

Procedural Guide: YOR Documents Post Recommendation or Referral

Purpose:

This document describes the criteria YESAB uses to determine what information is posted or not to our online registry after we have concluded our assessment with a recommendation or referral.

Context:

YESAB is required to maintain a register of all documents that are produced, collected and received in relation to assessments. The document registry we maintain is guided by our records management policy and in accordance with s.118 and s.119 of the Yukon Environmental and Socio-economic Assessment Act (the Act). As an organization with seven offices throughout the Yukon Territory our document registry is housed in numerous storage locations. For example, we use shared network drives, cloud forums as well as email and paper files. We use these locations to store all of the documents that we produce, collect and receive during the course of an assessment.

YESAB also maintains an online registry (YOR) to empower participants to access assessment related documents online at any time. In this way, the YOR helps us to facilitate and enable meaningful participation in the assessment processes conducted by YESAB.

Guidance:

YESAB concludes our assessments by issuing a recommendation or referral. We have created the following criteria to inform participants on what documents we will post to our YOR after the conclusion of an assessment. Note that these documents are also required to be stored in our document registry.

Documents that may be posted to the YOR, post-recommendation or referral include:

1. Decision documents and related records.
2. Referral of a recommendation back to the Executive Committee for reconsideration and the ensuing assessment records.
3. Notifications from a Decision Body.
4. Correspondence from a Decision Body that the Designated Office, Executive Committee or Panel of the Board determines is relevant to the assessment because the content has substantive implications for the assessment process and/or expectations of interested persons participating in that process.
5. Advice and results from audit or effects monitoring.
6. Recommendation and response for public hearings on the violation of a decision document.
7. Documents and correspondence related to a request or referral to a Panel.

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The following offers context for the documents that we will post to the YOR:

1. DECISION DOCUMENTS AND RELATED RECORDS:

Decision on recommendation from Executive Committee or Panel of the Board as per s.76(1)(a) of the Act:

- A decision document from a Decision Body accepting the recommendation of the Executive Committee or Panel of the Board.

Decision on recommendation from Designated Office or Joint Panel as per s.75 of the Act:

- A decision document from a Decision Body accepting, rejecting or varying the recommendation from a Designated Office or Joint Panel.

Notice of non-referral rejected as per s.59 of the Act:

- A notice from a Decision Body that they reject the Executive Committee's recommendation that a project not be referred for a review.

2. REFERRAL OF RECOMMENDATION BACK TO THE EXECUTIVE COMMITTEE

Referral of recommendation back to the Executive Committee for reconsideration as per s.76(1)(b):

- Documents from a Decision Body communicating their decision to refer a recommendation back for reconsideration, and all of the ensuing documents produced, collected or received by the Executive Committee throughout the reconsideration process.

3. NOTIFICATIONS FROM A DECISION BODY:

Notifications as per s.89 of the Act: specifically, the notification provided by a Decision Body when they,

- issue any authorization required for the project to be undertaken, or amends or revokes that authorization, pursuant to s.89(a);
- grants any interest in land required for the project to be undertaken, or modifies or withdraws that interest, pursuant to s.89(b); or
- provides any financial assistance that enables the project to be undertaken, or alters or cancels that assistance, pursuant to s.89(c).

4. CORRESPONDENCE FROM A DECISION BODY

- that references the timelines as set out in the *Decision Body Time Periods and Consultation Regulations*, notably any information related to extending a timeline to issue a decision document or referral (i.e., a decision document accepting, rejecting or varying a recommendation made by a Designated Office; a decision document to accept a recommendation made by the Executive Committee; or referring a recommendation back for reconsideration to the Executive Committee); or

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- that the Designated Office or Executive Committee determines is relevant to the assessment (i.e., evaluation or screening) because the content has substantive implications for the assessment process and/or the expectations of interested persons participating in that process.

5. ADVICE AND RESULTS FROM AUDIT OR EFFECTS MONITORING

Audit or effects monitoring as per s.110 of the Act:

- The results of the s.110 monitoring, provided by a Decision Body to the Designated Office or the Executive Committee, as the case may be.
- The advice provided by the Designated Office or Executive Committee to a Decision Body, regarding the s.110 results, pursuant to s.110(3).

Audit or monitoring of existing project as per s.111 of the Act:

- A report of the results of a project audit or effects monitoring of an existing project conducted by the Executive Committee, pursuant to s.111(2).

6. RECOMMENDATION AND RESPONSE FOR PUBLIC HEARINGS ON THE VIOLATION OF A DECISION DOCUMENT

Recommendation by Board to Decision Body as per s.114 of the Act:

- Recommendations made by the Board to a Decision Body pursuant to s.114(1) (i.e. a recommendation that a public hearing be held regarding violations of the provisions of a decision document).
- Documents from a Decision Body outlining their response to recommendations for disposition made at the conclusion of a s.114 hearing, and reasons for the same.

7. REQUEST FOR A PANEL

- From participants in relation to requesting a Panel review.

Documents that will not be posted to the YOR post recommendation or referral:

For further clarity, at this time, YESAB has taken the position that it will not post the following examples of post-referral or post-recommendation documents to the YOR. YESAB may direct parties to re-submit revised documents in the event that their submissions include a mix of content that may or may not be posted. Note that these documents are also required to be stored in YESAB's document registry as per our records management policy and in accordance with s.118 and s.119 of the Act.

1. DECISION BODY CORRESPONDENCE

- Notifying the Designated Office or Executive Committee as to the reasons for not issuing an authorization.
- Requesting clarification on an evaluation or referral report from a Designated Office or a final screening report or referral report from the Executive Committee. For example, clarifying the scope of the project and/or scope of assessment.
- Responding to correspondence from third parties such as the proponent and/or First Nations.
- Pertaining to the regulatory process for the project.
- Relating to participant funding.
- Pertaining to regional baseline information.

2. CONSULTATION DOCUMENTS

- Relating to a Decision Body fulfilling their consultation requirements pursuant to s.74(2) of the Act and s.35 of the *Constitution Act*, whether from a Decision Body or First Nation.

3. PROPONENT CORRESPONDENCE AND INFORMATION

- Communicating issues, comments or questions with the recommendation or referral (i.e., as per an evaluation or referral report from a Designated Office or a final screening report or referral report from the Executive Committee).
- Responding to correspondence from third parties such as a Decision Body and/or First Nation.
- Pertaining to the regulatory process for the project.
- Updating the project including business plans, marketing, feasibility studies, detailed engineering, models and collection of baseline data.
- Relating to expansions or changes to project's previously assessed.

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4. FIRST NATION CORRESPONDENCE

- Communicating issues, comments or questions with the recommendation or referral (i.e., as per an evaluation or referral report from a Designated Office or a final screening report or referral report from the Executive Committee).
- Responding to correspondence from third parties such as a Decision Body and/or proponent.
- Pertaining to the regulatory process for the project.
- Relating to participant funding.
- Providing regional baseline information, traditional land use studies, traditional knowledge.

5. PUBLIC CORRESPONDENCE

- Communicating issues, comments or questions with the recommendation or referral.

6. OTHER CORRESPONDENCE

- Communicating issues, comments or questions with the recommendation or referral, or with the project, or providing updates on studies, views and information.
- Relating to media enquiries or articles.