



Canada Energy
Regulator

Régie de l'énergie
du Canada

Mackenzie Valley
Review Board



Process Coordination Framework Mackenzie Valley Environmental Impact Review Board and Canada Energy Regulator



Photo Credit: Pat Kane

1 Introduction

The Mackenzie Valley Environmental Impact Review Board (**Review Board**) and the Canada Energy Regulator (**CER**) together have developed this Process Coordination Framework (**the Framework**) to be used when the Review Board assesses a development regulated by the CER. We have a history of cooperation grounded in a Memorandum of Understanding (**MOU**)¹ and shared legislation.

1.1 Objective

This Framework builds on the MOU's description for coordination between the Review Board and the CER. It aims to provide Indigenous communities, developers and the public with a better understanding of the coordination opportunities in various scenarios, which depend on the timing of an application to the CER in relation to when the Review Board starts an environmental assessment (**EA**). The Review Board and the CER may consider these coordination opportunities when negotiating development-specific agreements.

1.2 Scope

The Framework applies to proposed developments within the Mackenzie Valley under the regulatory purview of the CER, that have been referred to the Review Board for EA as set out in the *Mackenzie Valley Resource Management Act* (**MVRMA**). The Framework does not include specific considerations for an environmental impact review; however, most coordination opportunities involved in an EA could apply.

1.3 Benefits

In addition to the expected benefits of cooperation and coordination for the Review Board and CER described in the MOU, there are several potential benefits to Indigenous communities, developers and the public, including:

- Duplication of steps could be reduced, saving time and human effort.
- Consultation fatigue could be minimized, reducing the number of events community members need to prepare for and attend.
- The overall timeline of the EA and regulatory process could be shortened.
- A greater overall understanding of each of the respective processes could be achieved.

1.4 Road map

This Framework contains three sections:

- Introduction
- Context
- Opportunities for coordination and scenarios



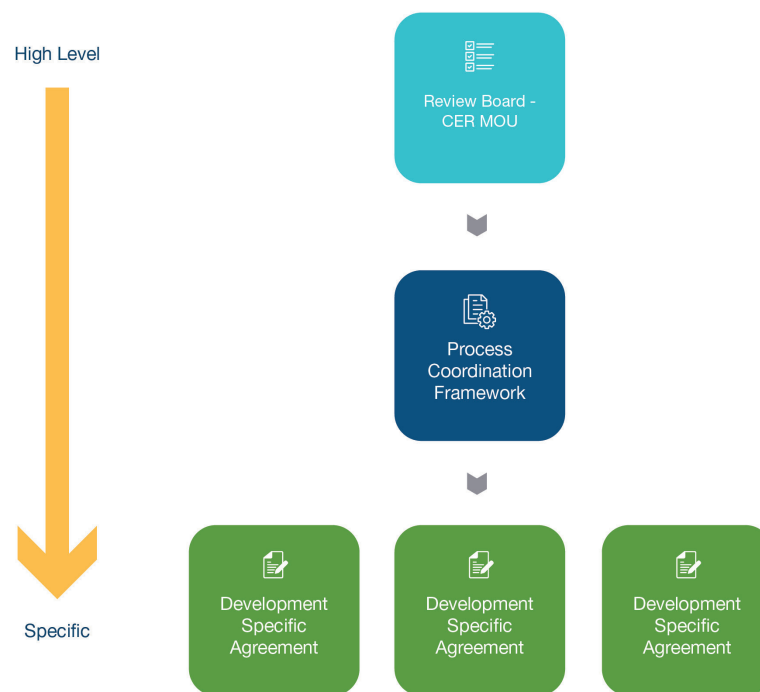
¹ [Memorandum of Understanding between the Mackenzie Valley Environmental Impact Review Board and the Canada Energy Regulator \(2 February 2023\)](#).

2 Context

The MOU describes the relationship between the Review Board and the CER at a high level. This Framework provides further detail on opportunities for coordination and potential scenarios. We may negotiate additional agreements and/or plans for cooperation and coordination for a specific proposed development, where practical. Figure 1 below describes the relationship between these documents.

The Framework focuses on coordination opportunities between the Review Board and CER. Other organizations could be involved in an EA but are not within the scope of this Framework.

Figure 1: Cooperation Documents



2.1 Guiding principles

Some key principles that will guide us when we coordinate our processes include:

- Cooperation between the Review Board and the CER
- The desire for “made in the North” options
- Efficiency and flexibility
- Effective public participation
- Reducing or avoiding duplication

2.2 Legislative context, roles and responsibilities

The Review Board

The Review Board is an administrative tribunal established through the MVRMA that resulted from the Gwich'in Comprehensive Land Claim Agreement, the Sahtu Dene and Métis Comprehensive Land Claim Agreement, and the Tlicho Land Claims and Self-Government Agreement.

The Review Board is the main body for conducting environmental assessments and environmental impact reviews in the Mackenzie Valley under the MVRMA. The Review Board's mandate is broad and comes from Part 5 of the MVRMA. As per section 115 of the MVRMA, the Review Board must consider these guiding principles in its proceedings:

- the protection of the environment from significant adverse impacts,
- the social, cultural and economic well-being of residents and communities in the Mackenzie Valley, and
- the importance of conservation to the well-being and way of life of Indigenous peoples to whom section 35 of the *Constitution Act, 1982* applies and who use an area of the Mackenzie Valley.

The Canada Energy Regulator

The CER (successor to the National Energy Board) was established by the *Canadian Energy Regulator Act (CER Act)* in 2019. The CER is defined as a designated regulatory agency under the MVRMA and has decision making responsibilities for environmental assessments on developments they regulate. Under section 11 of the CER Act, the CER's mandate includes exercising its powers and performing its duties and functions in a manner that respects the Government of Canada's commitments with respect to the rights of Indigenous peoples.

Regulatory decisions are made by the Commission of the CER, which is a court of record. The Commission has the authority to, among other things, conduct public hearings and issue or vary authorizations under the *Canada Oil and Gas Operations Act (COGOA)*. The CER undertakes its responsibilities under COGOA in accordance with the Act's purpose in section 2.1. This includes promoting, in respect of the exploration for and exploitation of oil and gas:

- safety
- protection of the environment, and
- conservation of oil and gas resources.

Crown Consultation

The Crown relies on the Commission's process to fulfill its duty to consult. For certain types of applications, the CER may conduct additional consultation activities to supplement the Commission's process. These activities are carried out by the CER's Crown Consultation Coordinator.

Other departments and governments may have a role² in Crown consultation processes for a development such as the Northern Projects Management Office, Crown-Indigenous Relations and Northern Affairs Canada and the Government of the Northwest Territories; however, the coordination of these agencies is beyond the scope of this Framework.

2.3 Assumptions

The following assumptions are key to understanding how we developed the Framework:

- The Framework in no way prejudices or pre-approves any proposed development.
- This Framework does not bind the Commission or Review Board to a certain course of action.
- Nothing in this Framework shall be interpreted as having application to the powers, duties and functions of the Review Board or Commission or otherwise fetter the discretion or independence of the Review Board or Commission in any manner.
- Decisions and commitments to coordinate the EA and regulatory processes can only be finalized in the context of a specific development description and application.
- Opportunities for public participation in the EA and regulatory processes will be clarified through our respective workplans and hearing orders.

2 [CER – Memorandum of Cooperation Between the Canadian Northern Economic Development Agency, Northern Projects Management Office and Federal Departments/ Agencies with Regulatory Responsibilities in the Territories](#)

3 Opportunities for coordination and scenarios

3.1 Opportunities for coordination

In our MOU, we agree to coordinate our respective processes where practical and provide some examples of potential coordination activities. There is a spectrum of coordination depending on the timing of an application to the CER. Opportunities for coordination may include:

- **Public engagement and outreach:** Help prepare the public for participating in EA or regulatory processes. Outreach could include information sessions for impacted communities explaining the EA and regulatory processes; how to participate in these processes; Crown consultation; and, how to use and navigate our websites and public registries (that is, the Online Review System and REGDOCS).
- **Information sharing:** Ensure that information that is relevant to our assessments is placed on each other's public registry/hearing record.
- **Coordinated process steps:** Where practical, align the timing and location of process steps, combine information needs, and share technical support. This could include:
 - **Information requirements:** Information expected from the developer such as the Review Board's Terms of Reference and the CER's filing requirements.
 - **Information requests:** Written questions that are sent to the developer and other parties to help understand the proposed development better.
 - **Workshops/community sessions/oral Indigenous knowledge sessions:** Opportunities to hear from communities and parties about cultural impacts, technical issues and/or process steps. The Review Board and/or Commission may attend workshops, sessions, and oral indigenous knowledge session but if not, summary reports are typically posted on the record.
 - **Oral final argument/public hearings:** Formal in-person or virtual meetings typically held near the end of a CER proceeding or Review Board EA to tie together and focus all the information gathered throughout the assessment. The developer and other parties present their conclusions and final arguments.

3.2 Scenarios and process steps

This Framework considers three potential scenarios for a proposed development that requires an EA by the Review Board where the CER is a designated regulatory agency. These scenarios assume that, upon completion of the environmental assessment, the Review Board recommends approving the proposal for a development subject to measures to prevent a significant adverse impact on the environment (as per s.128(1)(b)(ii) of the MVRMA). Opportunities for us to coordinate may differ for scenarios where the Review Board makes a different recommendation at the conclusion of an EA, since the outcome of the Review Board's assessment has different implications for the Commission.

In the scenarios described here, the Review Board can start an EA based on a referral from a preliminary screening decision or referral authority, or on its own authority under s.126(3) of the MVRMA;

- **Scenario 1:** The Review Board starts an EA for a development without an application to the CER. The developer applies to the CER after the Review Board's scoping phase is complete. This scenario was considered because after the scoping phase the developer may have the information needed to produce a more comprehensive application for the CER as well as more information for the Review Board's EA. The timing of the application submissions in this scenario would allow us to consider the coordinated process step opportunities mentioned above. See Appendix B – Scenario 1.
- **Scenario 2:** The Review Board starts an EA at any point during the CER's hearing for the application. In this scenario, the Review Board EA starts at any point from the early stages to the near-completion of a hearing. This scenario allows for a wide range of coordination opportunities at the early stages of a CER hearing, which narrows as the hearing gets closer to completion. See Appendix A - Scenario 2.
- **Scenario 3:** As in Scenario 1, the Review Board starts an EA without an application to the CER. In this case, the developer applies to the CER after the Review Board's EA process is complete and opportunities for coordination are limited. See Appendix C-Scenario 3.

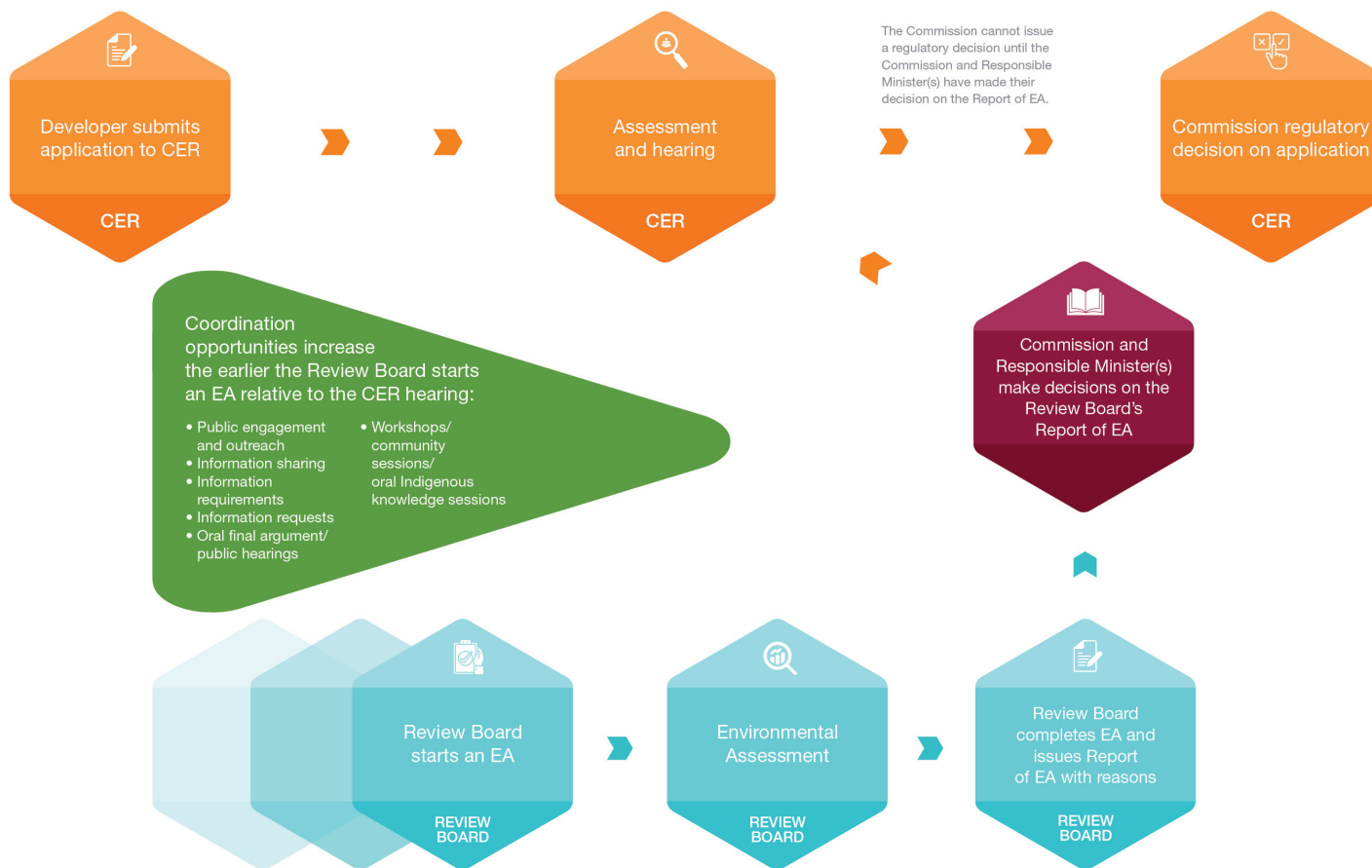
PROCESS COORDINATION FRAMEWORK - Scenario 1

Developer applies to the CER during the Review Board's EA



PROCESS COORDINATION FRAMEWORK - Scenario 2

Review Board's EA begins during the CER's Assessment and Hearing



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PROCESS COORDINATION FRAMEWORK - Scenario 3

Developer applies to the CER after the Review Board's EA is complete

