

Mackenzie Valley
Review Board



REFERENCE BULLETIN ON DEVELOPMENT CERTIFICATES

Preparing for the coming into force of
development certificate provisions in the
Mackenzie Valley Resource Management Act

FEBRUARY 2021

A large, stylized graphic in shades of blue occupies the right side of the page. It features a large, semi-circular shape with a wavy, undulating interior, resembling a landscape feature like a valley or a stylized sun/moon. The background is a solid dark blue with a pattern of smaller, lighter blue circles scattered across it.

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1. INTRODUCTION

In 2014, the *Mackenzie Valley Resource Management Act* (MVRMA) was amended as part of legislation surrounding the devolution of the Northwest Territories. Among other changes to the MVRMA, the *NWT Devolution Act* included provisions for enforceable development certificates. The development certificate provisions have not yet been called into force.¹

These new provisions allow for the issuance, administration, enforcement, and amendment of development certificates. The Review Board will issue a development certificate after the Ministers, and any other MVRMA decision makers,² adopt the Review Board's recommendations on a development.³ The development certificate will set out the final, approved measures that a developer must comply with as it builds, operates, and closes its development.

This document:

- outlines the MVRMA amendments relevant to development certificates,
- describes roles and responsibilities for the Review Board and other agencies and organizations,
- explains how development certificates will be integrated into existing environmental assessment and environmental impact review processes in the Mackenzie Valley and
- discusses the steps that the Review Board may take to further prepare for the coming into force of development certificates.

The Review Board is releasing this document in preparation for the effective implementation of the new MVRMA amendments which require development certificates and to demonstrate that we are ready to do our part. The Review Board will provide further guidance and/or revise this document as required, once development certificate provisions come into force. If there is any conflict between this document and the MVRMA, including the amendments in Bill C-88, the MVRMA prevails.

¹Bill C-88, *An Act to amend the Mackenzie Valley Resource Management Act and the Canada Petroleum Resources Act and to make consequential amendments to other Acts*, reintroduced many of the provisions that were introduced in the *NWT Devolution Act*, including the provisions related to development certificates. Bill C-88 received Royal Assent on June 21, 2019.

²In some cases, Designated Regulatory Agencies and/or Indigenous government have decision making authorities under part 5 of the MVRMA.

³Per s.128 of the MVRMA.

2. LEGAL FRAMEWORK

Based on modern comprehensive land, resource, and self-government agreements in the Mackenzie Valley,⁴ Part 5 of the MVRMA establishes the Review Board as the main instrument for environmental assessment (EA) and environmental impact review in the Mackenzie Valley and sets out the purpose and guiding principles of the EA process.

The recent amendments made to the MVRMA include provisions for issuing, administering, enforcing, and amending development certificates. The provisions described below reflect the current MVRMA wording, as amended by Parliament through Bill C-88.

This document focuses on development certificate provisions related to environmental assessment only. The provisions for environmental impact reviews related to development certificates are generally the same as those for EA and are not discussed here.

General Provisions (MVRMA s.117, 130, 131)

Development certificates will confirm that the EA of a development has been completed. Any and all measures to prevent or minimize significant adverse impacts that are directed to the developer and approved by the Minister and responsible ministers in their final decision on the development will become enforceable conditions in the development certificate.⁵

A development that undergoes EA cannot proceed without a development certificate, and developers must comply with the conditions of the development certificate.

Federal and territorial government agencies, the Tłı̨chǫ Government and Designated Regulatory Authorities are required to carry out EA decisions to the extent of their respective authorities. A first nation, local government, regulatory authority⁶ or department or agency of the federal or territorial government must also incorporate development certificate conditions into any licence, permit or authorization that it issues for the development, to the extent of its authority. Development certificates do not supersede or nullify requirements for compliance with other legislation, orders or regulation.

⁴Gwich'in Comprehensive Land Claim Agreement, Sahtu Dene and Metis Comprehensive Land Claim Agreement, the Déline Agreement and the Tłı̨chǫ Land Claims and Self Government Agreement.

⁵Some ministerial decisions under Part 5 of the MVRMA are designated to the "federal minister" (some of which have been delegated to the GNWT through devolution) or to the "federal minister and responsible ministers". For simplicity in this document we use "Minister" to refer to the federal minister, and "ministers" plural to refer to the federal minister and responsible ministers. For the specific legal authorities in each case, see the MVRMA and the devolution delegation instrument or the Review Board's previous reference bulletin on MVRMA amendments, which can be found online [here](#).

⁶Regulatory authorities are defined in the MVRMA as a body or person responsible for issuing a licence, permit or other authorization required for the development under any federal or territorial law but does not include a designated regulatory agency or a local government.



The Review Board must issue a development certificate within 30 days of the ministers' decision.⁷ The Minister may extend the time for issuance up to 45 days, at the request of the Review Board. For EAs that require a decision by another final decision-maker (for example, the Tłı̨chǫ Government for developments on Tłı̨chǫ Lands), the Review Board must issue the development certificate within 30 days of receiving all applicable decisions. The Review Board will provide copies of the development certificate to the developer, ministers, and every first nation, local government, regulatory authority and department or agency affected by the decision.

Key roles and responsibilities - General Provisions

REVIEW BOARD

- recommends measures to prevent or minimize significant adverse impacts in its *Reports of Environmental Assessment*. Approved measures directed to developers become development certificate conditions.
- writes, issues, and distributes development certificates.

DEVELOPERS

- must operate in accordance with conditions set out in development certificates, including all required monitoring, reporting and adaptive management activities prescribed to ensure that measures are effective.

FEDERAL AND TERRITORIAL GOVERNMENTS

- grant ministerial approval of final EA measures which then become development certificate conditions.
- may grant a Ministerial extension to the timeline for development certificate issuance.
- must act carry out EA decisions and implement all development certificate conditions to the extent of their respective authorities.

REGULATORY AUTHORITIES

- must incorporate development certificate conditions into permits, licences, or other authorizations they issue, to the extent of their authority.
- must act in conformity with EA decisions and implement all development certificate conditions, to the extent of their authority.
- should look for ways to harmonize regulatory approvals with conditions, including monitoring and reporting requirements.

⁷Development certificates for EAs that do not result in any measures must be issued within 30 days of when the ministers receive the Review Board's report (unless the Minister orders an environmental impact review or a joint review).

Amendments (MVRMA s. 142.21)

The Review Board may, with approval from the Minister, examine the conditions of a development certificate if:

- conditions are not achieving their intended purpose or are causing significantly different effects than what the Review Board anticipated,
- the circumstances related to the development change significantly, or
- technological developments or new information provide a more efficient way to meet the intended outcomes of the conditions.

In any of these cases, the Review Board may, based on its own initiative, or a request from the developer or any interested person, seek approval from the Minister to examine the conditions of the certificate. Alternatively, such an examination can begin at the direction of the Minister.

Under section 111(1) (b) of the MVRMA, the Review Board can require follow up programs to evaluate the effectiveness of mitigating or remedial measures that are imposed as conditions of approval for a project. This provision is separate and apart from the development certificate provisions.

In recent EAs, the Review Board has required follow up programs that included reporting from developers, government, and regulators, that demonstrate how measures are being implemented. Future requirements for follow up programs within a development certificate can help the Review Board evaluate the effectiveness of EA measures and may help the Review Board or others determine if an examination process is warranted.

The ability to amend development certificates will allow the flexibility to review and adjust EA measures during the life of a project. This means that a proposal to use new technology or change mitigation strategies could undergo a development certificate amendment process rather than a new EA. For example, [the Snap Lake water licence amendment EA](#) process might not have been required if the development had a development certificate and an examination process had been available to the Board. In all cases, the Review Board will use the most appropriate assessment tools and process steps for the scope and scale of the development and the issues to be assessed.

The Review Board must notify the developer and the Minister if an examination of the conditions is being conducted and will conduct the examination process in a manner that the Board deems appropriate. The Review Board must complete its examination within five months and submit a written report to the Minister with the Board's assessment of the existing conditions and recommendations about new or amended conditions.⁸

⁸The Minister may, at the request of the Review Board, grant an additional two months to complete the examination.

Within three months, the ministers must either:

- accept the Review Board's report and recommendations,
- refer it back to the Review Board for further consideration, or
- accept the report with modifications, after consulting with the Review Board.

The Minister will distribute the ministers' decision to all first nations, local governments, regulatory authorities, and federal and territorial government agencies affected by the decision.

Review Board has 30 days to issue an amended development certificate after it receives the ministers' decision. Each regulatory authority must then incorporate the new or amended development certificate conditions in any licence, permit or other authorization that it issues, amends or reviews, to the extent of its authority to do so.

Key roles and responsibilities - Amendments

REVIEW BOARD

- may, with approval from the Minister, examine development certificate conditions and recommend amendments to the Minister.
- carries out the examination and amendment process for development certificate conditions in the way it sees fit.
- submits a written report to the Minister with the Review Board's assessment of the existing conditions and recommendations about new or amended conditions.
- must notify the person or body and the Minister if it is conducting an examination process.

DEVELOPERS

- may request that the Review Board initiate an examination process if conditions are not working as intended.

FEDERAL AND TERRITORIAL GOVERNMENTS

- the Minister may initiate an examination process, approve a Review Board request to start an examination process, and grant extensions to the timelines for examination reports or amended development certificate issuance.
- the ministers make decisions about the Board's recommended amendments.
- the Minister distributes the amendment decision to every first nation, local government, regulatory authority and department and agency of the federal or territorial government affected by the decision.
- must act in conformity with and implement all development certificate conditions, including amended development certificate conditions, to the extent of their respective authorities.

REGULATORY AUTHORITIES

- must incorporate amended development certificate conditions into permits, licences, or other authorizations they issue to the extent of its authority.

Developments not carried out (MVRMA s. 142.23)

Development certificates expire within five years of their date of issuance if the development has not started. Amending a development certificate does not change its expiry date. Once a development has commenced, the development certificate does not expire.

A developer may not carry out any aspect of a development if the development certificate has expired. Developers can request that the Review Board conduct a new EA for developments with expired development certificates. In conducting this new EA, the Review Board must consider and may rely on previous assessments conducted for the proposed development. It may consider any relevant changes in the development setting that have occurred since the previous assessment(s).

Key roles and responsibilities - Developments not carried out

DEVELOPERS

- may not conduct any aspect of a project if the development certificate for that project has expired.
- can request that the Review Board conduct a new EA for a project with an expired development certificate.

REVIEW BOARD

- must consider and may rely on previous assessments for a project if it is conducting a new EA for a project with an expired development certificate.



Administration and enforcement (MVRMA s.142.24-142.3)

The Minister may designate inspectors for verifying and promoting compliance with development certificate conditions. The inspector should coordinate these activities with land use permit and water licence inspectors. If an inspector has reasonable grounds to believe that a developer is not complying with development certificate conditions, they may order the developer to stop work or take measures to mitigate the effects of the non-compliance.⁹

Prohibitions, offences, and punishment related to development certificates are described in MVRMA sections 144.01-144.05. Administrative monetary penalties (which are similar in some ways to fines) for violations of development certificate conditions are described in MVRMA Part 5.1.¹⁰

Key roles and responsibilities - Administration and Enforcement

FEDERAL AND TERRITORIAL GOVERNMENTS

- the Minister appoints inspectors to verify compliance with or prevent non-compliance with development certificate conditions.

INSPECTORS

- carry out necessary actions to verify compliance or prevent non-compliance with development certificate conditions.
- should communicate with the Review Board about compliance with development certificates by submitting inspection reports.

⁹This order will be provided as a written notice and will describe the reasons for the order and the time and way the order must be carried out. If a developer fails to comply with the inspector's order, then the inspector may take the measures required on their own initiative. Any costs associated with such activities will be recovered from the developer.

¹⁰ Amendments related to administrative monetary penalties have also not yet come into force.

3. DEVELOPMENT CERTIFICATES WILL BE INTEGRATED INTO EXISTING EA PROCESSES

Development certificate provisions are an addition to Part 5 of the MVRMA. These new provisions include new authorities to issue, amend and enforce development certificates. However, they do not change the roles of the Review Board, the Minister and the responsible ministers, the Government, or designated regulatory agencies in conducting EA. Accordingly, the coming into force of development certificates will not require or result in substantial changes to the EA process in the Mackenzie Valley.

When development certificate provisions come into force, approved measures that are directed at the developer and within the jurisdiction of the responsible ministers will become conditions in stand-alone, enforceable certificates. The Review Board will, therefore, need to carefully consider the characteristics of effective measures as it drafts proposed conditions. In practice, careful consideration when writing measures is already a central part of the Review Board's EA and decision-making process.

The Review Board provides step by step guidance to interveners about how to best participate in the EA process. Once development certificates come into force, this guidance may include specific suggestions for making recommendations in interventions or closing arguments, considering that EA measures will become directly enforceable conditions in a development certificate.

The Review Board recognizes that effective measures should include the following characteristics:

- have a clear purpose and rationale;
- be practicable;
- match the scale of the impact;
- relate to impacts that are within the Review Board's authority and the scope of assessment;
- link to a regulatory authority, where applicable; and,
- avoid conflicts with other legal requirements.



4. THE REVIEW BOARD IS READY FOR DEVELOPMENT CERTIFICATES TO COME INTO FORCE

It is the Federal Government's responsibility to bring legislative provisions into force, including those related to development certificates. Since the new MVRMA amendments were passed by Parliament in 2014, the Review Board has been preparing for its own roles related to development certificates, in anticipation of those provisions coming into force. In addition to the release of this document and other reference bulletins, and internal ongoing preparations, the Review Board has the discretion to:

- update existing guidelines to reflect the requirements of and provisions for development certificates,
- modernize the public registry to meet the requirements of the new MVRMA amendments, including facilitating development certificate amendments through ongoing monitoring and reporting,
- continue discussions with government partners on how to implement development certificates, particularly with respect to roles and responsibilities for administration and enforcement,
- coordinate with Land and Water Board partners to ensure that development certificate conditions work in harmony with land use permit and water licence conditions.
- work to coordinate with all relevant enforcement inspectors, and
- coordinate with ENR to ensure that development certificate conditions work in harmony with Wildlife Monitoring and Management Plans.

The Review Board is ready to do its part to effectively implement the provisions for development certificates once the Government brings them into force. The Review Board looks forward to working with all MVRMA partners towards this same goal.



5. ABOUT THE MACKENZIE VALLEY REVIEW BOARD

The Mackenzie Valley Environmental Impact Review Board was established by the Mackenzie Valley Resource Management Act in 1998 as an independent administrative tribunal responsible for the environmental impact assessment process in the Mackenzie Valley, Northwest Territories. As a co-management board, Indigenous land claim organizations nominate half of the board members, and the federal and territorial governments nominate the other half of the board members. The Minister of Crown-Indigenous Relations and Northern Affairs Canada appoints all members to the Review Board including the Chairperson.

The Mackenzie Valley Review Board's vision is:

Making wise environmental impact assessment decisions that balance the diverse values, interests, and knowledge of all residents of the Mackenzie Valley, while ensuring the protection of the environment for present and future generations.



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