



Rules of Procedure for Environmental Assessment and Environmental Impact Review Proceedings

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Introduction and Purpose

The Rules of Procedure for Environmental Assessment and Environmental Impact Review Proceedings (the Rules) are intended to ensure that the Mackenzie Valley Environmental Impact Review Board's (the Board's) environmental assessment and environmental impact review Proceedings fulfill the requirements, intent, and principles of the *Mackenzie Valley Resource Management Act* (the Act), particularly Part 5 of the Act. The Rules are also intended to ensure that Board Proceedings, including Public Hearings, are fair, focused, effective, and meet the needs of Parties, Members of the Public, and the Board.

The Board has approved the 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 Act has the same meaning when used in the Rules.

Board	means the Mackenzie Valley Environmental Impact Review Board established by section 112 of the Act or a Review Panel established under section 132 of the Act, as the context requires.
Community Hearing	means an informal Public Hearing where the Board seeks evidence from residents of a community directly affected by a development.
Consult to Modify Process	means a process initiated under one or more of subsections 130(1)(b)(ii) and 131(1)(b) or 135(1)b) and 137(1)(b) of the Act.
Developer	means the person or organization responsible for a development referred to environmental assessment or environmental impact review under the Act.
Direction on the Rules	means a mandatory direction issued by the Board in a Proceeding to supplement, vary, or dispense with one or more of the Rules.
Directive	means a mandatory instruction, order or ruling, including a work plan, Terms of Reference, Hearing Directive, or a Notice of Proceeding issued by the Board to set out or clarify Board process and ensure the fairness and 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 knowledge about the land.
Environmental Assessment	means an examination of a proposal for a development undertaken by the Board under section 126 of the Act.
Environmental Impact Review	means an examination of a proposal for a development undertaken by a Review Panel established under section 132 of the Act.
Executive Director	means, for purpose of the Rules, the Executive Director of the Board or the environmental assessment advisor designated to receive comments, information, or submissions during a Proceeding.
Independent Expert	means an expert engaged by the Review Board to assist the Parties in a Proceeding by providing independent expert opinion, evidence, and/or analysis.
Indigenous Government or Organization	includes an organization representing a First Nation (as defined in section 2 of the Act), a Métis, Inuit, or other affected Indigenous organization, the Tłı̄cho Government, or the Délı̄ne Got'ine Government.
Information Request	means a written question or request for information made during a Proceeding under Rules 34 to 39.
Intervener	means any Party that has been granted Intervener status by the Board under Rule 84 or 86 and submits an intervention.
Intervention	means a written submission by an Intervener made in accordance with Rule 100, which may include evidence and/or argument including Traditional Knowledge studies, intended to assist with Board decision-making.
Member of the Public	means a person or organization other than a Party or Intervener, who, subject to the Rules, wishes to provide comments to the Board during a Proceeding.
Online Review System	means the online document review system operated by the Board in the conduct of its Proceedings.



Party	means any person or organization that participates in an environmental assessment or environmental impact review in accordance with the Rules and includes the Developer and Interveners.
Proceeding	includes an environmental assessment or an environmental impact review, or any part thereof but does not include a business meeting of the Board.
Public Hearing	means a Hearing conducted under Part 3 of the Rules that includes oral testimony.
Public Notice	means an announcement in relation to a Proceeding required by the Act or any other means deemed appropriate by the Board.
Public Record	includes all the evidence, including but not limited to 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 register required by section 142.1(1) of the Act and shall include all Documents filed on the Public Record
Referral	means a referral to environmental assessment made under section 126 of the Act, or an order to environmental impact review made under section 128, 130 or 131 of the Act.
Request for Ruling	means a request for a ruling made under Rules 50 to 59.
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 and issued as part of a Directive and includes decisions in response to a Request for Ruling, or decisions made during a Public Hearing.
technical or community session	means part of a Proceeding where Parties meet without the Board to discuss issues of concern with the Developer in a face-to-face setting, to clearly understand and, where possible, resolve issues.



Authority

1 The Board makes the Rules under section 30 of the Act.

Citation

2 The Rules may be cited as the Mackenzie Valley Environmental Impact Review Board *Rules of Procedure* (the Rules).

Interpretation

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

4 The Rules will be interpreted in a manner consistent with the Act.

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 The 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 51, supplement, vary, or dispense with the Rules by issuing a Direction on the Rules.

9 Where any question about procedure is not addressed by the 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 during a Proceeding.

11 Where there is a conflict between the Rules and a specific Direction on the Rules issued by the Board, the Direction on the Rules prevails over the Rules.

12 Where an issue arises during a Proceeding, the Board may take any necessary action consistent with the Rules, or permitted by law, to enable it to decide on the issue fairly and effectively.

Compliance with the Rules

13 Any Party or Member of the Public participating in a Board Proceeding is bound by the Rules.

14 Where a Party has not complied with the Rules, a Direction on the Rules, or a Directive, the Board may:



- a) impose limits on that Party's participation;
- b) adjourn the Proceeding until satisfied that the requirement has been complied with; or
- c) take such other steps as it considers just and reasonable.

Forms

- 15 The Mackenzie Valley Environmental Impact Review Board's list of forms, required by the Rules, includes an Application for Intervener status, and a Request for Ruling.

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PART 2: Conduct of Board Proceedings

These Rules apply to all parts of all Board Proceedings.

Commencement of a Proceeding

- 16 A Proceeding commences when a development is referred to the Board for environmental assessment or environmental impact review, or when the Board orders an environmental assessment under section 126(3) of the Act, or an environmental impact review under subsection 128(1) of the Act.

Public 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 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 timelines fixed in a Directive.

Becoming a party in a Proceeding

- 20 Any person, organization, or Indigenous Government or Organization, that notifies the Board in the manner set out by the Rules, or by the Board in its Public Notice of Proceeding for an environmental assessment or environmental impact review will be granted status as a Party.
21 Any person, organization or Indigenous Government or Organization that provides public comments directly to the Board or on the online review system, or otherwise participates in a part of a Proceeding is considered a party to that Proceeding.

Participating in a Board Proceeding

- 22 All Board Proceedings are public unless otherwise ordered by the Board.
23 Any Party may submit Information Requests or a Request for Ruling, take part in a technical or community session organized by Board staff, and participate fully in a Board Proceeding before the Public Hearing Phase.
24 Any Party may, without becoming an Intervener (see Part 3), provide comments to the Board in writing, or via the Online Review System, the Rules or participate in a Hearing organized by the Board as provided for by the Rules.



Burden of Proof

- 25 Any Party 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, and/or argument to support their position.

Traditional Knowledge

- 26 The Board will encourage the provision of and must consider Traditional Knowledge submitted in any appropriate form during its Proceedings.
- 27 The Board may make appropriate arrangements to receive information from or hear the testimony of Elders or holders of Traditional Knowledge at any time during a Proceeding.

Providing Documents and Written Information to the Board

- 28 A Party intending to rely on a Document or written evidence in a Proceeding must file the Document or evidence along with any supporting materials within the time specified by the Board in a Directive.
- 29 Failure to disclose evidence or file a Document as required under the Rules, a Direction on the Rules, a Directive, or in accordance with the requirements of fairness may result in the Board ruling that it is inadmissible in the Proceeding.
- 30 Subject to Rule 31, all submissions received by the Board will be posted on the Public Register in accordance with section 142.1 (1) of the Act.
- 31 The Board reserves the right to remove from the Online Review System, Public Register or Public Record any submission which, in its discretion, it determines to be offensive, vexatious, or not in accordance with the law, the Rules or Board standards.
- 32 The Board will notify and provide reasons to the Parties if a submission is removed from the Online Review System, Public Register or Public Record under Rule 30.
- 33 A party that objects to the removal of materials under Rule 30 must make a Request for Ruling.
- 34 Except during a Public Hearing, all written communication with the Board in a Proceeding should be addressed to the Executive Director or designated staff person as described in a Notice of Proceeding. For greater certainty, all print and electronic communication is acceptable.
- 35 Requests for Ruling or procedural issues that require a ruling from the Board should be addressed to the Executive Director.



Information Requests

- 36 The Board may issue an Information Request to any Party or Intervener at any time during a Proceeding.
- 37 A Party or Intervener may issue an Information Request to another Party or Intervener at the time set out in a Directive issued by the Board. An Information Request must seek information within the scope of assessment for the Proceeding.
- 38 All Information Requests shall be filed with the Board and at the time set out in a Directive. The Directive will indicate the timelines for responding to the Information Requests.
- 39 A Party or Intervener that receives an Information Request made under Rules 36 or 37 must provide its response to the Board within the time specified by the Directive issued by the Board under Rule 38.
- 40 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 51.
- 41 The Board may reject or modify any Information Request, for reasons including relevance, offensiveness, or being outside the scope of assessment for the Proceeding. If the Board rejects an Information Request, the Board will notify affected Parties and set out its reasons.

The Public Record in a Proceeding

- 42 All Documents or evidence that is produced, collected, or received by the Board in a Proceeding will be placed on the Public Record, unless otherwise ruled by the Board.
- 43 The Public Record in a Proceeding is opened upon commencement of that Proceeding as described in Rule 16.
- 44 The Public Record is closed at the time set by the Board in a Directive.
- 45 No new evidence 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.
- 46 The Board may seek clarification of any 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 and parties will be notified.
- 47 The Board will consider all relevant information on the Public Record in its decision.
- 48 After the Public Record is closed, late submissions related to the Proceeding that are filed with the Board will be posted on the Public Register.



- 49 After the final decision is made under the Act, the Board may also post submissions related to monitoring and follow-up of a development on the Public Register.
- 50 Upon written 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.

Procedure to Request a Ruling

- 51 The Board may, at any point in a Proceeding, make a Ruling on any legal or procedural matter to ensure fairness and progress during the Proceeding.
- 52 Any issue raised by a Party during a Proceeding that requires a Ruling from the Board must be raised by way of a written Request for Ruling.
- 53 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 evidence and authorities being relied on by the Party requesting the Ruling.
- 54 A Request for Ruling made under Rule 52 must be addressed to the Chairperson and filed with the Executive Director, who will ensure its circulation to the Parties.
- 55 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 interested Parties.
- 56 A Party wishing to respond to a Request for Ruling must file a written response and any supporting evidence, Documents and authorities with the Executive Director within the timeline set out in the Directive issued under Rule 55. The Executive Director will ensure that all participating Parties are provided with such responses.
- 57 The Party that filed the Request for Ruling will be given the opportunity to reply to the responses of other Parties.
- 58 After considering all the Documents submitted by the parties in the Request for Ruling process, the Board will respond to the Requests for Ruling in writing. Reasons for its decision will be made available on the Public Record.
- 59 The Board may deal with a Request for Ruling in any way that is consistent with the requirements of fairness.
- 60 The Board may dismiss a Request for Ruling which, in its view, is frivolous, vexatious, or an abuse of process. Where a Request for Ruling is dismissed under this Rule, the Board will provide written reasons, which will be placed on the Public Record.



Special Rules about Evidence and Traditional Knowledge

- 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 in accordance with section 25 of the Act.
- 62 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.
- 63 All information provided in a Proceeding is public and will be managed in accordance with the Act and the laws that protect personal and private information.
- 64 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. While such a ruling is being considered, the material in question will be kept confidential.
- 65 Where the Board approves a Request for Ruling under Rule 52, it will issue a Directive setting out the arrangements for receiving the evidence and the terms under which Parties may access the evidence.
- 66 The Board may secure both written and oral evidence or comments from the Parties to a Proceeding using any means of communication it sees fit.
- 67 To support the Board's consideration of their testimony, a 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.
- 68 To protect locations of culturally sensitive sites or information, the Board may place restrictions on questions to witnesses providing Traditional Knowledge.
- 69 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.

Independent Expert

- 70 The Board may engage an Independent Expert to provide evidence for the Public Record to benefit all Parties, and to assist with the analysis of matters arising in a Proceeding. A summary of the qualifications of such an Expert and any evidence or report provided by this Expert will be placed on the Public Record. An Independent Expert will be subject to questioning by the Parties.
- 71 An Independent Expert will not be part of Board deliberations.



Expert Advisors

- 72 The Board may retain an Expert Advisor to assist the Board in the analysis and evaluation of evidence.
- 73 If the Board retains an Expert Advisor, the Board will provide a summary of their background, including qualifications and experience, and the scope of their participation in the Proceeding for the Public Record

Late Filing of Submissions

- 74 Acceptance of evidence or argument received after a Board deadline is at the discretion of the Board. Late submissions will not be accepted or considered by the Board in a Proceeding unless so ruled upon by the Board, and therefore, will not be placed on the Public Record. A notation will be placed on the Public Register to accompany a late submission.
- 75 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.
- 76 An extension request must include the facts and reasons supporting the request.
- 77 If the Board grants an extension, timelines for all Parties will be adjusted accordingly and notice of the change will be entered onto the Public Record for the Proceeding.
- 78 Evidence or argument provided in accordance with an approved extension will be entered onto the Public Record for the Proceeding.
- 79 To ensure fairness and efficiency in its Proceedings, the Board may designate the Executive Director to manage extension requests in relation to late submissions.
- 80 For greater certainty, an extension request under Rule 74 is not a Request for Ruling.

Site Visits

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



PART 3: Public Hearings

The Rules in this Part apply to all Public Hearings held in environmental assessment and environmental impact review Proceedings.

Board's authority to order Public Hearings

- 82 The Board may order a Public Hearing for any matter related to the carrying out of its functions under section 24 of the Act. If it does so, these Rules apply with such modifications as might be required.

Initiation of the Public Hearing Phase

- 83 The Board will make a determination on the adequacy of information on the Public Record before it sets the dates for a Public Hearing and may request additional information from any Party to ensure an efficient and effective hearing.
- 84 Where the Board determines that a Public Hearing is required in an environmental assessment or environmental impact review proceeding, and that there is adequate information to proceed with the Public Hearing Phase, the Board will issue a Hearing Directive to initiate the Public Hearing Phase of the Proceeding.

Becoming an Intervener in a Public Hearing

- 85 Any Party that wants to participate in the Public Hearing Phase as an Intervener must notify the Board in a manner set out in the Rules or in a Hearing Directive.
- 86 Any Party may request Intervener status by submitting the appropriate form to the Board (identified in Rule 15) within the time specified in a Hearing Directive.
- 87 The Board may request additional information or explanation from any Party seeking Intervener status and may direct those with similar interests to make a joint Intervention.
- 88 Indigenous Governments or Organizations which are Parties to a Proceeding will become Interveners by notifying the Board in writing of their intention to intervene by the deadline set out in the Board's Hearing Directive.

Notice of a Hearing

- 89 No less than 90-days before holding a Public Hearing, the Board will give Notice of the Hearing in accordance with the Rules and will issue a Directive(s) for the conduct of the Hearing including information about hearing dates, times, locations, if Community Hearings will be included, and other information as necessary.
- 90 The Board may direct that all or portions of the Public Hearing Phase be conducted by way of written submissions.



- 91 The Board may cancel a Public Hearing at any time. The Board will provide notice and reasons for the cancellation on the Public Record.

Preparation for the Public Hearing

- 92 Notice of any preliminary, legal, or jurisdictional issue to be raised in a Public Hearing must be provided at least 60 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.
- 93 Before a Public Hearing, the Board may hold a Pre-Hearing Conference for the following purposes:
- a) to explore possible admissions of facts, the proof of facts, or the use of any public Documents;
 - b) to consider the possibility of joint submissions by Interveners with shared interests;
 - c) to clarify the issues to be addressed in the Public Hearing;
 - d) to review the procedures to be followed at the Public Hearing;
 - e) any other reason that will contribute to the fair and efficient conduct of the Public Hearing.
- 94 The Board will place a summary report of the information provided at the Pre-Hearing Conference on the Public Record.
- 95 The Board may, in advance of a Public Hearing, limit the issues it will consider and will notify the Parties of such a decision before Interventions are filed.
- 96 Not less than 30 days before the Public Hearing, the Board will issue a final notice of proceeding on the Public Hearing Phase including clarification on issues, joint submissions, the hearing agenda, and other matters.

Locations of Hearings

- 97 The Board shall determine the time(s) and place(s) at which a 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.
- 98 The Board may decide to hold a Public Hearing in one or more communities and may determine which issues will be addressed in each community.



Conduct of a Hearing

- 99 The Chairperson of the Board or of a Review Panel is responsible for and will manage the conduct of the Public Hearing.
- 100 Parties may submit oral Requests for Ruling during Public Hearings at the discretion of the Chairperson.

Participation in the Public Hearing Phase by Interveners and the Developer

- 101 Only Interveners and the Developer may participate fully during the Public Hearing Phase of a Proceeding.
- 102 During the Public Hearing Phase, Interveners and the Developer may submit written interventions, Requests for Ruling, requests for adjournment, presentations and may ask questions at Public Hearings, and file written closing arguments.
- 103 Interveners and the Developer must file a written Intervention within the time specified by the Hearing Directive.
- 104 An Intervener that does not file a written Intervention may still participate in a Public Hearing by asking questions, facilitating the testimony of Elders, and filing argument.
- 105 An Intervener which does not intend to file an Intervention must notify the Board prior to the deadline for written Interventions of its intention to participate in a Public Hearing in accordance with Rule 102.
- 106 An Intervener participating in a Public Hearing in accordance with Rule 102 may be required by the Board to provide a written summary of its questions or any Traditional Knowledge that it will present at the Public Hearing.
- 107 After the deadline for Interventions has passed an Intervener cannot submit new written evidence unless a Request for Ruling is submitted and leave to file the late evidence is granted by the Board.
- 108 A Developer may, in accordance with the Board's Hearing Directive, respond to the Interventions prior to the Public Hearing. Such a response must not include new evidence.
- 109 A Developer has the right to reply before the close of a Public Hearing.

Participation in Public Hearings by Parties and Members of the Public

- 110 Any Party or Member of the Public may participate during the Public Hearing Phase by:
- a) Providing their views in writing to the Board in advance of the Public Hearing by the deadline set by the Board; or
 - b) making oral comments during the portion of a Public Hearing that has been set aside by the Board to hear the views of the public.



- 111 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 Parties or Members of the Public during a Public Hearing.

Community Hearings

- 112 The Board may provide additional direction about the conduct of a Community Hearing.
- 113 Interveners may not be required to present interventions at Community Hearings.
- 114 Interveners and the Developer do not cross examine each other at Community Hearings.

Time Limits and Questioning

- 115 The Board will set time limits for presentations, questions, and oral submissions during a Public Hearing.
- 116 The Developer and Interveners at a Public Hearing are subject to questioning by one another, Board staff and Expert Advisors, and by the Board.

Hearing Language and Provision of Interpreters

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

Transcript

- 118 A transcript of a Public Hearing may be ordered by the Board and will be placed on the Public Record.
- 119 If transcripts are not produced, the Board will prepare a summary of the information resulting from a Public Hearing and, after providing Interveners and the Developer with the opportunity to comment, file the final summary on the Public Record.

Coordinated Hearings

- 120 The Board may, in accordance with subsection 24.1 the Act, conduct a coordinated hearing with other Boards established by the Act or with other boards and authorities responsible for environmental assessment or environmental impact review in neighbouring jurisdictions.

Adjournments

- 121 Any Intervenor or the Developer may apply for an adjournment of a Public Hearing by submitting a Request for Ruling under Rule 52.
- 122 The Board may on its own motion adjourn, postpone, or reschedule a Public Hearing where:
- a) it requires further information, particulars or Documents, and these cannot be provided in time for the 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.
- 123 The Board will provide Public Notice and reasons for adjourning, postponing, or rescheduling a Public Hearing on the Public Record.

Written Closing Arguments and Closing the Record

- 124 The Board may request written closing arguments from Interveners and a closing reply argument from the Developer.
- 125 Once undertakings and transcripts (if any) and written arguments are received by the Board they will be filed, and the Public Record will be closed.

Translation of Documents

- 126 The Board may require a Party or Intervener to translate at their own cost, all or portions of Documents submitted in a Proceeding into an Indigenous language.

Part 4: Review Board Procedures for Consult to Modify Processes

- 127 Where a final decision-maker(s) under the Act initiates a Consult to Modify Process to consult the Board or a review panel, the Board will provide notice of the Consult to Modify Process on the Public Record.
- 128 The Public Record for the Proceeding will be re-opened, and any information provided by decision-makers in a process under Rule 127 will be placed on the Public Record.
- 129 The Board may seek feedback from Interveners and the Developer during a Consult to Modify process. Any information provided from interveners and the developer will be put on the public record along with any decisions of the Board.

