

**MACKENZIE VALLEY ENVIRONMENTAL IMPACT REVIEW BOARD**

**Environmental Impact  
Assessment in the  
Mackenzie Valley:  
Interim Guidelines**

January 1999, Version 1

### **Acknowledgments**

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### **Disclaimer**

*If there is any inconsistency or conflict between these Guidelines and the Mackenzie Valley Resource Management Act and the land claim agreements, the Act and the agreements prevail.*

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# SECTION 1

## INTRODUCTION

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The Mackenzie Valley Environmental Impact Review Board (MVEIRB) has developed *Interim Guidelines (Guidelines)* according to s. 120 of the *Mackenzie Valley Resource Management Act (MVRMA)*<sup>1</sup>.

The *Mackenzie Valley Resource Management Act* was proclaimed December 22, 1998. This Act implements obligations under land claim agreements<sup>2</sup> and creates an integrated co-management regime for the conservation, development and utilization of land and water resources, for the protection of the environment from significant adverse impacts, and for the protection of the social, cultural and economic well-being of residents and communities in the Mackenzie Valley.

The MVEIRB may amend or add to these *Guidelines* at any time subject to any regulations made pursuant to paragraph 143(1)(a) of the *MVRMA*, and necessary consultation. Everyone is encouraged to contact the MVEIRB to ensure that they are working from the most recent version of the *Guidelines*.

### **Purpose of these Guidelines**

These *Guidelines* describe the environmental impact assessment (EIA) process in the *MVRMA*. These *Guidelines* apply to developments on land or water in the Mackenzie Valley. They contribute to the conservation, development and use of land and water resources for the optimum benefit of the residents of settlement areas, the Mackenzie Valley and Canada.

These *Guidelines* are intended to provide practical information on the EIA process in the Mackenzie Valley. They are designed to ensure that any rules and procedures meet the principles of natural justice and fairness.

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<sup>1</sup> s.120 states *Following consultation with first nations and the federal and territorial Ministers and subject to any regulations made under paragraph 143(1)(a), the Review Board may establish guidelines respecting the process established by this Part, ....*

<sup>2</sup> Gwich'in, and Sahtu Dene and Metis Comprehensive Land Claim Agreements

## Who will use these Guidelines

These *Guidelines* are primarily intended for those responsible for implementing parts of the EIA process and for those planning to undertake a development activity. More specifically, they are intended for regulatory authorities, the designated regulatory agency, government departments and agencies, Gwich'in Tribal Council, Sahtu Secretariat Inc. and developers. They may also be used as a reference for communities, local governments, first nations and the public at large. These *Guidelines* contain information on the process of EIA in the Mackenzie Valley, namely:

- preliminary screening (PS);
- environmental assessment (EA); and
- environmental impact review (EIR).

## How to use these Guidelines

This document is divided into eight sections. While these *Guidelines* are designed, and should be read and treated as a complete document, any reader interested in general information on EIA principles and EIA in the Mackenzie Valley should read Sections 3 and 4. Any reader interested in detailed information on preliminary screening, environmental assessment and environmental impact review should read Sections 5, 6 and 7. Section 8 contains the appendices. A summary of each section is as follows:

**SECTION 2** describes in brief the contents of the *Mackenzie Valley Resource Management Act*.

**SECTION 3** describes the principles of EIA.

**SECTION 4** provides an overview of the EIA process in the Mackenzie Valley.

**SECTION 5** contains details on the preliminary screening process.

**SECTION 6** explains the environment assessment process.

**SECTION 7** describes the environmental impact review process.

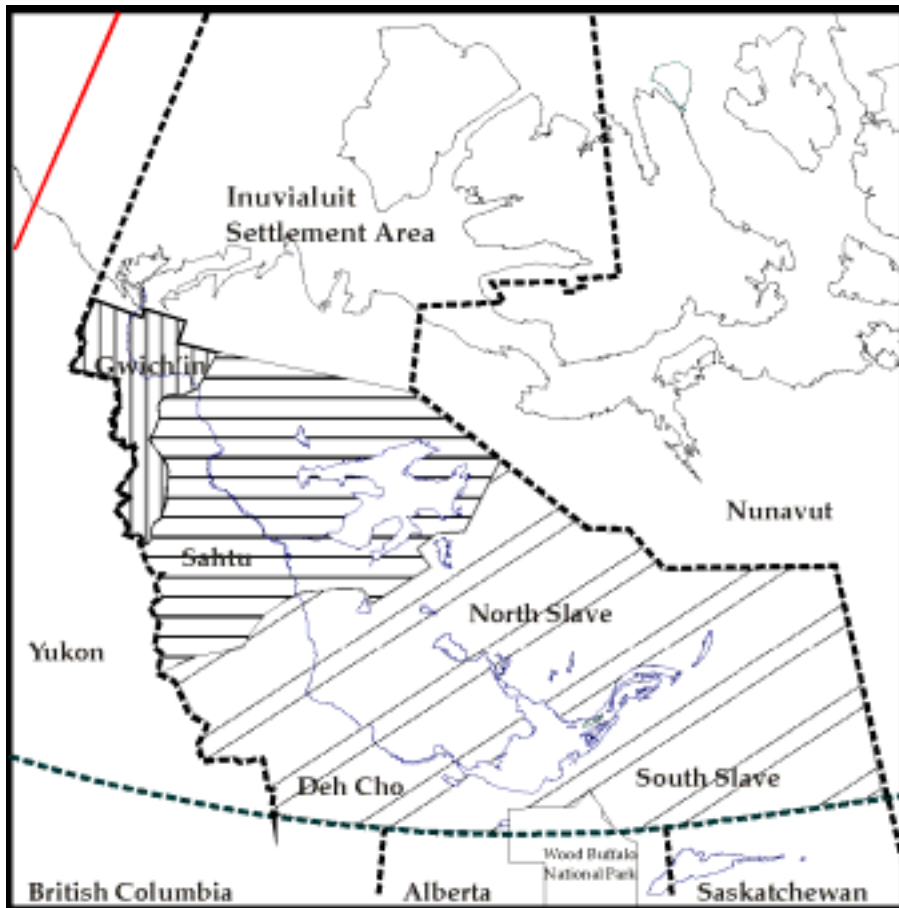
**SECTION 8** contains the appendices.

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## SECTION 2

# MACKENZIE VALLEY RESOURCE MANAGEMENT ACT

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### Introduction

This section explains the new land and water management system and institutions of public government established by the *Mackenzie Valley Resource Management Act* (MVRMA). It also explains which existing federal responsibilities that will be transferred to these new institutions of public government.

### Geographical area

The “Mackenzie Valley” is defined as the area in the Northwest Territories bounded by:

- Inuvialuit Settlement Area to the north

- Nunavut Settlement Area to the east
- Yukon Territory to the west
- 60th parallel of latitude on the south (excluding Wood Buffalo National Park)



# **Mackenzie Valley Resource Management Act**

The MVRMA implements obligations under the *Gwich'in Comprehensive Land Claim Agreement* and the *Sahtu Dene and Metis Comprehensive Land Claim Agreement*. Anyone requiring a copy of these land claim agreements should contact the Department of Indian Affairs and Northern Development.

The MVRMA is divided into seven parts:

- Part 1 — General provisions respecting boards
- Part 2 — Land use planning
- Part 3 — Land and Water Regulation
- Part 4 — Mackenzie Valley Land and Water Board
- Part 5 — Mackenzie Valley Environmental Impact Review Board
- Part 6 — Environmental monitoring and audit
- Part 7 — Transitional provisions

The MVRMA establishes processes for land use planning, land use and water use regulation, environmental impact assessment, and environmental monitoring and audit. These processes are to be implemented through institutions of public government i.e., boards.

## **Institutions of public government**

The MVRMA establishes co-management boards as institutions of public government in the Mackenzie Valley. These boards provide for an integrated and coordinated system of land and water management. They are designed to enable residents in the Mackenzie Valley, as well as other Canadians, to participate in the management of resources for their benefit. The boards are:

### ***Regional Land Use Planning Boards***

The Gwich'in Land Use Planning Board is responsible for preparing and implementing a land use plan within the Gwich'in Settlement Area. The Sahtu Land Use Planning Board is responsible for preparing and implementing a land use plan within the Sahtu Settlement Area. Each board's land use plan will deal with the conservation, development and use of land, waters and other resources in their settlement area. Following the approval of a land use plan, each board will monitor its implementation and consider applications for exceptions to the plan.

### ***Regional Land and Water Boards***

The Gwich'in Land and Water Board regulates the use of land and waters and the deposit of waste in the Gwich'in Settlement Area, and Sahtu Land and Water Board regulates the use of land and waters and the

deposit of waste in the Sahtu Settlement Area. Each board's objective is to provide for the conservation, development and utilization of land and water resources for the optimum benefit to the residents in their settlement area and the Mackenzie Valley. Both boards are preliminary screeners in their respective settlement areas.

These boards are responsible for functions previously performed by the Department of Indian Affairs and Northern Development and the Northwest Territories (NWT) Water Board.

### ***Mackenzie Valley Land and Water Board***

This board, like the regional land and water boards, is a preliminary screener and it regulates all uses of land or waters or deposits of waste in the Mackenzie Valley where a development will likely have an impact:

- in more than one settlement area
- in a settlement area and an area outside any settlement area
- wholly outside of any settlement area

This board is responsible for functions previously done by the Department of Indian Affairs and Northern Development and the NWT Water Board.

### ***Mackenzie Valley Environmental Impact Review Board***

The Mackenzie Valley Environmental Impact Review Board (Review Board) conducts environmental assessments and environmental impact reviews in the Mackenzie Valley. The Review Board must ensure the impact of proposed developments on the environment receive careful consideration before actions are taken in connection with them.

The Review Board takes on a role previously completed by federal departments and agencies.

## **Canadian Environmental Assessment Act**

The MVRMA establishes the Review Board as the main instrument of EIA in the Mackenzie Valley. The *Canadian Environmental Assessment Act* (CEAA) no longer applies in the Mackenzie Valley except under prescribed circumstances related to environmental impact review (EIR) or some transboundary developments. The CEAA also continues to apply during the transitional period as the MVRMA is promulgated. Appendix E summarizes the transitional provisions.

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# SECTION 3

## PRINCIPLES OF ENVIRONMENTAL IMPACT ASSESSMENT

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### Introduction

This section provides general information on the concept, history and selected good practices of environmental impact assessment (EIA). References to further readings are listed at the end of this section.

### Concept

Environmental impact assessment provides an approach used to predict the environmental impacts of a proposed development. An impact on the environment under the MVRMA means any effect on land, water, air or any other component of the environment, as well as on wildlife harvesting. It also includes any effect on the social and cultural environment or on heritage resources.

Environmental impact assessment begins with understanding baseline conditions and the identification of issues. By collecting and assembling baseline data early, the developer can modify and improve the design of the development as new information and issues are gathered. By identifying potential positive and negative environmental impacts and issues of public concern of a proposed development before they occur, the developer and the decision-maker, as well as the public, have valuable information. For the developer, this information can be used in the development planning (e.g., reducing or eliminating impacts and issues, and refining the development and preparing mitigation measures). For the decision-maker, this information can be used in their determination of the impact's significance. For the public, they can gain an increased understanding of the development and its potential impacts and benefits.

An EIA also enables a developer to forecast the costs and benefits of environmental measures which may be necessary for the development to proceed. The level of detail required in an EIA will vary depending on the scale of the development, the degree of the environmental impacts the degree and amount of public concern, and other factors.

## **Background**

The federal government and Canadian provinces began establishing EIA regimes in the 1970s. The federal government approved a cabinet policy establishing the Environmental Assessment and Review Process (“EARP”) in 1973.

The EARP process was developed further and formalized in the Environmental Assessment and Review Process Guidelines Order (“EARPGO”) in 1984. The EARPGO was treated as advisory, and not mandatory, in nature. It was only after court decisions in the late 1980s that the EARPGO became mandatory and legally binding.

In 1990, the federal Minister of the Environment commenced new EIA legislation. The goal was to ensure that environmental considerations were integral to federal decision-making, as well as to help harmonize EIA systems across Canada. In 1992, new EIA legislation, the *Canadian Environmental Assessment Act* (CEAA), received Royal Assent and came into force with four regulations in early 1995.

In the Northwest Territories, the Gwich’in and the Sahtu Dene and Metis settled land claim agreements in 1992 and 1994 respectively. Both agreements require that all development proposals in the Mackenzie Valley be subject to an environmental impact assessment and review process set out in those agreements and legislation. This legislation is the *Mackenzie Valley Resource Management Act*. As with the CEAA, the goal is to make sure that environmental considerations are an integral part of decision-making.

## **Good Practices in EIA**

*This subsection describes good practices in EIA*

### **Project planning and integration**

Environmental impact assessment is most effective when it is completed parallel to and in conjunction with other design and planning activities associated with a development. Environmental impact assessment is not a development “add-on”. For project planning purposes EIA activities should occur before adverse impacts occur and final planning and design decisions are made.

Elements of EIA should have the same priority as engineering, economics, health and safety in the planning and design of a development. As such, a development proposal can be modified to avoid unacceptable environmental impacts, or reconsidered if the impacts or risks are too high.

### **Public involvement**

Public involvement is essential to EIA. It is crucial to identifying issues and in problem-solving. Good public involvement is more than presenting information. It is also active listening and sharing information. It can be used to gather information, such as traditional and local knowledge; to identify valued biophysical, socio-economic and cultural components; and, contribute to a better overall development design.

Early public involvement before applying for approvals is advisable. Depending on the development, the public should be involved (with appropriate translation/communication services where applicable) for the entire development from pre-planning to post closure. Public involvement can include: community visits and input, advisory committees, audio-visual presentations, discussion papers, news releases, brochures, open houses and meetings, site tours and workshops.

Maintaining a good record of public involvement and the results is recommended. This record can include the date, location and nature of meetings or more formal consultation(s), concerns/issues raised, attendees and the principle items discussed. At this point, it is also very important to identify any resolutions reached, and to identify how the development was changed or altered as a result.

### **Identifying environmental impacts**

Environmental impact assessment requires the developer to identify environmental impacts and issues at each development stage (e.g., construction, closure). Information regarding the nature of impacts (e.g., duration, geographic extent) at each stage should be presented. Based on impact with mitigation, the significance of the remaining (or residual) environmental impacts are determined by the decision-making body.

Effective EIA relies on the information available and provided. Parties such as the developer, governments, the public and communities have a role in providing information, including their interests and needs, both present and future.

### **Sustainable development**

EIA is also a tool that helps developers and decision makers meet the needs of the present generation without compromising the ability of future generations to meet their own needs. This makes EIA a good sustainable development tool.

Environmental impact assessment provides for the conservation, development and utilization of land and water resources in a manner that will provide the optimum benefit to the residents of the settlement area and of the Mackenzie Valley and to all Canadians. The process shall have regard to the protection of the environment from the significant adverse impacts of proposed developments; and the protection of the social, cultural and economic well-being of residents and communities in the Mackenzie Valley.

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## SECTION 4

# EIA IN THE MACKENZIE VALLEY

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### Introduction

This section provides information on the process of environmental impact assessment (EIA) in the Mackenzie Valley. In particular, it summarizes preliminary screening, environmental assessment and environmental impact review. It does so from the point of view of a development requiring a licence, permit or authorization. It does not describe a situation where government, the Gwich'in Tribal Council or the Sahtu Secretariat Incorporated are the developers and they propose a development not requiring a licence, permit or authorization.

Note, this summary:

- does not describe the process in detail;
- describes a development which goes through all three stages, not just one or two; and
- does not necessarily define how other authorities may vary from these processes.

Any reader needing more complete information on these processes should refer to specific sections in this document.

### Preliminary screening

Preliminary screening is the first stage in the EIA process under the *Mackenzie Valley Resource Management Act* (MVRMA). For small developments with no public concern and no possibility for significant adverse impacts, this may be the only evaluation for environmental impacts that is necessary. Preliminary screening is the initial examination of a development's impact on the environment and a first look at potential public concern with respect to a development.

For example, a developer will apply to the appropriate Land and Water Board or other regulatory authority (RA) or the designated regulatory agency (DRA) for a licence, permit or other authorization. Upon receiving an application, the RA or DRA will determine if the developer's activity will require a preliminary screening. If so, the preliminary screening is completed and a decision made. The decision is based on public concern or if there might be significant adverse impacts. If the answer is 'yes', then the development is referred to the Mackenzie Valley Environmental Impact Review Board (Review Board) for an environmental assessment. If 'no', then the regulatory process continues.

### Environmental Assessment

Environmental assessment is the second step in the environmental impact assessment process under the MVRMA. The Review Board is required to conduct an environmental assessment of a development that is referred to it following a preliminary screening. The Review Board must also conduct an environmental assessment of a development, regardless of any determination from a preliminary screening, that is referred to it by:

- a RA, DRA, or the federal or territorial government
- the Gwich'in Tribal Council or Sahtu Secretariat Incorporated; or
- a local government

The Review Board can also conduct an environmental assessment on its own motion regardless of any determination from a preliminary screening.

Upon completing its environmental assessment, the Review Board will make one of four decisions:

- i) determine that an environmental impact review of the development is not required;
- ii) order that an environmental impact review of the development be conducted if it is likely to have a significant adverse environmental impact or public concern;
- iii) recommend the development's approval subject to mitigation measures to prevent significant adverse impact(s); or
- iv) recommend the development be rejected without an environmental impact review.

The Review Board's decision must be submitted to the federal Minister (DIAND) or DRA<sup>3</sup> who may:

- i) order an environmental impact review regardless of the determination in (i) above<sup>4</sup>;
- ii) where the Review Board makes a recommendation under (iii) or (iv) above
  - (a) adopt the recommendation or refer it back to the Review Board for further consideration, or
  - (b) adopt the recommendation with modifications or reject it and order an environmental impact review of the development; or
- iii) Where it was determined that the development is of national interest, refer the development to the Minister of the Environment for a joint review under the *Canadian Environmental Assessment Act*<sup>4</sup>.

The Review Board must complete its environmental assessment of a development prior to the start of an environmental impact review.

### **Environmental Impact Review**

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<sup>3</sup> The DRA only considers Review Board recommendations to approve a development where there are likely to be significant adverse impacts which can be prevented with mitigation; or where the Review recommends rejecting the development without an environmental impact review.

<sup>4</sup> Federal Minister only

Environmental impact review (review) is the third possible evaluation a development may undergo. The review will be conducted by a panel. Where the impact or concern extends beyond of the Mackenzie Valley, the Review Board may enter into an agreement with another authority for (i) the coordination of the respective examinations of the environmental impact of the development or (ii) the examination of the environmental impact of the development by a joint panel.

Every review will include:

- preparation by the Review Board of the terms of reference for the panel;
- submission of an environmental impact statement by the applicant;
- analysis of the proposal as the panel considers appropriate; and
- public consultations or hearings.

The panel will issue a report containing a summary of its conclusions, comments received from the public, and recommendations whether:

- i) The development be approved, with or without mitigative or remedial measures, or a follow-up program; or
- ii) The development be rejected.

The panel's report will be submitted to the DIAND Minister or DRA who may agree to:

- i) Adopt the recommendation of the panel, or refer it back to the panel for further consideration; or
- ii) After consulting the panel, adopt the recommendation with modifications or reject it.

The DIAND Minister will distribute its decision to every group affected by the decision. Any body affected by a decision will be required to conform with the decision to the extent of its authority.



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# SECTION 5

## PRELIMINARY SCREENING

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### Introduction

This section provides details on the preliminary screening process. These *Guidelines* define “preliminary screening” to mean the initial examination by a preliminary screener of a development’s potential for impact on the environment and public concern. For reference purposes, preliminary screening is described in sections 124 and 125 in the *Mackenzie Valley Resource Management Act* (MVRMA).

#### Glossary of terms:

*Designated Regulatory Agency* (DRA) - an independent regulatory agency. The National Energy Board (NEB) is the only DRA under the (MVRMA). NEB will be used instead of DRA.

*Developer* - any person carrying out an existing or proposed development.

*Federal Minister* - This refers to the Minister of Indian Affairs and Northern Development (DIAND). DIAND will be used instead of federal minister.

*Government* - refers to the federal and territorial governments

*Local government* - any local government established under the laws of the Northwest Territories, including a city, town, village, hamlet, charter community or settlement, whether incorporated or not, and includes the territorial government acting in the place of a local government pursuant to those laws

*Preliminary Screener* - any body or agency which completes a preliminary screening

*Regulatory Authority* (RA) - in relation to a development, means a body or person responsible for issuing a licence, permit or other authorization required for the development under any federal or territorial law, but does not include a designated regulatory agency or a local government e.g., Land and Water Boards, Department of Fisheries and Ocean, Resources, Wildlife and Economic Development.

## Irrevocable Actions

The MVRMA ensures that no irrevocable actions will be taken before the requirements of preliminary screening, environmental assessment (EA) and environmental impact review are met. It says that,

*No licence, permit or other authorization required for the carrying out of a development may be issued under any federal or territorial law unless the requirements of this Part<sup>5</sup> have been complied with in relation to the development.*

Likewise,

*Where the Gwich'in or Sahtu First Nation, a local government or a department or agency of the federal or territorial government proposes to carry out a development that does not require a licence, permit or other authorization, it shall comply with the requirements of this Part before taking irrevocable action in relation to the development.*

## Deciding the Need for a Preliminary Screening

Before starting a preliminary screening, there are a series of questions which require answering. It may be that a preliminary screening is not necessary.

- Do you have a development by definition of the MVRMA?
- Does the development require a licence, permit or authorization as listed in the Preliminary Screening Requirements Regulation?
- Is the development exempt from preliminary screening because it is on the Exemption Regulation, it is exempt for national security or emergency purposes; or it is manifestly insignificant?
- Who does preliminary screening?
- Does the development conform with the applicable land use plan?

Figure 1 on page 17 illustrates the preliminary screening process.

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<sup>5</sup> Part refers to Part V of the MVRMA which contains the environmental impact assessment process for the Mackenzie Valley.

## **What is a development?**

According to the MVRMA, a development means *any undertaking, or any part of an undertaking, that is carried out on land or water and, except where the context otherwise indicates, wholly within the Mackenzie Valley, and includes measures carried out by a department or agency of government leading to the establishment of a national park subject to the National Parks Act and an acquisition of lands pursuant to the Historic Sites and Monuments Act.*

For clarity, “except where the context otherwise indicates” allows for the evaluation of transboundary developments by the Review Board (see Section 6).

## **Does the development require a licence, permit or authorization from the Preliminary Screening Requirements Regulation?**

The **Preliminary Screening Requirements Regulation** contains a list of provisions from government acts and regulations that confer powers, duties or functions on regulatory authorities. When a RA or DRA must issue a licence, permit or other authorization listed in this regulation, a preliminary screening must be conducted first.

Depending on the type of development proposal, several different types of authorizations may be required (e.g., land use permit, fisheries authorization, water licence, timber cutting permit). A developer can assist preliminary screeners by providing a full development description and identifying all the licences, permits and authorization required.

## **Is the development exempt from preliminary screening because it is on the Exemption Regulation, exempt for national security or emergency purposes; or manifestly insignificant?**

The **Exemption Regulation** describes proposed or existing developments for which preliminary screening is not required because the impacts from these developments will have an insignificant impact on the environment. For example, a scientific study which does not require a land use permit and does not include the capture of wildlife is excluded from preliminary screening.

A development may also be exempt for reasons of **national security** or **emergency purposes**. No preliminary screening is required for:

- a. A national emergency under the *Emergencies Act*;
- b. An emergency in the interests of protecting property or the environment or in the interests of public welfare, health or safety; or
- c. Reasons of national security.

A development may also be exempt from preliminary screening because it is **manifestly insignificant**. This category of exemption only applies to developments proposed by government, the Gwich'in Tribal Council (GTC) or the Sahtu Secretariat Incorporated (SSI) where no licence, permit or other authorization is required.

### **Who does preliminary screening?**

The MVRMA describes two types of bodies responsible for preliminary screening, i.e., preliminary screeners. Which body is involved depends on whether or not the development requires a licence, permit or other authorization.

- a) Developments requiring a licence, permit or other authorization from the Preliminary Screening Requirements Regulation

A preliminary screening is completed by **regulatory authorities** and the **designated regulatory agency** when the development requires a licence, permit or authorization from the Preliminary Screening Requirements Regulation.

- b) Developments proposed by government, the Gwich'in and Sahtu First Nations not requiring a licence, permit or other authorization

A preliminary screening is completed by the federal or territorial department or agency, the GTC or the SSI when they propose a development for which no licence, permit or other authorization is required.

Appendix B contains a key to help identify from whom a licence, permit or authorization may be required.

# Preliminary Screening Process

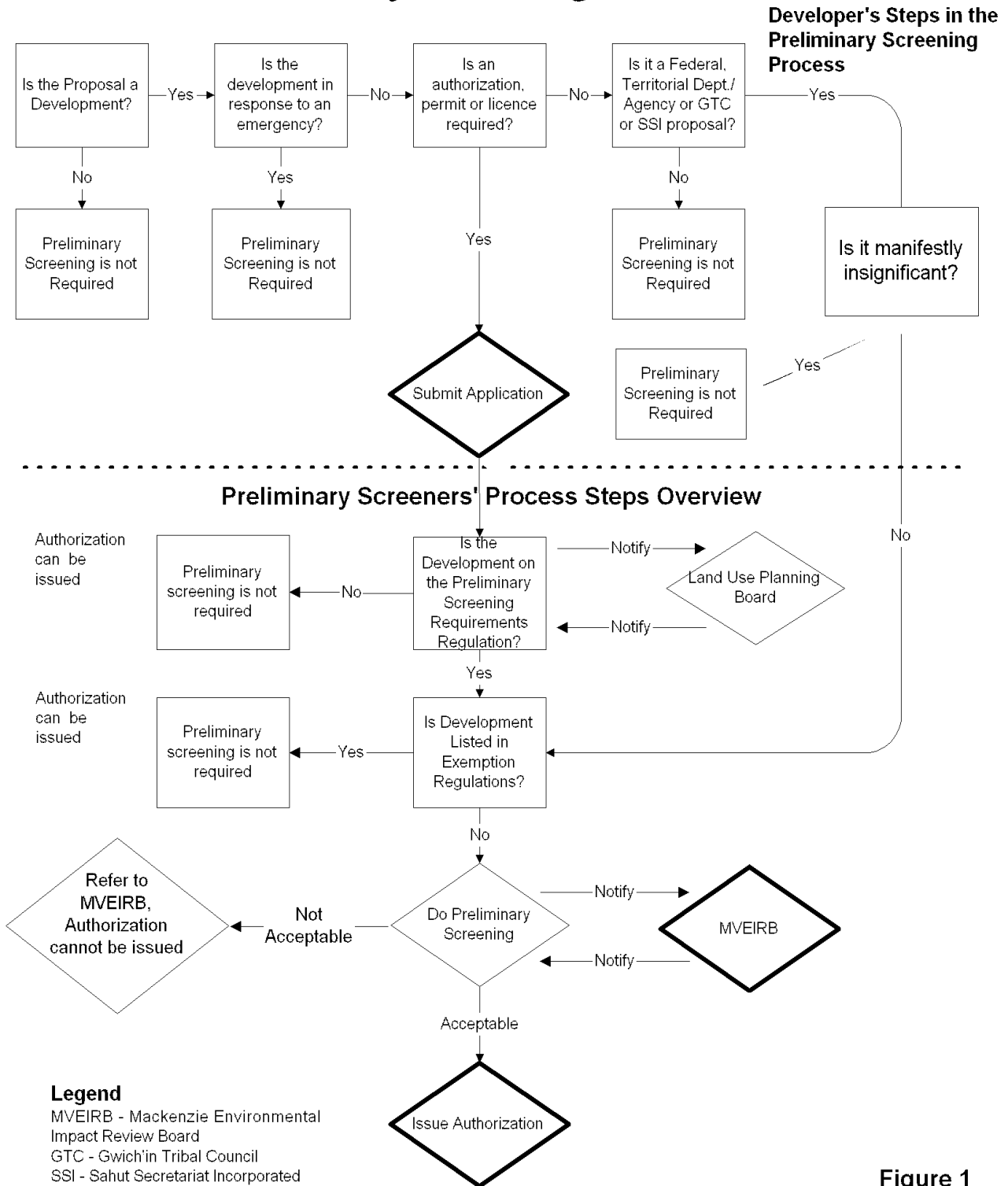


Figure 1

## **Conformity with a land use plan**

Land use plans will be prepared by the Gwich'in Land Use Planning Board and the Sahtu Land Planning Board for their respective settlement areas. All proposed development must conform with an applicable land use plan before proceeding. Where there is no applicable land use plan, the development proceeds through the regulatory or other approvals processes. An "applicable land use plan" means a fully approved plan pursuant to s. 43 of the MVRMA. In these *Guidelines*, "applicable" is synonymous with "approved".

Where there is an applicable land use plan, the developer should check the land use plan to see if their development will be in conformity. The developer may also contact the Gwich'in and Sahtu Land Use Planning Boards for assistance with determining conformity. Preliminary screeners are required to check that the development conforms before proceeding with the preliminary screening. If a preliminary screener is unsure of conformity, they will defer to the appropriate Land Use Planning Board for a determination and will notify the developer that it has done so.

If the development does not conform, the developer will have to contact the appropriate Land Use Planning Board for direction.

### **Example 1: Development requiring a licence, permit or authorization**

*This example deals with development proposals requiring a licence, permit or other authorization pursuant to a provision in the Preliminary Screening Requirements Regulation.*

An application is received by the Sahtu Land and Water Board (SLWB). The application is for a land use permit to operate a caterpillar to clear a site for well drilling i.e., gas exploration. The development description attached to the application indicates that the developer plans to operate a test well in the hills just east of Norman Wells. In order to access the site, a 5 km road will need to be constructed and 3 water courses will have to be crossed. The developer will also need to draw water for the proposed drilling operation.

The SLWB reviews the application for completeness and determines from the development description that the development is not exempt from preliminary screening. It also determines that the developer may possibly need a water licence, fisheries authorization, and navigable waters permit. The SLWB, therefore, asks the developer if they have been in contact with the Department of Fisheries and Oceans and Coast Guard.

There is no applicable land use plan, therefore, there is no need to confirm conformity with the land use plan.

## **Example 2: Development proposed by government or the Gwich'in and Sahtu First Nations**

*This subsection deals with development proposals that do not require a licence, permit or other authorization.*

- a) The GNWT Department of Resources, Wildlife, and Economic Development (RWED) proposes to a wolf hunt. This activity does not require a licence, permit or authorization to be completed. It is an undertaking on land or water. Its impact on the environment is not considered manifestly insignificant. It is also not exempt from preliminary screening. A preliminary screening is completed.
- b) The GNWT Department of Transportation proposes some road repairs on Hwy. 2. This activity will involve fixing potholes i.e., putting down gravel. This is considered routine maintenance and therefore manifestly insignificant. The development proceeds without a preliminary screening.
- c) The GTC proposes a heritage trail which can be constructed without requiring a land use permit. The trail is 10 km long and because of the length and the area which is crossed, it is not considered to be manifestly insignificant. Therefore, the GTC completes a preliminary screening.

### **Notification**

Once a preliminary screening is known to be required, the Mackenzie Valley Environmental Impact Review Board (Review Board) will be notified in writing by the preliminary screener at the beginning and at the end of the preliminary screening. In notifying the Review Board, the preliminary screener should submit, where applicable:

- a. Upon it being received by the preliminary screener, one (1) copy of the completed application or the proposal for authorization being considered, including any attached background document(s) and relevant correspondence;
- b. Any other pertinent information, including results from public involvement and, where known, the developer's performance record;
- c. Primary contact for the development proposal; and,
- d. Upon completion of a preliminary screening where no referral was made, a copy of the preliminary screener's Report Form.

# Completing the Preliminary Screening

## Coordination and completing the preliminary screening

Preliminary screeners may cooperate on the completion of a preliminary screening. Where there is more than one preliminary screener involved in the evaluation of a development they may:

- a) consult with each other;
- b) adopt another's preliminary screening report;
- c) participate in a joint preliminary screening; or
- d) where one of the preliminary screeners is one of the Land and Water Boards, the other preliminary screeners can choose not to do a preliminary screening and allow the Land and Water Board to complete the work.

Preliminary screeners should endeavour, whenever possible, to avoid duplication and seek harmonization measures.

See Table 1 for an example of how a preliminary screening might be completed where one of the Land and Water Boards is involved.



**Table 1: Example of a preliminary screening involving a Land and Water Board**  
 (Assumes Class A Land Use Permit)

STEPS	PRELIMINARY SCREENER	DEVELOPER
Application made	<p>Examines application for completeness (where applicable, review should include confirmation of landowner and conformity with land use plan).</p> <p>Once the application and documents are complete, the regulatory time clock begins.</p> <p>Attaches any supplementary information to the application.</p> <p>Works with the developer to identify other preliminary screeners (e.g., RAs).</p>	<p>Completes application</p> <p>Application should include:</p> <ul style="list-style-type: none"> <li>- good description of development</li> <li>- other preliminary screeners</li> <li>- verification of contact with the landowner</li> </ul>
<p>Notify the Review Board</p> <p>Application circulated to interested parties for comment</p> <p>Preliminary screening report finished, should include reasons for decisions</p> <p>Pause Period to allow for a possible referral of development to Review Board</p>	<p>Land and Water Board contacts other potential preliminary screeners to confirm preliminary screener status and determine if they wish to coordinate (within 10 days). Land and Water Board also circulates application to other regulatory authorities and interested parties.</p> <p>Other preliminary screeners indicate if they require additional information.</p> <p>Other regulatory authorities and interested parties also provide comments on the application.</p> <p>Land and Water Board prepares preliminary screening report and circulates it to other preliminary screeners for comment.</p> <p>Land and Water Board compiles and circulates report to other preliminary screeners, Review Board, land owner and other bodies.</p> <p>Each preliminary screener arrives at their own preliminary screening decision and prepares a written reasons of decision report which will be made available to the public.</p> <p>Notification of completed preliminary screening report</p>	<p>Provide additional information, as required.</p> <p>Will be informed of the preliminary screening process and who is doing the preliminary screening.</p>
Licence or permit issuance		<p>Licence or permit can be issued with reasons for decision.</p> <p>Developer receives copy of preliminary screening report.</p>

## **Factors to be considered during a preliminary screening**

Preliminary screening is a small scale environmental impact assessment. The MVRMA requires that certain factors be taken into account when completing a preliminary screening and before taking a decision. These factors vary whether the development is inside a local government boundaries or outside local government boundaries. As always, good practice holds that you start with an understanding of the baseline environment i.e., state of the environment.

### Key definitions from the Act:

“**Environment**” means the components of the Earth and includes (a) land, water and air, including all layers of the atmosphere; (b) all organic and inorganic matter and living organisms; and (c) the interacting natural systems that include components referred to in paragraphs (a) and (b).

“**Impact on the environment**” means any effect on land, water, air or any other component of the environment, as well as on wildlife harvesting, and includes any effect on the social and cultural environment or on heritage resources.

“**Harvesting**”, in relation to wildlife, means hunting, trapping or fishing activities carried on in conformity with a land claim agreement or, in respect of persons and places not subject to a land claim agreement, carried on pursuant to aboriginal or treaty rights.

“**Heritage resources**” means archaeological or historic sites, burial sites, artifacts and other objects of historical, cultural or religious significance, and historical or cultural records.

### Factors when the development is outside local government boundaries:

- a. public concerns; and
- b. all environmental components captured under the definition “impact on the environment”

### Factors when the development is inside local government boundaries:

- a. public concerns
- b. air
- c. water
- d. renewable resources

## **Use of previous preliminary screenings, EA and EIR**

Preliminary screeners should use all information available for making a decision. This includes previous EIAs of a development, including any previous preliminary screening and related information.

## **Public Involvement**

The MVRMA makes no explicit requirement for public involvement during preliminary screening. Nevertheless, it is advisable to involve the public before proceeding with a development. This applies to developers and preliminary screeners.

Where efforts to involve the public have been undertaken, the results should be summarized for the public record. The summary may include:

- a. A record of public sessions including, but not limited to:
  - (i) the dates of meetings;
  - (ii) a list of issues and findings;
  - (iii) a copy of any letters or notification of support for the proposed development; and,
  - (iv) any identified or suggested need for further public involvement,
- b. Status of permission from a land owner to occupy the land where the development proposal is planned.
- c. Information on any arrangements or agreements with people potentially impacted by the proposed development.

## **Decision and Written Reason**

In decision making, the MVRMA makes a distinction between developments that are outside local government boundaries and those inside local government boundaries.

### **Development outside of local government boundary**

Where a development is outside of the boundaries of a local government, a preliminary screener that conducts a preliminary screening will:

- a. Determine and report to the Review Board whether, in its opinion, the development might have a significant adverse impact on the environment or might be a cause of public concern; and
- b. Where it so determines in the affirmative, refer the proposal to the Review Board for an environmental assessment.

## **Development within local government boundary**

Where a development is wholly within the boundaries of a local government, a preliminary screener that conducts a preliminary screening will:

- a. Determine and report to the Review Board whether, in its opinion, the development is likely to have a significant adverse impact on air, water or renewable resources or might be a cause of public concern; and
- b. Where it so determines in the affirmative, refer the proposal to the Review Board for an environmental assessment.

## **Referral**

When a development has been referred for EA, no activities can be undertaken that would allow the development to proceed until the EA is completed. For example, no licence, permit or other authorization for the carrying out of that development can be issued by a government department or agency. Likewise, a proposed development by the Gwich'in Tribal Council or Sahtu Secretariat Incorporated, or a department or agency of the federal or territorial government cannot proceed until the EA is done.

When a decision has been made to refer a proposed development to the Review Board, the preliminary screener should submit to the Review Board:

- a. A letter with rationale and reasons for the referral  
Where available, a copy of:
  - (i) the preliminary screener's Report Form
  - (ii) the application for the proposed development, including any project description, background documents, previous assessments and relevant correspondence
- b. The name and address of the developer
- c. Any other pertinent information, including any results from community consultation

## **Written reasons**

Every preliminary screener will issue a preliminary screening report including its written reasons for the decision or recommendations. The written reasons shall be made available to the public, and for completeness, distributed to the developer, other preliminary screeners, the Review Board and other regulatory authorities.

A preliminary screener can be the final decision-making body; that is, upon completion of a preliminary screening, where no referral is made, and the Review Board has no special concern resulting in an environmental assessment, the preliminary screener issues the licence, permit or authorization for a development.

For a development not requiring a licence, permit or other authorization and undergoing a preliminary

screening, the preliminary screener will also have to issue written reasons when completing their preliminary screening.

## **Environmental assessment not withstanding the preliminary screening**

The MVRMA allows for an EA even when a preliminary screener does not refer a development proposal to the Review Board. Referrals can be made by the following:

- a) a RA, DRA, or department or agency of the federal or territorial government;
- b) the GTC or SSI, in the case of a development to be carried out in their respective settlement areas or a development that might, in its opinion, have an adverse impact on the environment on that settlement area;
- c) a local government, in the case of a development to be carried out within its boundaries or a development that might, in its opinion, have an adverse impact on the environment within its boundaries; or
- d) the Review Board.

In this circumstance, developments shall not be allowed to proceed or irrevocable decisions shall not be made regarding the development until the EA is completed.

## **Environmental assessment of developments not requiring a preliminary screening**

The MVRMA allows for the completion of an EA, under certain circumstances, even where preliminary screening was not required. The circumstances where this is allowed are as follows:

- a) where a licence, permit or authorization is required, but it is not a licence, permit or authorization found on the Preliminary Screening Requirements Regulation;
- b) where the development is exempt because of the Exemption Regulations; or
- c) where the development is found to be manifestly insignificant.

This referral can be done by the following:

- a) a RA, DRA, or department or agency of the federal or territorial government;
- b) the GTC or SSI, in the case of a development to be carried out in their respective settlement areas or a development that might, in its opinion, have an adverse impact on the environment on that settlement area;

- c) a local government, in the case of a development to be carried out within its boundaries or a development that might, in its opinion, have an adverse impact on the environment within its boundaries; or
- d) the Review Board.

In the case of the Review Board, the EA of a development not requiring preliminary screening for developments on the Exemption Regulation or exempt because the development is manifestly insignificant, can only be undertaken where there is a special environmental concern.

As with the above, developments shall not be allowed to proceed or irrevocable decisions made regarding the development until the EA is completed.

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# SECTION 6

## ENVIRONMENTAL ASSESSMENT

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### Introduction

This section provides information on the environmental assessment process conducted by the Mackenzie Valley Environmental Impact Review Board (Review Board). For reference purposes, the *Mackenzie Valley Resource Management Act* (MVRMA) describes the environmental assessment (EA) process in sections 126 to 131.

Environmental assessment is a more detailed, second level evaluation in the environmental impact assessment process described in the MVRMA. Environmental assessment measures the changes in the environment resulting from a development and evaluates the benefits and risks before deciding if a development should proceed.

#### Glossary of terms:

*Development description* - an initial report prepared by the developer describing the proposed development and the environment to be impacted

*Environmental assessment report* - the report completed by the developer describing the development, impacted environment, potential environmental effects and proposed mitigation.

*Federal minister* - refers to the Minister of Indian Affairs and Northern Development

*First nations* - means the Gwich'in First Nation, the Sahtu First Nation or bodies representing other Dene or Metis of the North Slave, South Slave or Deh Cho region of the Mackenzie Valley

*Government* - refers to the federal and territorial government

*Local government* - any local government established under the laws of the Northwest Territories, including a city, town, village, hamlet, charter community or settlement, whether incorporated or not, and includes the territorial government acting in the place of a local government pursuant to those laws

*National Energy Board* - the National Energy Board (NEB) is the only designated regulatory agency under the MVRMA

*Reasons for decision* - a written explanation, which is made public, based on information presented during the panel of the rationale for a recommendation or decision made

*Regulatory Authority (RA)* - in relation to a development, means a body or person responsible for issuing a licence, permit or other authorization required for the development under any federal or territorial law, but does not include a designated regulatory agency or a local government e.g., Land and Water Boards, Department of Fisheries and Ocean, Resources, Wildlife and Economic Development.

## **Mackenzie Valley Environmental Impact Review Board**

The Mackenzie Valley Environmental Impact Review Board (Review Board) is the principal body for EA and environmental impact review (EIR) in the Mackenzie Valley. The Review Board is an independent body, accountable to the public, whose members are not acting on behalf or in the interest of their nominating agency or other organization.

The activities of the Review Board are governed by the MVRMA, and any by-laws, rules and guidelines, e.g., interim guidelines, the Review Board may have created.

### *Membership and quorum*

The Review Board is composed of not less than seven (7) members including a chairperson. Not including the chairperson, one half of the members are nominated by first nations, and one half of the members are nominated by government. The Board's quorum is five (5) members with two appointed first nation members, two appointed government members and a chairperson.

### *Alternates*

The MVRMA allows for alternates to be appointed by the Minister of Indian Affairs and Northern Development (DIAND Minister) in the case of absence or incapacity of members. The alternate member is selected from persons nominated by first nations or the territorial Minister. The activities of alternates are governed by the Review Board by-laws.

## **Deciding the need for an environmental assessment**

### *Referral at the end of a preliminary screening*

At the end of a preliminary screening, the body or agency that does preliminary screening, such as one of the Land and Water Boards or federal and territorial regulatory authorities, shall refer a development proposal to the Review Board because they have determined that the development might be the cause of public concern or it might cause significant adverse impacts.

### *Environmental assessment despite the results of a preliminary screening*



The MVRMA allows for an EA even when it is determined that no EA is required. These referrals to the Review Board can be made by:

- a) a regulatory authority, the National Energy Board, or department or agency of the federal or territorial government;
- b) the Gwich'in Tribal Council (GTC) or Sahtu Secretariat Inc. (SSI), in the case of a development to be carried out in their respective settlement areas or a development that might, in its opinion, have an adverse impact on the environment on that settlement area;
- c) a local government, in the case of a development to be carried out within its boundaries or a development that might, in its opinion, have an adverse impact on the environment within its boundaries; or
- d) the Review Board.

*Environmental assessment despite being exempt from preliminary screening*

Under specific circumstances, an environmental assessment can be done by the Review Board even when the development was exempt from preliminary screening. The occasions where this is allowed are as follows:

- a) where a licence, permit or authorization is required, but it is not a licence, permit or authorization found on the Preliminary Screening Requirements Regulation;
- b) where the development is exempt because of the Exemption Regulations; or
- c) where the development is found to be manifestly insignificant.

This referral can be done by the following:

- a) a regulatory authority, National Energy Board, or department or agency of the federal or territorial government;
- b) the GTC or SSI, in the case of a development to be carried out in their respective settlement areas or a development that might, in its opinion, have an adverse impact on the environment on that settlement area;
- c) a local government, in the case of a development to be carried out within its boundaries or a development that might, in its opinion, have an adverse impact on the environment within its boundaries; or

- d) the Review Board.

In the case of the Review Board, the environmental assessment of developments on the *Exemption Regulation* or exempt because the development is manifestly insignificant, can only be undertaken where there is a special environmental concern as determined by the Review Board.

The Board will only accept a referral for an EA from an organization with this authority.

### **Referral for Environmental Assessment**

When a development proposal has been referred to the Review Board, the organization doing the referring should submit:

- a) A letter with rationale and reasons for the referral;
- b) Where available, a copy of (i) the preliminary screener's written reasons for decision report, including any recommendations; and (ii) the developer's application, including any background documents and correspondence; and,
- c) Any other relevant information, such as the results from community consultation and previous EA reports.

### **Environmental Assessment on Review Board's own motion**

When conducting an EA on its own motion, the Review Board will request from any preliminary screener or from the developer:

- a) Where available, a copy of (i) the preliminary screener's written reasons for decision report, including any recommendations and (ii) the developer's application, including any background documents and correspondence; and,
- b) Any other relevant information, such as the results from community consultation and previous EA reports.

Where an issue of special environmental concern as been identified, the Review Board will:

- a) Where the development has not started, stipulate the developer not proceed until the Review Board's process has been completed; and,
- b) Where available, obtain any relevant information.

## **Notification**

After the decision to do an EA has been made, the Review Board will notify the developer and every applicable regulatory authority or the National Energy Board of a referral or a decision on its own motion to conduct an EA. The developer will be provided with a copy of these *Guidelines* and any other relevant documents.

## **Irrevocable actions**

After a development has been referred for an EA no actions can be taken that would allow the development to proceed until the EA is completed. For example, no government department and agency can issue a licence, permit or other authorization that would allow the development to proceed. The same holds when the GTC or SSI, or a department or agency of the federal or territorial government propose a development. They cannot proceed with the development until the Review Board completes the EA.

## **Setting the context for the environmental assessment**

As with preliminary screening, the environmental assessment process is guided by several principles and factors. Mostly, the Review Board is expected to do its work in a timely and efficient manner, and at the same time protect the environment from the significant adverse impacts of proposed developments; and protect the economic, social and cultural well-being of residents and communities in the Mackenzie Valley.

### **Key definitions from the Act:**

“**Environment**” means the components of the Earth and includes (a) land, water and air, including all layers of the atmosphere; (b) all organic and inorganic matter and living organisms; and (c) the interacting natural systems that include components referred to in paragraphs (a) and (b).

“**Impact on the environment**” means any effect on land, water, air or any other component of the environment, as well as on wildlife harvesting, and includes any effect on the social and cultural environment or on heritage resources.

“**Harvesting**”, in relation to wildlife, means hunting, trapping or fishing activities carried on in conformity with a land claim agreement or, in respect of persons and places not subject to a land claim agreement, carried on pursuant to aboriginal or treaty rights.

“**Heritage resources**” means archaeological or historic sites, burial sites, artifacts and other objects of historical, cultural or religious significance, and historical or cultural records.

“**Mitigative or remedial measure**” means a measure for the control, reduction or elimination of an adverse impact of a development on the environment, including a restorative measure.

### **Factors to be considered**

Every EA shall include the factors listed below:

- a) The impact of the proposed development on the environment, including the impact of malfunctions, or accidents that may occur in connection with development, and any cumulative impact that is likely to result from the development in combination with other developments;
- b) The significance of any such impact;
- c) Any comments submitted by members of the public in accordance with the regulations, these *Guidelines*, or other rules of practice and procedure established by the Board;
- d) Where the proposed development is likely to have significance adverse impact on the environment, the imposition of mitigative or remedial measures; and
- e) Any other matter, such as the need for the development and any available alternatives to it, that the Board or any responsible minister, after consulting with the Review Board, determines to be relevant.

### **The environmental assessment**

An EA starts with the referral of a development proposal to the Review Board or the Review Board calling up a development proposal on its own. After that, the majority of the EA work is done by the developer under the direction of the Review Board.

The developer is responsible for production, revision, cost and distribution of the eventual Environmental Assessment Report. The Board will inform the developer how many copies of this report are required. The Board retains the final decision regarding the direction and requirements of the developer’s Environmental Assessment Report.

## **Scoping**

Scoping is deciding what is included in an environmental assessment and what is not. The Review Board establishes for every environmental assessment the scope of the development and the scope of the environmental assessment. How the Review Board establishes the scope is at its discretion. Scoping will normally be done after a development description has been submitted by the developer. The development description, at a minimum, is a report describing the development and the environment. The Review Board may also undertake site visits prior to determining scope.

Scope of development is the description of the development. It is all the separate parts of the development. For example for a proposed mine, the Review Board might decide that the development includes not only the mine facility but also additional components such as access roads.

Scope of assessment are the components of the environment which will be evaluated for impacts from the proposed development. This may include aquatic (e.g., fish habitat) or land (e.g., vegetation) components, as well as, social (housing needs) or economic (subsidies) components.

## **Scale of the assessment**

Developments are not identical. Therefore, it is necessary to design the EA according to the size and scale of the development, any public concern expressed, and the potential significant adverse impacts. To do this, the Review Board will evaluate any relevant information such as:

- a) any previous EA reports completed with respect to the development under consideration;
- b) the preliminary screening report prepared at the time of referral;
- c) the development description if prepared; or
- d) input from experts, advisors and the public.

## **Traditional Knowledge/ Local Knowledge/ Scientific Knowledge**

The Review Board expects all relevant forms of information to be gathered and used in the course of completing the EA report. All types of information are necessary to complete the picture. That is, get a full description of the environment and understand the effects of the proposed development.

## **Use of previous reports**

Developers, RAs and the NEB may assist by providing the Review Board with copies of, or references to, previous environmental assessment reports relevant to the development proposal. Developers may use the information in these reports in the preparation of the EA report.

The Review Board will take applicable EA reports into account when undertaking its environmental assessment. These reports will include any conducted under the *Environmental Assessment and Review Process Guidelines Order* and the *Canadian Environmental Assessment Act*.

### **Environmental Assessment Report**

The Environmental Assessment Report is the report summarizing the work undertaken to evaluate the environmental effects of a development. It should be written and designed for a non-technical audience. This report will be written by the developer.

The document can include, but is not restricted to the following information:

- Title (of the development proposal)
- Executive summary (translated into appropriate aboriginal languages)
- Description of the development (e.g., phases, timetables, location, technology used, alternatives to the development, development design details taking into account the environment)
- Description of the existing environment including environmental interactions (e.g., natural and human setting);
- Impact of the development on the environment, including those caused by malfunctions or accidents, and any cumulative impact(s);
- List of potential impacts and the proposed mitigation or remedial measures;
- Identification and description of the residual impacts following mitigation or remedial measures;
- Results and summary of issues from public and community consultation, including any concerns raised;
- Plans for any environmental management plan, follow-up and monitoring;
- List of supporting evidence and information sources, including previous environmental assessments; and
- List of the required licences, permits and other authorizations, if relevant.

Prior to writing the EA report, the Review Board will provide additional direction on the content of the report and on the completion of the environmental assessment overall.

The developer submits the Environmental Assessment Report to the Review Board. Where the Board reviews the Environmental Assessment Report for any deficiencies. If there are any, the Review Board will inform the developer in writing of the deficiency and request it be addressed. If the deficiency has not been addressed within a time set by the Review Board, the Board may be required to delay or adjourn its environmental assessment. Those affected by any delay or adjournment will be notified in writing.

## Mitigation

Mitigation should be part of the design of the development. That is, the development should be designed to control, reduce or eliminate adverse impacts. As well, the design should also include restorative measures that will be undertaken throughout the lifespan of the development.

## Reasons for Decision Report

The Review Board will, once all the information is before it, complete an environmental assessment and endeavor to make a timely and expeditious decision. The developer and authorities will be notified of any schedule set by the Board, including any anticipated delay. Before preparing the Reasons for Decision Report, the Review Board may hold public meetings on the Environmental Assessment Report and any other report prepared.

The Review Board's Reasons for Decision Report will indicate one of the following:

- a. Where the proposed development is not likely to have any significant<sup>6</sup> adverse impact on the environment or to be a cause of significant<sup>6</sup> public concern, determine a review of the development is unnecessary;
- b. Where the proposed development is likely to have a significant adverse impact on the environment
  - (i) order that a review of the proposal be conducted; or
  - (ii) recommend that the approval of the proposal be made subject to prescribed measures to prevent the significant adverse impact.
- c. Where the proposed development is likely to be a cause of significant public concern in any part of Canada, order that a review of the proposal be conducted; and,
- d. Where the proposed development is likely to cause an adverse impact on the environment so significant that it cannot be justified, recommend that the proposal be rejected without a review.

When applicable, the Review Board's Reasons for Decision Report will also:

- a. Identify any area within or outside the Mackenzie Valley where a development is likely to have a significant adverse environmental impact or be a cause of significant public concern, and

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<sup>6</sup> "Significance" may be measured by considering the following criteria: risk (what are the chances of e.g., an accident); prevalence (how long with the impact will persist); duration (how long the e.g. spill will occur); magnitude (how big is the impact's footprint); sensitivity (any special features e.g., heritage resources, migration routes); technology (existing compared to unproven techniques); history (important lessons learned from the past); and any other relevant factors

- b. Specify the extent of the area affected.

The Review Board will provide a copy of its Reasons for Decision Report to:

- the federal Minister (DIAND)
- the developer
- the National Energy Board if it is an oil or gas development proposal
- preliminary screener(s)
- the referral body

The Board's Reasons for Decision Report will be available to the public.

## **Decisions**

The Review Board, government and the NEB have a role in making a decision on the development under consideration. The Review Board provides recommendations to government. Government and the NEB agree or disagree with those decisions. Where the Review Board decides that an environmental impact review is not necessary,

- a. a person may proceed with a development; and
- b. an authority may issue any licence, permit or other authorization for a development,

after ten (10) days have lapsed following receipt of the Board's Reasons for Decision Report.

## **Government**

The responsibility of reviewing the Reasons for Decision Report rests with the DIAND Minister unless the DIAND Minister delegates that responsibility to another Minister. After considering the Review Board's Reasons for Decision report, DIAND and other Ministers with a decision making role may:

- a. Order an environmental impact review of the development proposal, regardless of the Review Board's decision that a review of the development is unnecessary;
- b. Where the Board recommends the approval of the proposed development be made subject to measures to prevent the significant adverse impact, or be rejected without an environmental impact review, DIAND and responsible ministers may:
  - (i) adopt the recommendation or refer it back to the Review Board for further consideration, or
  - (ii) after consulting with the Review Board, either adopt the recommendation with modifications, or reject it and order an environmental impact review of the proposal; or,



- c. Regardless of the Review Board's decision, refer the development to the Minister of the Environment for a joint review under the CEAA where the DIAND Minister and the ministers consider it to be of national interest.

Where an environmental impact review is ordered, DIAND and responsible ministers will:

- a. Identify any area within or outside the Mackenzie Valley in which the development is likely, in their opinion, to have a significant adverse impact or to be a cause of significant public concern; and,
- b. Specify the extent to which that area is affected.

### **National Energy Board**

A National Energy Board will, after considering the Review Board's report containing its recommendation (the development be subject to measures or rejected without a review):

- a. Adopt the recommendation or refer it back to the Board for further consideration; or
- b. After consulting the Board, adopt the recommendation with modifications or reject it and order an environmental impact review of the proposal, and
- c. carry out, to the extent of its authority, any recommendation that it adopts.

Where an environmental impact review is ordered because the proposed development is likely to have a significant adverse impact on the environment, the National Energy Board will:

- a. Identify any area within or outside the Mackenzie Valley in which the development is likely, in its opinion, to have a significant adverse impact or to be a cause of significant public concern; and,
- b. Specify the extent to which that area is affected.

If the National Energy Board considers any new information that was not before the Board, or public concern not in the Board's reasons, the new information or public concern will be identified in the National Energy Board's decision.

### **Public Consultation and Input**

The Review Board encourages developers to commence their discussions with affected communities, federal and territorial government departments and agencies as early as possible in the life of the development. In conducting an environmental assessment, the Review Board will request from the developer a written record of their consultation beginning with preliminary screening.

For itself, the Review Board may hold public consultations/ hearings when conducting an environmental assessment. All consultations/ hearings are public except in the case where proprietary information is

presented. The need for consultations/ hearings will be decided on a case by case basis. Information on meetings and hearings can be found at the Review Board offices.

The developer's contact with the Review Board is through its Executive Director and staff. The Review Board's staff can provide information on consultation, including a list of contact names and other sources.

### **Development registry**

The Review Board maintains a Development Registry of proposed developments in the Mackenzie Valley. The Development Registry is all the documents related to the environmental assessment. These documents are available for viewing at the Review Board's office. The *Access to Information Act* and the *Privacy Act* will determine what information may or may not be available to the public.

At the end of an environmental assessment, the public registry on a development proposal will be closed and the files will be properly archived.

### **Expert advice**

The Review Board may employ or utilize the services of advisors, additional staff and other sources as are necessary. The Review Board may also obtain any information from the federal or territorial government that it feels is necessary to conduct the environmental assessment. If necessary, it has the power to subpoena the attendance and examination of witnesses and the production and inspection of documents.

Further, from time to time, the Review Board may require that government provide its position with respect to a development vis-a-vis policies, conventions and protocols government is responsible for implementing. This should be completed at the same time as the environmental assessment report.

## **Transboundary and Transregional Developments**

Not all developments or their effects are limited to the Mackenzie Valley. Many developments cross boundaries. Therefore, for each environmental assessment, the Review Board needs to determine if the development proposal has transboundary implications and if so, then contact the other environmental assessment bodies to coordinate the examination of the environmental effects related to the development. It is important to do this early.

Where a development will be carried out:

- a. Wholly within the Mackenzie Valley; and,
- b. Might have a significant adverse environmental impact in a region (e.g., Inuvialuit Settlement Region) outside the Mackenzie Valley,

the Board will advise the authority responsible in that region and request its cooperation in the conduct of the environmental assessment.

Where a development will be carried out:

**a.** Partly in the Mackenzie Valley and partly in a region (e.g., Nunavut) of the Northwest Territories or Yukon Territory; or,

**b.** Partly in a province,

the Board will endeavour to coordinate its environmental assessment with those of any authority responsible in that region or province.

Where a development will be carried out:

**a.** Wholly outside of the Mackenzie Valley in an adjacent region or province (e.g., Alberta); and,

**b.** Might have a significant adverse environmental impact in the Mackenzie Valley, the Board may, with the approval of the federal Minister, enter into an agreement with the authority responsible in that region or province. The agreement will provide for the Board's participation in the examination of the environmental effects of the development by that authority.

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# SECTION 7

## ENVIRONMENTAL IMPACT REVIEW

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### Introduction

This section describes the environmental impact review (panel) process, including the responsibilities of the Review Board and the panel. For reference purposes, the *Mackenzie Valley Resource Management Act* describes the environmental impact review process in s. 132 to s. 137. Sections 138 to 142 describe cooperation and joint reviews.

#### Glossary of terms:

*Environmental impact review* - the final level of evaluation of the environmental effects of a development in the *Mackenzie Valley Resource Management Act*

*Environmental impact statement* - the report prepared by the developer on the potential impacts of a proposed development

*Environmental impact statement guidelines* - the instructions to the developer on what to include in the environmental impact statement

*first nation* - the Gwich'in First Nation, Sahtu First Nation or bodies representing other Dene or Metis of the North Slave, South Slave or Deh Cho region in the Mackenzie Valley

*Guideline* - written direction produced by the Review Board according to s.120 of the MVRMA

*Panel* - three or more members of the Review Board including a chairperson responsible for evaluating the environmental effects of a development except in the case of CEAA, transboundary developments

*Reasons for decision* - a written explanation, which is made public, based on information presented during the panel of the rationale for a recommendation or decision made

*Responsible minister* - any minister of the Crown in right of Canada or of the territorial government having jurisdiction in relation to the development under federal or territorial law

### Deciding the need for a Review

The decision for an environmental impact review is made after the completion of an environmental assessment. This decision can be made by the Review Board, the DIAND Minister or the NEB.

## Setting the context for the Review

As with the environmental assessment process, the environmental impact review is guided by several principles and factors. The Review Board and the panel are expected to do their work in a timely and efficient manner, and at the same time protect the environment from the significant adverse impacts and protect the economic, social and cultural well-being of residents and communities in the Mackenzie Valley.

### Definitions needed to set the context:

**“Environment”** means the components of the Earth and includes (a) land, water and air, including all layers of the atmosphere; (b) all organic and inorganic matter and living organisms; and (c) the interacting natural systems that include components referred to in paragraphs (a) and (b).

**“Impact on the environment”** means any effect on land, water, air or any other component of the environment, as well as on wildlife harvesting, and includes any effect on the social and cultural environment or on heritage resources.

**“Harvesting”**, in relation to wildlife, means hunting, trapping or fishing activities carried on in conformity with a land claim agreement or, in respect of persons and places not subject to a land claim agreement, carried on pursuant to aboriginal or treaty rights.

**“Heritage resources”** means archaeological or historic sites, burial sites, artifacts and other objects of historical, cultural or religious significance, and historical or cultural records.

**“Mitigative or remedial measure”** means a measure for the control, reduction or elimination of an adverse impact of a development on the environment, including a restorative measure.

### Factors to be considered

Section 117 requires that every environmental impact review shall include the factors listed below:

- a) The impact of the proposed development on the environment, including the impact of malfunctions, or accidents that may occur in connection with development, and any cumulative impact that is likely to result from the development in combination with other developments;
- b) The significance of any such impact;
- c) Where the proposed development is likely to have significance adverse impact on the environment, the imposition of mitigative or remedial measures;
- d) the purpose of the development;

- e) alternative means, if any, of carrying out the development that are technically and economically feasible, and the impact on the environment of such alternative means;
- f) the need for any follow-up program and the requirements of such a program;
- g) the capacity of any renewable resources that are likely to be significantly affected by the development to meet existing and future needs;
- h) Any comments submitted by members of the public in accordance with the regulations, s. 120 *Guidelines*, or other rules of practice and procedure established by the Review Board; and
- i) Any other matter, such as the need for the development and any available alternatives to it, that the Review Board or any responsible minister, after consulting with the Review Board, determines to be relevant;

## **The Environmental Impact Review**

The environmental impact review is composed of up to seven parts. These are:

- i) appointment of panel,
- ii) developing terms of reference for the panel,
- iii) preparation of environmental impact statement guidelines,
- iv) review of the environmental impact statement,
- v) public hearings,
- vi) panel report; and
- vii) government response.

The Review Board establishes the panel and outlines the process to be followed. It is responsible for establishing the panel, appointing its members, setting out its terms of reference for operation, arranging its budget and engaging the panel manager and support staff.

### **Appointment of Panel**

The Review Board selects and appoints the panel except in special circumstances such as cooperative or joint panel reviews (see later in this section). The panel will be made up of three or more Review Board members including a chairperson. In addition to Review Board members, the panel can include other people who have expertise related to the development under consideration.

#### *Panel composition - general*

When the panel is made up of Review Board members, it must be composed an equal number of first nation nominated members and government nominated members, not including the chairperson.

#### *Panel composition where development is wholly or partially in a settlement area*

For a development to be carried out wholly or partly in a settlement area, Review Board members appointed to a panel will include members nominated by the Gwich'in First Nation or Sahtu First Nation unless otherwise agreed by the first nation and the federal Minister.

The percentage of the panel that shall be Review Board members nominated by first nations will depend on how much of the development is in the settlement area. That is,

- a) Wholly within the first nation's settlement area, the Review Board members nominated by first nations will comprise half of the panel, other than the chairperson;
- b) Predominantly within the first nation's settlement area, the Review Board members nominated will comprise of at least two on the panel; and
- c) Partially, but not predominantly within the first nation's settlement area, the members nominated will comprise of at least one on the panel.

As soon as possible after appointment, the Review Board office, the panel Manager and staff shall conduct an orientation meeting with panel members to explain the panel's terms of reference, and outline the panel's responsibilities.

#### *Panel Power and Authorities*

The panel has all the powers of the Review Board including the ability to hold hearings, subpoena witnesses and make rules. It shall perform the duties of the Review Board. Like the Review Board, the panel is an independent body, accountable to the public, whose members are acting on behalf of the residents of the Mackenzie Valley. It, too, shall be unbiased and free of conflict of interest.

#### **Panel Terms of Reference**

The terms of reference set the bounds of the environmental impact review for the panel. The terms of reference may include a complete description of the development, the scope of the issues to be considered, the main steps of the process to be followed. It could also include the timeframe within which the work should be completed.

Among the instructions the Review Board should mention in its terms of reference is whether the panel needs to prepare environmental impact statement guidelines. In the case where the Review Board has determined that a report equal to an environmental impact statement exists, the panel may be directed to proceed directly to public hearings. Alternatively, the panel may be directed to seek public comment on the adequacy of the report before the Review Board will determine if it is necessary to prepare and issue draft environmental impact statement guidelines if an amendment to the terms of reference is required.

The terms of reference are prepared by the Review Board after consultation with the responsible ministers and any first nation affected by the development. During the preparation of terms of reference consideration of previous reports of similar types of developments should also be considered. Any existing environmental assessment reports should also be considered. If required, the panel may seek clarification of the terms of reference, or an amendment.

#### **Preparation of environmental impact statement (EIS) guidelines**

The EIS is the developer's report on the biophysical, socio-cultural and economic effects of the proposed development. The panel will prepare and provide to the developer EIS guidelines when directed by the Review Board. The EIS guidelines should not be inconsistent s.120 guidelines or its terms of reference. The EIS guidelines may include instructions on the distribution of the environmental impact statement; submission of the environmental impact statement; or issues identified as a result of site visits, scoping meetings, expert commentary and previous assessments reports.

#### *Site visits*

Site visits allow the panel members to develop an understanding for the environmental setting, potential issues and the development. Site visits are best undertaken prior to the preparation of the guidelines.

#### *Scoping*

In the preparation of the EIS guidelines, the panel may also hold scoping meetings. Scoping is the process of identifying issues and establishing the priority for the examination of the environmental impact review. The purpose of scoping is to ensure that the issues to be studied represent the concerns of the interested parties and are the issues which deserve to be studied. In a nutshell, scoping is the sorting out of the issues.

The scoping meetings will be conducted according to the rules for hearings. Normally, the panel will open these public meetings with a review of the process and the purpose of scoping. The developer will also be allowed to make a presentation on the proposed development.

#### *Experts and previous assessments*

The other source of scoping information comes from experts and previous environmental impact assessment reports. In particular, the environmental assessment completed by the Review Board.

After scoping, the panel will prepare draft EIS guidelines. The panel may make the EIS guidelines available to the public for comment and within what time frame the comments should be provided. This period provides an opportunity for the public, government agencies, industry, the developer and other interested parties to comment before the draft guidelines are finalized and issued to the developer.

Through consultation with interested parties, the panel will determine the language requirements and the number of copies of the EIS that are necessary for distribution. The panel shall consider the availability of electronic communication and the potential for reducing the numbers of hard copies required. The panel will specify these requirements in the final EIS guidelines.

Taking into account all the information received, the panel will finalize the EIS Guidelines. Once the guidelines are finalized, the panel will issue them to the developer and make them available to the public.



## **Review of the environmental impact statement**

The developer shall prepare the EIS according to the guidelines provided by the panel. The panel will review the EIS after it is submitted by the developer. The public will also have the opportunity to review and comment on the EIS.

While the developer is preparing the EIS, the panel manager, with direction from the panel, may arrange for the consultation or hearings. The panel manager will take into consideration communities that could be affected by the development, interested parties and their location and time availability, local culture and customs of affected communities, and the need to complete the review in a timely and cost-efficient manner.

Upon receipt of the EIS from the developer, the panel will review it against the EIS guidelines. If the panel determines that it does not have adequate information to proceed with public consultation or hearings, the panel shall advise the developer, publicly and in writing. Upon receipt of the additional information, the review panel will ensure that it is made available to the public for review and comment.

## **Public Consultations or Hearings**

The panel may hold public consultations or hearings on the accepted EIS. Information on hearings can be found at the Review Board offices. The panel may hold community and technical hearings/consultations.

If the panel has decided to hold public consultations or hearings, the panel will issue a notice indicating:

- dates and location(s) of the public hearing
- how to provide written evidence
- procedural rulings
- order of appearance
- rules, format and protocol for participants and interveners
- issue identification and order of address

Community hearings or consultations are held to encourage the full and open participation of people living in or adjacent to the area potentially affected by the development. The panel chairperson shall make it clear to participants that consultations or hearings will be conducted in an informal, but structured manner, and that all participants are to be treated with respect. To the extent possible, consultations and hearings will be conducted in an informal fashion.

The panel chairperson shall commence each community consultation or hearing with opening remarks. The developer may be asked to make a presentation at some or all of the consultations or hearings. The public will have the opportunity to present information and make statements. This may be followed by an informal question and answer period.

To ensure all participants have an opportunity to participate, reasonable time limits may be imposed. Where time limits are not imposed, the chairperson may encourage session participants to make their

presentations within a specified period of time, to allow all participants an opportunity to speak. The panel chairperson has the discretion to restrict discussion or presentations which are outside the mandate of the panel review, or which are repetitive or irrelevant. Organizations are encouraged to co-ordinate their presentations.

The panel chairperson shall determine the language(s) in which the proceedings shall be conducted. Upon prior notification, the chairperson shall have the discretion to decide if interpretation services are warranted.

Technical consultations/hearings provide an opportunity for registered participants, including the developer, to make a presentation to the panel on technical subjects that are within the scope of the review. The hearings may also provide an opportunity for participants and the panel to question the developer and its submissions, and for the panel and the developer to question participants' submissions. Some of these consultations/ hearings may be focused on one or two topics, which will be specified at the time the consultations/hearings are announced.

Where the panel is required to hear proprietary technical information in-camera, the panel shall make available its reasons for exercising that authority. If possible, information provided at an in-camera meeting should be summarized or characterized for the public record in a way that does not cause harm to an interested party.

The panel can not receive any new information after the consultations/hearings have ended.

Each person that provides information to the panel may be questioned after his or her presentation. A reasonable period of time for questions shall be provided following each presentation.

## **Panel Report**

At the close of hearing, the panel will prepare a report with a summary of comments from the public, the panel's analysis and conclusions, and its recommendation on the proposed development. That is, should the development i) be approved, with or without mitigative or remedial measures or a follow-up program, or ii) be rejected.

The Panel's report will be submitted to:

- a. The DIAND Minister, who will distribute it to every responsible minister; and,
- b. The National Energy Board in the case of a oil or gas development.

## **Government Response to Panel**

### *Government*

After considering the panel's report, the DIAND Minister and responsible ministers may agree to i) adopt the recommendation of the panel, or refer it back to the panel for further consideration; or ii) after consulting the panel, adopt the recommendation with modifications or reject it.

If DIAND and the responsible ministers consider any new matter that was not before the panel, including public concern not in the panel's reasons, the new matter will be identified in the government decision and in their consultations with the panel before government adopts a recommendation with modifications or reject it.

The DIAND Minister will prepare written reasons for decision and distributed to every first nation, local government, regulatory authority and department or agency of the territorial or federal government affected by the decision.

### *National Energy Board*

After considering the panel's report, a National Energy Board will i) adopt the recommendation of the panel, or refer it back to the panel for further consideration; or ii) after consulting the panel, adopt the recommendation with modifications or reject it.

If the National Energy Board considers any new matter that was not before the panel, including public concern not in the panel's reasons, the new matter will be identified in the National Energy Board's decision and in consultations they may have with the panel.

## **Implementing Recommendations**

Before a decision is made, no licence, permit or other authorization for the carrying out of a development shall be given or any other activity by government that would allow the development to proceed.

Once the decision is made then the affected first nation, local government, regulatory authority or department or agency of the federal or territorial government shall implement the recommendations.

## **Experts**

A panel established by the Review Board may get specialist or expert information or knowledge with respect to a development from federal authorities, or any other source, in possession of such information or knowledge. In addition to this, the need may arise for the panel to retain the services of independent non-government experts or legal counsel at any time during the review but prior to the completion of hearings, to provide advice on certain subjects within the panel's terms of reference.

The list of experts retained shall be made public by the panel. All documents obtained or created by the experts shall be made available to the public upon receipt by the panel. This shall exclude information subject to solicitor client privilege where the expert is a lawyer, or to proprietary information.

When the panel is appointed, the Review Board may make available to interested parties the reasons for referral, a list of panel members and short biographies, and the panel's terms of reference.

In the event that a panel member resigns or is unable to continue to work, the remaining members shall constitute the panel, provided the minimum panel size of three (3) people is maintained.

## **Public Participation Program**

The panel manager will prepare a draft public participation program prior to the orientation meeting. At the orientation meeting or shortly afterward, the panel will finalize a public participation program. Included in the public participation program will be an invitation to organizations and individuals to register as interveners.

In finalizing its public participation program, the Panel will:

- h) determine language requirements;
- i) determine the most appropriate means of communication for public participation;
- j) provide the opportunity for interested parties to indicate their interest in participating in the review;
- k) take into account cultural and community considerations such as important hunting periods, key community gatherings, and general assemblies of aboriginal communities;
- l) take into account seasonal, economic and social considerations;
- m) develop a mailing list of all participants in the review, using electronic mail where possible; and
- n) determine the need for and mandate of a local information officer.

The panel manager and staff shall establish a public registry. The panel manager will ensure convenient public access to the registry in both hard copy, Internet, and other forms. The registry shall contain a list of documents that would help members of the public participate in the review.

To facilitate public participation, the developer shall submit all documentation in hard copy, and in electronic form. Finalized documents shall be made available on CD-ROM, and distributed to the panel office, the Review Board office, all registered participants in the review, and to local libraries other public locations identified by the panel.

## **Cooperation and Joint Reviews**

A joint review between the Review Board and any other authority able to conduct environmental evaluations will replace a panel conducted by the Review Board. In a joint review, this chapter will apply with such modifications as may be required.

## **Canadian Environmental Assessment Act (CEAA)**

A review will be established jointly under the CEAA where it is determined that it is in the national interest to do so. This panel will satisfy the requirements of the CEAA. The panel report will be submitted to:

- a. The federal Minister, who will distribute it to every responsible minister; and
- b. The National Energy Board where a licence, permit or other authorization is required for an oil or gas development.

## **National Energy Board**

Where a review is ordered and a licence, permit or other authorization must be issued by a National Energy Board, the Review Board and the National Energy Board may enter into an agreement for a joint panel examination of the development's environmental impact. This joint panel will make a report of its examination to:

- a. The federal Minister, who will distribute it to every responsible minister; and
- b. The National Energy Board.

## **Impact outside the Mackenzie Valley**

Where it is determined that a development within the Mackenzie Valley is likely to have significant adverse environmental impact in a region outside the Mackenzie Valley, the Review Board may, with the approval of the DIAND Minister, enter into an agreement with the authority responsible for the examination of environmental effects in that region. The purpose of this agreement would be to establish:

- a. The coordination of the respective examinations of the environmental impact of the development; or
- b. The examination of the environmental impact of the development by a joint panel.

Where a joint panel is established, the panel report will go to the DIAND Minister, who will distribute it to every responsible minister; and National Energy Board if a licence, permit or other authorization is required.

This panel will exist instead of a Review Board panel.

## **Transregional and external developments**

Where a review is ordered for a development partly in the Mackenzie Valley and partly in a region of the Northwest Territories or Yukon Territory, or partly in a province, the Review Board may, with the approval of the DIAND Minister:

- a. Enter into an agreement with the Minister of the Environment to provide for a panel where the CEAA applies in that region or province; and

- b. In any other case, enter into an agreement with an authority responsible in that region or province to either coordinate their respective examinations of the development's environmental impact, or to provide for these examinations by a joint panel.

Where a panel is established according to (a) because the development is partly in a region of the Northwest Territories or Yukon Territory, at least one quarter of the panel's members, excluding the chairperson, must be appointed on the nomination of first nations and other aboriginal groups affected by the development proposal.

Where a panel is established under (a) or (b) above, it will make a report to:

- a. The federal Minister, who will distribute it to every responsible minister;
- b. The National Energy Board if a licence, permit or other authorization is required; and
- c. In case of a joint panel, the minister of the federal, provincial or territorial government having jurisdiction in relation to the authority having the ability to examine environmental effects.

One of these panels will exist instead of a Review Board panel.

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**SECTION 8**  
**APPENDICES**

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## APPENDIX A Definitions and Abbreviations

“**CEAA**” means the “*Canadian Environmental Assessment Act*”

“**Consultation**” means wherever in the *Mackenzie Valley Resource Management Act* reference is made, in relation to any matter, to a power or duty to consult, that power or duty shall be exercised:

- a. by providing, to the party to be consulted,
  - (i) notice of the matter insufficient form and detail to allow the party to prepare its views on the matter,
  - (ii) a reasonable period for the party to prepare those views, and
  - (iii) an opportunity to present those views to the party having the power or duty to consult; and
- b. by considering, fully and impartially, any views so presented [s.3].

“**Designated regulatory agency**” means an agency named in the schedule, referred to in a land claim agreement as an independent regulatory agency. Currently, the only agency named in the schedule is the National Energy Board.

“**Developer**” means any person carrying out an existing or proposed development. A developer may be an authority who issues a licence, permit or authorization listed on the *Preliminary Screening Requirements Regulation*, or a federal or territorial department or agency or the Gwich’in Tribal Council or the Sahtu Secretariat Incorporated who propose a development for which no authorization is required.

“**Development**” means any undertaking, or any part of an undertaking, that is carried out on land or water and, except where the context otherwise indicates, wholly within the Mackenzie Valley, and includes measures carried out by a department or agency of government leading to the establishment of a national park subject to the *National Parks Act* and an acquisition of lands pursuant to the *Historic Sites and Monuments Act*.

“**DIAND**” means the “Department of Indian Affairs and Northern Development”. See also “federal Minister”.

“**EARP**” means the “Environmental Impact Review Process”

“**EARPGO**” means the “Environmental Impact Review Process Guidelines Order”

“**EIA**” means “environmental impact assessment”

“**Emergency**” means a present or imminent event that requires prompt coordination of actions or special regulation of persons or property to protect health, safety, or welfare of people, or to limit damage to property and the environment.

“**Environment**” means the components of the Earth and includes (a) land, water and air, including all layers of the atmosphere; (b) all organic and inorganic matter and living organisms; and (c) the interacting natural systems that include components referred to in paragraphs (a) and (b).



**“Environmental assessment”** means an examination of a proposal for a development undertaken by the Review Board pursuant to section 126 of the *Mackenzie Valley Resource Management Act*.

**“Environmental impact review”** means an examination of a proposal for a development undertaken by a review panel established under section 132 of the *Mackenzie Valley Resource Management Act*.

**“Environmental impact statement”** means the report prepared by the developer on the potential impacts of a proposed development

**“Federal Minister”** means the Minister of Indian Affairs and Northern Development.

**“First nation”** means the Gwich'in First Nation, the Sahtu First Nation or a body representing the Dene or Metis of the North Slave, South Slave or Deh Cho region of the Mackenzie Valley.

**“Follow-up program”** means a program for evaluating (a) the soundness of an environmental assessment or environmental impact review of a proposal for a development; and (b) the effectiveness of the mitigative or remedial measures imposed as conditions of approval of the proposal.

**“Gwich'in Agreement”** means the Comprehensive Land Claim Agreement between Her Majesty the Queen in right of Canada and the Gwich'in as represented by the Gwich'in Tribal Council, signed on April 22, 1992 and approved, given effect and declared valid by the *Gwich'in Land Claim Settlement Act*, as that Agreement is amended from time to time in accordance with its provisions.

**“Gwich'in First Nation”** means the Gwich'in as represented by the Gwich'in Tribal Council referred to in the Gwich'in Agreement or by any successor to it.

**“Gwich'in Tribal Council”** see “Gwich'in First Nation”

**“Harvesting”** in relation to wildlife, means hunting, trapping or fishing activities carried on in conformity with a land claim agreement or, in respect of persons and places not subject to a land claim agreement, carried on pursuant to aboriginal or treaty rights.

**“Heritage resources”** means archaeological or historic sites, burial sites, artifacts and other objects of historical, cultural or religious significance, and historical or cultural records.

**“Impact on the environment”** means any effect on land, water, air or any other component of the environment, as well as on wildlife harvesting, and includes any effect on the social and cultural environment or on heritage resources.

**“Land claim agreement”** means the Gwich'in Agreement or the Sahtu Agreement.

**“Local government”** means any local government established under the laws of the Northwest Territories, including a city, town, village, hamlet, charter community or settlement, whether incorporated or not, and includes the territorial government acting in the place of a local government pursuant to those laws.

**“Mackenzie Valley”** means that part of the Northwest Territories bounded on the south by the 60th parallel of latitude, on the west by the Yukon Territory, on the north by the Inuvialuit Settlement Region, as defined in the Agreement given effect by the *Western Arctic (Inuvialuit) Claims Settlement Act*, and on the east by the Nunavut Settlement Area, as defined in the *Nunavut Land Claims Agreement Act*, but does not include Wood Buffalo National Park.

**“Mitigative or remedial measure”** means a measure for the control, reduction or elimination of an adverse impact of a development on the environment, including a restorative measure.

**“Review Board”** means the “Mackenzie Valley Environmental Impact Review Board”

**“Panel”** means three or members of the Review Board including a chairperson responsible for evaluating the environmental effects of a development except in the case of CEAA, transboundary developments

**“Preliminary screener”** can be:

- a. An authority who issues a licence, permit or authorization listed on the *Preliminary Screening Requirements Regulation*;
- b. A federal or territorial department or agency; or
- c. The Gwich'in First Nation (i.e., Gwich'in Tribal Council) and the Sahtu First Nation (i.e., Sahtu Secretariat Incorporated) who propose a development for which no authorization is required.

**“Preliminary screening”** means an examination of a proposal for a development under taken pursuant to section 124 of the *Mackenzie Valley Resource Management Act*. In these *Guidelines*, “preliminary screening” means an initial examination of a development proposal by a preliminary screener.

**“Regulatory authority”** in relation to a development, means a body or person responsible for issuing a licence, permit or other authorization required for the development under any federal or territorial law, but does not include a designated regulatory agency or a local government.

**“Responsible minister”** in relation to a proposal for a development, means any minister of the Crown in right of Canada or of the territorial government having jurisdiction in relation to the development under federal or territorial law.

**“Review”** refers to the process of “environmental impact review”

**“Sahtu Agreement”** means the Comprehensive Land Claim Agreement between Her Majesty the Queen in right of Canada and the Sahtu Dene and Metis as represented by the Sahtu Tribal Council, signed on September 6, 1993 and approved, given effect and declared valid by the *Sahtu Dene and Metis Land Claim Settlement Act*, as that Agreement is amended from time to time in accordance with its provisions.

**“Sahtu First Nation”** means the Sahtu Dene and Metis as represented by The Sahtu Secretariat Incorporated, a corporation without share capital under Part II of the *Canada Corporations Act*, chapter C-32 of the Revised Statutes of Canada, 1970, being the successor, for the purposes of this Act, to the Sahtu Tribal Council referred to in the Sahtu Agreement, or by any successor to that corporation.

**“Sahtu Secretariat Incorporated”** See “Sahtu First Nation”

**“Settlement area”** means a portion of the Mackenzie Valley to which a land claim agreement applies.

**“Settlement lands”** means lands referred to as settlement lands in a land claim agreement.

**“Territorial government”** means the government of the Northwest Territories.

**“Territorial Minister”** in relation to any provision of the *Mackenzie Valley Resource Management Act*, means the minister of the territorial government designated by instrument of the Executive Council of the Northwest Territories for the purposes of that provision.

## APPENDIX B Identifying Preliminary Screeners

This appendix is designed to assist developers in identifying preliminary screeners from whom a licence, permit or authorization may be required. Each question is followed by a legislative provision(s) contained on the *Preliminary Screening Requirements Regulation*, and a list of preliminary screeners that administer the legislation. If the answer to a question is "Yes", then the legislative provision that follows the question may be required and the preliminary screening provisions of the MVRMA may be invoked. For further information, the preliminary screeners identified should be contacted to determine their interest in the project.

Project Questions	Legislative Provisions	Possible R.A./DRA
<p><b>NATIONAL PARKS</b> Does the development occur in a National Park or National Historic Site, or is it likely to affect a National Park or National Historic Site?</p>	<p><i>National Historic Parks General Regulations</i></p> <ul style="list-style-type: none"> <li>• <i>National Parks Business Regulations</i></li> <li>• <i>National Parks General Regulations</i></li> <li>• <i>National Parks Building Regulations</i></li> <li>• <i>National Parks Lease and Licence of Occupation Regulations (1991)</i></li> <li>• <i>National Parks Wildlife Regulations</i></li> <li>• <i>National Parks Act</i></li> </ul>	<p>Canadian Heritage</p>
<p><b>TERRITORIAL PARKS</b> Does the development involve the establishment of a Territorial Park?</p>	<ul style="list-style-type: none"> <li>• <i>Forest Management Regulations (Forest Management Act)</i></li> <li>• <i>Pesticide Regulations (Pesticide Act)</i></li> <li>• <i>Outfitter Regulations (Travel and Tourism)</i></li> <li>• <i>Wildlife Business Regulations (Wildlife Act)</i></li> </ul>	<p>Resources Wildlife and Economic Development</p>
<p><b>Developments involving land and water</b></p>		

Project Questions	Legislative Provisions	Possible R.A./DRA
<p><b>INDIAN RESERVE LANDS</b> Is the development likely to affect Indian Reserve lands?</p>	<ul style="list-style-type: none"> <li>• <i>Indian Oil and Gas Regulations</i></li> <li>• <i>Indian Reserve Waste Disposal Regulations</i></li> <li>• <i>Indian Timber Regulations</i></li> <li>• <i>Indian Act</i></li> </ul>	<p>Indian and Northern Affairs</p>
<p><b>OIL AND GAS</b> Is the development likely to:</p> <ul style="list-style-type: none"> <li>• Involve the exploration for, production of or recovery of oil or gas?</li> <li>• Involve or affect a pipeline, property or related facility, that is used for the transmission of oil, gas or any other commodity and that connects provinces or extends beyond the limits of a province? A commodity pipeline does not include a sewer or water pipeline that is used solely for municipal purposes.</li> <li>• affect an international power line or property that is used for the purpose of transmitting electricity outside the territory?</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Canada Oil and Gas Operations Act</i></li> <li>• <i>National Energy Board Act</i></li> </ul>	<p>National Energy Board</p>

Project Questions	Legislative Provisions	Possible R.A./DRA
<p><b>RAILWAYS</b> Is the development likely to affect the operation of a railway company or property owned or leased by a railway company or require the installation of telephone, electricity, telegraph or other wire services for a railway facility?</p>	<p><i>Ammonium Nitrate Storage Facilities Regulations</i></p> <ul style="list-style-type: none"> <li>• <i>Chlorine Tank Car Unloading Facilities Regulations</i></li> <li>• <i>Liquefied Petroleum Gases Bulk Storage Regulations</i></li> <li>• <i>Anhydrous Ammonia Bulk Storage Regulations</i></li> <li>• <i>Canada Transportation Act</i></li> <li>• <i>Railway Safety Act</i></li> <li>• <i>Flammable Liquids Bulk Storage Regulations (Railroad Safety Act)</i></li> </ul>	<p>Canadian Transportation Agency and Transport Canada if Railway Safety Act is involved</p>
<p><b>RADIO-ACTIVE MATERIALS, MINING AND NUCLEAR FACILITIES</b> Does the development involve the mining, processing or use of thorium or uranium or other radioactive prescribed substances; or the construction of a nuclear facility?</p>	<ul style="list-style-type: none"> <li>• <i>Uranium and Thorium Mining Regulations</i></li> <li>• <i>Atomic Energy Control Regulations (Atomic Energy Control Act)</i></li> </ul>	<p>Atomic Energy Control Board</p>
<p><b>PCB</b> Does the development involve the testing or operation of a mobile PCB treatment or destruction system?</p>	<ul style="list-style-type: none"> <li>• <i>Federal Mobile PCB Treatment and Destruction Regulations (Canadian Environmental Protection Act)</i></li> </ul>	<p>Environment Canada</p>
<p><b>TRANSPORT OF DANGEROUS GOODS</b> Does the development involve the transportation of dangerous goods?</p>	<ul style="list-style-type: none"> <li>• <i>Transport of Dangerous Goods Act</i></li> </ul>	<p>Department of Transportation</p>

<b>Project Questions</b>	<b>Legislative Provisions</b>	<b>Possible R.A./DRA</b>
<p><b>BRIDGES</b> Does the development involve replacement or repair of a bridge?</p>	<ul style="list-style-type: none"> <li>• <i>Bridges Act</i></li> </ul>	<p>Public Works and Government Services.</p> <p>Department of Fisheries and Oceans if there are potential navigable waters issues</p>
<p><b>TELECOMMUNICATIONS</b> Does the development involve the selection of a site or construction of a radio communications tower?</p>	<ul style="list-style-type: none"> <li>• <i>Radiocommunication Act</i></li> </ul>	<p>Industry Canada</p>
<p><b>NATIONAL DEFENCE</b> Will the development involve activities related to national defence?</p>	<ul style="list-style-type: none"> <li>• <i>National Defence Act</i></li> </ul>	<p>Department of National Defence</p>
<p><b>EXPLOSIVES</b> Does the development involve production or holding of explosives in a magazine?</p>	<ul style="list-style-type: none"> <li>• <i>Explosives Act</i></li> </ul>	<p>Natural Resources</p> <p>Department of Fishers and Oceans as a blasting authorization may be required if blasting within 15m of a fish-bearing waterway.</p>
<p><b>LAND</b> Will the development occur on lands in the Northwest Territories that are under the control, management and administration of a Land and Water Board and require the issuance of a Class A or Class B permit?</p>	<ul style="list-style-type: none"> <li>• <i>Territorial Lands Use Regulations</i></li> <li>• <i>Mackenzie Valley Resource Management Act</i></li> </ul>	<p>Gwich'in Land and Water Board, Sahtu Land and Water Board, Mackenzie Valley Land and Water Board</p>
<p><b>FORESTS AND FOREST PRACTICES</b> Is the development likely to involve:</p> <ul style="list-style-type: none"> <li>• forest management;</li> <li>• forest fire management; and</li> <li>• timber harvesting?</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Forest Management Regulations</i></li> <li>• <i>Forest Management Act</i></li> <li>• <i>Forest Protection Act</i></li> </ul>	<p>Resources Wildlife and Economic Development</p>

Project Questions	Legislative Provisions	Possible R.A./DRA
<b>Developments involving water</b>		
<p><b>TAKING, DIVERSION OR DEPOSIT OF WASTE INTO WATER</b> Does the development involve the taking or diversion of water or the deposit of waste into water?</p>	<ul style="list-style-type: none"> <li>• <i>Northwest Territories Waters Act</i></li> <li>• <i>Fisheries Act</i></li> </ul>	<p>Gwich'in Land and Water Board Sahtu Land and Water Board Mackenzie Valley Land and Water Board  Environment Canada  Department of Fisheries and Oceans</p>
<p><b>METAL MINING EFFLUENT</b> Is the development likely to result in the deposition of metal mining liquid effluent into water frequented by fish?</p>	<ul style="list-style-type: none"> <li>• <i>Metal Mining Liquid Effluent Regulations</i></li> <li>• <i>Fisheries Act</i></li> </ul>	<p>Environment Canada  Dept. of Fisheries and Oceans.</p>
<p><b>NAVIGABILITY AND DREDGING</b> Is the development likely to involve dredge or fill operations? Is the development likely to affect the navigability of a water body or does it involve the removal or destruction of a wreck or abandoned vessel from a water body?</p>	<ul style="list-style-type: none"> <li>• <i>Navigable Waters Protection Act</i></li> <li>• <i>Territorial Dredging Regulations</i></li> </ul>	<p>Department of Indian and Northern Affairs  Dept. of Fisheries and Oceans (Coast Guard and Habitat Management) given the potential for dredging activities to affect fish habitat.</p>
<b>Developments involving hunting, fishing, wildlife and wildlife habitat</b>		
<p><b>FISH AND FISH HABITAT</b> Is the development likely to affect fish or fish habitat, affect the quantity or quality of water available for fish or result in the destruction of fish by means other than fishing?</p>	<ul style="list-style-type: none"> <li>• <i>Fisheries Act</i></li> </ul>	<p>Dept. of Fisheries and Oceans.</p>



Project Questions	Legislative Provisions	Possible R.A./DRA
<p><b>FISHING</b> Is the development likely to involve the taking of fish?</p>	<ul style="list-style-type: none"> <li>• <i>Northwest Territories Fisheries Regulations</i></li> <li>• <i>Fisheries Act</i></li> </ul>	<p>Resources Wildlife and Economic  Department of Fisheries and Oceans</p>
<p><b>REINDEER RESERVES</b> Does the development involve a reindeer reserve?</p>	<ul style="list-style-type: none"> <li>• <i>Northwest Territories Reindeer Regulations</i></li> </ul>	<p>Regulatory Authority: Indian and Northern Affairs.</p>
<p><b>WILDLIFE AREAS</b> Does the development occur in a wildlife area as defined in the Wildlife Area Regulations?</p>	<ul style="list-style-type: none"> <li>• <i>Wildlife Area Regulations</i></li> </ul>	<p>Environment Canada.</p>
<p><b>MIGRATORY BIRDS AND BIRD SANCTUARIES</b> Is the development likely to result in the killing, capturing, taking or possession of a migratory bird or its nest or eggs, or in the collection of eiderdown, or deposit of oils or other harmful substance in areas frequented by migratory birds, or is it likely to affect migratory bird habitat within a bird sanctuary, or result in the release of a species of bird not indigenous to Canada?</p>	<ul style="list-style-type: none"> <li>• <i>Migratory Bird Sanctuary Regulations</i></li> <li>• <i>Migratory Birds Regulations</i></li> </ul>	<p>Environment Canada.</p>
<p><b>CONTROL OF WILDLIFE</b> Is the development likely to involve the control of wildlife?</p>	<ul style="list-style-type: none"> <li>• <i>Wildlife Act</i></li> </ul>	<p>Resources, Wildlife and Economic Development</p>

# APPENDIX C Preliminary Screening Report Form

## Preliminary Screening Report Form

<b>Preliminary Screener Reference / File Number:</b>	
<b>Title:</b>	
<b>Organization:</b>	
<b>EIRB Reference Number:</b>	

1.

<b>Type of Development:</b>	New Development
(CHECK ALL THAT APPLY)	Amendment to Licence / Permit, EIRB Ref. # _____
	Renewal of Licence / Permit, EIRB Ref.# _____
	Requires permit, license or authorization
	Does not require permit, license or authorization

2.

Principal Activities	<i>(related to scoping)</i>	(CHECK ALL THAT APPLY)	
Construction	Exploration	Decommissioning	Repair
Installation	Industrial	Abandonment	Linear / Corridor
Maintenance	Recreation	Aerial	Scientific / Research
Expansion	Municipal	Harvesting	Water Intake
Operation	Quarry	Camp	Sewage
Other: (DESCRIBE)			Solid Waste

3.

Principal Development Components <i>(related to scoping)</i>	(CHECK ALL THAT APPLY)
Access Road	Waste Management
construction	disposal of hazardous waste
abandonment/removal	waste generation
modification e.g., widening, straightening	Sewage
Automobile, Aircraft or Vessel Movement	disposal of sewage
Blasting	Geoscientific Sampling
Building	trenching
Burning	diamond drill



6.

<b>Trans-boundary Implications</b>		(Check All That Apply - If Known & Applicable)	
British Columbia	Saskatchewan	Manitoba	Wood Buffalo National Park
Nunavut	Alberta	Yukon	Inuvialuit Settlement Region

7.

<b>Type of Transboundary Implication:</b>		
Public Concern	Development	Impact / Effect
(DESCRIBE):		

**PHYSICAL - CHEMICAL EFFECTS**

8.

**IMPACT**

**MITIGATION**

<b>Ground Water</b>	This Section does not apply.
water table alteration	
water quality changes	
infiltration changes	
other:	

9.

<b>Surface Water</b>	This Section does not apply.
flow or level changes	
water quality changes	
water quantity changes	
drainage pattern changes	
temperature	
wetland changes / loss	

other:	
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**10.**

<b>Noise</b>	This Section does not apply.
noise increase	
noise in/near water	
other:	

**11.**

<b>Land</b>	This Section does not apply.
geologic structure changes	
soil contamination	
buffer zone loss	
soil compaction & settling	
destabilization / erosion	
permafrost regime alteration	
other:	

**12.**

<b>Non Renewable Natural Resources</b>	This Section does not apply.
resource depletion	
other:	

13.

<b>Air / Climate / Atmosphere</b>	This Section does not apply.
(DESCRIBE)	

**BIOLOGICAL ENVIRONMENT**

14.

<b>Vegetation</b>	This Section does not apply.
species composition	
species introduction	
toxin / heavy accumulation	
other:	

15.

<b>Wildlife &amp; Fish</b>	This Section does not apply.
effects on rare, threatened or endangered species	
fish population changes	
waterfowl population changes	
breeding disturbance	
population reduction	
species diversity change	
health changes (Identify)	

behaviourial changes (Identify)	
habitat changes / effects	
game species effects	
toxins / heavy metals	
forestry changes	
agricultural changes	
other:	

#### INTERACTING ENVIRONMENT

16.

<b>Habitat and Communities</b>	This Section does not apply.
predator-prey	
wildlife habitat / ecosystem composition changes	
reduction / removal of keystone or endangered species	
removal of wildlife corridor or buffer zone	
other	

17.

<b>Social and Economic</b>	This Section does not apply.
planning / zoning changes or conflicts	

increase in urban facilities or services use	
rental house	
airport operations / capacity changes	
human health hazard	
impair the recreational use of water or aesthetic quality	
affect water use for other purposes	
affect other land use operations	
quality of life changes	
public concern	
other:	

**18.**

<b>Cultural and Heritage</b>	This Section does not apply.
affects to historic property	
increased economic pressure on historic properties	
change to or loss of historic resources	
change to or loss of archaeological resources	



increased pressure on archaeological sites	
change to or loss of aesthetically important site	
affects to aboriginal lifestyle	
other:	

19.

<b>PRELIMINARY SCREENER / REFERRING BODY INFORMATION</b> (CHECK ALL THAT APPLY)			
<b>Federal</b>	<b>RA or DRA</b>	<b>ADVICE</b>	<b>Permit Required</b>
Atomic Energy Control Board			
Canadian Heritage			
Canadian Transportation Agency			
Environment Canada			
Fisheries & Oceans			
Indian Affairs & Northern Development			
Industry Canada			
National Defense			
National Energy Board			
Natural Resources			
Public Works & Government Services			
Transport Canada			

20.

<b>Territorial</b>	<b>RA or DRA</b>	<b>ADVICE</b>	<b>Permit Required</b>
Municipal & Community Affairs			
Public Works & Government Services			
Resources, Wildlife & Economic Development			
Transportation			
Health Board			

21.

<b>Boards</b>	<b>RA or DRA</b>	<b>ADVICE</b>	<b>Permit Required</b>
Gwich'in Land & Water Board			
Sahtu Land & Water Board			
Mackenzie Valley Land & Water Board			
Renewable Resource Boards			
Local Health Board			

22.

<b>Aboriginal / First Nation</b>	
ADJOINING LAND CLAIM	

23.

<b>Local Government (IDENTIFY)</b>	
<b>Communities (IDENTIFY)</b>	

24.

**Reasons for Decision**

(List All Reasons and Supporting Rational for Preliminary Screening Decision)

25.

<b>Preliminary Screening Decision</b>	
<b>Outside Local Government Boundaries</b>	
	The development proposal might have a significant adverse impact on the environment, <i>refer it to the EIRB.</i>  <i>Proceed with regulatory process and/or implementation.</i>
	The development proposal might have public concern, <i>refer it to the EIRB.</i>  <i>Proceed with regulatory process and/or implementation.</i>
<b>Wholly within Local Government Boundaries</b>	
	The development proposal is likely to have a significant adverse impact on air, water or renewable resources, <i>refer it to the EIRB.</i>  <i>Proceed with regulatory process and/or implementation.</i>
	The development proposal might have public concern, <i>refer it to the EIRB.</i>  <i>Proceed with regulatory process and/or implementation.</i>

26.

<b>Preliminary Screening Organization</b>	<b>Signatures</b>

## **APPENDIX D    Transition from CEAA to the MVRMA**

Section 159 of the *Mackenzie Valley Resource Management Act* (MVRMA) outlines the process that will be binding upon Responsible Authorities, and in certain circumstances on Ministers, under the *Canadian Environmental Assessment Act* (CEAA) upon the coming into force of the MVRMA. Developments that are subject to an assessment under CEAA, but have not completed that process prior to the proclamation of the MVRMA will be caught by s.159.

Depending on the stage of the CEAA assessment process, the development will be subject to the following (s.159) transition provisions<sup>7</sup>:

- s.159(1)** If a referral of a development proposal was made to a mediator or review panel pursuant to subsection 29(1) of the CEAA, the CEAA will continue to apply until the mediation or review panel is completed.
  
- s.159(2)** If a screening report or comprehensive study report was commenced under CEAA, a determination pursuant to subsection 20(1) or section 23 of CEAA may only be made after consultation with the *Mackenzie Valley Environmental Impact Review Board* (EIRB).
  
- s.159(3)** Where a referral of a development proposal following a screening or comprehensive study is made to a mediator or a review panel under CEAA, the federal Minister and responsible Ministers shall decide:
  - (a)** that CEAA will cease to apply and Part V of the MVRMA will then apply as if an environmental impact review of the development proposal had been ordered under paragraph 130(1)(a) of the MVRMA; or
  
  - (b)** where the federal Minister and responsible Ministers consider it is in the national interest to do so, to refer the proposal to the Minister of the Environment for a joint review with the EIRB under CEAA (p.130(1)(c)).

### **The Requirement to Consult**

Where consultation is required by the MVRMA, the Review Board expects Responsible Authorities to comply with both the substantive and procedural requirements of the MVRMA and to provide detailed information on the project to the Review Board.

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<sup>7</sup> These provisions are paraphrased. Readers are urged to refer to part 7 of the *Mackenzie Valley Resource Management Act*, s.159 for the actual statutory text.

Consultation is defined in the Gwich'in and Sahtu comprehensive land claim agreements and in section 3 of the MVRMA as,

- (a) the provision, to the party to be consulted (in this case the EIRB), of notice of a matter to be decided in sufficient form and detail to allow that party to prepare its views on the matter;
- (b) the provision of a reasonable period of time in which the party to be consulted may prepare its views on the matter, and provision of an opportunity to present such views to the party obliged to consult; and
- (c) full and fair consideration by the party obliged to consult of any views presented.

Where a project will be referred to the Review Board for an environmental impact review, or for a joint review under CEAA, the Review Board expects Responsible Authorities to provide all relevant documentation and advice to enable the completion of a review or joint review.