



**SECTION:** Leases  
**SUBJECT:** Special Areas Board Recreational Access Policy

05-18

## Guiding Principles

The provision of recreational access on Public Land within the Special Areas is facilitated under a set of Guiding Principles developed by the Special Areas Board. These principles are intended to provide background and context that illustrate the ideology supported by the Board and residents of the Special Areas.

- The dynamic nature of the prairie landscape should be appreciated including its limitation to endure human recreational activity.
- Responsibility for landscape health should be shared by all Albertans.
- Recreational users should be reasonable in their requests to the disposition holder who make his or her living outside of recreation.
- The prairie landscape is home to our residents and needs to be respected by the casual recreational user.
- Communication with the disposition holder can provide a high level of detail regarding the condition and attributes of the land.
- Trust relationships are the basis of respect regardless of personal background.
- The Special Areas is home to a number of species at risk and should not be harassed nor displaced by recreational users.

Road allowances, whether developed or not do not form part of public land dispositions. They are a municipal asset and are managed through relevant legislation, regulations and Local Government policy. Road allowances are designed to facilitate public travel and for the purposes of this policy are not considered recreational destinations.

Mineral Surface Leases are dispositions issued to industrial developers for specified purposes. *These dispositions remain as part of the Grazing/Cultivation lease under which they were issued. Recreational users have a duty to contact ALL LEASEHOLDER INTERESTS prior to accessing public lands for recreational use.*

Agricultural operations within the Special Areas often include a mixture of private deeded land and public land held under an agricultural disposition. Recreational access to public land does not categorically include permission to access private deeded land. The onus is upon the recreational user to obtain permission for access to private deeded from the land owner.

The dispute resolution processes outlined in this policy apply only to recreational access on public land held under an agricultural disposition and in no manner affect the bundle of rights associated with private deeded land. Unauthorized access to privately held land may be pursued under the provisions of the Petty Trespass Act.

Abandoned rail line property (ARP) is used in the Special Areas for multi-interest needs. It is not maintained on a scheduled basis and may contain many hazards that are not readily detected.

Cont....



**SECTION:** Leases

05-18

**SUBJECT:** Special Areas Board Recreational Access Policy

The hazards may include trenches where culverts have either collapsed or been removed, pipe wire left behind by the railroad and concealed in the vegetation, or rail spikes and other material that makes vehicular travel a non-recommended practice. ARP may also provide habitat to many wildlife species, some of which are difficult to detect and are venomous. The ARP is often used by adjacent land holders and may therefore be lounging areas for domestic livestock that can be aggressive if disturbed.

ARP and road allowances that are either owned, or under the administrative jurisdiction of the SAB are not contained within agricultural dispositions. They may be adjacent to either public land held under disposition, or private deeded land. Permission to access the adjacent land off the ARP or road allowance will require permission as addressed in this policy.

Where recreational users employ the services of a commercial guide, for the purpose of this policy, this is not considered within the same context of casual, private individual recreation. Due to the exclusive nature of Guiding Operations, this is not deemed an acceptable practice where it has the potential to exclude or jeopardize the interests of the casual recreational user.

Agricultural disposition holders may not deny public recreational access on the basis that parcels under their control may be subject to an agreement with a commercial guiding operation.

### *Table of Contents*

1 Interpretation

#### **Part 1**

##### **Access for Recreational Purposes**

2 Local settlement officers and directors

3 Other requirements unaffected

4 Contact information

5 Contact before access

6 Duty to allow access

7 Terms and conditions

8 Access not restricted or prohibited

9 Duties of recreational user

10 Recreational management plans

11 Terms and conditions

12 Director's order

Cont....



**SECTION:** Leases  
**SUBJECT:** Special Areas Board Recreational Access Policy

05-18

## Part 2

### Dispute Resolution

- 13 Application to resolve dispute
- 14 Combining applications
- 15 Review and decision by local settlement officer
- 16 Review of decision by director
- 17 Review does not operate as stay
- 18 Decision binding
- 19 Request for information
- 20 Procedure
- 21 Dismissal of frivolous matters
- 22 Extension of time

### Interpretation

#### 1(1) In this Policy,

- (a) “Act” means the *Public Lands Act* or the *Special Areas Act*, as the case may be;
- (b) “agricultural disposition” means the following agricultural dispositions under the Act:
  - (i) a grazing lease;
  - (ii) a grazing permit;
  - (iii) a cultivation lease;
  - (iv) a cultivation permit;
  - (v) an authorization to harvest hay;
  - (vi) a community pasture head tax grazing permit;
- (c) “bicycle” means any cycle on which a person may ride and that is propelled by muscular power, regardless of the number of wheels it has;
- (d) “crop” means an annual crop, but does not include forages grown for winter use or tame or native hay;
- (e) “director” means the Director of Property Administration for the Special Areas Board;

Cont....

**SECTION:** Leases  
**SUBJECT:** Special Areas Board Recreational Access Policy

05-18

- (f) “disposition” means every instrument executed pursuant to the Act whereby any interest in land of the Crown or the Special Areas, or any other right or privilege in respect of land of the Crown or Special Areas that is not an estate or interest in land, is or has been granted or conveyed by the Minister to any person, and may include a conveyance, lease, licence, permit, or authorization.
- (g) “local settlement officer” means a person who is designated as a local settlement officer under section 2;
- (h) “Minister” means the Minister responsible for administration of the affairs of the Special Areas, or his delegate.
- (i) “motor vehicle” means a device in, on or by which a person may be transported or drawn and that is propelled by any power other than muscular power and includes, without limitation, an off-highway vehicle within the meaning of section 117 of the *Traffic Safety Act*, other than a motor boat;
- (j) “party” means an agricultural disposition holder and a person who for recreational purposes exercises access or wishes to exercise access to the agricultural disposition land;
- (k) “recreational management plan” means a recreational management plan developed under the direction of the Minister, or from a request of a disposition holder;
- (l) “recreational purposes” includes, without limitation, any of the following activities when carried out for recreational purposes:
  - (i) hunting within the meaning of the *Wildlife Act*, or *antler shed hunting*;
  - (ii) camping;
  - (iii) fishing;
  - (iv) boating, swimming and other water sports;
  - (v) berry picking, mushroom picking and picking of other fruits or herbs;
  - (vi) picnicking;
  - (vii) hiking;
  - (viii) nature study and viewing or photographing scenic sites;
  - (ix) snow skiing, snowshoeing, skating, sledding and other winter sports;
  - (x) hang-gliding or para-sailing;
  - (xi) hot air ballooning;

Cont....



**SECTION:** Leases 05-18  
**SUBJECT:** Special Areas Board Recreational Access Policy

- (xii) bicycling;
- (xiii) the use of animals for transportation;
- (xiv) the use of motor vehicles.

(2) A reference in this Policy to a local settlement officer or the director is to be read as a reference to the local settlement officer or director with duties pursuant to a designation or authorization under section 2 to exercise jurisdiction in the Special Areas in which the relevant agricultural disposition land is located.

### **Part 1** **Access for Recreational Purposes**

#### **Local settlement officers and directors**

2(1) The Minister may in writing designate persons or classes of persons who are employees of the Government and under the Minister's administration as local settlement officers for the purposes of this Policy.

#### **Other requirements unaffected**

- 3(1) Nothing in this Policy negates a requirement under the Act or any other law to obtain for recreational purposes a licence, permit, approval or other authorization in connection with the use of agricultural disposition land.
- (2) Where a licence or authorization is required for a recreation based business such as guiding or commercial enterprise such as data gathering that takes place upon public land, the Minister does not recognize the for profit activity as public recreation in the context of this policy.
- (3) Subject to the intent of subsection (2), the commercial or business interest must obtain a Consent of Occupant within the meaning of the Special Areas Disposition Regulation prior to gaining entry onto the agricultural disposition holders land.

#### **Contact information**

- 4(1) The holder of an agricultural disposition that is a grazing lease or a cultivation lease shall provide to the Minister in the form and manner and at the time requested by the Minister the name and the telephone number, facsimile number or e-mail address of the person who will act as the agricultural disposition holder's contact person for the purposes of section 5.
- (2) The Minister shall keep a record of the information referred to in subsection (1) and shall make the information available to the public in a manner the Minister considers appropriate.
- (3) Without limiting the means by which the Minister may make information available under subsection (2), the Minister may post the information on a website.

Cont....

**SECTION:** Leases  
**SUBJECT:** Special Areas Board Recreational Access Policy

05-18

**Contact before access**

**5(1)** A person who for recreational purposes wishes to gain access to land that is the subject of an agricultural disposition to use the land shall contact the disposition holder's contact person and provide the following information to that person:

- (a) the number of persons wishing to gain access to the land and, if the disposition holder's contact person requests it, their names and the licence numbers of the vehicles that will be used to transport those persons to the land;
- (b) the name of a person who will act as a contact for the person or persons wishing to gain access and the means by which that person may be contacted;
- (c) the recreational purpose for which access is desired, the proposed date, time and duration of the access and the location, in as much detail as is practicable, at which the recreational purpose will be carried out.

**(2)** Subsection (1) does not apply in respect of agricultural disposition land where the holder of the agricultural disposition

- (a) fails to comply with section 4(1), or
- (b) has provided notice in writing to the Minister that contact under subsection (1) is not required.

**(3)** Subject to subsection (4), a person shall not enter land referred to in subsection (1)

- (a) if the person has not complied with subsection (1), or
- (b) if the agricultural disposition holder's contact person does not respond to contact made under subsection (1).

**(4)** Where

- (a) after reasonable attempts, a person wishing to gain access is unable to contact an agricultural disposition holder's contact person under subsection (1), or
- (b) the agricultural disposition holder's contact person does not respond to contact made under subsection (1)

a local settlement officer may, after conducting any inquiry that he or she considers appropriate, allow access to the land subject to any terms and conditions he or she considers appropriate.

**(5)** In the event of a dispute, the onus is on the person wishing to gain access to prove that this section has been complied with.

Cont....

**SECTION:** Leases

05-18

**SUBJECT:** Special Areas Board Recreational Access Policy

**Duty to allow access**

**6(1)** Where a person wishing to gain access for recreational purposes to land that is the subject of an agricultural disposition to use the land complies with section 5, the agricultural disposition holder shall allow access to the agricultural disposition land unless one or more of the following circumstances exist:

- (a) the proposed use would involve the use of one or more bicycles, animals for transportation or motor vehicles;
- (b) the proposed use would occur
  - (i) in a fenced pasture unit where livestock are present in accordance with the terms and conditions of the agricultural disposition and the Act, or
  - (ii) on cultivated land on which a crop is growing or has not been completely harvested; or
  - (iii) *in an area where the Minister has documented evidence of essential or critical habitat of any Species at Risk*
- (c) a fire ban imposed by the Minister is in effect in respect of all or part of the agricultural disposition land;
- (d) the proposed use would involve hunting within the meaning of the *Wildlife Act* at a location that is unreasonably close to a fenced pasture in which livestock of the agricultural disposition holder are present in accordance with the terms and conditions of the agricultural disposition and the Act;
- (e) the proposed use is camping;
- (f) the proposed use would be contrary to a recreational management plan, to terms and conditions imposed under section 10 or 11 or to an order of the director under section 12.

**(2)** Where the agricultural disposition holder is in compliance with section 4(1) and

- (a) the person wishing to gain access fails to comply with section 5, or
- (b) one or more of the circumstances referred to in subsection (1) exists, the agricultural disposition holder may
- (c) refuse access to the person wishing to gain access, or
- (d) allow access subject to any terms or conditions imposed under section 7.

**(3)** Where an agricultural disposition holder refuses access under subsection (2)(c), the holder shall give to the person wishing to gain access reasons orally or in writing as to why access was refused.

Cont....

**SECTION:** Leases  
**SUBJECT:** Special Areas Board Recreational Access Policy

05-18

### Terms and conditions

7 In allowing access for recreational purposes to land that is the subject of an agricultural disposition, an agricultural disposition holder may impose any reasonable terms and conditions that the holder considers are necessary in respect of use and access as they relate to matters referred to in section 6(1)(a) to (e).

### Access not restricted or prohibited

8 Unless access is restricted or prohibited

- (a) by a recreational management plan,
- (b) under section 10(4)(a),
- (c) by a term or condition imposed under section 10(4)(b) or 11, or
- (d) by an order of the director under section 12,

the holder of an agricultural disposition shall not restrict or prohibit access for recreational purposes to the agricultural disposition land by persons who wish to use the land for recreational purposes.

### Duties of recreational user

9(1) No person who for recreational purposes uses agricultural disposition land shall

- (a) litter on the agricultural disposition land,
- (b) bring an animal onto the agricultural disposition land, or allow an animal to enter or remain on the agricultural disposition land unless the animal is under the direct control of the person,
- (c) park a vehicle within the boundaries of the agricultural disposition land or block an approach to the land without the consent of the agricultural disposition holder,
- (d) set, light or maintain a fire on the agricultural disposition land without the consent of the agricultural disposition holder, *notwithstanding the above, no fires shall be lit during periods of a declared municipal fire ban,*
- (e) enter or use any building or improvement on the agricultural disposition land without the consent of the agricultural disposition holder, or
- (f) cause any damage to the agricultural disposition land or the property of the agricultural disposition holder.

(2) A person who for recreational purposes uses agricultural disposition land that is subject to a grazing lease or cultivation lease shall

- (a) leave gates and other property on the agricultural disposition land in the same condition and state that they were in before the recreational use,

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**SECTION:** Leases  
**SUBJECT:** Special Areas Board Recreational Access Policy

05-18

- (b) forthwith advise the agricultural disposition holder or the agricultural disposition holder's contact person designated under section 4 of any damage to property or other matters of concern that arose as a result of the activity of the recreational user while on the land,
  - (c) comply with an applicable recreational management plan, if any,
  - (d) comply with the terms and conditions, if any, imposed by the agricultural disposition holder under section 7,
  - (e) comply with any prohibitions or restrictions under section 10(4)(a),
  - (e.1) comply with the terms and conditions, if any, imposed under section 10(4)(b) or 11, and
  - (f) comply with an order of the director under section 12, if any.
- (3) A person who for recreational purposes uses agricultural disposition land shall
- (a) leave gates and other property on the agricultural disposition land in the same condition and state that they were in before the recreational use,
  - (b) comply with an applicable recreational management plan, if any,
  - (c) comply with any prohibitions or restrictions under section 10(4)(a),
  - (c.1) comply with the terms and conditions, if any, imposed under section 10(4)(b) or 11, and
  - (d) comply with an order of the director under section 12, if any.

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### **Recreational management plans**

- 10(1)** The Minister may establish recreational management plans that apply in respect of agricultural disposition land.
- (2)** The Minister shall not establish a recreational management plan, or make any changes to such a plan, unless the Minister first secures the agreement to the plan or changes of all persons who hold agricultural dispositions in respect of land to which the plan applies.
- (3)** Where there is a conflict between a recreational management plan and
- (a) a provision of this Part, or
  - (b) an order made or a term or condition imposed under this Part,
- the recreational management plan is paramount.
- (4)** The Minister may

Cont....

**SECTION:** Leases  
**SUBJECT:** Special Areas Board Recreational Access Policy

05-18

- (a) prohibit or restrict access to, or
  - (b) impose terms and conditions respecting recreational use of and access to, agricultural disposition land pending the establishment of a recreational management plan in respect of the land.
- (5) Agricultural disposition holders, contact persons and persons exercising access for recreational purposes to agricultural disposition land shall comply with any recreational management plan that applies in respect of the land.

### **Terms and conditions**

**11(1)** A local settlement officer or the director may impose any terms and conditions respecting recreational use of and access to agricultural disposition land that the local settlement officer or director considers are necessary for the purposes of proper land management, public safety or animal health.

**(2)** In the case of an agricultural disposition a local settlement officer or director may not impose terms and conditions under subsection (1) without first consulting with the holder of the grazing lease or cultivation lease in the form and manner the local settlement officer or director considers appropriate.

### **Director's order**

**12(1)** The director may, with respect to agricultural disposition land described in the access order, issue an access order to

- (a) prohibit access for recreational purposes to all or part of the agricultural disposition land,
- (b) require the agricultural disposition holder to permit reasonable access for recreational purposes to all or part of the land, or
- (c) require a person who is exercising access to agricultural disposition land to comply with a provision of the Act or this Policy or with any term or condition that is validly imposed under this Policy,

subject to any terms and conditions that the director considers appropriate.

**(2)** An access order under this section operates notwithstanding any provision of this Policy.

**(3)** Where the director makes an access order under this section, the director shall

- (a) provide a copy of the access order to the holder of the agricultural disposition land to which the access order relates, and

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**SECTION:** Leases  
**SUBJECT:** Special Areas Board Recreational Access Policy

05-18

- (b) otherwise make the access order available to the public in the form and manner that the director considers appropriate.

## **Part 2 Dispute Resolution**

### **Application to resolve dispute**

**13(1)** Where a dispute arises between the holder of an agricultural disposition and a person who is exercising access or wishes to exercise access to the agricultural disposition land for recreational purposes, and the dispute relates to

- (a) the allowing or refusal of access to the agricultural disposition land,
- (b) the imposition of a term or condition by the agricultural disposition holder under section 7, or
- (c) the making of contact under section 5,

and the parties are unable to resolve the dispute, either party may apply to a local settlement officer to have the dispute resolved under this Part.

**(2)** An application must be made in writing, must be provided to the local settlement officer within 10 business days of the date that the dispute arose, and must contain

- (a) the grounds for the application,
- (b) a description of the relief requested by the applicant, and
- (c) an address for the applicant.

**(3)** A party who applies to a local settlement officer under subsection (1) shall forthwith provide a copy of the application to the other party.

### **Combining applications**

**14** Where a local settlement officer receives more than one application under section 13, the local settlement officer may combine the applications for the purposes of dealing with them under this Policy.

### **Review and decision by local settlement officer**

**15(1)** Where a local settlement officer receives an application that complies with section 13, the settlement officer shall review the dispute and make a determination in accordance with this Policy and any rules made under section 20.

- (2)** On conducting a review the local settlement officer may
  - (a) deny access to all or part of the agricultural disposition land for recreational purposes;

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**SECTION:** Leases  
**SUBJECT:** Special Areas Board Recreational Access Policy

05-18

- (b) require the agricultural disposition holder to allow access to all or part of the agricultural disposition land for recreational purposes, subject to any terms and conditions the local settlement officer considers appropriate;
- (c) give any directions with respect to the making of contact under section 5 that the local settlement officer considers appropriate.

(3) The local settlement officer shall forthwith provide a copy of the local settlement officer's decision to the parties.

### **Review of decision by the director**

**16(1)** Any party may request a review of a local settlement officer's decision under section 15 by the director.

(2) A request for review must be in writing and must be provided to the local settlement officer within 10 business days after receipt of notice of the local settlement officer's decision, and must contain

- (a) a copy of the local settlement officer's decision,
- (b) the grounds upon which the review is requested,
- (c) a description of the relief requested by the applicant, and
- (d) an address for the applicant.

(3) A party who provides a request for review to a local settlement officer under subsection (2) shall forthwith also provide a copy of the request for review to the other party.

(4) A local settlement officer who receives a request for review that complies with subsection (2) shall forthwith forward it to the director.

(5) On reviewing the local settlement officer's decision the director, after presenting the matter to and considering the input of the Special Areas Board may

- (a) confirm, reverse or vary the decision;
- (b) order any thing the director may order in an access order under section 12;
- (c) make any decision that the local settlement officer could have made.

(6) In a review under this section the director must consider the material provided under subsection (2) but may accept new information if the director considers that the new information is relevant to the dispute.

(7) The director shall provide written notice of the director's decision to the parties.

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**SECTION:** Leases  
**SUBJECT:** Special Areas Board Recreational Access Policy

05-18

### **Review does not operate as stay**

17 Where a request for review of a decision of a local settlement officer is made under section 16, the decision of the local settlement officer remains in effect pending the director's decision under section 16.

### **Decision binding**

18 The parties are bound by and shall comply with a decision of a local settlement officer or director under this Part.

### **Request for information**

19(1) A local settlement officer or the director may by notice in writing request a party to provide any information that the local settlement officer or director considers is necessary to enable him or her to carry out his or her duties under this Part.

(2) A party who receives a request under subsection (1) shall comply with it within 10 business days after it is received.

### **Procedure**

20(1) Subject to this section, the Minister may establish rules governing the procedure to be followed by local settlement officers and the director in carrying out their duties under this Part.

(2) Before making a decision on a dispute under this Part, a local settlement officer or the director may hold preliminary discussions with the parties and any other persons the local settlement officer or director considers appropriate for the purpose of resolving the dispute including, without limitation, determining any preliminary issues that are relevant to the dispute.

(3) A local settlement officer or director may, with the consent of the parties, engage the services of any persons the local settlement officer or director considers appropriate for the purpose of assisting him or her in resolving the dispute.

(4) A local settlement officer in reviewing a dispute and the director in reviewing the decision of a local settlement officer may carry out the review by means of discussions, meetings, written submissions or a teleconference, or a combination of any of them, as the local settlement officer or director considers appropriate.

### **Dismissal of frivolous matters**

21 A local settlement officer reviewing a dispute and the director reviewing the decision of a local settlement officer may at any time dismiss the application or the request for review where the local settlement officer or director considers that the application or request for review is frivolous or malicious or without merit.

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**SECTION:** Leases  
**SUBJECT:** Special Areas Board Recreational Access Policy

05-18

### Extension of time

**22** A local settlement officer or director may, before or after the expiry of the period, extend a time period referred to in section 13(2), 16(2) or 19(2) where the local settlement officer or director considers that there are sufficient grounds for doing so.

### Part 3 Miscellaneous

#### Service

**23** A document provided under section 12(3)(a), 13, 15(3), 16 or 19 is sufficiently provided if it is

- (a) personally provided to the person to whom it is directed,
- (b) sent by ordinary or registered mail addressed to the person at the last known address for that person,
- (c) sent by facsimile addressed to the person at the last known facsimile number for that person, or
- (d) sent by electronic mail to the person's *last known* e-mail address.

  
Jordon Christianson, Chair  
Special Areas Board

Board Motion  
8-3-12