



Rules of Procedure for Environmental Assessment and Environmental Impact Review Proceedings

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Table of Contents

Introduction and Purpose 4

PART 1: Definitions and General Provisions 4

 Definitions 4

 Authority..... 7

 Citation 7

 Interpretation 7

 Application of the Rules 7

 Compliance with the Rules 8

 Forms 8

PART 2: Conduct of Board Proceedings 9

 Commencement of a Proceeding..... 9

 Notice by Board of Commencement of a Proceeding..... 9

 Timing of process steps in a Proceeding 9

 Participating in a Board Proceeding 9

 Decisions Requested from the Board during a Proceeding 10

 Providing Documents and Written Information to the Board 11

 The Public Record in a Proceeding 11

 Traditional Knowledge 12

 Special Rules about Evidence 12

 Late Filing of Submissions 13

 Information Requests..... 14

 Site Visits 14

PART 3: The Public Hearing Phase of a Proceeding 15

 Call for a Public Hearing 15

 Notice of a Public Hearing 15

 Participation in the Public Hearing Phase by an Intervener 15

 Participation by Members of the Public..... 16

Pre-Hearing Conferences	17
Formulation of Issues	17
Locations of Public Hearings	17
Conduct of a Public Hearing	18
Time Limits and Questioning.....	18
Public Hearing Language and Provision of Interpreters.....	18
Transcript.....	18
Coordinated Public Hearings.....	18
Adjournments.....	18
Written Closing Argument.....	19
Translation of Documents	19
Part 4: Procedures for Consult to Modify Processes	19

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Introduction and Purpose

These Rules are intended to ensure that the Mackenzie Valley Environmental Impact Review Board’s environmental assessment and environmental impact review Proceedings fulfill the spirit and principles of the *Mackenzie Valley Resource Management Act*, particularly Part 5 of the Act. The Rules are also intended to ensure that Board Proceedings, including Public Hearings, are fair, efficient, focussed and meet the needs of Parties, Members of the Public, and the Board.

The Board has approved these Rules and may amend them from time to time as required.

PART 1: Definitions and General Provisions

The rules in this part apply to all Board Proceedings.

Definitions

Any word or term defined in the MVRMA has the same meaning when used in these Rules.

Aboriginal Organization means an organization representing a First Nation (as defined in section 2 of the MVRMA) a Métis, Inuit, or other Indigenous organization, the Tłjcho First Nation, the Tłjcho Government, or the Déljñę Got’ine Government.

Act means the *Mackenzie Valley Resource Management Act*.

Application includes a request for Intervener status, a Board ruling, or a request for any other Board action required to advance a Board Proceeding.

Board means the Mackenzie Valley Environmental Impact Review Board established by section 112 of the MVRMA or a Review Panel established under s.132 of the Act, as the context requires.

Clarification means the process by which the Board seeks an explanation of any Document or information on a Public Record without seeking new evidence or information in a proceeding.

Community Public Hearing means an informal, oral Public Hearing held in a community to hear the views of Members of the Public, in accordance with a Directive issued by the Board.

Consult to Modify Process means a process initiated under one or more of sections 130(1)(b)(ii) and 131(1)(b) or 135(1)(b) and 137(1)(b) of the MVRMA.

Developer	means the person or organization responsible for a development referred for environmental assessment or environmental review under the Act.
Direction on the Rules	means a mandatory direction issued by the Board at any time in a Proceeding specifically to supplement, vary, or dispense with one or more of these Rules.
Directive	means a mandatory instruction or order, including a work plan, terms of reference, and a notice of proceeding, issued to set out or clarify Board process and ensure the efficiency of a Proceeding.
Document	includes any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape, machine-readable record and any other documentary material, regardless of physical form or characteristics, and any copy of any of those things.
Elder	means any person recognized as an elder in accordance with local culture, customs and traditions, or someone recognized for their experience in Indigenous culture, customs, or Traditional Knowledge.
Environmental Assessment	means an examination of a proposal for a development undertaken by the Board under section 126 of the MVRMA.
Environmental Impact Review	means an examination of a proposal for a development undertaken by a Review Panel established under section 132 of the MVRMA.
Executive Director	may include, for purposes of these Rules, the Executive Director of the Board or a staff person designated to receive comments, information, or submissions during a Proceeding.
Formal Public Hearing	means an oral Public Hearing conducted under Part 4 of these Rules to hear the views of Interveners and for questioning of Interveners and the Developer, as well as to hear the comments of Members of the Public, in accordance with a Directive issued by the Board.
Independent Expert	means an expert engaged to assist with a Board Proceeding by providing independent expert opinion, evidence, and/or analysis.
Information Request	means a written question exchanged in the course of a Proceeding under Rules 73 to 77.

Intervener	means a person, organization, or Party that has been granted Intervener status by the Board under Rule 26.
Intervention	means a written submission by an Intervener, including a Traditional Knowledge study, provided to the Board in accordance with Rule 90 during the Public Hearing Phase of a Proceeding and which may include evidence or argument intended to assist with Board decision-making.
MVRMA	means the <i>Mackenzie Valley Resource Management Act</i> .
Member of the Public	means a person other than a Party or Intervener, who, subject to these Rules, wishes to provide comments to the Board in a Proceeding.
ORS	means the online review system operated by the Board in the conduct of its Proceedings.
Party	means a person or organization registered under these Rules to participate in an environmental assessment or environmental impact review and also includes the Developer and an Intervener.
Proceeding	includes an environmental assessment or an environmental impact review, or any part thereof and includes any process resulting in a decision by the Board, but does not include a business meeting of the Board.
Public Hearing	may include one or all of a Community Public Hearing, a Formal Public Hearing, and a Written Hearing.
Public Hearing Phase	means the part of a Proceeding which includes a Public Hearing through which the Board may receive evidence and argument from the Developer and Interveners.
Public Notice	means an announcement made through newspaper, radio, community poster or any other means deemed appropriate by the Board.
Public Record	includes the relevant testimony, information, or Documents filed with the Board during a Proceeding which will be used as the basis for a Board decision.
Public Register	means the Board's physical and online databases established in accordance with the Act for documents submitted during a proceeding, including all of the evidence and other submissions by Parties, and Board notices and updates.

Request for Ruling	means a written request for a ruling made under Rules 28 to 37.
Rules	means these Rules of Procedure for Environmental Assessment and Environmental Impact Review Proceedings.
Ruling	means a decision or order made by the Board during a Proceeding including decisions in response to a Request for Ruling or made during a Public Hearing.

Authority

1 The Board makes these Rules under section 30 of the MVRMA.

Citation

2 These Rules may be cited as the Mackenzie Valley Environmental Impact Review Board Rules of Procedure.

Interpretation

3 These Rules will be interpreted liberally to achieve the most fair and effective decision for every matter before the Board.

4 These Rules will be interpreted in a manner consistent with the MVRMA.

Application of the Rules

5 To the extent consistent with its duty of procedural fairness, the Board will emphasize flexibility and informality in all its Proceedings.

6 No Board Proceeding is invalid because of an objection based only on a technical irregularity or a defect in form.

7 These Rules apply to all Proceedings of the Board unless otherwise determined by the Board.

8 The Board may, by its own motion, or on a Request for Ruling by a Party under Rule 28, supplement, vary, or dispense with these Rules by issuing a Direction on the Rules.

9 Where any question about procedure is not addressed by these Rules, or the Board in its discretion decides that certainty of process or fairness requires it, the Board may issue a Directive to deal with the matter.

10 The Board may revise or vary a Directive or a Direction on the Rules in the course of a Proceeding.

- 11 Where there is a conflict between these Rules and a specific Direction on the Rules issued by the Board, the Direction on the Rules prevails over the Rules.
- 12 Where any issue arises during the course of a Proceeding, the Board may take any necessary action consistent with these Rules, or permitted by law, in order to enable it to fairly and effectively decide on the issue.

Compliance with the Rules

- 13 Any person who participates in a Board Proceeding is bound by these Rules.
- 14 Where a Party has not complied with these Rules, a Direction on the Rules, or a Directive, the Board may:
 - a) impose limits on a Party's participation;
 - b) withdraw a Party's status in the Proceeding;
 - c) adjourn the Proceeding until satisfied that the requirement has been complied with; or
 - d) take such other steps as it considers just and reasonable.

Forms

- 15 The Mackenzie Valley Environmental Impact Review Board Document Submission Standards set out the format and general content for any document or communication that must be submitted to the Board in accordance with these Rules. This includes a Party status registration form, an Application for Intervenor status, and a Request for Ruling.

PART 2: Conduct of Board Proceedings

These rules apply to all parts of all Board Proceedings.

Additional rules for the Public Hearing Phase of Proceedings are in Part 3.

Commencement of a Proceeding

- 16 A Board Proceeding commences when the Board receives a referral to environmental assessment or environmental impact review. Proceedings initiated by the Board commence upon Public Notice of that Board decision.

Notice by the Board of the Commencement of a Proceeding

- 17 The Board will, upon receipt of a referral for environmental assessment or upon ordering an environmental assessment or an environmental impact review, give Public Notice of the Proceeding which will include a brief description of the development proposal and identify the Board's contact person for the Proceeding.

Timing of process steps in a Proceeding

- 18 The Board will issue a Directive to set out the timing for each step in a Proceeding.
- 19 The Board may, upon notice to Parties, revise any time period fixed in a Directive.

Participating in a Board Proceeding

- 20 All Board Proceedings are public unless otherwise ordered by the Board.
- 21 Any person or organization seeking to convince the Board of any point or position in a Proceeding bears the burden of proof in so doing and has the responsibility to introduce information, evidence, or argument to support their position.
- 22 Any person or organization may, without becoming a Party, provide comments to the Board in writing or via the ORS, or in a public session or Public Hearing organized by the Board.
- 23 Any person or organization may become a Party by submitting the appropriate Form to the Board.
- 24 Only a Party may submit Information Requests or a Request for Ruling, take part in a technical session, and participate fully in a Board Proceeding outside of the Public Hearing Phase.

- 25 Only the Developer or an Intervener may participate fully during the Public Hearing Phase of a Proceeding, including written interventions, a Request for a Ruling, presentations and questioning at a Formal Hearing, and written closing arguments.
- 26 Any person, organization, or Party may request Intervener status by submitting the appropriate Form to the Board within the time specified in a Directive.
- 27 Aboriginal Organizations which may be affected by a proposed development will automatically be granted Party and Intervener status upon written notice to the Board of their intention to participate in a Proceeding.

Decisions Requested from the Board during a Proceeding

- 28 The Board may make a Ruling on any legal or procedural matter in order to ensure fairness and progress during a Proceeding.
- 29 Any issue raised by a Party in the course of a Proceeding that requires a Ruling from the Board must be raised by way of a written Request for Ruling.
- 30 A Request for Ruling must be in the form required by Rule 15 and include a clear, concise statement of the issue, the relevant facts, an explanation of the Ruling being sought, the reasons why the decision or Ruling should be granted by the Board and include any authorities being relied on by the Party requesting the Ruling.
- 31 A Request for Ruling made under Rule 29 must be addressed to the Chairperson and filed with the Executive Director, who will ensure its circulation to the appropriate Parties.
- 32 The Chairperson will, after consultation with the Executive Director, issue a Directive setting out a timeline for the consideration of a Request for Ruling, including time for the participation of the appropriate Parties.
- 33 A Party wishing to respond to a Request for Ruling must file a written response and any supporting documents with the Executive Director within the timeline set out in the Directive issued under Rule 32. The Executive Director will ensure that all participating Parties are provided with such responses before the Board considers the Request.
- 34 The Party that filed the Request for Ruling will be given the opportunity to reply to the responses of other Parties.
- 35 A Request for Ruling will be dealt with in writing unless the Board decides the matter is better addressed through an oral Public Hearing.
- 36 When a Request for Ruling is made in a Public Hearing, the Board may deal with it in any way that is consistent with the requirements of fairness.

37 The Board may dismiss a Request for Ruling which, in its view, is frivolous, vexatious, or an abuse of process.

Providing Documents and Written Information to the Board

38 Any person, organization, or Party may communicate with the Board in a Proceeding via the ORS or otherwise, as provided for by these Rules or the Board.

39 A Party intending to rely on a Document or written evidence in a Proceeding must file the evidence along with any supporting materials within the time specified by the Board in a Directive.

40 Failure to disclose evidence or file a Document as required under these Rules, a Direction on the Rules, a Directive, or the requirements of fairness may result in the Board ruling that it is inadmissible in the Proceeding.

41 All Documents received by the Board will be posted on the Public Register in accordance with section 142.1 of the Act.

42 The Board reserves the right to remove from the ORS or the Public Register any material which, in its discretion, it determines to be offensive, vexatious or not in accordance with the law or Board standards.

43 The Board will notify and provide reasons to the Parties if comments or Documents are removed from the ORS or the Public Register under Rule 42.

44 Except during an oral Public Hearing, communication in all Board Proceedings must be in writing and addressed to the Executive Director.

The Public Record in a Proceeding

45 The Public Record in a Proceeding is opened when a development is referred to the Board for environmental assessment or when the Board orders an environmental assessment under section 126(3) of the MVRMA.

46 Information, Documents, evidence and argument received by the Board will be placed on the Public Record for a Proceeding.

47 The Public Record is closed at the time set by the Board in a Directive.

48 No new information will be accepted for consideration in a Board decision after the Public Record has been closed, unless the Board decides to reopen the Public Record after a Request for Ruling, or on its own motion.

- 49 The Board may seek Clarification of any evidence or submission on the Public Record without causing the Public Record to be re-opened. Information provided in response to such a Board request will become part of the Public Record.
- 50 All relevant information on the Public Record will be considered in the Board's decision.
- 51 After the Public Record is closed and the Board's Report is before the Minister, new Documents related to the Proceeding that are filed with the Board will be posted on the Public Register.
- 52 After the responsible Minister's decision is made the Board may also post Documents related to monitoring and follow-up of a development on the Public Register.
- 53 Upon request by a Review Panel, the Board will transfer information from the Public Record for an environmental assessment to the Public Record for an environmental impact review.

Traditional Knowledge

- 54 The Board will encourage the provision of and must consider any Traditional Knowledge, including oral history, submitted during its Proceedings.
- 55 The Board may make appropriate arrangements to receive information from or hear the testimony of Elders or the holders of Traditional Knowledge at any time during a Proceeding.

Special Rules about Evidence

- 56 All information provided in a Proceeding is public and will be managed in accordance with the Act.
- 57 The Board is bound by the laws that protect personal and private information. Any Party wishing to ensure the protection of confidential or proprietary information in a Proceeding must file a Request for Ruling with the Board to establish the terms for access to this information.
- 58 Where the Board approves a Request for Ruling to protect the information described in Rule 57, it will issue a Directive setting out the arrangements for receiving the evidence and the terms under which Parties may access the evidence.
- 59 The Board is not bound by the technical rules of evidence. In conducting its Proceedings, the Board may accept information that would not normally be admissible under the strict rules of evidence or in a Court of law.

- 60 The Board may secure evidence or comments from the Parties to a Proceeding using teleconferences or any other means of communication.
- 61 The Board has the powers, rights, and privileges of a Superior Court with respect to the attendance and examination of witnesses and the production and inspection of documents.
- 62 Any specialist retained by the Board to assist the Board in the analysis and evaluation of evidence will provide a summary of their background, including qualifications and experience for the Public Record.
- 63 Any witness offering Traditional Knowledge, may be required by the Board to provide a written or oral statement to summarize their background and experience for the Public Record before their evidence is accepted.
- 64 Any witness who will give technical, expert, or opinion evidence in a Proceeding before the Board, may be required to file a statement of their qualifications on the Public Record before their evidence is accepted. Any Party relying on the evidence of such a witness shall make them available for questioning in the Proceeding.
- 65 The Board may engage an Independent Expert to provide evidence for the benefit of all Parties and will place a summary of their qualifications and any evidence or report provided by such an expert on the Public Record. An Independent Expert will be subject to questioning by the Parties.

Late Filing of Submissions

- 66 Acceptance of evidence or argument received after a Board deadline is at the discretion of the Board. Late submissions will generally not be accepted or considered by the Board in a Proceeding, and therefore, will not be placed on the Public Record. A notation will be placed on the Public Record to indicate receipt of a late submission.
- 67 A Party that cannot provide its evidence or argument within the time specified by the Board must submit a written request to the Executive Director for an extension prior to the relevant deadline.
- 68 An extension request must include the facts and reasons why the extension is warranted.
- 69 If the Board grants an extension, timelines for all Parties will be adjusted accordingly and notice of the change will be provided.
- 70 Evidence and argument provided in accordance with an approved extension will be entered onto the Public Record for the Proceeding.

- 71 In order to ensure fairness and efficiency in its Proceedings, the Board may designate the Executive Director to manage extension requests in relation to late submissions.
- 72 For greater certainty, an extension request under Rule 67 is not a Request for Ruling.

Information Requests

- 73 The Board may require additional information from any Party at any time during a proceeding.
- 74 A Party may issue an Information Request to another Party, seeking information within the scope of assessment for the Proceeding and in accordance with a Directive issued by the Board. All Information Requests shall be filed with the Board.
- 75 A Party that receives an Information Request must respond within the time specified by the Board Directive and provide its response to the Board.
- 76 If there are any disputes over the appropriateness of an Information Request or a response, the objecting Party must submit a Request for Ruling to the Board under Rule 28.
- 77 The Board may reject any Information Request, for reasons including but not limited to an IR that is not relevant, is offensive, or outside the scope of assessment for the Proceeding. If the Board rejects an IR, the Board will notify affected Parties and set out its reasons.

Site Visits

- 78 The Board may schedule a site visit at any time during a Proceeding and will notify the Parties in advance of any proposed site visit.

PART 3: The Public Hearing Phase of a Proceeding

These rules apply to all Public Hearings held in environmental assessment and environmental impact review Proceedings. The rules under Parts 1 and 2 also apply to Public Hearings.

Call for a Public Hearing

- 79 The Board may decide to hold a Public Hearing as part of a proceeding. The Board will issue a Directive to initiate the Public Hearing Phase of a Proceeding.
- 80 Prior to initiating the Public Hearing Phase, the Board will make a determination on the adequacy of information on the Public Record and may request additional information from the Parties to ensure an efficient and effective hearing.
- 81 The Board may direct that a Public Hearing will include either or both of a Formal Public Hearing and a Community Public Hearing and will issue a Directive accordingly.
- 82 The Board may direct that all or portions of the Public Hearing Phase be conducted by way of written submissions.
- 83 The Board may cancel a Public Hearing at any time.

Notice of a Public Hearing

- 84 Before holding a Public Hearing, the Board will give Public Notice of the hearing in accordance with these Rules, and will issue a Directive for the conduct of the Public Hearing.
- 85 The Board may use any appropriate methods to notify the public of a Public Hearing, having regard to the nature, location, and size of a development, and the affected communities, land owners and Aboriginal Organizations.

Participation in the Public Hearing Phase by an Intervener

- 86 Only the Developer or an Intervener may participate fully during the Public Hearing Phase of a Proceeding, including written Interventions, Requests for Ruling, presentations and questioning at a Formal Hearing, and written closing arguments.
- 87 Any person, organization, or Party may request Intervener status by submitting the appropriate Form to the Board within the time specified in a Directive.
- 88 Aboriginal Organizations which are Parties to a Proceeding do not need to submit an Application for Intervener status, but they must notify the Board in writing of their intention to intervene by the deadline set out in the Board's Directive.

- 89 The Board may request additional information or explanation from anyone seeking Intervener status, or may direct those with similar interests to make a joint Intervention.
- 90 Interveners may file a written Intervention within the time specified by Board.
- 91 The role of Interveners in a Community Hearing will be decided by the Board on a case by case basis, and it will issue a Directive accordingly.
- 92 An Intervener which does not file a written Intervention may still participate in a Formal Hearing by asking questions, presenting oral Traditional Knowledge, and filing argument. Prior to the deadline for written Interventions, such an Intervener must notify the Board of its intention to participate in a Formal Hearing and provide a written summary of what it will present at the Formal Hearing.
- 93 After the deadline for Interventions has passed an Intervener cannot submit new written evidence unless a Request for Ruling is submitted and approved by the Board.
- 94 A Developer may, in accordance with the Board's Directive, respond to the Interventions prior to the Formal Public Hearing or other deadline set by the Board. Such a response must not include new evidence.

Participation by Members of the Public

- 95 Any person, organization, or Party who is not an Intervener may participate as a Member of the Public during the Public Hearing Phase.
- 96 A Member of the Public may:
- a) provide their views in writing to the Board in advance of an oral Public Hearing by the deadline set by the Board; or
 - b) make comments during the portion of an oral Public Hearing that has been set aside by the Board to hear the views of the public.
- 97 The Chairperson may, in the interests of fairness, allow the Developer or Interveners to ask questions or respond to the written or oral comments of Members of the Public in an oral Public Hearing.

Pre-Hearing Conferences

- 98 The Board may hold a Pre-Hearing Conference for the following purposes:
- a) to clarify the issues to be addressed in the Public Hearing;
 - b) to explore possible admissions of facts, the proof of facts, or the use of any public Documents;
 - c) to review the procedure to be followed at the Public Hearing;
 - d) to identify the need for additional information, and to determine responsibilities for the submission of this information; or
 - e) any other reason which will contribute to the fair and efficient completion of a Proceeding.
- 99 Notice of any preliminary, legal or jurisdictional issue to be raised in a Formal hearing must be provided at least 25 days before the hearing date. Such issues will be addressed as a Request for Ruling and the Board will issue a Directive to set out the process.

Formulation of Issues

- 100 The Board may limit the issues it will consider at a Public Hearing and will notify the Parties of such a decision and set out its reasons.

Locations of Public Hearings

- 101 The Board shall determine the time(s) and place(s) at which an oral Public Hearing will be held. In so doing, the Board shall consider the requirements of fairness, including which community is most convenient to the Interveners and close to the location of the development in question. In making this determination, the Board will consider cost as well as any special requirements brought to the Board's attention by the Developer or Interveners.
- 102 The Board may decide to hold an oral Public Hearing in one community or in a number of communities and may determine which issues will be addressed in each community.

Conduct of a Public Hearing

103 The Chairperson of the Board or of a Review Panel will control the conduct of the Public Hearing.

Time Limits and Questioning

104 The Board may set time limits for presentations, questions and oral submissions for a Public Hearing.

105 The Developer and Interveners at a Public Hearing are subject to questioning by one another and by the Board.

Public Hearing Language and Provision of Interpreters

106 The Board may arrange for interpretation services for Public Hearings or other sessions, in the language(s) it deems necessary.

Transcript

107 A transcript of an oral Public Hearing may be ordered by the Board and will be placed on the Public Record in a timely manner.

108 If transcripts are not produced, the Board will prepare a summary of the information resulting from an oral Public Hearing and, after providing Interveners with the opportunity to comment, file the final summary on the Public Record.

Coordinated Public Hearings

109 The Board may, in accordance with the MVRMA, conduct a coordinated Public Hearing in cooperation with other Boards established by the MVRMA or with other boards and authorities responsible for environmental assessment or environmental impact review in neighbouring jurisdictions.

Adjournments

110 A Party may apply for an adjournment of a Proceeding by submitting a Request for Ruling under Rule 29.

111 A Developer or an Intervener may apply for an adjournment of a Public Hearing by submitting a Request for Ruling under Rule 29.

112 The Board may on its own motion adjourn, postpone, or reschedule a Public Hearing where:

- a) it requests further information, particulars or documents, and these cannot be provided in time for the Public Hearing;
- b) a development proposal is revised and the Board determines that the revision constitutes a significant change and additional assessment work is required; or
- c) for any reason the Board deems it necessary or fair.

Written Closing Argument

113 The Board may, once all the evidence is received in a Proceeding, make arrangements to secure written closing arguments from Interveners and a closing reply argument from the Developer.

Translation of Documents

114 The Board may require a Party or Intervener to translate all or portions of Documents submitted in a Proceeding into an Aboriginal Language.

Part 4: Procedures for Consult to Modify Processes

115 Where final decision-makers initiate a Consult to Modify Process to consult the Board or a Review Panel before adopting a final recommendation, the Board will notify Parties to the Proceeding.

116 The Public Record for the Proceeding will be reopened and any information provided by decision-makers in a process under Rule 115 will be placed on the Public Register.

117 The Board may seek feedback from Interveners before responding to a Consult to Modify process initiated by final decision makers.