PROCESS GUIDE

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THE BOARD REVIEW PROCESS UNDER THE NRCBA

Process Guide

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Section 1: The Board Review Process under the NRCBA

1.1: Introduction

This guide provides an overview of the process used by Alberta's Natural Resources Conservation Board (NRCB or Board) for reviewing project applications filed under the *Natural Resources Conservation Board Act* (NRCBA). Information to promote effective participation in pre-hearing conferences and hearings is included in this guide to assist the general public, project proponents, municipalities and other provincial and federal government departments involved in an NRCBA review.

Reviews conducted under the NRCBA are different than reviews conducted under the *Agricultural Operation Practices Act* (AOPA[1]). Guide materials addressing AOPA matters are not contained in this guide but are available by contacting the NRCB.

Under the NRCBA, the NRCB's responsibility is to conduct a fair and open process for reviewing applications for proposed projects that will or may affect natural resources in Alberta. When reviewing a project application, the Board must decide whether or not the project is in the best interest of Albertans. The Board does this by weighing the potential environmental, economic and social impacts associated with each proposal.

Individual members of the public; coalitions of people sharing a common position on a project; organized public interest groups; and federal, provincial and municipal representatives all have important roles to play in this process. Public participation helps ensure that the NRCB has access to relevant and reliable information from different perspectives when determining if a project is in the public interest.

In carrying out its mandate, the NRCB strives to conduct an effective and efficient project review process. The NRCB is accountable to the Alberta Legislature and, ultimately, to the taxpayers of the province for the careful use of public funds. Therefore, all participants in the NRCB process, including the Board itself, are responsible for using limited resources most effectively.

Given the nature and size of projects the NRCB reviews, proposed projects may also be subject to review processes conducted by other boards, commissions or agencies at the federal or provincial level. The NRCBA provides that the NRCB may conduct its proceedings jointly or in conjunction with these other bodies (if a proceeding involves a reviewing agency of a jurisdiction outside of Alberta, approval must first be obtained from Cabinet).

1.2: Board and Staff

The NRCB is a quasi-judicial agency created by the NRCBA. Cabinet-appointed Board members act as panel members for project reviews. The NRCB chair selects which Board members will sit on a specific panel to review a project application. Such review panels are usually comprised of three Board members.

The NRCB has designated staff to provide legal, clerical, administrative and expert technical services to facilitate the Board review process. If you are interested in participating in a review, you are encouraged to contact Board review staff (contact information located inside back cover). They can familiarize you with the various stages of the review process and let you know about any new developments with respect to project reviews.

[1] Under AOPA, the NRCB is responsible for regulating confined feeding operations, manure collection areas, manure storage facilities, agricultural composting facilities and associated structures (excluding residences).

1.3: Overview of the *Natural Resources Conservation Board Act* Review Process

There are several steps in the review process, from the initial project disclosure to the issuance of a Board decision on an application. The following illustrates the basic stages of review (further details for each are provided later in this guide):

Project Disclosure:	The proponent makes parties aware of the proposed project and its potential implications.
Confirming Jurisdiction:	The NRCB confirms whether its approval is required to commence the project. Reviewable projects include those related to forestry, water management, metallic or quarriable minerals, and certain tourism projects, for which an Environmental Impact Assessment (EIA) has been directed under the *Environmental Protection and Enhancement Act (*EPEA*)*. Other types of projects may also be referred to the Board by Cabinet.
Application Content:	The NRCB determines what information an application must contain to assess the social, economic, and environmental effects of a reviewable project so that it can properly evaluate whether the proposed project is in the public interest. For those applications that include an EIA, the NRCB and Alberta Environment and Protected Areas (EPA) establish a common statement of information requirements (Terms of Reference) so the applicant can prepare one submission in response to the needs of both the NRCB and EPA.
Deficiency Review:	The NRCB reviews the application and identifies if there are any deficiencies in the assessment of the social, economic and environmental effects. The deficiency review is usually coordinated with EPA. For applications requiring an EIA, EPA provides the NRCB with confirmation that the EIA is complete for the purposes of meeting requirements under EPEA.
Hearing Process:	The NRCB determines if a public hearing is required. The NRCB is required to hold a hearing if a bona fide written objection is received from a party the NRCB views as being "directly affected" by the project. Normally, if a hearing is held it will be preceded by a pre-hearing conference to confirm the scope of the hearing and other preliminary and procedural matters.
Decision:	The NRCB may, with prior Cabinet authorization, grant an approval on any terms and conditions that the NRCB considers appropriate. Cabinet authorization may include additional terms and conditions imposed by Cabinet. The NRCB also has authority to deny or defer applications.
Appeal period:	NRCB decisions may be appealed to the Alberta Court of Appeal on questions of jurisdiction or law. An application for leave to appeal must be filed and served within 30 days after the decision appealed from.

Section 2: Project Disclosure and Confirmation of Jurisdiction

The Board's review process is initiated when a project's proponent (an applicant) discloses a reviewable project to the Board. Proponents should provide advance notice of proposals that may be reviewable.

During the disclosure phase, the proponent discusses the proposed project with EPA and prepares preliminary documents so EPA can make a decision as to the appropriate environmental assessment process to apply. Proponents should also seek advice on regulatory requirements under EPEA*, Water Act, Canadian Environmental Assessment Act,* and land disposition legislation (as applicable).

Following the preliminary disclosure of the proposed project, the NRCB will confirm whether or not an NRCB approval is required. The NRCBA and EPEA regulations establish the types of projects that must receive NRCB approval before commencing.

Information regarding thresholds for projects that require an EIA is provided under EPEA's regulations. A project for which an EIA is not mandatory may still fall under the NRCB's jurisdiction, should EPA make a discretionary decision to direct an EIA.

Generally the projects reviewed by the NRCB are related to forestry, water management, metallic or quarriable minerals, and certain tourism projects. Other types of projects or activities may also be referred to the Board by Cabinet.

Section 3: Early Public Involvement and Consultation

The NRCBA review process is open, public, and impartial. Project proponents are expected to involve the public in the development of an application for NRCB approval. Public involvement is also a requirement of the EIA process for those projects that require an EIA as part of their application to the NRCB.

Public participation plays an important role during the development phase of an application. Key objectives of early public involvement include:

- facilitating effective communication between all parties prior to public hearings;
- ensuring that public involvement occurs in such a manner and time that public concerns may be properly addressed and resolved;
- encouraging innovative approaches to the discussion of issues to promote win/win solutions and reduce public hearing time;
- fostering an understanding of the needs and concerns of all those involved in natural resource developments, including industry, government, and the public;
- improving the public's understanding of the requirements for sustainable natural resource developments;
- improving project proponents' understanding of public concerns and priorities; and
- facilitating the involvement of directly affected parties in the planning for specific reviewable natural resource development projects.

Achieving sustainable natural resource developments that reflect the public interest requires collaboration with the people and communities who may be directly affected. To accomplish this, the public should advance any concerns to the project proponent; municipal, provincial and federal government departments; and the NRCB as early as possible so they may be resolved, if possible, prior to a public hearing. (People directly affected by an application should try to resolve as many issues as possible with the applicant prior to the public hearing and bring only unresolved issues that fall within the NRCB's jurisdiction to the hearing).

Natural resource developments can have both positive and negative impacts on Albertans. It is important for those who feel they will be directly and negatively affected by a development to have their concerns fully identified and considered. Albertans are encouraged to take steps to understand development proposals that may affect them and to participate in all stages of the review process. Such

involvement may include participating in the application review and any public hearings to ensure their priorities are considered. Consultation opportunities may include public meetings, and small-group or one-on-one meetings with government and industry. Effective communication prior to application filing contributes significantly to the efficiency of the public hearing process. In this regard, proponents are responsible to explain to directly affected persons and communities the social, economic and environmental effects expected from the project. Proponents are also encouraged to communicate with public groups concerned with the issues posed by any proposed natural resource development. Proponents should also explore avenues for problem solving and work to resolve concerns in a proactive way before bringing unresolved citizen concerns to a public hearing.

Experience has shown that proposed natural resource development projects may have effects on First Nations communities that can only be determined through communication and consultation with the appropriate representatives of First Nations. The NRCB recognizes First Nations people have a relationship to the land and natural resources that is special within their culture.

The NRCB expects proponents to advise First Nations communities that may be affected by a proposed development of their plans at an early stage, so First Nations people may make decisions regarding their interest and participation in the development of the application. The NRCB notifies First Nations communities regarding proposed projects and provides opportunities for their participation in the review process.

The NRCB's expectation for proponents to consult with the public from the initial project design stage and continue, if necessary, right up to the time of the hearing, is reflected in the application requirements set out in the Rules of Practice. Applicants are required to describe the process used during the preparation of the application, and the EIA (if applicable), and their attempts to communicate with and involve the residents of the region, the owners and users of resources that may be affected, and other members of the public. In their plans for the project, applicants must also describe the manner in which those views and concerns were addressed.

As noted, a primary purpose of early public consultation is to define and, where possible, resolve issues. Consensual resolution of issues between the applicant and other review participants is likely to be adopted by the Board. Early consultation can also lay the groundwork for a positive ongoing relationship between the proponent and those who are affected by the project. For these reasons, the NRCB strongly recommends that all interested parties participate fully and in good faith in the pre-hearing public consultation process.

Ideally, a hearing may not be required if all of the concerns of directly affected persons are resolved through the consultation process. Even if all concerns cannot be resolved, the public consultations may narrow the range of issues in contention at the hearing and clarify the available options and the positions of the parties. As a result, the length of the hearing may be reduced and its focus restricted to the critical issues. The Rules of Practice also specifies that the Board may direct the applicant and interveners to participate in alternative dispute resolution prior to a hearing or other proceeding.

Section 4: Integration of the Environmental Assessment Process

The integrated environmental assessment process detailed in this guide focuses on projects for which an EIA is required as part of the application. As noted earlier, it is possible for the Board to review Cabinet referred projects that may not be required to prepare an EIA. In such cases, project proponents should consult with Board staff to discuss the applicable review process.

The province's environmental assessment process is intended to:

- support the goals of environmental protection and sustainable development;
- integrate environmental protection and economic decisions at the earliest stages of planning an activity;
- predict the environmental, social, economic and cultural impacts of an activity and to assess plans to mitigate any adverse impacts resulting from the proposed activity; and
- provide for the involvement of the public, proponents, and government departments and agencies in the review of proposed activities.

Specific terms of reference are issued by EPA for each EIA following a period of public notice and review. For NRCB reviewable projects, EPA requires proponents, when publishing notice of the proposed terms of reference for the EIA under EPEA, to include a statement in addition to any requirements under EPEA that:

- the proposed project is reviewable by the NRCB;
- the NRCB will require that the EIA be filed with and be included as part of the NRCB application; and
- the terms of reference for the EIA request information to assist the NRCB in considering the public interest.

As stated earlier, the combined NRCB application/EIA contains information on the anticipated social, economic and environmental effects of the project. The Board has regard for this information in its determination of whether the project is in the public interest.

The NRCB and EPA expect that proponents will work cooperatively with the public to identify and resolve concerns pertaining to the social, economic and environmental effects of the proposed project. An Analysis of Issues is required as part of the EIA. It outlines those aspects of the proposed project which were identified as issues during the preparation of the application and which the proponent believes have been addressed through adjustments in the proposal or through other means.

The applicant must provide the NRCB with an outline of those aspects of the proposed project that were identified as issues by the public and which the proponent believes have not been, or cannot be, resolved prior to an NRCB public hearing. The NRCB requires the applicant to provide an analysis of the prospects for the resolution of each issue or public concern that remains unresolved at the time the application is submitted to the Board. The analysis should include:

- a clear description of the issue and the perspectives of the parties in dispute;
- an account of efforts at resolution, including any solutions proposed and the reasons why they have not been adopted;
- an assessment of what would be required to conclude the matter; and
- any recommendations the applicant may have as to how the Board might deal with the issue in its decision.

Applicants should identify and report on public interest issues raised through the development of the application and during the environmental assessment process. This analysis will become a key document during the subsequent public hearing process.

The NRCB recognizes that at the earliest stages of the review process, key decisions are made by the proponent about the scope and scale of the EIA, the issues to be addressed in the assessment and the kinds of information that must be obtained to address those issues. These decisions shape the subsequent NRCB review and public hearing on the application. The public plays an essential role in these early stages of the review process. By raising issues and commenting on the NRCB application requirements, the public helps to ensure that no issues of concern are omitted in the NRCB review and decision-making process.

Likewise, written comments from an affected municipality on the application requirements and draft terms of reference for the EIA help to identify the information needed to assess municipal effects. The nature of a proposed project will also determine the need for the proponent to provide information regarding specific municipal legislative changes that may be required to accommodate the development. If the project is near the boundary of a municipality, then the adjacent municipality might also wish to be notified by the proponent and participate in the NRCB review process. Therefore, the Board requests that proponents notify neighbouring municipalities of new developments or subdivision changes near to municipal boundaries.

Municipalities may wish to respond to the application requirements and draft EIA terms of reference outlining any concerns regarding the potential for effects on the municipality (positive or negative); additional areas that the EIA should cover to assist the municipality in its decision-making process; areas where the municipal statutory plans and land use by-laws might be affected; and additional information that should be included to assess municipal effects.

Section 5: Applications

5.1: Notice of Filing
Immediately following receipt of an application, the Board may publish a Notice of Filing in local and regional newspapers. A Joint Notice of Filing may be published if other provincial or federal governments are involved. This notice is published before the Board has determined whether supplementary information will be required.

The notice briefly describes the subject of the application, states that the application has not yet been completed, and provides the name and address of the applicant (or the applicant's lawyer or agent). The notice also indicates where to obtain copies of the application and supporting information. With this notice, the Board asks interested parties to register with the NRCB; a general mailing list is then established and subsequent notices are sent directly to interested parties.

5.2: Content of an Application to the NRCB
The Board is responsible for defining the scope and content of the information to be included in an application for NRCB approval. An application must provide sufficient information for the Board to determine if the proposed project is in the public interest, and must include the following information:

- a statement of the proposed project and the approval applied for from the NRCB;
- a statement of other approvals required to commence the proposed project, including the identification of the acts or regulations under which they are required;
- the reasons the proponent believes the Board should grant approval;
- an EIA containing a description and evaluation of the social, economic and environmental effects (in cases where an EIA has been directed);
- the address in Alberta of the proponent's lawyer or agent to whom communications may be sent;
- the name and address of the proponent, its type of business, the location of its head office, and any other relevant aspects of its operations;
- any other information the Board may require; and
- If the application has technical reports or material attached, the technical qualification of the person(s) taking responsibility for such reports.

Pursuant to the *Municipal Government Act*, the NRCB requires proponents to include in their applications a detailed discussion of the municipal land use implications of the proposed project. Applications must include sufficient background information to allow the Board to assess the effects on municipal land use, including effects on municipal development plans, area structure plans, land use by-laws and other municipal by-laws. Information will also be required on any proposed subdivision plans, development agreements, and conformance with development standards and codes.

The NRCB anticipates that proponents will work cooperatively with municipal authorities to identify and resolve land use concerns. The Board requires proponents to document those aspects of the proposed project which may not be in conformity with local land use plans and bylaws, and indicate what steps have been taken to address any municipal concerns.

5.3: Application Deficiency Review Process
- When an application is filed with the NRCB, Board staff will assist the Board in determining its completeness. Applicants may then be required to provide additional information to address deficiencies. Copies of the application are provided to the municipal and federal governments. At this stage, NRCB staff, EPA, and the federal government (as appropriate) conduct detailed and independent reviews of the application. In conducting a review, Board staff may obtain assistance from independent consultants or from experts seconded to the Board from other government departments.

During the initial review stage, interested parties may provide comments to Board staff regarding potential problems with the application. In addition, representatives from provincial and federal government departments or from municipalities are likely to forward comments to Board staff. Any comments, concerns or questions that are received are assessed by Board staff in terms of their relevance to the Board's decision-making process and their relationship to the information requirements identified in the Rules of Practice.

The NRCB proactively notifies municipalities and locally elected representatives about proposed developments in their areas. In order to assist in a review of the application, a municipality should review application documents and advise the Board, in writing, of any concerns and issues, including identification of any deficiencies in the assessment of the potential municipal impacts. The nature of the project will likely determine specific areas of municipal interest worthy of consideration during the deficiency review process.

Once Board staff has completed a review of the application, any further information required to complete the application is identified in a letter to the applicant. This correspondence is typically coordinated with EPA and is referred to as a supplemental information request (SIR).

The function of the application review conducted by the NRCB staff is to assess the information in the application for clarity and completeness. Staff members do not weigh the value of the information presented, as that function rests with the panel.

5.4: Notice of Application

The Rules of Practice require the publication of either a Notice of Application or Notice of Hearing following receipt of a completed application. The completed application includes any supplementary information requested as a result of the deficiency review.

A Notice of Application includes a statement that the project may be approved without a hearing if the Board does not receive any submissions objecting to the project. Such objections must be filed by persons whom the Board considers to be directly affected by the project, or who, in the Board's view, have a bona fide interest in the matter. Directly affected individuals or groups of individuals who believe that a hearing should be held on an application should file a written objection by the deadline specified in the Notice of Application.

Upon receipt of the completed application, if the Board is aware of objections to the project, the general practice is to proceed directly to a pre-hearing conference to consider preliminary matters prior to publishing a Notice of Hearing. Written objections may be filed with the Board following publication of the Notice of Filing and/or the Notice of Application.

5.5: Triggering the Hearing Process

The Board's process includes a public hearing in cases where the Board has determined that a hearing is appropriate, or where a written objection has been submitted by a person whom the Board considers to be directly affected or has a bona fide interest in the matter. The only exception to this rule occurs when the Board considers the objection to be vexatious or of little merit, in which case a hearing need not be held.

Letters objecting to the project should explain the reasons why the submitter believes they are directly affected by the proposed project, what their concerns are (a brief summary is sufficient), and what effects they believe the project may have. The letters must set out the basic reasons for objecting to the project.

5.6: Statutory Requirements upon Receipt of an Application

In accordance with the NRCBA and *Administrative Procedures and Jurisdiction Act,* the Board ensures that directly affected persons have:

- a reasonable opportunity to review information submitted by the applicant and the other parties;
- a reasonable opportunity to provide evidence relevant to the application;
- when appropriate, an opportunity to cross-examine (in the presence of the Board) persons submitting information relevant to the application; and

- an opportunity to make arguments before the Board regarding the project.

The NRCB's review process, including notice provisions, public access to information, and the procedures for public hearings, ensures that these rights are respected.

The Board may extend these opportunities to others as well. While the directly affected test is relevant to a number of elements of the NRCB process, it is not a precondition for participation in that process. (The directly affected test is one of the eligibility criteria for intervener funding, a topic discussed further in the NRCB Guide to Intervener Funding*)*. Generally anyone with an established interest in a proposed project may be an intervener in the process.

Section 6: Participation of First Nations Groups and Governments

In addition to public participation to determine public interest (as discussed throughout this guide), the participation of First Nations groups and the applicable municipal, provincial and federal governments is likewise very important.

The NRCB anticipates First Nations people that may be affected by proposed natural resource development projects will participate in NRCB proceedings and hearings. Because of the nature of the role played by First Nations in Canada under the *Constitution Act* and other statutory provisions, First Nations have impressed upon the NRCB the importance of understanding the nature of any project effects on First Nations in the NRCB review and decision process. First Nations people, through direct participation in the NRCB public hearing process, are in a position to provide information and evidence regarding potential effects so that they may be appropriately considered by the Board in determining the public interest.

Government departments are a source of valuable information that can contribute to a better understanding of a project's effects and the regulatory approval processes managed by those departments. The Board encourages participation in its process by all government departments having knowledge and expertise relevant to a specific project.

While the NRCB assesses the effects of a proposal on municipal land use, it is important to note that an approval by the Board prevails over any condition of a conflicting land use provisions within a municipal development plan. The *Municipal Government Act* provides that NRCB approvals may affect the content of municipal statutory plans (intermunicipal development plans, municipal development plans, area structure plans, and area redevelopment plans), land use bylaws, and the municipal subdivision and development approval process. This underscores the importance of municipal participation.

Section 7: Pre-Hearing Conference

After an application is formally received by the Board, but prior to convening a formal public hearing, the Board may decide to convene one or more pre-hearing conferences with the applicant and interveners on its own initiative or at the request of an interested party to the proceeding.

The purpose of the pre-hearing conference is to create a public forum for the Board to consider preliminary and procedural matters in advance of a hearing. Pre-hearing conferences are relatively informal and are usually held in the region where the proposed project would be located to facilitate participation by local residents. (See Appendix 1 for pre-hearing procedures).
If the Board decides to hold a pre-hearing conference, it first publishes a Notice of Pre-Hearing Conference (described below). Topics that may be addressed at the pre-hearing conferences include:

- the scope of major issues (relevant to a determination of public interest) and other matters to be considered at the hearing;
- a discussion of opportunities for further dialogue among parties to resolve or narrow issues prior to the hearing;
- the exchange of documents;
- procedures to facilitate effective participation;
- intervener funding;
- deadlines for written interventions; and
- scheduling and location for a participant information session (if one is planned)

Pre-hearing conferences offer an important opportunity for interveners to become involved early

in the review process and to participate in shaping that process. They are also an important planning instrument for the Board. If used effectively, pre-hearing conferences can increase the efficiency of the hearing process for all parties. The pre-hearing conference is not the venue for the Board to hear submissions regarding the likely effects of a proposed project. (Those submissions are for consideration in the subsequent hearing that will follow the pre-hearing conference).

Interveners who believe they are directly affected by the project and require funding to effectively participate in the review process are strongly encouraged to seek a determination from the Board regarding their eligibility for intervener funding at this stage of the process. This should be done even if they do not seek an advance award of costs prior to the hearing.

After the pre-hearing conference, the Board will issue a written report addressing each of the topics considered during the meeting. Participants will then be afforded sufficient time to prepare for the hearing.

7.1: Notice of Pre-Hearing Conference
Before a pre-hearing conference, the NRCB publishes a Notice of Pre-Hearing Conference in local and regional newspapers advising that a meeting will be held to discuss preliminary and procedural issues related to an application (not the merits of the application itself). The notice announcing the date, time and location of a pre-hearing conference also provides:

- a description of the subject of the application and proceedings;
- the location(s) where the application can be viewed;
- the requirements for directly affected persons who wish to apply for intervener funding and the requirements for submissions; and
- the date, time and address for receipt of written submissions.

7.2: What to Include in Your Presentation at the Pre-Hearing Conference
One of the main purposes of the pre-hearing conference is to identify the major issues which should be addressed during the hearing itself. Therefore, it is important to ensure that your presentation clearly identifies those issues that represent your key concerns regarding the application.

You should make a presentation if you want to seek clarification as to whether or not the issues you wish to address in the hearing are relevant to the Board in determining whether the proposed project is in the public interest, or if you wish to speak to any item(s) on the agenda such as the time and location for a hearing or your eligibility for intervener funding.

Written submissions must be filed on or before the date specified in the Notice of Pre-Hearing Conference. The following information should be included in your pre-hearing conference presentation:

- A statement of the major issues to be addressed at the hearing. (If you believe the Board does/does not have the authority to deal with certain issues, these should be clearly identified with the reasons for your position);
- A detailed description of the information that you intend to include in your hearing submission and how such information may assist the Board in assessing the social, economic or environmental effects of the reviewable project;
- Your views on the time required to prepare your hearing submission and any preferences or limitations you may have regarding scheduling and location of the hearing; and
- If you are seeking an advance award of intervener funding to prepare a submission and participate at the hearing, you should review the NRCB Intervener Funding Process Guide and provide the information consistent with the request for advance cost awards application form contained in the guide.

If you are not seeking an advance award of costs but intend to request reimbursement of costs after the hearing, you are strongly encouraged to seek a decision from the Board at the pre-hearing conference as to whether or not you are or may be directly affected by a proposed project and therefore eligible for an award of costs following the public hearing. You should also review the funding provisions contained in the Rules of Practice.

7.3: Legal Counsel and Experts
It is not necessary to retain the services of a lawyer to represent your interests. However, you may wish

to retain a lawyer if there will be issues that involve legal complexities. In this event, you may want to consider retaining legal counsel only for those portions of your submission that require such assistance. Most applicants retain legal counsel, at least to represent their position during the public hearing.

You may decide that the services of an expert would increase the effectiveness of a submission. Under such circumstances, you may wish to consider whether other interveners have similar interests and would wish to share the costs associated with retaining the services of an expert. Becoming aware of the intentions of other interveners may allow you to reduce your expenses. The Board will circulate a copy of submission summaries for all registered parties to assist you. If you do choose to retain any experts, be sure to obtain clear information concerning the costs of their services, including the cost to appear at the hearing.

7.4: Funding for Submission Preparation and Presentations

Effective participation in the NRCB process, particularly when legal counsel and expert witnesses are used, can involve considerable cost. As noted earlier, the Rules of Practice includes provisions for cost awards to eligible interveners.

Participants should note that cost award provisions may not cover all costs associated with preparation for and participation in the pre-hearing conference or subsequent hearing. A guide dealing specifically with intervener funding (Intervener Funding Process Guide) may be obtained from the NRCB.

7.5: Intervener Coalitions

Since participation in the NRCB process can take considerable time and effort, it may be advantageous to form a coalition with others sharing the same views or information needs. In some instances the Board may limit, reduce or deny funding where individuals have not worked with others having a common interest. In addition to sharing the workload among participants, intervener coalitions can increase efficiency of the review process by reducing the number of individual submissions to be considered.

7.6: What to Expect at the Pre-Hearing Conference

Although NRCB pre-hearing conferences are considerably less formal than courtroom proceedings, they do provide a structured format for the presentation of information and argument. Typically the meeting begins with opening remarks from the panel chair. These may include a statement of the purpose of the pre-hearing conference, the introduction of panel members and NRCB staff, and formal registration of participants.

Preliminary matters such as procedural or legal issues are usually considered next. Each participant will be requested to present their position on each agenda item. The applicant will be allowed to respond after all participants have presented their views of each item. Normally, only the panel members and the applicant question participants. All parties then present closing arguments to the panel, summarizing their principal issues and evidence and outlining the reasons why they believe that the panel should reach particular preliminary and procedural decisions. Not all participants need to participate under each agenda item; only those who may have a concern with a particular item should do so. (See Appendix 2 for a pre-hearing conference checklist).

The NRCB records the proceedings; therefore, it is important to come forward to the microphones provided, identify yourself and speak at a relaxed pace. NRCB staff is available to assist with any questions you may have throughout the meeting (they will be seated at a separate table from the panel members). NRCB staff will be available to assist with matters of process throughout the pre-hearing conference; participants are encouraged to direct any process inquiries to the designated staff.

7.7: The Report of Pre-Hearing Conference

Following its pre-hearing conference, the panel reviews all of the information presented and issues a written decision to all registered participants. The decision on preliminary and procedural matters is made public in the form of a written Report of Pre-Hearing Conference. This report summarizes the agenda items discussed, reviews the positions of the participants and explains the panel's conclusions on each of the issues.

The report also confirms the scope of the upcoming review; the time, place and date for the commencement of the hearing; and the Board's decision regarding funding eligibility and advance intervener funding, if applicable. Typically, the Report of Pre-Hearing Conference also announces the deadline for filing submissions for the hearing.

Section 8: Public Hearing

The public hearing allows individual members of the public' coalitions of people having a common position on a project; organized public interest groups; and federal, provincial and municipal representatives to make representations to the Board and to examine the evidence presented by other parties. Public participation helps ensure the Board has access to relevant and reliable information from different perspectives when determining if a project is in the public interest.

As noted earlier, the Board's process includes a public hearing in cases where the Board has determined that a hearing is appropriate.

8.1: Notice of Hearing
When a hearing on an application is to be held, a Notice of Hearing will be published in local and regional newspapers at least thirty days prior to the hearing date. In addition to this formal notification procedure, copies of the notice may be mailed directly to individuals and groups on the NRCB's mailing list for the particular project. This notice includes:

- a brief description of the subject of the application;
- the time, date and place of the hearing;
- information on how to obtain copies of the application and supporting information;
- the deadline and location for filing submissions with the Board;
- a statement that persons directly affected by the proposed project may apply to the Board for funding to assist in the preparation and presentation of an intervention.

8.2: Access to the Application and other Filed Materials
The Notice of Filing and the Notice of Hearing each include the address of the applicant (or the applicant's lawyer or agent) and the addresses of public places where the application and related information is available for viewing (usually regional public libraries and the NRCB office).

The Rules of Pr*actice* require the applicant to supply a copy of the application and supporting information to any person with an established interest in the matter. That material must be made available on request at any time from the publication of a notice until the last date provided for filing submissions (following a notice of application) or up until the hearing date (following a Notice of Hearing*)*. The Board will settle any dispute that arises over whether a person requesting this material has an established interest.

These provisions ensure that all persons who might be directly affected by the proposed project can obtain the application and supporting information, and that this material is available for review by any interested members of the public. The Board also makes interveners' submissions and supporting materials available for public examination.

8.3: What to Expect at the Hearing
It is the Board's responsibility to determine the need for a hearing. Given the complex nature of most reviewable projects, public hearings are often helpful in determining the public interest. If the Board decides that a hearing is required, the NRCB first completes its deficiency review of the application and may hold a pre-hearing conference (described earlier in this guide)

As previously noted, participants are invited to comment on the timing and location for the upcoming hearing (this feedback is gathered through written submissions or at a pre-hearing conference). With this information, the NRCB then attempts to schedule the hearing at a time and location most convenient for those who wish to participate. Scheduling of the hearing also depends on the complexity of the project, the length of time required for adequate preparation, and on cost implications for applicants and other participants. In order to facilitate participation by local interveners, hearings are usually held in a meeting room or public hall in a community near the location of the proposed project.

The process followed at pre-hearing conferences and hearings is similar; however, their purposes differ. The pre-hearing conference is primarily

intended to determine preliminary and procedural matters, while the hearing is the venue for advancing evidence and arguments to the Board with respect to participants' positions.

NRCB hearings provide an open and fair public forum for the presentation and testing of technical, environmental, social, and economic evidence relating to proposed projects. They also permit the orderly expression of differing points of view by interested parties, and an opportunity to present and defend evidence in support of those views.

In particular, hearings allow applicants an opportunity to explain the project and also give people who would be affected by it an opportunity to state their support or objections in detail. Since participants are expected to present their evidence and arguments as clearly and completely as possible in their written submissions, a principal purpose of the hearing is to permit cross-examination as a means of reviewing, contradicting or explaining information; furnishing evidence; or making representations by way of argument.

A public hearing has benefits as a means of discussing positions and evaluating evidence on contentious projects. However, hearings on complex projects can be costly and time-consuming for both the Board and the participants. Consequently, the NRCB is conscious of the need to ensure that, in addition to being open and fair, the public hearing process is as efficient as possible. From this perspective, the purpose of the hearing is to provide the Board with the evidence, arguments and points of view that are necessary for it to determine whether the project is in the public interest. The efficiency and effectiveness of the process depends on all participants keeping this objective in mind when preparing their submissions.

Like the pre-hearing conference, the hearing begins with opening remarks from the panel chair. These may include a statement of the purpose of the hearing, the introduction of panel members and Board staff, and formal registration of participants. If required, preliminary matters such as procedural or legal issues are considered next.

Each participant, typically beginning with the applicant, then presents evidence to the panel and responds to questions or cross-examination by other parties. Following all submissions by interveners, the applicant is permitted to present rebuttal evidence.

All parties then present final arguments to the panel, summarizing the principal issues and evidence and outlining the reasons why they believe that the panel should reach a particular conclusion regarding the application. Commencing with the applicant, each participant has the opportunity to make a final argument. The applicant is then given an opportunity to present a reply to the interveners' final arguments.

Finally, the panel chair will close the hearing and, in most cases, announce the deferral of the panel's decision until the release of the decision report (see Appendix 3 for a summary of the hearing procedure).

As with the pre-hearing conference, these proceedings are also recorded. Throughout the hearing, NRCB staff will assist with any questions you may have regarding matters of process (i.e., scheduling of presentations, providing access to exhibits, etc). Such inquiries should be directed to the designated staff.

The panel will review all written submissions and evidence submitted at the hearing prior to arriving at its decision. As NRCB reviews are quasi-judicial, only evidence brought forward during the hearing process may be considered by the panel in arriving at its final decision (see Appendix 3 for hearing procedures and Appendix 4 for a hearing checklist).

8.4: Participant Roles at a Public Hearing

The Role of the Applicant

Applicants are expected to address all the matters that the panel must consider to arrive at its decision. In addition to describing the technical features of the project, applicants should submit evidence and arguments regarding the social, economic, and environmental effects that are relevant to the Board's determination of the public interest.

Like any other participant, the Board expects applicants to limit their hearing presentation to a brief description of the project, and a summary of the evidence contained in the materials filed in advance of the hearing. Applicants must also provide a summary of why they believe an approval of the project is in the public interest. The applicant's role at the hearing also involves responding to questions

and cross-examination from the other participants. As well, applicants may seek to rebut evidence presented by interveners (or their expert witnesses) who oppose the proposed project.

The Role of Interveners

Interveners may participate in a hearing to support or oppose an application, including providing information to the Board relevant to its consideration of the public interest. Participation may involve putting detailed written submissions before the Board, or it may be limited to cross-examination of other parties and presentation of final arguments.

Since the written submissions should contain the substance of interveners' evidence and argument, a principal function of the hearing is to provide a forum for publicly challenging or corroborating these submissions in the presence of the Board. The Board is particularly interested in the validity of the evidence before it and in the extent to which the assumptions and arguments made in submissions can be substantiated. Consequently, interveners make an important contribution at hearings through their responses to questions and cross-examination, and their role in testing the validity of submissions made by other participants.

The Role of Government

Provincial, federal and municipal government officials participate to present information regarding social, economic or environmental matters within their jurisdiction and areas of expertise. In some cases, government officials can provide information about approvals likely to be required by a project proponent and the effect of these approvals on an NRCB decision. Most often federal and provincial government submissions neither support nor oppose an application. Municipal submissions may or may not state a position.

Government interventions, like those of other participants, must include the technical qualifications of the person signing or taking responsibility for a report or the material contained within it. Oral presentations must be confined to matters set out in the written submission and cross-examination limited to the scope of the evidence provided in the submission. Government officials are not available for cross-examination about matters unrelated to their submissions, or matters already decided by an approval authority. Additionally, government officials are not required to respond to questions more properly placed before elected representatives.

The hearing is the primary opportunity for municipalities to participate in the NRCB review process. Each registered municipal participant has the opportunity to present evidence and cross-examine on municipal matters relevant to the NRCB review. Among other matters, municipal interventions adopted through municipal council resolution may address: the impact on the municipality, including such areas as population growth, housing requirements, recreation and school needs, and servicing demands; the location of the project in relation to other land uses; potential transportation needs; potential servicing needs; views of council and local residents regarding the proposal; and potential positive and negative environmental impacts.

Municipalities are encouraged to provide evidence regarding the need for any specific municipal legislation changes that might be required should the proposed project receive approval, including: possible adjustments to the municipal development plan and land use by-law; adjustments to, or complete preparation of, an area structure plan; and adjustments to other municipal legislation.

The Role of Legal Counsel

Since NRCB hearings are relatively informal and panel members have considerable expertise separating technical information from opinion, it is not necessary to hire a lawyer to participate effectively. However, many interveners do make use of experienced legal counsel to present their cases, particularly if they seek to put complex evidence or legal arguments before the panel or if they want to cross-examine other participants.

The decision whether or not to hire a lawyer must be made by each intervener on the basis of his or her objectives and own level of comfort in participating directly in the hearing process.

The Role of Expert Witnesses

Expert witnesses may be used to present social, economic or environmental evidence or to rebut evidence presented by other participants. The usefulness of expert witnesses will depend on the

type and complexity of evidence to be presented and on the nature of the issues being addressed. While interveners need not rely on expert witnesses to present their evidence, the persuasiveness of that evidence will obviously be increased if it is supported by credible expert opinion. Submissions by experts must include the technical qualifications of that of the person signing or taking responsibility for the report or material.

8.5: Intervener Submissions

Obtaining Standing to Make a Submission to the NRCB

The NRCBA states that status shall be granted to individuals whom the Board determines to be directly affected by the proposed project and that the Board may at its discretion give status to others. In practice, the NRCB has extended status to most parties who have expressed intent to file a submission with the Board.

All individuals or groups who have an established interest in the reviewable project, and who wish to provide evidence concerning an application before the Board or ask questions of other participants, are entitled to do so. All that is required is that those individuals register and make themselves available to participate in the public hearing. Those wishing to participate should register with the Board within the time set out in the Notice of Hearing.

The Board is interested in obtaining information from all participants who can contribute to an understanding of the social, economic and environmental effects that could be anticipated from a project. The NRCB recognizes that local and indigenous people may have personal knowledge of proposed project development areas, and therefore encourages their participation in the public hearing process.

Obtaining standing to make a submission to the NRCB concerning a particular project should be distinguished from being found to be eligible for funding under the act's intervener funding provisions. Funding to assist in the preparation and presentation of a submission to the NRCB may be available to certain interveners (see the NRCB Guide to Intervener Funding for related information). The Board strongly encourages all participants intending to seek funding as a directly affected party to seek a determination from the Board regarding their eligibility as early as possible.

Parties should make a submission if they believe they have information that will assist the Board in determining whether the proposed project is in the public interest. A distinction should be made between information that is interesting and information which the Board must know to reach its public interest decision. Submissions may include expert or lay evidence, a response to or critique of the application, or opinion and suggestions as to the appropriate disposition of the application by the Board.

Filing and Presenting Submissions at the Hearing

The legal rules under which the Board operates require that parties to the process not be surprised by new or unfamiliar information during the hearing; therefore, written submissions are requested by the Board by the deadline specified in the Notice of Hearing.

In most cases, the Board will have convened a pre-hearing conference to consider preliminary and procedural matters regarding the application and issued a Report of Pre- Hearing Conference. This report may deal with a variety of issues including the scope of the review and major issues to be discussed at the hearing on the application. Participants should review this document prior to preparing a hearing submission.

The Rules of Practice require that all parties wishing to intervene in a hearing must file seven copies of their submission with the Board by the specified deadline (the Board will also require an electronic copy if your submission is lengthy). A copy of your submission must also be provided to the applicant. Most submissions are brief, often just a few pages; however, if a submission is complex or lengthy, interveners are required to submit a summary of the major issues identified and the conclusions reached on each issue. As the Board strives to maintain transparent, open reviews, all participants are advised that any application-related material sent to the NRCB will be considered a public document (do NOT include private information). Board staff will distribute a copy of submission summaries to all registered participants for information.

The submission must be signed by the intervener or the intervener's lawyer or agent, and must contain the name and address of the intervener and an address in Alberta where communications may be sent. The submission must also contain a statement to clarify the following:

- whether the intervener believes the application should be approved or rejected and arguments to support that position;
- the information the intervener proposes to present in evidence (including a list of proposed exhibits to be filed and one copy of each exhibit to be filed); and
- an estimate of the time required for the oral presentation and time constraints of any expert witnesses.

If the intervener's participation is to be confined to cross-examination and final argument at the hearing, this intention should be stated in the submission. Finally, if a submission contains a technical report or material of a technical nature, it should set out the qualifications of the person signing or taking responsibility for the report or material.

Interveners should ensure that all information for submissions is filed prior to the date referred to in the Notice of Hearing. After that date, additional material may be filed only at the request of, or with leave of, the Board. Interveners' submissions are made available by the Board for examination at public locations.

To make the most effective use of this opportunity, it is important to maintain an understanding of the jurisdiction of the Board and the issues that will be central to the decision-making process. It is also important that interveners narrow the focus of their submission to those issues which will serve to represent key concerns most effectively.

The written submission is the principal means for interveners to put information and arguments before the Board. Interveners may choose to limit their hearing participation to providing a brief summary of their written submission and responding to cross-examination by other parties.

Written submissions are read by the Board and taken into consideration when the decision report is prepared. Consequently, it is essential that the submission contains a clear and concise statement of the intervener's position on the application and the reasons for that position. In addition, interveners may wish to suggest reasonable alternatives to the project, ways to alleviate impacts, and conditions they believe should be imposed on the applicant should the project be approved. Interveners should keep in mind that the Board's responsibility to decide whether or not a project is in the public interest means that it must take into account the interests of all Albertans.

The following guidelines are helpful in preparing an effective written submission:

- clearly state the desired disposition of the application (whether you believe it should be approved or rejected) and the arguments supporting that position;
- focus on a few key issues or arguments;
- avoid including material that is peripheral to the main issues before the Board or that is unlikely to have a material impact on the Board's analysis of the proposed project;
- support all factual statements as fully as possible, and where possible avoid basing arguments on unsubstantiated assumptions or intuitions;
- provide a summary of the submission outlining the major issues to be addressed and the conclusions on each issue; and ensure that all the evidence and arguments to be put before the Board are included in the written submission (including a list of exhibits to be filed and a copy of each exhibit) – the oral presentation to the Board (if the intervener wishes to make one) should only highlight the key points in the written material.

If possible, providing an electronic copy of submissions assists the Board to review the material and prepare the decision report.

During the hearing, your oral presentation should highlight the key points contained in your written submission. The Board will have read all submissions and will not require a detailed reiteration. At this stage you should stress evidence that will best reflect your desired disposition of the review. Generally the presentation of your direct evidence should not exceed 20 minutes (or other time limit, as prescribed by the panel). Interventions that include detailed testimony and expert evidence may require more time. On application, the Board

may consider providing you with more time if your particular circumstances merit such consideration.

Typically staff will confirm with you the time you require for your oral presentation and, based on this input, will create a tentative order and time schedule for presentations. It is important that you adhere to the time schedule.

The Rules of Practice establish basic guidelines for presentations at NRCB hearings. As a general rule, presentations must be made by witnesses who prepared the submission, supervised or participated substantially in its preparation, or otherwise have special knowledge of the submission. In the case of technical material, the technical qualifications of the witness must be presented.

The Rules of Practice also place limits on the content of presentations. Oral presentations must be confined to matters set out in the written submission, unless the Board directs otherwise. Your submission must be available for review by all parties in advance of the hearing (as per the submission deadline identified in the Notice of Hearing). Finally, the Board will not hear arguments unless they are based on evidence before it.

A written submission alone is an acceptable form of participation in an NRCB hearing, and oral presentation is not necessary in all circumstances**.** However, if the Board or other participants require clarification on a written submission, the party making that submission may be asked to respond to questions and should be available for that purpose. Requests of this type from other participants are channelled through the Board prior to the hearing.

As noted, presentations at NRCB hearings can be an effective way of highlighting important information and arguments, and testing the submissions of other parties. However, unfocused and repetitive presentations can be costly for both the intervener who prepares the presentation, and for the Board and other participants at the hearing, without assisting the Board to decide on the issues before it. Consequently, the Board recommends that interveners keep the following points in mind when considering and making oral presentations at hearings:

- an oral presentation may not be necessary if the intervener's position and evidence are clearly stated in the written submission (the intervener should, however, be available for cross-examination if required);
- oral presentations should be brief and limited to highlighting the most important evidence and arguments in the submission (the Board will have read the submission in advance);
- as with a written submission, focusing on a few key points is the best approach;
- ensure your issues are relevant to the project being reviewed and structure your presentation to deal with each issue in logical sequence;
- ensure that your position is consistent and clear;
- if the issues in your submission have already been presented, simply note agreement rather than repeating the information;
- when there are conflicting opinions from experts, establish that for the Board. If you are convinced you can help through additional expert information or questions, do so briefly;
- be cooperative with other participants, not only in terms of procedure, but in dealing with the actual issues. If you are prepared to make a concession or to negotiate with respect to an issue, say so;
- if you see an opportunity to resolve certain issues more efficiently outside of the formal hearing process, pursue it, even if it means asking for a delay or adjournment; and,
- identify for the Board those conditions that would assist in addressing your concerns if the project were to be approved.

Tendering Documents (Exhibits)

Participants may choose to tender the documents on which they rely as exhibits at the hearing. This way the Board and all participants have access to participants' supporting information. By the date specified in the Notice of Hearing, parties are asked to provide a list of any exhibits along with a copy of each exhibit to be tendered at the hearing. Since the NRCB process seeks to avoid surprise by requiring full disclosure of evidence and arguments prior to the hearing, documents to be entered as exhibits should generally be tendered at the same time as your written submission.

Another alternative that may be acceptable in some cases is to include the specific excerpt to be relied

on with the written submission. The entire document can then be presented at the opening of the hearing if it is required to put the excerpt in context. Tendering the full document prior to the hearing is less essential if it is clearly identified in the written submission and is publicly available. In contrast, documents that are not readily available should be tendered in advance if they are to be entered as exhibits at the hearing.

8.6: Cross-Examination
Cross-examination is the questioning of a witness called by an opposing party in the hearing following the presentation of his or her evidence. There are three principal reasons for cross-examination:

1. to test evidence by challenging its soundness (e.g., scientific or technical validity), the assumptions upon which it is based, or its logic and internal consistency;
2. to show that evidence presented by the opposing witness can, in fact, support one's own case; and
3. to question an opposing witness by challenging his or her professional qualifications, expertise, objectivity, direct knowledge of the particular issues before the Board, recollection of relevant events, etc.

The Rules of Practice state that witnesses can only be cross-examined by or on behalf of an applicant, an intervener or the Board. Cross-examination allows participants to test conflicting evidence and competing arguments before the Board. The NRCBA specifically provides that persons directly affected by a proposed project, and other persons where the Board considers it necessary, shall be given the opportunity to contradict or explain information presented by the applicant and other interveners.

As with other forms of participation in the NRCB process, cross-examination should follow certain guidelines if it is to be conducted in an effective and efficient manner. In particular participants should observe the following guidelines:

- engage in cross-examination only when clearly beneficial (such as directly contradicting or undermining the persuasiveness of the evidence or arguments of another participant);
- be as direct as possible, particularly when dealing with scientific and technical information. Convoluted questioning in an attempt to establish an inconsistency has limited value;
- cross-examination should only be done when the answer to be obtained will be directly helpful to the Board in its disposition of the application (cross-examination on minor details or peripheral matters is unlikely to be helpful);
- be familiar with other participants' submissions before engaging in cross-examination, to avoid raising questions that have already been answered;
- refrain from cross-examination directed at submissions with which they are in agreement, since these "sweetheart cross-examinations" generally do not assist the Board and consume valuable hearing time;
- do not be surprised that all parties do not reach the same conclusions; therefore focus cross-examination on matters of fact rather than on interpretation; and
- do not use cross-examination as a means of debate or presenting final argument.

8.7: Final Argument
In presenting final arguments, participants should clearly and succinctly state what they view as the most important issues before the Board. They should also briefly summarize the reasons for the conclusion that they believe the Board should reach on these issues, and on the application as a whole. The final argument should not introduce new evidence or revisit in detail the participant's submission.

Section 9: After the Hearing: Next Steps

The next steps in the process following the hearing are as follows:

- the NRCB issues its decision report;
- the NRCB will approve or deny an application (if approved, then with or without conditions as appropriate);
- if approved, the Lieutenant Governor in Council's (Cabinet's) authorization is required;
- if approved by Cabinet, Cabinet formally authorizes the Board to issue an approval;
- the NRCB issues its approval following the Form of Approval contained in the Board's decision report, including any additional conditions that may be required by Cabinet.

In the event that a hearing is not required, the above steps would occur in the same order following the Notice of Application.

Section 10: The Board's Decision-Making Authority

The Board has considerable latitude in deciding on applications. It may, with prior authorization from Cabinet, grant an approval on any terms and conditions that the Board considers appropriate. Alternatively, it may refuse to grant an approval, defer consideration of an application (on terms and conditions determined by the Board), or dispose of the application in any other way that it considers to be appropriate. In summary, the Board has authority on its own to reject or defer applications, but the approval of applications requires Cabinet authorization. That authorization may include additional terms and conditions imposed by Cabinet.

10.1: The Decision Report
The NRCB reviews all the evidence presented before it reaches a decision. The decision is made public in the form of a decision report written by the Board members. The time required for its release depends on its length and complexity. Typically, participants can expect the Board’s decision to be issued within four months of the hearing close, or from the Notice of Application if a hearing is not required.

In the decision report, the Board provides background information on the project, summarizes the application and supporting information, reviews the positions of the other participants, explains its conclusions on each of the issues before it, and sets out its disposition of the application. If the application is approved, any terms and conditions imposed by the Board are stated in the decision report.

10.2: Appeals
Board decisions may only be appealed on questions of jurisdiction or law. Appeals must be made to the Alberta Court of Appeal. For an appeal to succeed, it is necessary to show that the Board had misconstrued its authority under the NRCBA (e.g., did not have legal authority to make the decision), or had failed to respect the legal requirement of procedural fairness in quasi-judicial hearings. The act contains specific provisions governing appeals.

10.3: Related Approval Processes and Ongoing Regulatory Compliance
Approval by the NRCB does not dispense with the need to obtain any licenses, permits, approvals or other authorizations from other government departments, agencies or municipalities having regulatory authority over the project.

The NRCB provides an impartial decision-making process to adjudicate applications for the construction of reviewable projects. However, the Board's function is not that of an ongoing industry regulator. Within the context of the NRCBA, the NRCB may place conditions that require approval holders to establish the satisfaction of conditions to ongoing regulatory agencies. Various regulatory agencies under their own legislation are in a position to place ongoing regulatory requirements upon project operations and to monitor and inspect the activities of NRCB approval holders.

The NRCB expects that NRCB approval holders will be diligent in fulfilling their obligations and commitments made during the NRCB review process, and will meet all terms and conditions contained within NRCB approvals. However, the NRCB recognizes the need to ensure that the terms and conditions set out in an NRCBA approval are fulfilled by the approval holder. Should the NRCB become aware of a situation where it is alleged that a condition of a NRCB approval has not been fulfilled, the NRCB would normally engage in discussions with appropriate regulatory agencies to ensure that a reviewable project proceeds in a manner consistent with the terms and conditions contained in the NRCB approval.

Under EPEA some statutory provisions are related to NRCB approvals. Subsequent to an NRCB review, certain approvals may be required under EPEA. In making a decision to issue or refuse to issue an approval under EPEA, the director must consider any applicable written decisions of the NRCB. In addition, the director may consider any evidence that was before the Board.
The director's decision to issue or refuse to issue an approval under EPEA may be subject to appeal to the Environmental Appeals Board (EAB). If the NRCB conducted a review, some limitations are placed on the appeals that may be heard by the EAB. If, in the EAB’s opinion, the person submitting

the notice of objection received notice of or participated in or had the opportunity to participate in one or more hearings or reviews under the NRCBA at which all of the matters included in the notice of objection were considered, then the EAB must dismiss the notice of objection.

The Municipal Land Use Planning Process

Following an NRCB decision to approve an application with Cabinet authorization, the municipality has land use planning responsibilities. Where the municipal development plan, area structure plan(s), land use bylaw(s) or any other bylaw can accommodate the proposed project, the proponent would proceed to obtain subdivision and/or development approvals from the municipality in a manner consistent with those plans.

Where the municipal development plan, area structure plan(s), land use bylaw(s) or any other by-law cannot accommodate the proposed project, the project proponent would request changes to those plans or bylaws before applying for the necessary subdivision and/or development approvals required to allow the project to proceed. The municipality would consider such a request in the context of the *Municipal Government Act* land use planning provisions and the specific provisions which require the municipality, on application from the holder of an NRCB approval, to amend the statutory plans and land use bylaws to conform to Cabinet authorized NRCB approvals.

Appendix 1: Pre-Hearing Conference Procedure

Opening Remarks

- Statement of the purpose of the pre-hearing conference.
- Introduction of panel and NRCB staff.
- Registration of applicant, followed by participants.
- Filing of exhibits and written submissions.

Preliminary Matters

- Discussion of any procedural, legal, or similar matters.

Agenda Items

For each agenda item:

- Comments by each participant including the applicant.
- Questions by the panel.

For each participant, including the applicant:

- Verbal summary arguments as to their directly affected status.
- Questions by the applicant and the panel.
- Note: Cross-examination of participants is not normally allowed other than by the panel and the applicant.

Request for Intervener Funding

For each participant:

- Verbal summary of the nature of intervener funding sought (including advance awards).
- Questions by the panel and applicant.
- Comments by applicant.
- Rebuttal from participant.

Timing and Location of Hearing

For each participant:

- Verbal comment on hearing and location.
- Questions by the panel.

Closing

- Panel chair will usually announce deferral of the panel's decision.

Report

- Later, a Report of the Pre-hearing Conference stating the decisions and the reasons for them are distributed to all registered participants and made available to the public.

Appendix 2: Pre-Hearing Conference Checklist

Prior to the Pre-Hearing Conference

- ☐ Become familiar with those aspects of the project application which are of interest to you.
- ☐ Contact the NRCB and request to be placed on the NRCB mailing list for the project. Direct any questions you have to NRCB staff.
- ☐ Obtain NRCB guide documents and familiarize yourself with the review process.
- ☐ Prepare your arguments for directly affected status in advance.
- ☐ Prepare your arguments on the scope and kinds of issues to be addressed at the public hearing.

Filing your Submission

- ☐ File seven copies with the Board and deliver one copy to the proponent.
- ☐ Sign your submission and include your name, address and telephone number.
- ☐ Advise NRCB staff of any scheduling concerns or conflicts.
- ☐ Practice your oral presentation to ensure it is focused and addresses the major issues.

At the Pre-Hearing Conference

- ☐ Address the agenda items in turn.
- ☐ Do NOT present your hearing arguments at this time unless they affect a matter under discussion.
- ☐ Become familiar with the position of other registered participants and identify where you may avoid duplication by coordinating efforts with them. This is often possible with respect to technical studies, even when your conclusions are not exactly the same.
- ☐ Remember that the NRCB's mandate is to determine the public interest having regard to the social, economic and environmental effects. Keep this in mind throughout the process and emphasize for the panel the issues you believe are important.
- ☐ Ensure your issues are relevant to the project being reviewed and structure your presentation to deal with each issue in logical sequence.
- ☐ Ensure that your position is consistent and clear. Don't leave the panel guessing about inconsistent or ambiguous statements.
- ☐ Don't feel that you have to deal with each issue in detail to the point of being repetitive of others. Your submission may complement that of other participants - simply noting agreement is sufficient.

- ☐ Limit oral presentations to highlighting the most important evidence and arguments in the submission (the panel will have read your written submission in advance).
- ☐ Be cooperative with other participants, not only in terms of procedure, but in dealing with the actual issues. If you are prepared to make a concession or to negotiate with respect to an issue, say so.
- ☐ If you see an opportunity to resolve certain issues more efficiently outside of the formal process, pursue it.

Appendix 3: Hearing Procedure

Opening Remarks

- Statement of the purpose of the hearing.
- Introduction of panel and NRCB staff.
- Registration of applicant, followed by participants.
- Filing of exhibits and written submissions.

Preliminary Matters

- Discussion of any procedural, legal, or similar matters.

Submissions

For each submission:

- Documents are registered as exhibits.
- Witnesses are introduced and credentials presented.
- The submission is highlighted by the witnesses.
- Witnesses are examined (questioned to clarify their submissions or statements) by other participants, in order of registration; by NRCB staff; and by the panel.
- Examination is re-directed (that is, additional clarifying information may be presented by the witness).

Rebuttal

- Applicant may submit rebuttal evidence to address points raised during the submissions of other participants. Examination by other participants is permitted, but only on the additional evidence presented.
- Interveners are not allowed rebuttal as their submissions are made after the applicant's, and they have an opportunity at that time to rebut the applicant's submission.

Final Argument

- Participants may state what they believe are the most important aspects of the matters to be considered and the reasons for the conclusions they believe the panel should come to.
- Following the interveners' final arguments, the applicant has an opportunity to reply to the interveners' arguments.

Closing

- Panel chair will usually announce deferral of the panel’s decision.

Report

- Later, a decision report stating the decision and the reasons for it is distributed to all registered participants and is made available to the public.

Appendix 4: Hearing Checklist

After the Pre-Hearing Conference

- ☐ Become familiar with those aspects of the project application which are of interest to you.
- ☐ If you have not already done so, contact the NRCB and request to be placed on the NRCB mailing list for the project.
- ☐ Review NRCB Guide(s), NRCBA and regulations to familiarize yourself with the review process.
- ☐ Review the Report on Pre-Hearing Conference regarding preliminary and procedural matters.

Filing a Submission

- ☐ File seven copies with the Board and deliver one copy to the proponent. If your submission is lengthy, you can expect the Board to direct that you file an electronic copy of your complete submission.
- ☐ Provide an overview which identifies the major issues addressed in your submission and the conclusion you have reached on each issue.
- ☐ Provide a list of exhibits and one copy of each exhibit to be tendered.
- ☐ All participants are advised that any material sent to the NRCB will be considered a public document (do NOT include private information).
- ☐ Sign your submission and include your name, address and telephone number and the identity and qualifications of any party who assisted with the preparation of the submission.
- ☐ Indicate clearly whether it is your intention to present the submission at the hearing. If you or your witnesses have potential time conflicts, identify these prominently in your submission.
- ☐ Advise NRCB staff of any scheduling concerns for technical experts and witnesses and include this information in your submission.

Prior to the Hearing

- ☐ Review the overviews of other submissions to identify where you may avoid duplication or unnecessary conflict. The NRCB will provide submission summaries to all registered participants and complete intervener's submissions will be available for public review at locations identified in the Notice of Hearing.
- ☐ If it is your intention to cross-examine other participants, prepare your questions in advance.
- ☐ Practice your oral presentation to ensure it falls within the 20 minute guideline (or time limit prescribed by the panel) for direct evidence and addresses the major issues. Focus on key points, as the panel will have read your written submission in advance.

At the Hearing

- ☐ Avoid asking questions that have already been asked by other participants.
- ☐ If you intend to present final argument, start preparing this in advance of the hearing and update it throughout the hearing so you are prepared when the time comes.
- ☐ Keep in mind that the NRCB's mandate is to determine the public interest having regard to the social, economic and environmental effects. Emphasize the issues that you believe are important.
- ☐ Ensure your issues are relevant to the project being reviewed and structure your presentation to deal with each issue in logical sequence.
- ☐ Ensure that your position is consistent and clear. Don't leave the panel guessing about inconsistent statements.
- ☐ Don't feel that you have to deal with each issue in detail to the point of being repetitive of others. Your submission may complement that of other participants - simply note this.
- ☐ An oral presentation may not be necessary if your position and evidence are clearly stated in the written submission (the intervener should, however, be available for cross-examination on the submission if required).
- ☐ Coordinate your efforts with other interveners. This is often possible with respect to technical studies even when your positions are not exactly the same.
- ☐ When there are conflicting opinions from experts, establish that for the panel, and if you are convinced you can help through additional expert information or questions, do so.
- ☐ Don't try to win the day on the basis of the quantity of words; stress quality.
- ☐ Be cooperative with other participants, not only in terms of procedure, but in dealing with the actual issues. If you are prepared to make a concession or to negotiate with respect to an issue, say so.

Appendix 5: Checklist for Preparing a Written Submission

- ☐ Clearly write or type your submission. Your submission will be duplicated and made available for review by the public at the NRCB office.
- ☐ Provide seven copies of your submission to the NRCB (the public notice will tell you the deadline for submissions and where to send them); be prepared to provide an electronic copy (including attachments) as the Board requires complete electronic copies of all lengthy submissions. As the Board strives to maintain transparent, open reviews, all participants are advised that any material sent to the NRCB will be considered a public document (Do NOT include private information).
- ☐ Provide one copy of your submission to the project applicant (address in the public notice).
- ☐ Include your name, address in Alberta, and that of any others who are part of your submission.
- ☐ Sign your submission.
- ☐ Explain where you live in relation to the proposed project.
- ☐ Clearly state your evidence, assumptions and conclusions or position on the project, highlighting any economic, social or environmental effects (positive or negative) you believe the project would have on you, your community or our province.
- ☐ If your concerns are related to a specific component of a project only, please point this out (i.e., do you have any concerns that relate specifically to the construction of a project or to its longer-term operations?)
- ☐ Supply any facts, information or documents that support your views or let the Board know where the information is available.
- ☐ If your submission includes a technical report or material, provide the qualifications or credentials of the technical expert.
- ☐ Make any suggestions that would help the Board in making its decision (i.e., conditions that would make a project acceptable or unacceptable to you, alternatives to the project, or suggestions on how to alleviate impacts).
- ☐ Indicate if you wish to make an oral submission during the hearing, cross-examine other participants or make a final argument; if required, you will be asked by the panel to be available for cross-examination.
- ☐ Indicate if you will be represented by a lawyer or if you have an expert witness who wishes to make a presentation at the hearing and an estimate of how much time you expect your presentation will take (you may be asked to limit your presentation to a specific timeframe – refer to the hearing notice for any set time limits).

Appendix 6: Review Process Summary

Application is Filed

- The project proponent (the applicant) files an application with the NRCB.

Preliminary Public Notice

- The NRCB publishes a Notice of Filing in daily and community newspapers in the region of the proposed project, and mails a notice to its mailing list. The notice briefly describes the nature of the application, how copies of the application may be obtained, and information on when submissions can be filed. Objections to or support for the applications can be provided at this point, or following the Notice of Application that is published later. Interested parties are encouraged to contact the NRCB to be added to the NRCB's mailing list for future notices.

Detailed Technical Review

- NRCB staff, along with EPA and other relevant provincial and federal regulatory partners, carry out a detailed review to assess the clarity and completeness of the application information. The applicant may be asked to provide additional information based on this review and any public submissions (a Supplemental Information Request may be forwarded to the applicant).

Notice of Application

- The NRCB publishes a Notice of Application following receipt of the completed application. This notice asks directly affected individuals or groups who believe that a hearing is necessary to consider the application to submit a written objection to the Board within a certain time. If there are no objections, the project may be reviewed by the Board without a hearing. Alternatively, if it has been determined that a hearing is necessary, the Board may proceed directly with the publication of a Notice of Hearing and not issue a Notice of Application.

Pre-Hearing Meetings

- Pre-hearing meetings may be arranged by the NRCB. These relatively informal meetings are held in the region of the proposed project to help the applicant and intervener resolve issues where possible, determine the issues which will be the focus of the hearing, familiarize all participants with hearing procedures, and set the scheduling and location of the hearings. These meetings help to increase the efficiency of the hearing process for all participants.

Hearing is Called

- If the NRCB receives a written objection from a person or group it considers to be directly affected by the proposed project, a hearing will be called. The only exception to this rule is when the Board considers the objection to be vexatious or of little merit. A Notice of Hearing will be published at least 30 days prior to the hearing date.

Intervener Submissions Filed

- Interveners file seven copies of their submission with the Board within the time specified in the notice. A copy must also be provided to the applicant (See Appendix 5 for suggestions on how to prepare your written submission). The Board will require an electronic copy of lengthy submissions. As the Board strives to maintain transparent, open reviews, all participants are advised that any material sent to the NRCB will be considered a public document.

Hearing is Held

- The hearing is held to provide an open and public forum for the presentation and testing of technical, environmental, social and economic evidence related to the proposed project. The hearing also provides for the orderly expression of various points of view.

NRCB Reviews all Evidence

- Following the hearing, the NRCB reviews all of the evidence presented at the hearing and all written submissions.

NRCB Issues Decision Report

- The NRCB issues a decision report, which is available to all participants and to the public. The NRCB can grant an approval (subject to Cabinet authorization) with certain terms or conditions, reject an application, or defer consideration of an application.

Cabinet Authorization Required

- Cabinet authorization is required for approved applications. The NRCB has the authority to reject or defer applications without Cabinet authorization.

Order in Council issued

- If Cabinet authorizes the application, an Order in Council is issued.

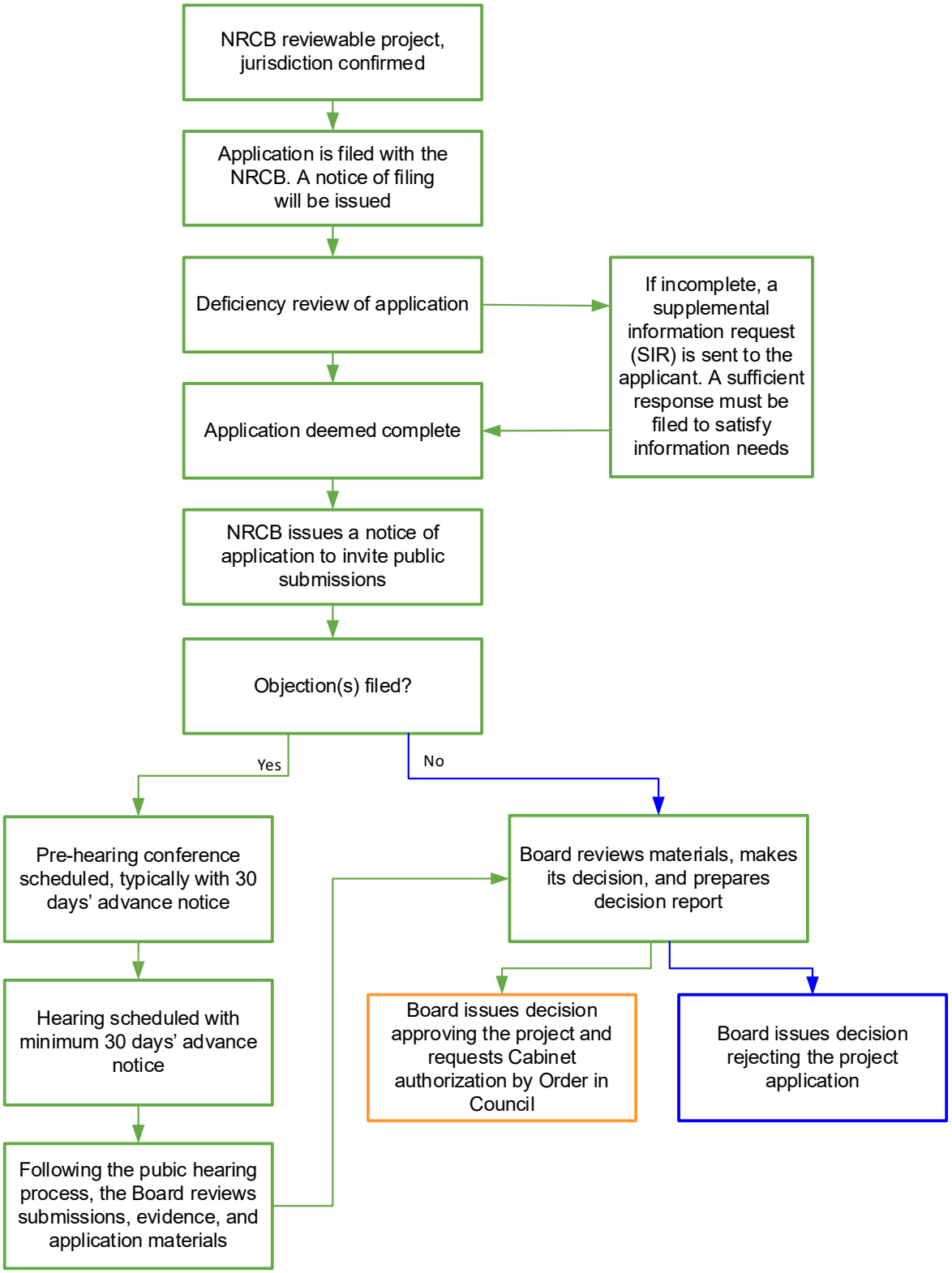
Other Licences, permits, approvals or authorizations

- The applicant must obtain any licenses, permits, approvals or other authorizations required by other regulatory bodies and not previously obtained.

Appeal Period for Board Decision

- Board decisions may be appealed to the Alberta Court of Appeal only on questions of jurisdiction or law. For an appeal to succeed, it would be necessary to show that the Board did not have legal authority to make the decision or had failed to respect legal requirements. An application for leave to appeal may be made within the month following issuance of a Board decision.

Appendix 7: Review Process Chart



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Copies of the *NRCB Act,* Rules of Practice of the Natural Resources Conservation Board Regulation and the *Administrative Procedures and Jurisdiction Act* are available through Queen's Printer. NRCB Guides are available by contacting the NRCB's office.

This guide is currently under review.

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