

Rules of Procedure for Environmental Assessment and Environmental Impact Review Proceedings

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**Mackenzie Valley Environmental Impact Review Board
Box 938, Suite 200 Scotia Centre,
5102 - 50th Ave.
Yellowknife, NT. X1A 2N7**

**Phone (867) 766-7050
Fax (867) 766-7074
Email: board@mveirb.nt.ca
www.mveirb.nt.ca**



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Introduction and Interpretation

These are the Rules of Procedure for environmental assessment and environmental impact review proceedings of the Mackenzie Valley Environmental Impact Review Board contemplated by s. 30 of the Mackenzie Valley Resource Management Act.

These Rules are intended to ensure that the Review Board's environmental assessment and environmental impact review proceedings fulfill the spirit and principles of the MVRMA, particularly Part 5 of the Act.

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

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

The common law duty of procedural fairness applies to all decision-making by and proceedings of the Review Board.

PART 1: General Rules for Review Board Proceedings

This part applies to all parts of all Review Board proceedings.

Definitions

“clarification” means the process by which the Review Board seeks an explanation of any document or information on the public record without seeking new evidence or information in a proceeding.

“community hearing” means an informal oral hearing held in a community under Part 5 of these Rules.

“developer” means the individual, corporation or other organization responsible for a development proposal that is subject to environmental assessment or environmental impact review;

“direction on procedure” means a direction issued by the Review Board at any time in a proceeding, and may include work plans or terms of reference for an environmental assessment or environmental impact review proceeding.

“document” means papers, reports, documents, maps and photographs and any other records filed in a proceeding, including audio or video tapes or any type of electronic records.

“environmental assessment” means an examination of a proposal for a development undertaken by the Review Board under section 126 of the MVRMA.

“environmental impact review” means an examination of a proposal for a development undertaken by a panel of the Review Board established under section 132 of the MVRMA.

“first nation” means the Gwich'in First Nation, the Sahtu First Nation or bodies representing other Dene or Metis of the North Slave, South Slave or Deh Cho region of the Mackenzie Valley, but does not include the Tlicho First Nation or the Tlicho Government.

“formal hearing” means an oral hearing conducted under Part 4 of these Rules.

“hearing” means a written hearing, a formal hearing and a community hearing forming part of an environmental assessment or environmental impact review proceeding where the Review Board receives information or evidence either orally or in writing from the parties and members of the public.

“Information Request” means written questions exchanged in the course of an environmental assessment or environmental impact review under Rules 37 to 41.

“MVRMA” means the Mackenzie Valley Resource Management Act.

“member of the public” means a person other than a party, who is allowed to participate in an environmental assessment or environmental impact review proceeding subject to these Rules.

“party” means an individual or an organization which is granted standing in an environmental assessment or an environmental impact review proceeding on the terms set out by the Review Board and may include but is not limited to a developer, a first nation affected by a proposed development, the federal or any responsible minister, a designated regulatory agency or the owner or occupier of any land affected by the development.

“proceeding” includes an environmental assessment or an environmental impact review, or any part thereof and any process resulting in a determination by the Review Board but does not include a meeting of the Review Board.

“public notice” means an announcement made through newspaper, radio, community poster or other public means, according to whatever terms are set by the Review Board.

“public record” includes information or documents relevant to a proceeding filed with the Review Board during the period described in Rule 20.

“Request for Ruling” means a written request for a ruling made under Rules 48 to 52 and Rule 63.

“Review Board” means the Mackenzie Valley Environmental Impact Review Board.

“Rules” means these Rules of Procedure for Environmental Assessment and Environmental Impact Review Proceedings

“Ruling” means a decision or order made by the Review Board in response to a Request for Ruling or in an oral hearing under Rule 87.

“specialist” means an expert engaged by the Review Board to assist with a Review Board proceeding by providing expert opinion, evidence or analysis.

“Tlicho Government” means the government of the Tlicho First Nation established in accordance with chapter 7 of the Tlicho Agreement.

Notice and Participation in Proceedings

1. The Review Board will, upon receipt of a referral for environmental assessment or upon ordering an environmental assessment or an environmental impact review, publish a public notice of the proceeding. The notice will include a brief description of the development proposal and will identify the staff contact within the Review Board for the proceeding.

2. Subject to Rule 21, any member of the public may provide written information or comments to the Review Board at any time during a proceeding. Parties to a proceeding will be given the opportunity to respond to such information or comments before the conclusion of the proceeding.

3. Any party may participate in a proceeding on its own behalf and is encouraged to do so. Parties represented by a contact person or counsel will notify the Executive Director of the identity of their representative. If a change in representation takes place, the Executive Director must be informed as soon as practicable.

4. All Review Board proceedings are public unless otherwise ordered by the Review Board.

Parties

5. An application for party status in a proceeding will be filed with the Review Board within the time specified by the Review Board. The application will clearly state why party status should be granted and outline any information or other assistance the party may provide to the Review Board during the proceeding. The application should be filed in Form 1.

6. The developer is automatically a party to a Review Board proceeding.

7. The Review Board may grant party status to an applicant under Rule 5 and may request additional information or clarification from any person before granting party status.

Conduct of Review Board Proceedings

8. The Review Board may, in any proceeding, dispense with, vary or supplement these Rules by way of a direction on procedure.
9. The Review Board may issue a direction on procedure at any time during an environmental assessment or environmental impact review proceeding
10. Where reference is made in any direction on procedure to a number of days, it will mean business days. Where a time fixed falls on a statutory holiday or a Saturday or a Sunday, the time fixed will extend to the following business day.
11. The Review Board may, on its own motion, or on a Request for Ruling by any party, lengthen or shorten the time for any action to be taken in an environmental assessment or environmental impact review proceeding subject to any conditions the Review Board may impose.
12. Where any issue arises during the course of a proceeding, the Review Board may take any action necessary consistent with these Rules, or permitted by law, in order to enable it to fairly and effectively decide on the issue.
13. Where there is a conflict between these Rules and a direction on procedure issued by the Review Board, the direction on procedure prevails.
14. All Requests for Rulings, filing of information and contact in relation to a proceeding will be made through the Executive Director of the Review Board or the staff person designated by the Executive Director.
15. The Review Board may require additional information from any party to a proceeding at any time during a proceeding.
16. The Review Board may engage specialists to provide evidence relevant to the issues raised in any proceeding. Any evidence received from a specialist will be disclosed to all parties. The specialist may be questioned by any party to the proceeding.
17. Any party or member of the public seeking to convince the Review Board of any point or position in a proceeding bears the burden of proof in so doing and has the responsibility to introduce information or evidence to support their position.
18. Copies of documents filed in a proceeding will be made available to all parties by the Review Board and the parties will be given an opportunity to respond to the documents. In the case of an oral presentation made during a proceeding, the parties will be allowed to ask questions of the person who made the presentation.

19. Members of the public who choose to participate in a Review Board proceeding may respond to or ask questions about any document or oral presentation.

The Record and Privacy Matters

20. The public record in a Review Board proceeding is opened when the matter is referred to the Review Board for environmental assessment or when the Review Board exercises its discretion under section 126(3) of the MVRMA. The public record is closed at the time set by the Review Board in its direction on procedure.

21. No new information will be accepted for consideration in a proceeding after the public record has been closed unless the Review Board decides to reopen the public record on its own motion or a Request for Ruling to reopen the public record has been made and approved by the Review Board.

22. The Review Board may, upon notice to the parties, make appropriate arrangements to seek clarification of any evidence or information on the public record without causing the record to be re-opened.

23. The Review Board is subject to federal Access to Information and Privacy legislation. Unless a Request for Ruling to protect the confidentiality of information is filed with and approved by the Review Board under Rule 24, all information and documents received during a proceeding will be placed on the public record.

24. The Review Board may make a Ruling or issue a direction on procedure to limit the introduction of or to prevent the disclosure of information or documents to protect information of a confidential or sensitive nature, including but not limited to matters involving security, business, personal or proprietary interests.

25. The Review Board will notify parties to a proceeding of any Request for Ruling under Rule 23 involving the filing of confidential information and will deal with any issues that arise as the Review Board deems appropriate.

26. All information received by the Review Board from the time the public record is opened until the closing of the public record by the Review Board in its direction on procedure will be considered in the Review Board's decision.

27. If, after an environmental assessment proceeding, further examination of a proposed development by way of an environmental impact review is ordered, the Review Board will transfer all information on the public record from the environmental assessment proceeding to the public record for the environmental impact review proceeding.

Translation of Documents

28. The Review Board may direct a party to arrange for the translation of any documents into or from French or an aboriginal language(s) including the following documents:

- (a) the Executive Summary of a Developer's Assessment Report;
- (b) the Executive Summary of an Environmental Impact Statement;
- (c) plain English summaries of relevant documents; or
- (d) any relevant document provided by a party that, in the Review Board's opinion should be translated in order to conduct a fair proceeding.

29. A party will pay the cost of translation and provide the number of translated copies of a document directed by the Review Board. Translated materials may, subject to direction from the Review Board, be produced in printed or electronic format.

Flexibility in Review Board Proceedings

30. In conducting its proceedings the Review Board is not bound by the strict rules of evidence.

31. To the extent consistent with its duty of procedural fairness, the Review Board will emphasize flexibility and informality in the conduct of its proceedings and in the manner in which it receives information or documents.

Traditional Knowledge

32. The Review Board will encourage the submission of any first nation's traditional knowledge including oral history, during its proceedings.

33. The Review Board may make arrangements to secure information from or hear the testimony of an elder or the holder of traditional knowledge at any time during a proceeding.

The Exchange of Information or Documents in a Proceeding

34. Any information or document to be relied on during a proceeding must be provided to all parties in advance and in accordance with any timelines set by the Board.

35. Failure to disclose information or documents as required by the direction on procedure and these Rules may result in the Review Board ruling that the information or documents are inadmissible in the proceeding.

36. The Review Board may direct an exchange of information or documents among the parties to a proceeding to ensure that the proceeding, including a hearing, is focused, efficient and fair.

Information Requests

37. The Review Board may seek information from any party to a proceeding at any time by way of a written Information Request.
38. Subject to Rule 40, the parties to a proceeding may seek information within the scope of the terms of reference for the proceeding from other parties by way of written Information Requests at a time fixed by the Review Board.
39. The approval of a party's Information Requests is subject to the Review Board's discretion.
40. All Information Requests by parties will be submitted to the Review Board for approval. Copies of approved Information Requests will be placed on the public record. Information Requests approved by the Review Board will be transmitted to the party from which information is being requested.
41. The response to each Information Request will be provided to the Review Board and will be placed on the public record.

Copies of Documents and Service

42. Any party wishing to file documents during a proceeding may be directed by the Review Board to provide sufficient copies for distribution to the other parties to the proceeding.
43. The Review Board may, in its discretion, direct that documents be filed in printed or electronic format.
44. The Review Board may direct that certain information or documents be provided to the parties to a proceeding, by way of personal delivery, mail, electronic transmission or any other way directed by the Review Board.
45. When proof of delivery of information or documents is required, it may be provided by affidavit, by document showing electronic transmission and receipt by another party or by any other reasonable means acceptable to the Review Board.

Requests for Rulings by the Review Board

46. Any issue raised by a party to a proceeding that requires a Ruling from the Review Board will be brought to the Review Board's attention by way of a written Request for Ruling. The Request will include a clear, concise statement of the relevant facts, an indication of the Ruling being sought from the Review Board and the reasons why the Ruling should be granted. The Request for Ruling should be filed in Form 2.

47. All Requests for Rulings will be filed with the Executive Director. The Executive Director will ensure that a copy of the Request for Ruling is provided to the parties to a proceeding no later than ten (10) days before the Review Board plans to consider the Request for Ruling in order to allow the parties to respond.

48. A party wishing to respond to a Request for Ruling will provide a written response and supporting documents to the Executive Director no less than three (3) days before the Request for Ruling is scheduled to be heard by the Review Board. The Executive Director will ensure that all parties are provided with any responses provided to the Review Board at least two (2) business day before the Review Board considers the Request for Ruling.

49. The Review Board may, in its discretion, vary any time period prescribed for the filing and hearing of a Request for Ruling or a response.

50. The decision making process for a Request for a Ruling may in the Review Board's discretion, include an oral hearing and in such a case, the parties may participate via teleconference.

Technical Sessions

51. The Review Board may at any time during a proceeding and upon such terms as it deems appropriate, organize technical sessions or workshops or take such other steps as are necessary to encourage the parties to communicate and attempt to resolve technical and other questions.

Dispute Resolution

52. Any party in a proceeding may ask the Board to establish a mediation process prior to a hearing to resolve issues, reach possible agreement on facts or recommendations in relation to the application or clarify the issues in dispute and the reasons for any disagreement.

53. The Chairperson may designate a person including a Board member to act as a mediator. A Board member so designated shall not take further part in the hearing of the application.

54. The mediator will determine which parties to the proceeding intend to participate in the mediation.

55. The mediator will, prior to the start of the mediation process and in consultation with the participants, determine the procedure for the mediation including the issues to be addressed, the agenda for the mediation and the dates and times for mediation sessions.

56. The mediator will chair the mediation process. Discussions in the mediation process can, by agreement of the participants, be undertaken on a confidential and without prejudice basis. In such cases, mediation sessions will not be recorded and formal minutes will not be taken.

57. A participant may withdraw from the mediation process without prejudice to its position in the proceeding.

58. The mediator will prepare a Record of Agreement for the Board which summarizes any issues where consensus was reached. The Record of Agreement will set out the results of the process and not the substance of the discussion. The Record of Agreement will only address issues on which consensus was reached.

59. The mediator will verify the accuracy of the Record of Agreement with the participants to the mediation. All participants to the mediation must sign the Record of Agreement to indicate their agreement to the content of the document before it is presented to the Board.

60. A Record of Agreement must be finalized at least 21 days prior to the date set for a Hearing.

Site Visits

61. At any time during a proceeding, the Review Board may schedule a site visit to the proposed development.

Failure to Comply with the Rules

62. Where a party has not complied with these Rules or a direction on procedure issued by the Review Board in the proceeding, the Review Board may:

- (a) adjourn the proceeding until satisfied that its Rules or directions on procedure have been complied with; or
- (b) take such other steps as it considers just and reasonable, including withdrawing the status of the party in the proceedings.

63. A Review Board proceeding is not invalid because of an objection based only on a technical irregularity or a defect in form.

PART 2: Proceedings with a Hearing

This part includes provisions that apply to all hearings held in environmental assessment and environmental impact review proceedings.

Call for a hearing

64. The Review Board may direct that a hearing be held as part of a proceeding.

65. The Review Board may cancel a hearing at any time.

Hearings General

66. The Review Board may issue directions on procedure consistent with these Rules to ensure the efficient conduct of a hearing.

Hearing Notice

67. When a proceeding is to include a formal or community hearing, the Review Board will, at least 30 days in advance of that hearing, ensure that public notice of the date of a hearing is given to the parties and to the public.

68. The notice of hearing will include the following information:

- (a) the date, time, place and nature of the hearing whether formal or a community hearing;
- (b) the matters to be considered at the hearing;
- (c) the opportunity for members of the public to participate;
- (d) the date by which information to be considered in the hearing must be filed; and
- (e) any other information relevant to the conduct of the hearing.

69. Notice of any preliminary, legal or jurisdictional issue in a hearing will be raised as a Request for Ruling and filed in Form 2 with the Review Board at least 15 days before the scheduled hearing date. The Review Board will ensure that all parties are notified of the Request at least 10 days before the matter is addressed.

PART 3: Proceedings with a Written Hearing

This part applies to proceedings that will be conducted by written submissions.

70. The Review Board may, in its discretion, issue a direction on procedure specifying that all or portions of a proceeding or hearing be conducted by way of written submissions.

71. The parties and members of the public may provide written information, documents or submissions to the Review Board in a proceeding or hearing conducted by written submissions. This evidence or information will be provided to the Executive Director or designated staff person in a manner consistent with the direction on procedure issued by the Review Board.

72. The parties and members of the public may respond to written information, documents or submissions received by the Review Board pursuant to Rule 71 before a Review Board decision is made.

PART 4: Formal Hearings

This part applies to proceedings with formal oral hearings.

Participants in a Hearing

73. Any party may appear in a hearing on its own behalf. A party represented by a contact person or counsel will notify the Executive Director no later than ten (10) days prior to the hearing of any change in that representation.
74. The Review Board may in its discretion direct parties with similar interests to make a joint presentation at a hearing.
75. The Review Board will maintain a list of parties registered for a hearing under Rule 5.
76. Any person or organization who does not wish to seek status as a party in a hearing but who wishes to make his or her views known to the Review Board may:
- (a) provide his or her views, in writing, to the Review Board in advance of the hearing; or
 - (b) make an oral presentation during that portion of the hearing that has been set aside by the Review Board to hear the views of the public.

Pre-hearing Conferences

77. The Review Board may call a pre-hearing conference among the parties to:
- (a) finalize the list of issues to be discussed at the hearing;
 - (b) seek a clear description or amplification of the issues in a hearing;
 - (c) encourage the resolution of an issue by alternative means;
 - (d) set a time table for the exchange of information and for preparations for the hearing;
 - (e) adopt procedures to be used at the hearing; and
 - (f) consider any matter that may aid in the simplification and disposition of the hearing.
78. The Review Board will provide notice of a pre-hearing conference to the parties in a proceeding. The notice will include the date, time and place of the pre-hearing conference and a brief description of the agenda and will identify the point of contact within the Review Board for the pre-hearing conference.

Conduct of a Formal Hearing

79. The Chairperson of the Review Board or designate will preside at all hearings.
80. Hearings will be conducted in an orderly and professional manner.

81. Hearings may be conducted with one or several of the parties participating in person, by way of video-conference or by telephone conference call.

82. Parties, members of the public and specialists presenting information in hearings will be subject to such questioning by the parties to the proceeding as the Review Board may allow.

83. The Review Board may set time limits for oral submissions and questions by any or all parties and participants at a public hearing.

84. The Review Board may address any issue raised by a party during the course of a formal hearing and dispose of it by way of a Ruling.

85. Any party may apply for an adjournment of a hearing. If made in advance of a hearing, such an application will be made by way of Request for Ruling in accordance with these Rules.

86. The Review Board may on its own motion adjourn or reschedule a hearing at any time.

Language of a Hearing, Transcripts and Recording

87. The Review Board may, in its discretion, arrange for any hearing to be electronically recorded or for transcripts of the proceeding to be produced.

88. Where appropriate and necessary, simultaneous oral translation into an aboriginal language of the Mackenzie Valley, or from an aboriginal language of the Mackenzie Valley into English, will be arranged by the Review Board.

89. Where appropriate and necessary, translation from or into French may be arranged by the Review Board.

PART 5: Community Hearings

This part applies to proceedings with oral community hearings.

Community Hearings or Sessions

90. The Review Board may hold informal hearings to hear the views of any community potentially affected by a development proposal.

91. When it decides to hold a community hearing the Review Board will give directions for procedure at the community hearing in advance. The developer will be present at a community hearing.

92. The Chairperson of the Review Board or designate will preside at those community

hearings. All comments and questions will be directed through the Chairperson.

93. Any members of the public or organization from the community wishing to make a presentation should advise the Executive Director or the designated staff person on the day of the hearing or earlier. Oral presentations and written submissions will be accepted.

94. Members of the public or organizations appearing in a community hearing may be questioned by the Review Board and other parties.

95. The Review Board will prepare a summary of the information resulting from a community hearing and after providing the parties to the proceeding the opportunity to comment on the summary will file the final summary on the public record for the proceeding.

PART 6: Coordinated Hearings

This part applies to proceedings with coordinated hearings.

96. The Review Board may, in accordance with the MVRMA, conduct a coordinated 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.



Mackenzie Valley Environmental Impact Review Board

FORM 1

Request for Party Status

Name of Organization:

Name of Proceeding:

Reasons for requesting Party Status in these proceedings.

Participation:

Please describe how you or your organization intends to participate in this proceeding, such as what information, witnesses, or presentations you plan to submit.

If you represent a Responsible Minister or Responsible Authority please state which one.
List the licences, permits or authorizations issued by your organization relevant to this proceeding.

Contact Information:

Please confirm the organization's contact information and the name of the primary contact person for Board correspondence purposes.

Dated at _____, Northwest Territories, on (MM/DD/YY) _____.

(Signature of Party's Representative)



Mackenzie Valley Environmental Impact Review Board

FORM 2

Request for Ruling

Name of Proceeding

TAKE NOTICE that a Request for Ruling will be made to the MVEIRB by

_____ (name of party making the Request)

at _____ (time) in _____ (place), in the Northwest Territories, on the _____ (day) of _____ (month), 200__ or as soon after that time as the Board may decide to address the Request.

The Ruling requested from the MVEIRB is as follows:
(State the relief sought as clearly as possible)

The facts or information relevant to this Request for Ruling and which should be considered by the MVEIRB are as follow: (State the information relevant to the Request in as much detail as needed)

The authority or grounds for the Ruling which should be considered by the MVEIRB is as follows: (State the Rules or any law or enactment relied on and the grounds for the Ruling).

AND FURTHER TAKE NOTICE that in support of this Request for Ruling the following documents or information have been attached
(Set out all materials to be used to support the Request).

Dated at _____, Northwest Territories, on (MM/DD/YY) _____

(Signature of Party's Representative)