



Gwich'in Renewable Resources Board

RULES FOR PUBLIC HEARINGS

Final Draft Rules April 20, 2009

DISCLAIMER

If there is any inconsistency or conflict between these Rules and the Gwich'in Comprehensive Land Claim Agreement, the Agreement prevails.

This document is not intended to provide legal advice or opinion. It is provided for general information purposes only.

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1.0 Context and Legislative Authority for Public Hearings

CONTEXT

The Gwich'in Renewable Resources Board (GRRB) was established by authority of the *Gwich'in Comprehensive Land Claim Agreement* and the *Gwich'in Land Claim Settlement Act*, S.C. 1992, chapter 53. The GRRB is the main instrument of wildlife management in the Gwich'in Settlement Area (GSA).

The GRRB may hold a public hearing whenever the Board is satisfied that such a hearing is desirable. The GRRB is required to hold a public hearing whenever it sets a total allowable harvest or a Gwich'in Needs Level for any species or population of wildlife that has not been subject to a total allowable harvest level within the previous two years.

The GRRB has the power of a Commissioner under Part I of the federal *Inquiries Act*, R.S.C. 1985, c. I –11, and may summon witnesses, other than a federal or territorial Minister, before the Board to give evidence or produce documents and things that the Board considers necessary to the full investigation of the matters on which the Board has chosen to hold a public hearing.

The GRRB is also required to consult with various stakeholders and parties in a range of circumstances. Such consultations, which may be informal or held in public, are governed by the *GRRB's Consultation Rules and Procedures*, a copy of which can be obtained on the GRRB website, at its office or from any Gwich'in Renewable Resources Council.

The Gwich'in Renewable Resources Board (GRRB) adopts these Rules pursuant to Sections 12.8.19, 12.8.20, 12.8.21 and 12.8.22 of the Gwich'in Comprehensive Land Claims Agreement (1992).

These Rules may be cited as the "Gwich'in Renewable Resources Board Rules for Public Hearings".

These Rules are intended to provide the Board and participants with a practical reference to the requirements of a Public Hearing. The Board may amend or add to these Rules at any time.

2.0 Waiver of a Requirement

Without departing from the requirements of natural justice, and provided that reasons are given, the Board may waive any requirements of these Rules at any time, either before or after the matter arises.

3.0 Definitions and Interpretation

Contributor (Intervener) – means a participant making a contribution to the Hearing.

Public Hearing – means a formal public hearing held pursuant to these Rules, including a hearing in which participants appear before the Board either in person or through conference telephone, video or some other electronic means for hearing one another, and to make oral presentations.

Public Notice – means announcement by newspaper, radio, community poster or other public means, according to reasonable terms established by the Board.

Participant – means a party or interested person making a contribution to the Hearing.

Party – means, in addition to any other person, group or organization entitled to standing at a Public Hearing:

- Any resident of the Gwich'in Settlement Area (GSA)
- The Gwich'in Tribal Council
- Any Designated Gwich'in Organization
- Any Board created by the Gwich'in Comprehensive Land Claim Agreement
- Any municipality in the GSA
- Any government agency or department with a jurisdiction or mandate dealing with the matter being addressed

Representation – means written, audio or video tape, or telephone submission made to the Board, including statements of fact and opinion, argument and related documentation or other material.

Witness – means a person who is either summoned to appear before the Board during a Hearing, or has been retained to provide expert testimony or evidence during a Hearing.

4.0 Principles and Purpose for Conducting Public Hearings

As part of the processes for establishing or varying a total allowable harvest (TAH) and a Gwich'in Needs Level (GNL) in respect of a species/population of wildlife or administration, the Board may decide to hold a Public Hearing. This will offer stakeholders and contributors (interveners) a chance to present information, suggestions and concerns to the Board in a public forum. The Hearing will be held in one or more locations chosen by the Board. Any individual who wishes to speak may do so at the Hearing.

In conducting Public Hearings, the Board will to the extent consistent with the broad application of natural justice and procedural fairness, emphasize flexibility

and informality; and specifically allow, where appropriate, the admission of evidence that would not normally be admissible under the strict rules of evidence.

5.0 Public Notice

To allow parties to prepare their submissions to the extent that each party can participate meaningfully in the Hearing, the Board shall make available to all parties, in a reasonable time prior to a Hearing, sufficient information as to:

- The subject of the Hearing
- The issues to be dealt with at the Hearing
- The initial evidence, materials and other information intended to be used by the Board at the Hearing, all of which shall be made public and placed on the GRRB website in a single posting
- The purpose and intended consequence of the Hearing
- The preliminary agenda for the Hearing
- All parties and recognized interested persons shall normally be given 90 days notice of the date, time, and place of a Hearing. A shorter period of notice may be required in cases where the Board deems it necessary.

Notwithstanding the foregoing rules, failure to give adequate notice does not invalidate a subsequent Hearing where:

- The person entitled to notice consents
- There is no actual prejudice to any participant arising out of the failure
- The prejudice caused can be offset by:
 - Adjourning the Hearing where the Board feels that an adjournment would not unduly compromise progress, or
 - Through some other means that would not unduly compromise the process.

The Board will use different methods to provide notice and distribute information to the affected parties and residents. Every effort will be made to schedule Hearings at the appropriate time, in the proper location, and with the proper notice in order to provide fairness to parties, promote public awareness, and participation at the Hearing.

All efforts will be made to reach as many people affected as possible, in any language deemed necessary by the Board. This notice will be over radio and television, telephone, fax and email (where available) to the appropriate agencies, as well as by local and regional newspaper announcement.

The Board may cancel a Public Hearing if no registered participants are identified, or written submissions received, by the tenth (10th) business day prior to the date of the proposed Hearing.

6.0 Locations for Hearings

Normally the location for Hearings will be chosen based upon the communities most convenient to the parties. The goal of the GRRB is to hold hearings in as many of the four communities within the GSA as practical.

The Board or such person as the Board may designate, may determine the time and place at which a Hearing may be held. In scheduling the time and place of Hearings, the Board or its designate shall attempt to be mindful of any needs which the parties bring to the Board's attention, subject to the responsibility of the Board to schedule its proceedings such that a Hearing is fair and the Board is able to accomplish its mandate in an orderly and expeditious manner, and within the means available.

At its discretion, the Board may hold a single Hearing in one community in the GSA or in a number of communities in the GSA.

7.0 Access to Hearings

The public has an interest in the open functioning of the Board, based on the need:

- To maintain an effective hearing process
- To ensure an administration that behaves fairly and that is sensitive to the values espoused by the communities affected and Canadian society
- To promote a shared sense that the Board operates with integrity
- To provide an ongoing opportunity for the residents and communities of the GSA to learn how the decisions made by the Board affect them.

Unless otherwise ordered by the Board, all Hearings shall be open to the public.

7.1 Access to Hearings – Participants

A party has the right to fully participate in a Hearing. Where there is any question as to the right of a person to participate in a hearing as a party, the Board shall provide that person and all other parties with an opportunity to make representations on the question before making its determination.

7.2 Access to Hearings – Interested Persons

The Board may, prior to or at a Hearing:

- Recognize as an interested person any person who is not a party and who, in the opinion of the Board, has information, knowledge, or a view useful for the resolution of a matter before the Board
- Permit the interested person to participate in the Hearing upon terms established by the Board.

8.0 Contributions from Other Parties

Any interested person or organization may make a request for status to contribute and participate in a Hearing. The request must be in writing, audio or

visual tape recording, filed ten (10) business days in advance of the Hearing date and contain the following information:

- i. The name, mailing address, telephone and/or fax number, and email address of the person submitting the request;
- ii. An indication whether the person submitting the request intends to be represented by counsel or agent, and if so, that person's name and other information as indicated in (i) above; and
- iii. A brief summary of the person's interest in the Hearing with reasons clearly stated.

Where the Board receives the written, audio or visual tape recording request referred to above, it will determine whether that person will be allowed to make submissions at the Hearing, and if so, what conditions, if any, will be attached to the party's status.

As a general rule, those persons or organizations wishing to contribute must meet the following criteria:

- Their participation will materially assist the Board in the Hearing by providing testimony, cultural awareness, cross-examination, and/or offering argument or other evidence relevant to the Hearing
- That the contribution request be filed as early as possible and, at least, ten (10) days prior to the Hearing. The notice requirement could be waived under special circumstances by a decision of the Chairperson.

If the Board makes a determination to allow a contribution, the Board will notify all parties and may direct contributors with similar interests to present a joint contribution. The Board reserves the right to deny contributor status to a person who may have otherwise qualified, but failed to seek such status in timely fashion. All parties seeking such status should therefore notify the Board, in writing, as early as possible. The Board will post a list of the parties and their status in all languages deemed necessary by the Board, nine (9) business days before the Hearing in a way deemed appropriate by the Board.

9.0 Service of Submissions

At any time prior to or during a Hearing, participants may submit representations respecting the subject matter of the Hearing to the Board in writing, and the Board shall place such submissions in the Hearing record.

Upon informing the other participants, the Board may invite written submissions from a participant at any time, and the Board shall place the submission received in the record.

10.0 Submissions for Hearings

Every party must file a translated written, audio or video tape, or telephone submission with the Board, and provide a copy to every other party listed on the official parties list before the Hearing.

A written, audio or video submission shall contain:

- i. A summary of the facts and evidence to be submitted on behalf of the party;
- ii. A list of witnesses to be called on by the party and a summary of each witness' evidence; and
- iii. The name, mailing address, telephone and fax number, and email address of a lawyer or other agent acting on behalf of the party, if applicable.

11.0 Summoned Witnesses:

The Board may serve a person with a summons or a notice to attend requiring him or her to attend a Hearing at the time and place stated in the summons. Subject to unusual circumstances, the Board will issue summons where required at least 15 business days in advance of a Hearing.

The summons may also require the person to produce at the Hearing the documents or other things in his or her possession, control or power that relate to the matters in question in the Hearing and that are specified in the summons.

A witness summoned by the Board shall have the following expenses paid by the Board for the duration of their summons:

- Travel, accommodations, and per diems
- Child care
- Honorarium in the amount specified by the Board prior to the start of the Hearing.

12.0 Expert Witnesses

A witness having technical or traditional knowledge, who is retained by the Board to give evidence, shall provide an oral or translated summary of his/her background, including qualifications and/or experience where appropriate.

In Hearings, the Board will not normally qualify a witness as an expert, but any witness with a degree of specialized knowledge and/or experience should reference that knowledge. Documents summarizing a person's experience should be filed with the Board prior to the Hearing.

A witness retained by the Board shall have the following expenses paid by the Board for the duration of their summons:

- Travel, accommodations, and per diems
- Child care
- Honorarium in the amount specified by the Board prior to the start of the Hearing.

13.0 Order of Events at a Hearing

The order of events that will be followed at a Hearing are as follows:

- a) Opening Prayer
- b) Call to Order
- c) Chairperson's Opening Remarks
- d) Introduction of Board Members and Staff
- e) Introduction of Registered Participants
- f) Acknowledgement of Written Submissions
- g) Review Agenda for the Hearing
- h) Discussion/Clarification of Procedural Matters
- i) Registered Participant's Opening Statements (in order determined by the Board)
- j) Registered Participant's Presentations
- k) Registered Participants may be questioned: by other Registered Participants, the Board, and by general public in attendance
- l) Comments from the Floor
- m) Registered Participant's Closing Remarks
- n) Board Members' Closing Remarks
- o) Chairperson's Closing Remarks
- p) Adjournment of the Hearing

14.0 Opening Statements

Unless the Board directs otherwise, at the beginning of every Hearing, each party shall give a brief opening statement that describes the issues that the party will address at the Hearing. The statement should include an outline of the evidence the party intends to introduce, a list of witnesses, the topics to be covered, and the amount of time required.

15.0 Swearing of Evidence

All parties giving evidence at the formal Hearing venue may do so under oath or affirmation, to be administered by a person authorized by law to administer oaths.

16.0 Evidence: Admissibility

The Board is not bound by the technical rules of evidence.

Where legal principles do not protect oral/written evidence from being known, the Chairperson will admit this relevant evidence. The evidence is relevant if it has tendency to prove or disprove a fact contemplated by the Hearing. When evidence is admitted, it does not necessarily mean it will determine any fact in issue.

Where there is full compliance with the relevant *Evidence Acts*, with any legislation dealing with privilege, and with the *Canadian Charter of Rights and Freedoms*, the Chairperson may limit introduction of evidence or issue such protective or other orders that in his/her judgement are required to prevent undue disclosure of classified, confidential or sensitive matters which include, but are not limited to, information the dissemination of which could reasonably threaten wildlife or wildlife habitat, matters of national security, or of a business, personal, or proprietary nature. Where the Chairperson determines that information in documents containing classified, confidential or sensitive matters should be made available to another party, the Chairperson may direct the party to prepare an unclassified or non-sensitive summary or extract of the original. The summary or extract may be admitted as evidence in the record.

16.1 Evidence – Other Testimony

The Chairperson may accept and enter into the record direct testimony of a witness made by a sworn written statement or verified audio or video tape recording, rather than by oral presentation at the Hearing. A witness whose testimony is presented by a sworn written statement or verified recording shall be available for questioning as may be required.

16.2 Evidence – Questioning

Questioning shall be limited to the scope of the direct evidence and, subject to the discretion of the Chairperson, shall usually be limited to witnesses whose testimony is adverse to a proposed harvesting allocation or Gwich'in Needs Level. Questioning will be permitted to the extent necessary for full and true disclosure of the facts. The Chairperson may, in the exercise of his/her discretion, permit inquiry into additional matters if helpful to the Board in reaching its decision.

17.0 Time Limits for Presentations

The Board may determine time limits for oral submissions by any or all participants at the Hearing and may amend such time limits in the course of a Hearing.

18.0 Burden of Proof

In cases in which the Board accepts evidence, any party offering such evidence shall have the burden of introducing appropriate evidence to support its position. Where there is conflicting evidence, the Board will decide which evidence to accept and will generally act on a balancing of the evidence.

19.0 Closing Arguments and Briefs

At the close of formal Hearings and upon such terms as the Board may find reasonable, any party to the proceedings shall be entitled to file a written brief, propose findings of fact and conclusions of law, or do both. At the close of the Hearing, the Chairperson will provide each party with an opportunity to make brief closing remarks. Any brief, proposed findings of fact and conclusions of law, and closing remarks shall be included as part of the record.

At the conclusion of the Hearing, the record shall be closed unless the Chairperson directs otherwise. Once the record is closed, no additional evidence shall be accepted unless the Board decides the evidence is material and that there was good cause for failure to produce it in a timely fashion. The Chairperson shall reflect in the record, however, that any correction to the transcript must be approved by the Board.

20.0 Failure to Attend Proceedings

Where publication or notice of Public Hearing has been given by the Board in accordance with these Rules and/or statutory requirements, and a party does not attend the proceeding, the Board may proceed in that party's absence and that party is not entitled to any further notice of that portion of the Hearing unless the Board directs otherwise.

Unless excused by the Board for good cause shown, failure of a party to attend a proceeding shall, after being served with reasonable notice of the time and place, constitute a waiver of all objections to the agreements, orders or rulings reached in the proceeding.

21.0 Adjournment and Re-Opening of a Hearing

Subject to the requirements of natural justice, the Board may adjourn a Hearing from time to time, and may for any reason, reopen a Hearing upon reasonable notice to the parties, for the purpose of receiving further representations.

22.0 The Board's Decision

Any decision or recommendation of the Board shall be based upon a consideration of the whole record of the material properly before the Board, including:

- Its determination as to whether or not a Total Allowable Harvest (TAH) or a Gwich'in Needs Level (GNL) should or should not be established; and
- In the event that a TAH and/or GNL is established, terms and conditions reflecting the primary objectives of the Board.

23.0 Record of Hearings, Transcripts, Interpreter/Translation

The GRRB will arrange for interpretation/translation services into Gwich'in where deemed necessary by the Board at all Public Hearings. A copy of the record of proceedings at Public Hearings will be placed in the Public Register at the Board's office and made available for public inspection. A written transcript of the Hearing will be available to the public on a cost recovery basis.

24.0 Media Relations

Thoughtful and professional media coverage of Public Hearings can have an impact on the credibility of the GRRB, the dissemination of its findings, and public support for the GRRB's view of any contentious issue. Above all, the public must perceive the Hearing to be open, professional and fair to all participants.

25.0 Miscellaneous

All documents are available for inspection at the Board office by parties and by the public, except where the confidentiality requirements prohibit specific documentation from being released. Documents critical to the Board's findings, including proposed harvest allocation and Gwich'in Needs Level plans, will be made available on the GRRB website.

Any party may appear on its own behalf or be represented by an authorized representative or counsel.

Any party may apply, at any time, for advice and direction as to how to proceed.