

RULES OF PROCEDURE FOR THE RED HILL VALLEY PARKWAY INQUIRY'S INVESTIGATION AND PUBLIC HEARINGS

A. General

1. On April 24, 2019, pursuant to section 274 of the *Municipal Act 2001*, S.O. 2001, c 25, the Council of the City of Hamilton established the Red Hill Valley Parkway Inquiry (the "Inquiry") and affirmed its terms of reference (the "Terms of Reference"). The Terms of Reference direct the Inquiry to inquire into and hold public hearings regarding the Red Hill Valley Parkway.

2. Subject to *Public Inquiries Act, 2009*, S.O. 2009, c 33, Sch 6 (the "Act") and the Terms of Reference, the Honourable Mr. Justice Herman J. Wilton-Siegel (the "Commissioner") has the power to control the Inquiry's own processes at all stages of the Inquiry and to make rules governing its practices and procedure.

3. In the Rules on Participation and Funding, the Commissioner set out the application process for those who wish to participate in the public hearings of the Inquiry. In a Ruling on Participation and Funding released on February 12, 2020, the Commissioner granted participation to a number of parties (being "Participants", a term which includes any other person or entity to whom participation status is granted after the effective date of these Rules). Nothing in these Rules of Procedure ("Rules") alters or provides greater entitlements to Participants than those granted in the Commissioner's order(s) regarding participation.

4. The Commissioner may amend, supplement, or dispense with compliance of these Rules, as he deems necessary to ensure that the work of the Inquiry is thorough, fair, efficient, and timely. The Commissioner may make additional rules in respect of holding some or all of the public hearings by electronic means.

5. In these Rules,

(a) “persons” refers to individuals, groups, corporations, governments, agencies, institutions, or any other entity;

(b) “document”, including Participant Documents as defined below, is intended to have a broad meaning, and includes the following forms: written, electronic, audiotape, videotape, digital reproductions, photographs, maps, graphs, microfiche and any data and information recorded or stored by means of any device, and applies to physical evidence where applicable; and

(c) "public record" will include

i. information posted on the Inquiry’s website about the administration of the Inquiry, including the Terms of Reference, and any Rules;

ii. all written rulings by the Commissioner;

- iii. all submissions made to and written rulings of the adjudicator designated under paragraph 15;
 - iv. all documents marked as exhibits in the hearings or agreed to by Commission Counsel and all Participants as forming part of the record of the Inquiry, subject to paragraphs 37 and 39;
 - v. the transcripts of all portions of the hearings, subject to paragraphs 37 and 39; and
 - vi. any interim report, and the final report, of the Inquiry, once published by the Inquiry.
6. For the purposes of these Rules,
- (a) all correspondence, notices, and decisions will be transmitted by email or secure file transfer;
 - (b) if a Participant is represented by legal counsel, service on the Participant will be by email or secure file transfer to the Participant's counsel; and
 - (c) if a Participant is not represented by legal counsel, service on the Participant will be by email or secure file transfer to the Participant's designated contact person.

B. The Commissioner's Power to Control the Process and Compliance with these Rules

7. The Commissioner has the power to control the Inquiry's process in advance of and during the public hearings. The Commissioner may set timetables, convene public hearings, including hearings on preliminary or procedural matters, make rulings in respect of the application of these Rules, and make procedural rulings as he deems appropriate.

8. All Participants and all witnesses and their respective legal counsel, and Commission Counsel, are bound by these Rules and may raise any issue of non-compliance with the Commissioner.

9. The Commissioner may deal with any non-compliance with these Rules as he deems appropriate, including by revoking, limiting, or modifying the right to participate, imposing restrictions on a Participant or person in attendance at a hearing, or pursuing other remedies available pursuant to s. 33(5) of the *Act*.

C. Investigation

10. The Inquiry has commenced and will continue with an investigation by Commission Counsel, including obtaining documents to answer the questions posed in the Terms of Reference. The goal of the investigation, in part, will be to identify the core or background facts that will form the basis of an Overview Document, as described below, and to identify witnesses for the public hearings.

11. The investigation phase will consist primarily of the collection and review of documents from Participants and persons with information, inspection of physical evidence, consultation with interested persons and Participants, and interviews of persons with information by Commission Counsel.

D. The Participants' Document Preservation and Production to the Inquiry

1. Preservation and Production of Participants' Documents

12. All Participants are required to preserve originals of all documents relevant to the Inquiry's Terms of Reference that are in their possession, power or control ("Participant Documents") and any relevant physical evidence in their possession, power or control until such time as the Commissioner has ordered otherwise.

13. Within 21 days of release of these Rules, all Participants will provide to Commission Counsel a detailed plan setting out how the Participant will identify, locate and produce the Participant Documents and make available any physical evidence in their possession, power or control.

14. Subject to paragraph 15, all Participants will produce to the Inquiry copies of all Participant Documents, at their earliest convenience or in accordance with a timeline ordered by the Commissioner. All Participants will produce their Participant Documents in accordance with the Document Delivery Protocol (attached as Appendix "A").

2. Procedure for Assertions of Privilege

15. Where a person or Participant objects to the production of any Participant Document, or part thereof, or any other document or part thereof, on the grounds of privilege, the following procedures will apply:

- (a) The person or Participant
 - (i) shall deliver to Commission Counsel a list of the documents or parts thereof over which privilege is being asserted (the "Claimed Privilege List"). The Claimed Privilege List shall include the date, author, recipient, the nature of the privilege claimed, and a brief description of the documents, and may have attached to it additional material, such as an affidavit, to support the claim for privilege; and
 - (ii) may, at the election of the person or Participant, provide an unredacted copy of the document(s) on the Claimed Privilege List to Commission Counsel, without waiving privilege;
- (b) Commission Counsel shall review the Claimed Privilege List and, where applicable, the documents provided, and decide whether to recommend to the Commissioner that he accept the claim for privilege;
- (c) If Commission Counsel is not prepared to recommend to the Commissioner that he accept the claim for privilege, the Claimed Privilege List and written

submissions of Commission Counsel and of the person or Participant will be filed forthwith to the Commissioner or, at the Commissioner's option, to a judge of the Superior Court designated by the Associate Chief Justice of the Superior Court (or his designate) to act as the Commissioner's designate and exercise the powers of the Commissioner in respect of the determination of claims of privilege. Where the Commissioner or his designate is unable to make a determination based on the record before him or her, the Commissioner or his designate may request to receive oral submissions and a copy of the disputed documents for inspection which the Participant will provide forthwith; and

- (d) If the claim for privilege is dismissed, the documents shall be produced to the Inquiry forthwith.

E. Inquiry Database

16. The Inquiry will administer a database of the relevant, non-privileged data and documents collected and/or prepared by the Inquiry (the "Inquiry Database").

17. Documents received by the Inquiry that (1) the Inquiry concludes are irrelevant and/or (2) are determined to be subject to privilege and over which privilege has not been waived or has been adjudicated as privileged, will be tagged as such, segregated in a secure data archive, will not form part of the Inquiry Database, and will not be provided

to or shared with any Participant. A Participant may request destruction or return of documents determined to be privileged, in lieu of segregation in a secure data archive.

18. All documents in the Inquiry Database and the content of such documents are strictly confidential. Subject to any direction or order of the Commissioner, no one may make public or otherwise disclose to anyone any document from the Inquiry Database or otherwise received from the Inquiry, or the information contained therein, unless and until the document has been entered as evidence in the public hearings and is made part of the public record or has been disclosed in accordance with the requirements of paragraphs 19 and 2019.

19. Counsel to Participants and unrepresented Participants will be provided access to the Inquiry Database, upon provision to Commission Counsel of an executed undertaking in the form of Appendix “B” to these Rules.

20. A person who has signed a written undertaking in the form of Appendix “B” will not provide any document or information from the Inquiry Database to any other person, including clients/client representatives, agents, and experts, except to the extent that the document or information is provided to the recipient for the purpose of participation in the Inquiry investigation or public hearings. A person who has signed a written undertaking in the form of Appendix “B” will require the proposed recipient to execute a written undertaking in the form of Appendix “C” to these Rules and will provide the executed

Appendix “C” undertaking to Commission Counsel, prior to providing any document or information from the Inquiry Database to the recipient.

21. All persons who have executed an undertaking in the form set out in Appendices “B” or “C” shall comply with the terms of the undertaking. Failure to comply with the terms of an undertaking is a breach of an order of the Commissioner. The Commissioner may remedy and sanction such failure in accordance with paragraph 9.

22. The undertakings appended to these Rules as Appendix “B” and “C” have no force or effect in respect of a document or information that has been entered as evidence at the public hearings of the Inquiry and made part of the public record of the Inquiry.

F. Overview Document

23. Commission Counsel may prepare one or more documents that identify the core or background facts, together with their sources (each an “Overview Document”), which will be entered as an exhibit in the public hearings of the Inquiry.

24. Prior to the commencement of the public hearings, Participants will have an opportunity to provide comments on the Overview Document(s) which, at Commission Counsel’s discretion, may be incorporated into the final version of the Overview Document(s).

25. On a date or dates to be set by the Commissioner in advance of the public hearing, Participants will be required to provide a written response to the final version of the Overview Document(s) setting out:

- (a) Any items in the Overview Documents(s) that the Participant wishes to dispute and the Participant's position on each disputed item;
- (b) Any additional information that the Participant wishes to have included in the Overview Document(s); and
- (c) Any additional information that the Participant proposes to have admitted as evidence and made part of the public record of the Inquiry, including a brief description of that evidence and a brief explanation of why and how the information should be made part of the public record.

26. Participants will have the opportunity to call evidence at the public hearings to support, challenge, or supplement the core or background facts set out in the Overview Document(s), in accordance with these Rules.

27. These Rules apply equally to each Overview Document prepared by Commission Counsel.

G. Interviews of Persons with Information

28. As part of the investigation phase, Commission Counsel will interview persons who may have information or documents that relate to the subject matter of the Inquiry and that may be helpful in fulfilling the Inquiry's mandate.

29. Persons who are interviewed are permitted, but not required, to have their own legal counsel present during the interview. Other persons may only attend interviews with the permission of Commission Counsel.

30. Commission Counsel may provide documents from the Inquiry Database and/or relevant excerpts or chapters of the Overview Document(s) to persons interviewed by the Inquiry if the person interviewed executes and provides to Commission Counsel a written undertaking in the form of Appendix "C".

31. Commission Counsel may draft witness statements following these interviews which, if prepared, will form part of the Inquiry Database.

H. Disclosure of Proposed Evidence Prior to Public Hearings

32. In advance of the commencement of public hearings and on a schedule to be set by the Commissioner,

- (a) Commission Counsel will provide a list of proposed witnesses and a brief summary of the topics to be addressed by each witness, to all Participants;

- (b) Participants will provide to Commission Counsel and to all other Participants the names and addresses of any additional or alternate witnesses they believe ought to be heard (including proposed expert witnesses), and will provide Commission Counsel, where applicable, with a list and/or copies of documents relevant to the proposed witnesses, including statements of anticipated evidence from witnesses they propose; and
- (c) Commission Counsel will deliver a report of any witness who is proposed to be called as an expert;
- (d) Participants may seek leave to file expert reports.

33. Commission Counsel may refuse to call witnesses or present evidence proposed by a Participant in accordance with paragraph 32(b). If Commission Counsel refuses, a Participant may apply to the Commissioner for an order permitting that evidence be called or presented. Such application will be made in advance of the commencement of the public hearings, where possible. If the Commissioner is satisfied that the evidence of the witness is required, Commission Counsel will call the witness or present the evidence in accordance with these Rules.

I. Public Hearings of the Inquiry

1. Public Hearings

34. The Commissioner will conduct hearings as set out in these Rules.

35. The Commissioner will set the dates, hours and place of the hearings.
36. The Inquiry is committed to a process of fairness, including public hearings and public access to evidence and documents entered as exhibits at the hearings.

2. Public Nature of Hearings

37. All hearings are open to the public. However, where the Commissioner is of the opinion that

- (a) matters involving public security may be disclosed at the hearing; or
- (b) intimate financial or personal matters, or any other matters may be disclosed at the hearing that are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure is in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public,

the Commissioner may hold the portion of the hearings concerning any such matters, or receive documents, in the absence of the public on such terms as he may direct.

38. Applications from witnesses or Participants to hold any part of the hearing in the absence of the public should be made in writing to the Commissioner at the earliest possible opportunity.

39. The transcripts from and exhibits tendered in the public hearings will be made available as soon as possible for public viewing. If any part of the hearing is held in the absence of the public, the transcripts and exhibits from that part of the hearing will only be made available for public viewing on such terms as the Commissioner may direct.

40. Permission is required to use recording or photographic equipment in the hearing room. The use of such equipment shall be subject to the directions of the Commissioner and must not disrupt or detract from work of the Inquiry.

41. The Commissioner may impose further measures to address issues of confidentiality that may arise at the public hearings of the Inquiry.

3. General Principles for the Receipt of Evidence and Testimony of Witnesses

42. The Commissioner may receive any evidence that he considers to be helpful in fulfilling the mandate of the Inquiry. The Commissioner is entitled to receive evidence that might not be admissible in a court of law. However, pursuant to section 33(13) of the *Act*, nothing is admissible in evidence at the Inquiry that would be inadmissible in a court by reason of any privilege under the law of evidence.

43. Commission Counsel has the primary responsibility to call witnesses or experts that Commission Counsel believes will assist the work of the Inquiry. These witnesses may, amongst other things, support, challenge, comment upon, or supplement the Overview Document(s).

44. Where the Commissioner considers it to be appropriate, without hearing witnesses, the Commissioner may accept some or all of the facts contained in the Overview Document(s), may accept the authenticity of documents appended to the Overview Document(s) and may accept any of those documents, or parts thereof, for the truth of their contents.

45. Where appropriate, the Commissioner may receive evidence from representative witnesses on behalf of institutions or Participants.

46. Witnesses who testify will give their evidence under oath or upon affirmation. Further to subsection 33(12) of the *Act*, however, the Commissioner may admit evidence not given under oath or affirmation.

47. The Commissioner may admit into evidence an affidavit sworn by a witness in place of all or part of that witness's oral testimony.

48. Witnesses may be called upon to testify in panels.

49. Witnesses are entitled to have their own counsel present while they testify. Counsel for a witness will be permitted by the Commissioner to make objections during their client's testimony, subject to the Commissioner's power to control the process.

50. Witnesses may be called more than once.

4. Disclosure of Anticipated Evidence and Documents in Advance of Testimony

51. In advance of testimony by a witness at the public hearings, Commission Counsel will prepare a summary of the anticipated evidence of the witness and/or an affidavit sworn by the witness, which will form part of the Inquiry Database.

52. Commission Counsel will make best efforts to provide

- (a) the summary of the anticipated evidence of each witness and/or the affidavit sworn by the witness;
- (b) a list of documents in the Inquiry Database that will likely be referred to during that witness's testimony in chief; and
- (c) where applicable, a copy of any document that is not contained in the Inquiry Database that will likely be referred to during that witness's testimony in chief,

to each witness and to all Participants, at least five days before the witness commences his or her testimony. All witnesses will be required to execute an undertaking in the form set out at Appendix "C".

53. Counsel for any Participant who has been granted the right to question a particular witness in accordance with paragraph 60 will provide

- (a) a summary of anticipated evidence of the witness and/or an affidavit setting out the anticipated evidence sworn by the witness;
- (b) a list of documents in the Inquiry Database that will likely be referred to during that witness's testimony in chief; and
- (c) where applicable, a copy of any document that is not contained in the Inquiry Database that will likely be referred to during that witness's testimony in chief,

to each witness and to all Participants and Commission Counsel, at least five days before the witness commences his or her testimony. All witnesses will be required to execute a written undertaking in the form set out at Appendix "C", which the Participant's counsel will provide to Commission Counsel.

54. Participants who intend to cross-examine a witness will provide a list of documents in the Inquiry Database, and where applicable, copies of any document not in the Inquiry Database to which they intend to refer during their cross-examination. Participants will provide a preliminary list and/or documents at least three days before the witness commences his or her testimony, and a final list and/or documents at the earliest opportunity. No document will be adduced in cross-examination that has not previously been identified and/or provided to Commission Counsel and all Participants in advance of the witness's cross-examination.

5. Rules of Examinations in the Public Hearings

55. The Commissioner may set time allocations for the conduct of examinations and cross-examinations. It will be the practice of Commission Counsel to have a summons to witness delivered to every witness before he or she testifies.

56. In the ordinary course, Commission Counsel will call and question witnesses who testify at the Inquiry. Except as otherwise directed by the Commissioner, Commission Counsel is entitled to ask both leading and non-leading questions and to challenge the witness' evidence.

57. The Commissioner may give directions and/or make orders respecting a Participant counsel's ability to adduce evidence through leading questions.

58. The order of examination will be as follows, subject to orders made pursuant to paragraph 60:

- (a) Commission Counsel will question each witness;
- (b) Participants will then have an opportunity to cross-examine the witness to the extent of their interest. The order of cross-examination among the Participants for each witness will be determined by agreement of the Participants or, if they are unable to reach agreement, by the Commissioner;
- (c) Counsel for the witness will examine next; and

- (d) Commission Counsel will have the right to conclude the examination of the witness.

59. The total time allocated to cross-examination and examination by counsel for the witness will not exceed the time taken by Commission Counsel during their examination of the witness without leave of the Commissioner.

60. Counsel for a witness and/or counsel for a Participant may apply to the Commissioner to question a particular witness first, in advance of Commission Counsel, and for direction on the subsequent ordering of questioning. If such an order is made, counsel is subject to the requirements of paragraph 53 and will be confined to the normal rules governing the examination of one's own witness in court proceedings, such that counsel can only lead the witness on non-essential matters, unless otherwise directed by the Commissioner.

61. Neither Commission Counsel nor the Participants will be entitled to cross-examine a witness on statements set out in a anticipated evidence statement or witness interview summary prepared for the purposes of the Inquiry, except with leave of the Commissioner and only in circumstances where the evidence of the witness deviates substantially from the prepared statement or summary on an issue of significance. Prior to making any such order, the Commissioner will receive submissions from the witness or his or her counsel in respect of the request for leave.

62. The Commissioner may grant Commission Counsel or counsel for a Participant or witness leave to introduce a document to a witness at any point during the public hearings upon such terms as are just and fair.

J. Notices of Alleged Misconduct

63. The Commissioner will not make a finding of misconduct on the part of any person unless that person has had reasonable notice of the substance of the alleged misconduct and was allowed full opportunity during the Inquiry to be heard in person or by counsel.

64. Any notices of alleged misconduct will be delivered on a confidential basis to the person to whom the allegations of misconduct refer.

65. If a notice of alleged misconduct is delivered, the recipient may apply to the Commissioner for leave to call evidence that the recipient believes may be helpful to respond to the alleged misconduct.

K. Handling of Documents and Evidence at Conclusion of Inquiry

66. Upon issuance of the Inquiry's final report,

(a) all documents segregated in accordance with paragraph 17 will be destroyed and a Certificate of Destruction issued;

(b) all documents contained in the Inquiry Database that have not become part of the public record will be archived for a period of one year. At the end of this one-year period, all such documents will be destroyed and a Certificate

of Destruction issued unless a court of competent jurisdiction orders otherwise;

- (c) all documents that have been made part of the public record of the Inquiry will become the property of the City of Hamilton; and
- (d) notwithstanding the foregoing, any original document or physical evidence provided to the Inquiry will be returned to the person who provided it, upon request of that person, unless the Commissioner orders otherwise.



Document Delivery Protocol (Appendix “A” to the Rules)

(March 2020)

OVERVIEW

1. This Protocol is for the electronic delivery of electronically stored information and hardcopy documents information from document providers (“Provider”) to the Inquiry. The Protocol applies to all Providers (regardless of whether the Provider is an Inquiry Participant) except where Inquiry Counsel agree to receive information in another manner.
2. The Inquiry will use Relativity 9.7 as its document management system.

DOCUMENT NUMBERING

3. The Inquiry will assign a unique document identification number to each document. Documents will be numbered with a three-letter provider code (“Provider Code”) followed by a seven-digit number code, e.g. AAA0000000.
4. The Inquiry will send a unique Provider Code to each Provider. Providers will submit documents to the Inquiry with document identification numbers using the Provider Code and seven-digit number.

DELIVERY FORMAT

5. Providers will deliver documents and data to the Inquiry as set out in this Protocol.

A. HARDCOPY DOCUMENTS

6. Providers will deliver documents that exist in hardcopy only in a text searchable PDF

(one PDF file per record) or single page black and white Tiff with OCR text. Where colour is of significance in interpreting a document, these documents will be provided in colour JPEG format. All hardcopy documents will be batestamped.

7. Hardcopy documents larger than 11" x 17" will not be scanned but will be delivered in hard copy.
8. Providers will not delimit hardcopy documents except in accordance with Attachment B.
9. Providers will deliver all scanned hardcopy documents with the following coded fields based on industry standard document coding practices:
 - (a) Document identification number ("Docid"); e.g. AAA0000001
 - (b) Parentid (Docid number for the parent document of any document)
 - (c) Attachid (Docid number for all attachments to a document)
 - (d) Document Date [not "DocDate"]
 - (e) Author
 - (f) Recipient
 - (g) CC
 - (h) BCC
 - (i) Document Type – e.g. Email; Agreement etc. in accordance with the Document Types List set out in Attachment A
 - (j) Document Title- e.g. Subject matter line or title
 - (k) Document Marginalia – used for documents with handwritten notes
 - (l) Custodian/Source –Where applicable, custodian and source will be as specific as possible
 - (m) Origin_Paper Document
10. In respect of the coding required by paragraph 9(i), where a document type is encountered that is not listed in the Document Types List and such document type is required for the proper coding of a document relevant to the Inquiry, the Provider will contact Inquiry Counsel for directions.

11. In respect of the coding requirement for paragraph 9(d), documents that have no discernible date or which include only the month and day but no year will be coded as “Undated” by entering a date of “01/01/1900”. Documents that have a partial date that includes a month and year will be coded as the identified month, “01” for the day and the year (e.g. August 1997 will be coded as “08/01/1997”). Documents that have a year but no month or day will be coded with 01/01 for month and date and the four-digit year (for example, 01/01/1997).

B. IMAGE FILE FORMATS

12. Images will be provided in accordance with the table below:

ITEM	DESCRIPTION
Folder Volume name	Each Folder to have a unique volume name consisting of the Provider Code and a 3 digit, padded zero, sequentially in the file number order (i.e.: AAA001)
Composition of File	Single page TIFF files. For example, a four-page document will have four distinct image files and one text searchable file per document Audio Files: WAV, MP3, MP4 Video Files : AVI, WMV, MOV Text Files One text file per Image
Resolution of Image	Black and White Images – 300 dpi sub-type CCITT group 4 compressed, 1 bit (bi-tonal) Colour Images – 300 dpi saved as JPEG
Image Directory Structure	Images must reside in directories and subdirectories. The sub directory structure must reflect the levels in the numbering style (i.e.: AAA0000001.tif where AAA is the Provider Code; 0000001 is the document identifier)

C. ELECTRONIC DOCUMENTS:

13. Providers will deliver documents that are electronic in their original form (emails including email attachments or electronic files) in their native form and will not be converted to hard copy.

1. Coding of Electronic Documents

14. For electronically stored documents, Providers will include the following fields of information for each document, to the extent such information is available from the metadata associated with the document:
 - (a) Document identification number e.g. AAA0000001
 - (b) Group ID
 - (c) Parent ID
 - (d) Attach ID
 - (e) Date Sent
 - (f) Date Received
 - (g) Doc Date (date)
 - (h) Date Created
 - (i) Date Last Modified
 - (j) Lead Date
 - (k) Conversation Index
 - (l) Email Subject
 - (m) Email To
 - (n) Email From
 - (o) Email CC
 - (p) Email BCC
 - (q) File Name
 - (r) Title
 - (s) Document Extension
 - (t) Author
 - (u) Recipient

15. In addition to the fields set out in paragraph 14, Providers will provide the following fields:

- (a) Emails will be described as “Email” in a Document Type field
- (b) Electronic documents will be described as “E-File” in a Document Type field
- (c) Attachments to emails will be described as “Email attachment” in a Document Type field
- (d) The DocDate date will be the “last modified” date for non-emails (as available from the metadata) and the Date Sent for Emails
- (e) Custodians will be coded in a “Custodian” field
- (f) Multiple Custodians will be coded in a “Multiple_Custodians” field

2. Email Threading

16. Email Threading: Native emails shall be threaded to identify conversational threads and only the inclusive emails provided. All email threading fields should be provided including:

- (a) Email Author Date ID
- (b) Email Threading ID
- (c) Email Thread Group
- (d) Email Action
- (e) Indentation
- (f) Email Threading Display
- (g) Inclusive Email
- (h) Inclusive Reason
- (i) Email Duplicate Spare

3. Password-Protected Documents and Files

17. Providers are expected to use reasonable efforts to unlock password-protected documents to determine whether they are relevant and disclosable. Where an electronic file or document is password-protected, the password will be provided.

Providers will provide a list identifying the file or documents that are password-protected, and the password for each document, and when the Provider locked and unlocked the protected document. Where it is not possible to provide a password or when the document was locked and unlocked, the password-protected file or document will be delivered in its native format.

4. Documents Requiring Special Software

18. Where special software or other equipment is required in order to view certain types of documents, the Provider will advise the Inquiry of the list of documents that require special software and the name of the software or equipment required to review them, and will use reasonable efforts to make such software and/or equipment available to the Inquiry for the purpose of reviewing the documents concerned.

5. De-Duplication of Electronic Documents

19. Electronic documents that are exact duplicates from multiple custodians will be de-duplicated using an industry-recognized methodology, and noted in the Multiple_Custodians coding field.

6. Embedded files

20. Where an embedded file is attached to an Email, the embedded file will be detached. The Email will be the host, and the embedded file will be an attachment to the Email.

7. Redaction of Documents

21. Where redactions are required in an electronic document the document will be rendered to Tiff in accordance with the image resolution standards in the table above, the redactions applied and the documents coded accordingly. OCR with redactions burned in will be provided for any redacted document produced.
22. The redacting Provider must identify by labelling the redacted text to specify whether the redacted portions were removed on the basis that they contained privileged information, personal information, or irrelevant information, as applicable. Where possible, the redaction shall be done in black for production purposes. Alternatively, redaction may be done in white.

For objective coding of redacted emails, Providers will include the following fields of information for each document:

- (a) Email To_OC
- (b) Email From_OC
- (c) Email CC_OC

- (d) Email BCC_OC
- (e) Doc Date_OC
- (f) Lead Date_OC

8. Draft Documents

23. Documents that are drafts shall be coded as such in the Document Type Field. e.g. Draft Agreement

9. Delivery Regime

24. Electronic files shall be delivered in the following format:
- (a) All native documents in a folder called "Native"
 - (b) All extracted text (OCR) files in a folder called "OCR"
 - (c) Revised extracted text (OCR) for files that have been redacted in "OCR" folder
 - (d) An Opticon load file for all images
 - (e) Images in single page TIFF or JPEG file format
 - (f) Delimited DAT file for produced field information
 - (g) Date format to be mm/dd/yyyy

PRODUCTION MEDIUM

25. Providers will deliver data to the Inquiry as follows:
- (a) Providers will deliver data to the Inquiry via transfer to the Inquiry Vendor via secure ShareFile link. A secure link will be provided to the Provider by the Inquiry Vendor;
 - (b) Providers will label transfer media to identify the source, matter name, date, description of disclosure and the media number (i.e. Prod01 for initial production, Prod02 for the first supplemental production, etc.); and
 - (c) Providers will encrypt data during transit.
26. Providers will take all reasonable precautions to ensure that their data is free of

malicious code prior to delivery to the Inquiry.

UPDATING OR ADDING ADDITIONAL DOCUMENTS

27. Providers will provide corrections, replacements or supplementary data or images in the format outlined in this Protocol.
28. If errors are found in the data or images after the initial data and images have been delivered to the Inquiry, the Provider shall re-issue the entire record that has been changed including table references. For images, only the single Tiff file or affected page(s) should be re-issued in the appropriate directory structure named herein. Any updates should be accompanied with a letter outlining the Document ID and the information that has been changed. If documents provided in PDF form are updated then the whole document, in PDF format, shall be provided as a replacement.

CLAWBACK PROVISION

29. If a Provider concludes that a document that it believes is protected by legally recognizable privilege has inadvertently been produced to the Inquiry, the Provider will notify the Inquiry. The Inquiry will then sequester all copies of such document until the matter can be resolved.

RESPONSIBILITY FOR COSTS

30. It is the responsibility of each Provider to bear the cost of producing the electronic data to the Inquiry.

ATTACHMENT A

DOCUMENT TYPES LIST

Below are samples of the document types for hard-copy documents:

DOCUMENT TYPE	DESCRIPTION/EXAMPLE
Agreement	Includes Agreements, Contracts, Deeds, Letter of Agreement, Indenture
Agenda	Outline of meeting, business, seminar or conference events scheduled to take place
Appendix	Appendices, schedules, annexes that were originally part of a larger document, usually a report or contract but have become separated from the body of the larger document
Audit	A report summarizing the findings of an examination of records or financial accounts to determine their accuracy
Budget	Material giving financial details or breakdowns of projects, staffing, statement of resources, allocation of resources, etc. Usually called a budget. See also Financial Document
Business Card	Code the personal name and organization in the Author/Organization field. Includes virtual business cards
Calendar	Whole or excerpted calendar or schedule
Chart/Table	Any document in chart or table form separated from a larger report
Cheque	A written order to bank to pay a named sum from the drawers account to the bearer or named person. For true cheques, enter the cheque number in the title: 234. DO NOT include the word Number or No. or the #. DO NOT include the word cheque. Includes Cheque Stubs
Chronology	Any document outlining a time-line or describing historically important dates
Corporate Documents	Annual Reports, Shareholder Certificates, Closing Books, Articles of Amalgamation, Articles of Amendment, Articles of Incorporation, Declaration, Resignations, Waiver of Dividend etc.

Curriculum Vitae	Resume or CV – usually describes a person’s work experience or professional accomplishments. Includes professional profiles and bios
Email	Use for hard copy print-outs of emails. Code from the first message at the top of the page where there is a chain of emails.
Email Attachment	Use for hardcopy print-outs of documents that were attached to printed emails. Email attachments are coded to the appropriate document type – letter, report etc.
Exhibit	Use only for documents labelled as exhibits, e.g. “Exhibit A”
Fax Cover Sheet	Use for fax covers, fax transmittals and fax confirmations Use when there is only a non-substantive message on the fax cover sheet, e.g. “Attached for your information”, “See attached” etc.
Financial Document	Reports containing financial information. The information must be financial and not simply a list of numbers such as 123, 456, 789. Examples; balance sheets, operating costs, financial statements, financial analysis, financial report, debenture, prospectus, A/P, A/R, reconciliation records, income statements, all banking documents, promissory note, guarantee, statement of account, exchange rates, consolidated statements. This document type may also be used for single page documents that primarily concern financial information. DO NOT use for Audits, Budgets, Cheques
Graphics	Documents that are primarily visual, not textual. Includes illustrations, photographs, diagrams, drawings, graphs DO NOT use for Plans (document type Plan) Charts, Tables
Invoice	Any bill or receipt. Includes Purchase Orders, any record of goods or services sold or ordered. Document titles: for true invoices, enter the invoice number in the title: e.g. 234. DO NOT include the word Number or No. or the #. DO NOT include the word invoice
Legal Document	Litigation pleadings, affidavits, application, application record, consent, notice, notice of appearance, notice of application, notice of motion, trial record, endorsement,

	release etc. Includes all documents filed in court or that have a case name on them. Do not include legislation
Legislation	Any portion or complete copy of Acts, or Regulations from any jurisdiction. Includes municipal by-laws
Letter	Use for correspondence with addressee and a signature line. Usually has an address block. Letter of Agreement to be coded as a Contract; Letter of Credit to be coded as a Contract
License	A certificate or permit giving proof of permission from a government or other authority to do something as carry on a business or profession
List	Any list of items, places, things etc. Includes Distribution List, Directory, Index, Checklist etc.
Manual	Includes procedural manuals, service manuals, user guides, operating instructions, guidelines, specifications
Map	Includes geographical directions, may be hand drawn
Marketing	Advertisements, brochures, flyers etc.
Media	Newspaper articles, journal articles, press releases, speech, newsletter, bulletin, audio or video files etc.
Memo To File	Use for documents titled as such. May be typewritten or handwritten
Memorandum	Inter-Office memos, Inter-Department memos handwritten forms with Send To, From and Reply sections. Handwritten notes that are dated and indicate they are To and From
Memorandum of Understanding	Use for documents titled as such
Minutes Of Meeting	Formal records of meeting
Note(s)	Informal comments or notations either typed or handwritten. Includes invitations, telephone message slips.
Organizational Chart	Chart showing the hierarchy of an organization
Presentation	Materials used for presentations including Power Point and overhead materials

Tender Documents	Includes Request for Proposal (RFP), Request for Offer (RFO), Request for Quote (RFQ), Request for Tender, Proposal, request for any financial quote or bid for work or services proposed. Includes Response documents and Evaluations
Plan(s)	Site Plans, Surveys, engineers, architects or builders drawings, plans or blueprints including aerial photographs of buildings or land
Policies/Procedures	Policies: Principles, rules and guidelines formulated or adopted by an organization Procedures: Specific methods employed to express policies in action
Real Estate Transaction Documents	Documents with respect to a Real Estate Transaction, including Appraisal, Document General, Direction, Transfer / Deed of Land
Report	Usually has a formal title and indicates who prepared it (the author) and when, e.g. Productivity of the Coding Department in 1998 and 1999 Prepared by PFA February 2000 It may be a document that is not as formal in appearance, but it reports on certain findings or events, including project timelines. For example, a two-page report on the findings of a certain study: Recent Scanning Statistics. May also be titled Study, Summary, Results or Presentation. Do Not use for Corporate documents such as Closing Reports or Annual Reports Note that financial reports of any length are coded as Financial Document
Transcript	Verbatim transcription of hearings or legal proceedings including transcription of media programs such as radio interviews
Resolution	A formal statement of a decision or expression of opinion put before or adopted by an assembly
Telephone Records	Records of calls placed and received on both land lines and/or cell phones

Terms and Conditions	General and special arrangements, provisions, requirements, rules, specifications and standards that form an integral part of an agreement or contract
Web page	Website or www informational material

ATTACHMENT B

A. DOCUMENT DELIMITING

1. Appendices, Attachments, and Schedules which form part of an Agreement will not be coded as separate documents but will be considered part of the Agreement.
2. Appendices, Attachments, and Schedules which form a part of a Report, Financial Report, or Annual Report will not be coded as separate documents but will be considered part of the Report.
3. Appendices, Attachments, and Schedules which form part of Legal Documents, including affidavits, witness statements, pleadings etc. will not be coded as separate documents but will be considered part of the Legal Document.
4. Appendices, Attachments, and Schedules, which form part of Minutes of Meetings or Meeting Agenda, will not be coded as separate documents, but will be considered part of the Minutes or Agenda.
5. The back of pages with any text or markings will not be delimited as separate documents.

B. PARENT/ATTACHMENT/UNATTACHED

6. A parent document must be immediately followed with one or more attachment documents.
7. An attached document can only follow a parent document.
8. An unattached document cannot be followed by an attached document.
9. A document will be delimited as a Parent document if it is clearly ascertainable from either the face of the document or the unitization of the document bundle that one or more of the documents immediately following it is an attachment to it. The source document must contain a sentence which mentions either the word "enclosed" or "attached". Any source document that includes the words "enclosed", "attached", "following" or derivatives thereof, for example, "Please find enclosed", "Please find attached", "enclosed herewith" etc. will be included. Documents that do not contain such words will be assessed using logical unitization.

**APPENDIX “B” to THE RULES OF PROCEDURE FOR THE RED HILL VALLEY
PARKWAY INQUIRY’S INVESTIGATION AND PUBLIC HEARINGS**

Confidentiality Undertaking for Counsel and Unrepresented Participants

For the purpose of this undertaking, the word “Document” is intended to have a broad meaning, and includes without limitation, all records, files, sound recordings, videotapes, communications, correspondence, notes, data, memoranda, statements, reports, email, text (or any other form of electronic communication), photographs and Overview Reports, irrespective of whether such Documents have been identified as confidential, and includes all other material prepared, containing or based, in whole or in part, on any information included in the foregoing, including information contained in Overview Reports prepared by Commission Counsel.

I, _____, undertake to the Red Hill Valley Parkway Inquiry (“Inquiry”) that any and all documents accessible to me from the Inquiry Database (“Document”) will not be used by me for any purpose other than the Inquiry proceedings.

I further undertake that I will not disclose any Document to any person except in accordance with the Appendix.

I further undertake that I will disclose a Documents or the contents of a Document only to those for whom I act (or, in the case of Unrepresented Participants, to up to three individuals whose identities I will disclose to Commission Counsel in advance), witnesses or potential witnesses (and their counsel), or an expert retained for the purposes of this Inquiry (“recipients”), and only for the purposes of participating in the Inquiry.

In advance of any disclosure to any recipient, I further undertake that I will not disclose any Document or the contents of any Document to any recipient until I have (i) received from the recipient an executed written undertaking in the form attached as Appendix “C” to the Inquiry Rules of Procedure and (ii) provided the executed undertaking to Commission Counsel. This requirement includes disclosing documents to persons for whom I act.

I understand that under no circumstances shall I give anyone including, without limitation, those providing instruction or those whom I consult, access to the Inquiry Database.

I understand that this undertaking has no force or effect with respect to any Document that has been entered into evidence at the public hearings of the Inquiry, or to the extent

that the Commissioner has provided me with a written release from this undertaking with respect to any Document. For greater certainty, a Document is only entered into evidence at the public hearings when the Document is made an exhibit.

At the end of the Inquiry, I undertake to collect all Documents and copies thereof from anyone to whom I have disclosed Documents. With respect to Documents that remain subject to this undertaking at the end of the Inquiry, I undertake to destroy such Documents and all copies thereof and provide a certificate of destruction to Commission Counsel.

I understand that a breach of any of the provisions of this undertaking is a breach of an order made by the Commissioner.

Signature

Date

Witness

Date



APPENDIX “C” to THE RULES OF PROCEDURE FOR THE RED HILL VALLEY PARKWAY INQUIRY’S INVESTIGATION AND PUBLIC HEARINGS

Confidentiality Undertaking for Participants, Client Representatives, Potential Witnesses, and Experts

For the purpose of this undertaking, the word “Document” is intended to have a broad meaning, and includes without limitation, all records, files, sound recordings, videotapes, communications, correspondence, notes, data, memoranda, statements, reports, email, text (or any other form of electronic communication), photographs and Overview Reports, irrespective of whether such Documents have been identified as confidential, and includes all other material prepared, containing or based, in whole or in part, on any information included in the foregoing, including information contained in Overview Reports prepared by Commission Counsel.

I, _____, undertake to the Red Hill Valley Parkway Inquiry (“Inquiry”) that any and all Documents that are produced or provided to me in connection with the Inquiry’s proceedings will not be used by me for any purpose other than those proceedings.

I further undertake that I will not disclose any such Documents or the contents of any such Documents to anyone.

I understand that this undertaking has no force or effect with respect to any Document that has been entered into evidence at public hearings of the Inquiry, or to the extent that the Commissioner has provided me with a written release from the undertaking with respect to any Document. For greater certainty, a Document is only entered into evidence at the public hearings when the Document is made an exhibit.

With respect to Documents that remain subject to this undertaking at the end of the Inquiry, I further undertake to return all Documents provided to me, and any copies thereof to the person who disclosed them to me.

I understand that a breach of any of the provisions of this undertaking is a breach of an order made by the Commissioner.

Signature

Date

Witness

Date