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# SURFACE RIGHTS BOARD

  

# RULES

*Effective November 16, 2020*

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## **PART I: Purpose, Application of Rules, Definitions**

### **1. Purpose**

- (1) The purpose of these rules is to provide a means by which applications filed with the Board can be resolved through a fair and independent process in a timely and cost effective way.
- (2) The Board may publish guidelines, interpretation bulletins, information sheets and forms to assist parties in using these rules.
- (3) Unless otherwise ordered, these rules apply to all proceedings and mediations before the Surface Rights Board.

### **2. Intent of the Rules**

- (1) To identify the real issues in dispute.
- (2) To facilitate the most effective way of resolving the dispute at the least expense.
- (3) To encourage the parties to resolve the dispute themselves, by agreement, as early as possible.
- (4) To encourage parties to communicate.
- (5) To provide an independent, effective, efficient, and fair process.

### **3. Conflict Between the Rules, Acts and Regulations**

- (1) If any of these rules conflict or are inconsistent with an Act or Regulation, the Act or Regulation prevails to the extent of the conflict or inconsistency.

### **4. Effective Date**

- (1) These rules will come into effect on November 16, 2020.
- (2) For the purposes of rules 37(2)(d)–(e) and 37(4)(c), applications to review decisions and orders that issued prior to these rules coming into effect will be considered as though the decisions or orders issued on November 16, 2020.
- (3) The following are repealed and replaced by these rules:
  - (a) *Surface Rights Board Rules*, 1 December 2010;

- (b) *Written Offer Guideline*, ABSRB Guideline 2008.4;
- (c) *Mediation Guideline*, ABSRB Guideline 2008.5.

## 5. Definitions

- (1) In these rules:

“*Act*” means the Surface Rights Act as amended;

“*Address for Delivery*” means physical address or mailing address;

“*Adjourning*” involves a Member’s decision regarding when the proceeding or the hearing of an application will proceed and/or be completed;

“*Applicant*” means one or more person who files an application with the Board;

“*Application*” means any matter brought before the Board and includes all information required to be given to the Board in respect of the application;

“*Board*” means the Surface Rights Board;

“*Board Administrator*” means a person employed or engaged by the Board;

“*Chair*” means the Chair of the Board;

“*Deliver*” includes “serve” and “submit,” and means to provide or send a physical or electronic written communication to the Board or to other parties;

“*Document*” includes paper, letter, book, map, plan, drawing, photograph, film, recording, optical or electronic storage device, and any other thing on which information is recorded or stored;

“*Electronic Transmission*” includes delivery by e-mail, fax, file transfer protocol, online file storage, and similar tools;

“*File*” means delivery and acceptance of an electronic or written communication to the Board;

“*Guideline*” means general statements of principles of the Board that are non-binding and intended to inform and guide those subject to actions under the relevant legislation;

“*Hearing*” means a hearing by the Board under the Act or other relevant legislation authorizing the Board to make a decision;

“*Licensed Land Agent*” means a ‘land agent’ as licensed pursuant to the *Land Agents Licensing Act*;

*“Mediation”* means the intervention into a disputed matter or matters before the Board by a Mediator to facilitate negotiations among the parties and assist them in developing a mutually acceptable settlement, all of which is on a confidential basis;

*“Mediator”* means an individual, Member or Members appointed by the Chair to mediate an application;

*“Member”* means a member of the Board appointed under the Act;

*“Notice of Hearing”* means a notice from the Board stating the date, time and place that the Board will hold a hearing and giving reasonable particulars of the matter in respect of which the hearing will be held;

*“Occupant”* means an occupant as defined in the Act;

*“Operator”* means an operator as defined in the Act;

*“Owner”* means an owner as defined in the Act;

*“Panel Chair”* means the Member designated to preside at a hearing;

*“Party”* or *“parties”* means an applicant, operator, a respondent, owner, occupant, lessor, or any other person named in an application or an order of the Board;

*“Proceeding”* means a pre-hearing dispute resolution conference or hearing;

*“Reports”* means all appraisal reports and other documentary evidence prepared by a person, other than a party, which is intended to give written opinion evidence and testimony based on education, training, or experience;

*“Representative”* means a person, lawyer, or licensed land agent who has authority to act for a party;

*“Rescheduling”* involves a Board Administrator setting a new date for a proceeding or mediation in advance of the date originally set for it, usually confirmed by a new notice;

*“Respondent”* means an owner or occupant named as a respondent in an application to or in an order of the Board;

*“Settlement”* means an agreement respecting compensation reached by the parties to an application before the Board.

## **6. Application of Rules**

- (1) All parties must comply with these rules and any Board guidelines issued unless the Board otherwise orders.
- (2) The Board may exercise any power under these rules on its own initiative or on the application of a party.

- (3) The Board may waive or vary a requirement of these rules at its discretion.

## **7. Effect of Non-Compliance**

- (1) If a party refuses or fails without a reasonable excuse to comply with these rules, any Board guideline, or an order, direction or ruling of the Board, or to attend any proceeding under these rules, the Board may make any decision, order, or direction it considers appropriate in the circumstances, including one or more of the following:
  - (a) an order limiting the participation of a party in the proceeding or limiting the evidence which may be presented by a party in the proceeding;
  - (b) where the non-complying party is the applicant, an order dismissing the application or deeming the application to be withdrawn; or
  - (c) an order that the non-complying party pay the costs of another party resulting from the non-compliance.
- (2) In making a decision, order, or direction it considers appropriate under this section, the Board will consider whether there has been substantial compliance and whether a party has been prejudiced by the failure to comply.

## **8. Enlarging or Abridging Time**

- (1) The Board may, on any conditions it considers proper, shorten or lengthen the time required by these rules for doing anything or taking any proceedings.

# **PART II: Representatives**

## **9. Right to be Represented**

- (1) A party has the right to be represented by another person before the Board.
- (2) When a party retains a representative who is not a lawyer or a licensed land agent, a written notice of representation must be filed with the Board.
- (3) The notice of representation must be in the prescribed form and:
  - (a) be in writing, be dated, and be signed by the party appointing the representative;
  - (b) appoint and authorize the representative to act on behalf of the party;

- (c) include the Board file number and a description of the matter that the representative is appointed and authorized to act on behalf of the party; and
  - (d) include the representative's mailing address and telephone number, fax number, e-mail address, and cell phone numbers, if any.
- (4) Lawyers or licensed land agents that represent parties before the Board must notify the Board in writing that they represent the party and include their mailing address, telephone number, e-mail address, and cell phone numbers, if any.

#### **10. Giving Notice to a Representative is Notice to a Party**

- (1) Unless otherwise indicated in the rules, a notice given to a representative by the Board or by a party is notice to the party for whom the representative acts.

#### **11. Representative Ceasing to Act**

- (1) If a representative ceases to act for a party, the party or the representative must promptly file a written notice with the Board and deliver a written notice to the other parties.

### **PART III: Communications**

#### **12. Communications with Board and with Parties**

- (1) Other than communications required with a Member assigned to a pre-hearing dispute resolution conference or mediation, any communication with the Board must be through a Board Administrator. A party must not attempt to speak to or write directly to a Member outside a hearing regarding matters before the Board.
- (2) No party should give any evidence or submissions to a Member, except in the presence of the other parties at a proceeding to avoid the perception of bias.
- (3) A party must include the Board file number assigned by the Board on any communication that the party files with the Board.
- (4) A party must deliver a copy of any communication filed with the Board to the other parties.
- (5) A communication received by the Board after the Board's business day of 4:30 p.m. has ended is deemed to be received on the next business day.
- (5.1) The Board may publish an information bulletin detailing which forms of electronic transmission it will accept and its acknowledgement rules, or may vary the form of electronic transmission it will accept.



- (6) It is the party's responsibility to ensure the Board has the party's current address for delivery and address for electronic transmission, and those of its representative.
- (6.1) If a party has provided an address for electronic transmission, the Board and other parties may communicate with that party using that address unless otherwise requested by the party.
- (7) If a party fails to notify the Board of the party's current address and the Board receives notification by returned mail, e-mail, or otherwise, that the address on the Board's file is no longer current, the Board may stop sending communications to that address.
- (8) If a party is represented by a representative, the Board and other parties may communicate with that party by delivery to the representative.
- (9) A party or a representative must immediately notify the Board and other parties of a change of address for delivery or address for electronic transmission.

### **13. Guidelines**

- (1) The Board may make guidelines to help parties and the Board, with an application or any aspect of it, to help explain the Act, regulations or these rules.
- (2) If the guidelines conflict or are inconsistent with these rules or an act or regulation, the rules, act or regulation prevails to the extent of the inconsistency.

## **PART IV: Filing an Application**

### **14. Form of Application**

- (1) An operator who wishes to apply for a right of entry order must comply with the requirements in *Surface Rights Act General Regulation*.
- (1.1) Applications for Right of Entry may only be filed with the Board if they are received within twelve (12) months of the most recent written offer to the Respondent, unless the Board decides to accept the application at its own discretion.
- (2) Where a form is prescribed by the Board, the application must include a completed form.
- (3) An application must be in writing and contain the following:
  - (a) a description of the relief applied for;
  - (b) the reasons that the application is made;

- (c) a reference to the section of the statute relevant to the application;
- (d) a clear and concise statement of the facts relevant to the application;
- (e) any other information required by the Board or the relevant statutory provision;
- (f) any other information that may be useful in explaining or supporting the application;
- (g) the applicant's name, address for delivery, telephone number, fax number, and e-mail address, if available; and
- (h) if the applicant is represented by a representative, the representative's name, address for delivery, telephone number, and e-mail address, if available.

## **15. Board Administrator Review of Applications**

- (1) When an application is submitted for filing, a Board Administrator shall review the application and may, by notice to the applicant(s), refuse or suspend processing the application based on any of the following:
  - (a) failure to submit the information and documentation required with the application;
  - (b) failure to comply with these rules;
  - (c) failure to comply with the requirements of the Act; or
  - (d) the application was received later than the applicable deadline or limitation.
- (2) The Board Administrator may
  - (a) deliver a written notice with reasons to the applicant requiring the applicant, within a reasonable amount of time to complete the application, provide additional information or documentation, or correct deficiencies; or
  - (b) invite parties to provide additional written submissions, documentation or information to assist the Board in making a decision.
- (3) If an applicant fails to provide any information required to be submitted within a reasonable amount of time, the Board may consider the application withdrawn.
- (4) A party who disagrees with a notice from a Board Administrator may ask the Board to review the application, in which case the Board may:
  - (a) require an applicant to provide information, in addition to the application submitted, to assist the Board in determining whether the application can be accepted, and if the applicant then fails to provide the information

requested within a reasonable amount of time the Board may consider the application withdrawn;

- (b) dismiss the application;
  - (c) accept the application;
  - (d) accept the application with conditions; or
  - (e) waive any of the requirements under the rules if satisfied that there is good reason to do so.
- (5) If it appears to the Board that all or part of an application is not within its authority, or if a party on written application to the Board questions the Board's jurisdiction in an application, the Board may give the parties the opportunity to provide further information, evidence, or submissions and may conduct a proceeding to determine whether it has jurisdiction.
- (6) Any information provided in accordance with this section shall be considered part of the applicant's application.

#### **16. Acceptance of an Application**

- (1) When an application has been reviewed and is considered complete, a Board Administrator will notify the applicant that the application is accepted within a reasonable time.
- (2) Although a Board Administrator will review applications, it is always the applicant's responsibility to ensure that their application is complete, accurate and in compliance with the requirements of the Board and the statutory requirements.
- (3) Ultimately, it will be up to the Board panel hearing the application to decide whether or not the application is valid.

#### **17. Delivery of Documents**

- (1) Subject to rules 17(3) and 17(4), a document required to be delivered may be delivered on a person:
  - (a) by personal delivery;
  - (b) by courier service, ordinary mail, or electronic transmission;
  - (c) to the party's representative; or
  - (d) by any other method the Board directs.
- (2) If a person required to deliver a submission or other document fails to do so, the Board may deliver a copy of the submission or other document on the party.

- (3) A document may be delivered by electronic means only if the person being served has the information technology, equipment, software, and processes for receiving or retrieving the document.
- (4) An application for a right of entry order must be served:
  - (a) by personal delivery;
  - (b) by registered mail to the last known address(es) of the Respondent;
  - (c) by delivery to a lawyer who may, in writing, accept service on behalf of the person to be served, in which case the date of service of the application is the date the application is accepted in writing by the lawyer; or
  - (d) by such other method as the Board directs.
- (5) Proof of service of a right of entry application before the Board must be by affidavit setting out on whom the application was served and the means of service, and in any other applications before the Board, the Board may require a person to file an affidavit of service setting out on whom a document was delivered and the means taken to effect delivery.
- (6) The date of service of a document is the day on which the person being served receives the document unless it is received after 4:30 p.m., in which case the date of service is deemed to be the next day.
- (7) If a document is sent to a party's address for delivery by mail, it is deemed to be delivered seven (7) days after it was mailed, in the absence of evidence to the contrary.
- (8) If ordinary methods of delivery or service have not been or are not likely to be effective, the Board may permit or require an alternative method of delivery or service.

## **PART V: Pre-Hearing Issues, Dispute Resolution, and Mediation**

### **18. Pre-hearing Dispute Resolution Conferences**

- (1) After receiving an application, or after a right of entry order is made, 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.
- (2) 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.

- (3) The Chair may direct that the pre-hearing dispute resolution conference be facilitated by one or more Members or any other person.

## **19. Procedure at Pre-hearing Dispute Resolution Conferences**

- (1) At the pre-hearing dispute resolution conference, the facilitator may discuss the following with the parties:
  - (a) identification of the issues and whether the issues can be simplified;
  - (b) whether any facts or evidence can be agreed upon;
  - (c) whether any or all of the issues can be settled;
  - (d) issues relating to disclosure and the exchange of information; and
  - (e) the advisability of attempting other forms of resolution of the matter.
- (2) The facilitator conducting a pre-hearing dispute resolution conference may, among other things:
  - (a) schedule a site visit and determine the terms of participation for a site visit;
  - (b) schedule or reschedule a follow-up dispute resolution conference, a mediation, or a hearing;
  - (c) set a schedule for disclosure of:
    - (i) lists of witnesses intended to be called at a hearing,
    - (ii) expert reports to be tendered at a hearing, and
    - (iii) copies of any documents or other records that will be submitted as evidence at a hearing;
  - (d) provide non-binding opinions on any issue or the likelihood of success of any issue in the application;
  - (e) require the parties to prepare and file an agreed statement of facts;
  - (f) require the parties to prepare and file written submissions;
  - (g) review the procedure to be followed at the hearing; and
  - (h) 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 facilitator.

- (2.1) If the facilitator is also a Member, the facilitator may:

- (a) order a party to pay part of the costs of another party incurred to date or
  - (b) make any decision, order, or direction the Member considers appropriate.
- (2.2) If the facilitator is not a Member, a party who disagrees with a direction of the facilitator may ask the Board to review the direction, in which case the Board may confirm, amend, rescind, or replace the direction.
- (3) A pre-hearing dispute resolution conference is not open to the public.

## **20. Mediation**

- (1) Board-facilitated mediation is intended to provide a framework for a mediator to actively facilitate a process in which the parties resolve all or some of the issues in dispute by agreement.
- (2) At any time after an application is made to the Board, but before a hearing is conducted, any of the parties may request a Board-facilitated mediation.
- (3) After a request is made and the parties agree to participate, the Board may convene a Board-facilitated mediation.
- (4) At any time before concluding a mediation process, the Board may, on its own initiative or on the request of any of the parties, discontinue the mediation process and determine the issues in dispute before a hearing of the Board.
- (5) The Chair may direct that Board-facilitated mediation be conducted by one or more Members or appoint another person to conduct a mediation.
- (6) The Board may conduct Board-facilitated mediation in person, by telephone conference call, or by some other method.
- (7) The Board may determine the location for an in-person Board-facilitated 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.
- (8) In a Board-facilitated mediation, the mediator has discretion in the manner in which the mediation will be conducted and may:
  - (a) facilitate discussion between the parties towards a resolution of the issues;
  - (b) meet with the parties individually or together;
  - (c) make a consent order resolving the application; or
  - (d) schedule another meeting.
- (9) A Board-facilitated mediation is not open to the public.
- (10) A Board-facilitated mediation is a confidential process intended to facilitate the resolution of a dispute; discussions, negotiations and other communications made

attempting to settle claims by agreement in the Board process, including information exchanged as part of those communications, are confidential and must not be disclosed during the tribunal decision process or in any court proceeding or other legally-binding process unless

- (a) the parties agree that they can be disclosed or
  - (b) the parties are required by a court to disclose them.
- (11) Rule 20(10) does not prevent the use of statements made or documents generated for or in the Board-facilitated mediation process to prove the fact that a settlement was reached or the terms of a settlement.
- (12) A Member facilitating a Board-facilitated mediation process must not hear or decide any matter in the subject application without the written agreement of every party and the agreement of the Member.
- (13) A mediator facilitating a Board-facilitated mediation process must treat the Board process as confidential, and all the records relating to the process in the possession of the mediator or in the possession of a Board Administrator must be returned to the parties or destroyed except:
- (a) the agreement of the parties and any document necessary to implement the agreement;
  - (b) the Board approved Agreement to Mediate; and
  - (c) a report prepared by the mediator of the outcome.

## **PART VI: Hearings**

### **21. Scheduling a Hearing**

- (1) When determining compensation, the Board must schedule a date, time and place for a hearing if:
- (a) it has received the completed application and all required documents, or a right of entry order has been issued;
  - (b) there is no unresolved application or issue that should delay the scheduling of a hearing; and
  - (c) the prehearing dispute resolution conference or mediation did not resolve the compensation issue in dispute.

## **22. At the Hearing**

- (1) A party to an application has the right to:
  - (a) receive a copy of documents in the Board's possession that are related to the proceeding;
  - (b) present evidence;
  - (c) call witnesses;
  - (d) question or cross-examine witnesses who give evidence at a hearing;
  - (e) make submissions on the evidence and issues under dispute; and
  - (f) receive copies of the written submissions and evidence provided to the Board by the other parties to the proceeding.

## **23. Applications Considered by Written Submissions**

- (1) Where the Board decides that it is appropriate, it may
  - (a) make a decision with respect to a proceeding on the basis of the documents filed by the parties or
  - (b) require additional information and material from the parties before making a decision.
- (2) If the Board is considering an application by written submissions, the Board may issue a notice to the parties, which must:
  - (a) be in writing;
  - (b) briefly describe the subject matter of the application;
  - (c) indicate the date by which a written submission must be filed;
  - (d) state that the Board may grant the application or issue a decision if there are no submissions objecting to the application;
  - (e) indicate that copies of the application and other documents filed in support of the application are available upon request; and
  - (f) contain any other information that the Board considers necessary.
- (3) If a submission or submissions are filed, the Board may:
  - (a) set the application for a pre-hearing dispute resolution conference, a mediation, or hearing;
  - (b) issue a decision with respect to the application; or



- (c) dismiss the application.

#### **24. Notice of Hearing**

- (1) If the Board decides to set an application for a hearing, the Board shall issue a notice of hearing, which must:
  - (a) be in writing;
  - (b) briefly describe the subject-matter of the hearing;
  - (c) indicate the date, time, and place of the hearing;
  - (d) indicate the name and address of the applicant or the applicant's representative;
  - (e) indicate that copies of the application and other documents filed in support of the application are available upon request; and
  - (f) contain any other information that the Board considers necessary.

#### **25. Adjourning and Rescheduling**

- (1) The Board may adjourn or reschedule a proceeding at any time on its own initiative.
- (2) To reschedule a proceeding other than a pre-hearing dispute resolution conference
  - (a) on the first request and with the consent of all parties, the parties must deliver the request at least five (5) days before the proceeding and provide written consent, and then a Board Administrator may reschedule the proceeding; or
  - (b) on a subsequent or contested request, a party must deliver the request at least seven (7) days before the proceeding and the rescheduling request will be decided by the Board.
- (3) To reschedule a pre-hearing dispute resolution conference
  - (a) with the consent of all parties, the parties must deliver the request to the Board at least one (1) day before the proceeding and provide written consent; or
  - (b) without the consent of all parties, a party must deliver the request to the Board at least seven (7) days before the proceeding.
- (4) A rescheduling request must be delivered to the Board and other parties and must include the reasons and evidence relied upon in support of the request.

- (5) The Board may require further information or submissions from the parties, may require the parties to attend a pre-hearing dispute resolution conference and make further submissions regarding the request for the rescheduling, and may allow or disallow the rescheduling request.
- (6) The Board will not grant a rescheduling request unless the Board considers it reasonable and the request will not be prejudicial to the other parties.
- (7) If the Board grants the request, the Board may order any terms or conditions, attendance at pre-hearing dispute resolution conferences, production of documents or reports, payment of the costs, or any other matters which may assist with the fair and efficient conduct of the application.
- (8) If a party is unable to obtain consent to a rescheduling request from the other parties or if the party does not make the request to the Board within the prescribed time in rule 25(2) or 25(3), the Board may require the party or their agent to attend on the date of the proceeding to request an adjournment from the Board.
- (9) The Board may adopt guidelines outlining factors it will consider when exercising its discretion to reschedule or adjourn a proceeding.

## **26. Withdrawal of an Application**

- (1) Subject to rule 26(2), a party may withdraw all or part of an application at any time in writing to the Board.
- (2) An operator who wishes to withdraw an application for a right of entry order filed with the Board must, in writing, request the Board to cancel the application and deliver to all parties a copy of this request.
- (3) Upon receipt of a request to withdraw the application under rule 26(2), the Board will consider whether there is any claim from the respondents named in the application for costs in connection with the application and may:
  - (a) cancel the application or
  - (b) cancel the application with an order for payment of costs.

## **27. Settlement**

- (0.1) The Board may adopt a settlement as an order of the Board.
- (1) If the parties settle an application, they must advise the Board.
- (2) If the parties settle an application with respect to compensation, they may apply to the Board for a compensation order incorporating the terms of settlement using the form prescribed by the Board.
- (3) In an application for an order under rule 27(2), the Board may require further information or submissions from the parties regarding the application, and make an

order incorporating the terms of settlement of an application if it is satisfied the order is consistent with the legislation; or provide the parties with reasons if it declines to make an order.

## **28. Hearings**

- (1) The Board may conduct a hearing in person, by telephone conference call, by way of written submissions, or by some other method, and in deciding the method, the Board will consider the complexity of the matter in dispute, the number of witnesses, whether reports are to be filed and the convenience and the cost to the parties and the Board.
- (2) The Chair in accordance with the Act may direct that a hearing be conducted by a panel consisting of a single Member or any number of Members one of whom is to be the panel chair, and in deciding the number of Members, the Chair will consider the complexity of the matter in dispute, the number of witnesses, whether reports are to be filed and the convenience and the cost to the parties and the Board.
  - (2.1) The decision of a single Member panel or a majority of the Members of a panel is the decision of the Board. In the event of a tie vote then the panel chair shall have the deciding vote.
- (3) The Member conducting a mediation will not be designated as a panel Member for a hearing of the same application unless all parties consent.
- (4) The Board may determine the location for a hearing 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.
- (5) The panel at a hearing has discretion on how the hearing will be conducted and, without limitation, may:
  - (a) determine the order of proceeding;
  - (b) administer oaths and affirmations;
  - (c) exclude a witness from the hearing;
  - (d) make determinations on the admissibility of evidence;
  - (e) require the production of evidence;
  - (f) require the attendance of witnesses;
  - (g) proceed in a party's absence or in the absence of any submissions from a party where the party has had notice of the proceeding;
  - (h) ask questions to clarify issues or facts;
  - (i) ask questions of a witness in the nature of direct or cross-examination;

- (j) place time limitations on any part of the hearing including presentation of evidence, the examination or cross-examination of witnesses, or presentation of opening or closing submissions;
  - (k) require parties to provide written submissions;
  - (l) make any direction or order considered necessary for the maintenance of order at the hearing including imposing restrictions on a person's participation in or attendance at a hearing and excluding a person from participation or attendance at a hearing;
  - (m) adjourn a hearing;
  - (n) make an order for a party to pay costs to another party; and
  - (o) make any other direction or order necessary for the just and timely resolution of the application.
- (6) A party who intends to rely on legal authorities or cases in a hearing must provide a copy for each panel Member and for each party.
- (7) Unless otherwise directed by the Board, a hearing is open to the public.

## **29. Evidence and Disclosure**

- (1) Unless otherwise directed by the Board, if a party wants to submit a report at a hearing, the party must deliver the report to the other parties no later than 14 days before the start of the hearing.
- (2) A party who intends to put forward a document as evidence at a hearing must provide a copy to be marked as an exhibit and a copy of the document for each panel Member and each party.
- (3) Evidence or information submitted by a party with respect to an application at any time before the application is disposed of by the Board is not confidential and must not be withheld from parties.

## **30. Written Submissions**

- (1) A party to any proceedings before the Board who will not be present or represented at a hearing held by the Board may submit written submissions to the Board and the other parties not later than 14 days before the time fixed for the hearing.
- (2) A written submission must be signed by the party filing it or by that person's representative.

## **PART VII: Costs**

### **31. Costs Award**

- (1) The Board may award costs to a party if the Board is of the opinion that the costs are directly and necessarily related to the proceeding, and a request for costs must include:
  - (a) reasons to support the request;
  - (b) a detailed description of the costs sought; and
  - (c) copies of any invoices or receipts for disbursements or expenses.
- (2) In making an order for the payment of a party's costs, the Board may consider:
  - (a) the reasons for incurring costs;
  - (b) the complexity of the proceeding;
  - (c) the contribution of the representatives and experts retained;
  - (d) the conduct of a party in the proceeding;
  - (e) whether a party has unreasonably delayed or lengthened a proceeding;
  - (f) the degree of success in the outcome of a proceeding;
  - (g) the reasonableness of any costs incurred; and
  - (h) any other factor the Board considers relevant.

## **PART VIII: Decisions, Notices of Decisions, and Orders**

### **32. New or Additional Information**

- (1) If, before a decision is made, evidence that was not available before the hearing becomes available, or if evidence available before the hearing but which could not, on reasonable and justifiable grounds, be produced at the hearing, becomes available, the Board may:
  - (a) consider whether the evidence should be presented;
  - (b) provide an opportunity for every other party to review the information and make submissions on it and its relevance;

- (c) consider reopening the hearing to hear evidence related to the information;
- (d) consider giving notice to the parties to hear representations on the application of the Act or the Regulations with respect to the information.

### **33. Signing the Decision or Order**

- (1) A decision or order of a panel of the Board must be signed on behalf of the panel by a Member of that panel, or in that panel's absence, another Member.

### **34. Effective Date of Decision**

- (1) The decision of a panel of the Board is the official decision of the Board effective on and after the date the decision is signed, unless otherwise specified by the Board.

### **35. Notification and Distribution of Decision**

- (1) The Board must send each decision and order it makes to all parties to the application.

## **PART IX: Reviewing and Amending Decisions or Orders**

### **36. Clarification, Corrections of Technical Errors or Slips**

- (1) The panel of the Board making a decision may clarify any directions given in respect of a decision or order.
- (2) Notwithstanding rule 37, the Board may amend a decision or order to correct:
  - (a) a clerical or typographical error;
  - (b) an accidental or inadvertent error, omission, or other similar mistake; or
  - (c) errors of calculation.
- (3) Amendments under this rule may be made without first giving notice to the parties or asking for submissions, but the parties must subsequently be notified of the correction.

### **37. Reviewing, Rescinding, Amending, or Replacing a Decision or Order**

- (1) The Board may review a decision or order on its own initiative, and, if it does so, will determine a procedure for review, including an opportunity for parties to make submissions.
- (2) An application to have the Board review a decision or order to rescind, amend, or replace the decision or order must be in writing and:
  - (a) include the decision or order number;
  - (b) identify the issue or issues in the decision or order for which review is requested;
  - (c) include a brief explanation of how the party is adversely affected by the decision or order, or the damage that has resulted or will result from the decision or order;
  - (d) for an application made under rule 37(3)(a-d), be delivered to the Board within six (6) months of the date the decision or order was issued; and
  - (e) for an application made under rule 37(3)(e), be delivered to the Board within six (6) months of the date the evidence was discovered or became available.
- (3) The Board may only decide to review a decision or order if one of the following basic requirements for review are met:
  - (a) the decision or order shows an obvious and important error of law or jurisdiction;
  - (b) the decision or order shows an important error of fact, or an error of mixed fact and law, in the decision or order that affects the decision or order;
  - (c) the decision or order was based on a process that was obviously unfair or unjust;
  - (d) the decision or order is inconsistent with an earlier Board decision or order, binding judicial authority, or provision of the relevant legislation, regulation, or rules; or
  - (e) there was evidence at the time of the hearing that was not presented because it was unavailable to the party asking for review, and which is likely to make a substantial difference to the outcome of the decision or order.
- (4) The Board may dismiss an application for review without notifying other parties if the Board determines that any of the following apply:
  - (a) none of the basic requirements in rule 37(3) are met;

- (b) the application is not within the jurisdiction of the Board;
  - (c) the application was not filed within the applicable time limit; or
  - (d) there is no reasonable prospect that the application will proceed.
- (5) The Board shall not grant a request for review without providing all parties an opportunity to make submissions and may consider the application by written submissions or by some other method. Upon consideration of an application for review, the Board may
- (a) dismiss the request; or
  - (b) provided that all parties have had an opportunity to make submissions,
    - (i) confirm, amend, rescind or replace any decision or order previously made by it or
    - (ii) order a rehearing or any other proceeding in accordance with these rules on all or part of the matter.
- (6) If an application for review has been decided by the Board, the Board will not consider a subsequent application to review the same decision or order unless it is satisfied that there are exceptional circumstances; the Board does not need to give reasons for a decision not to consider a subsequent application.

### **38. Amendments When Parties or Land Descriptions Have Changed**

- (1) Notwithstanding rule 37, at any time the Board may amend a decision or order to reflect a change of circumstances if it is satisfied that any of the following apply:
- (a) the approval holder or licensee has changed since the Board's decision or order was issued;
  - (b) the owner or occupant of the land concerned has changed since the Board's decision or order was issued; or
  - (c) the land description has changed since the Board's decision or order was issued.
- (2) The Board may determine the procedures to be followed and these amendments may be made without first giving notice to the parties but the parties must subsequently be promptly notified of the amendment.

### **39. Rehearing Before a Decision or Order is Issued**

- (1) An application for a rehearing must be in writing and contain the following:
- (a) a clear and concise statement of the facts relevant to the application for a rehearing;



- (b) the reasons for the application for a rehearing;
  - (c) a brief explanation as to the nature of the prejudice or damage that will result if the rehearing is not granted;
  - (d) the applicant's name, address for delivery, telephone number, fax number, and e-mail address, if available; and
  - (e) if the applicant is represented by a representative, the representative's name, telephone number, fax number, and e-mail address, if available.
- (2) An application for a rehearing must be filed and delivered to the parties to the proceeding for which the original application was made.
- (3) If the Board grants the application, it shall issue a notice of rehearing, and a hearing will be held in accordance with these rules.