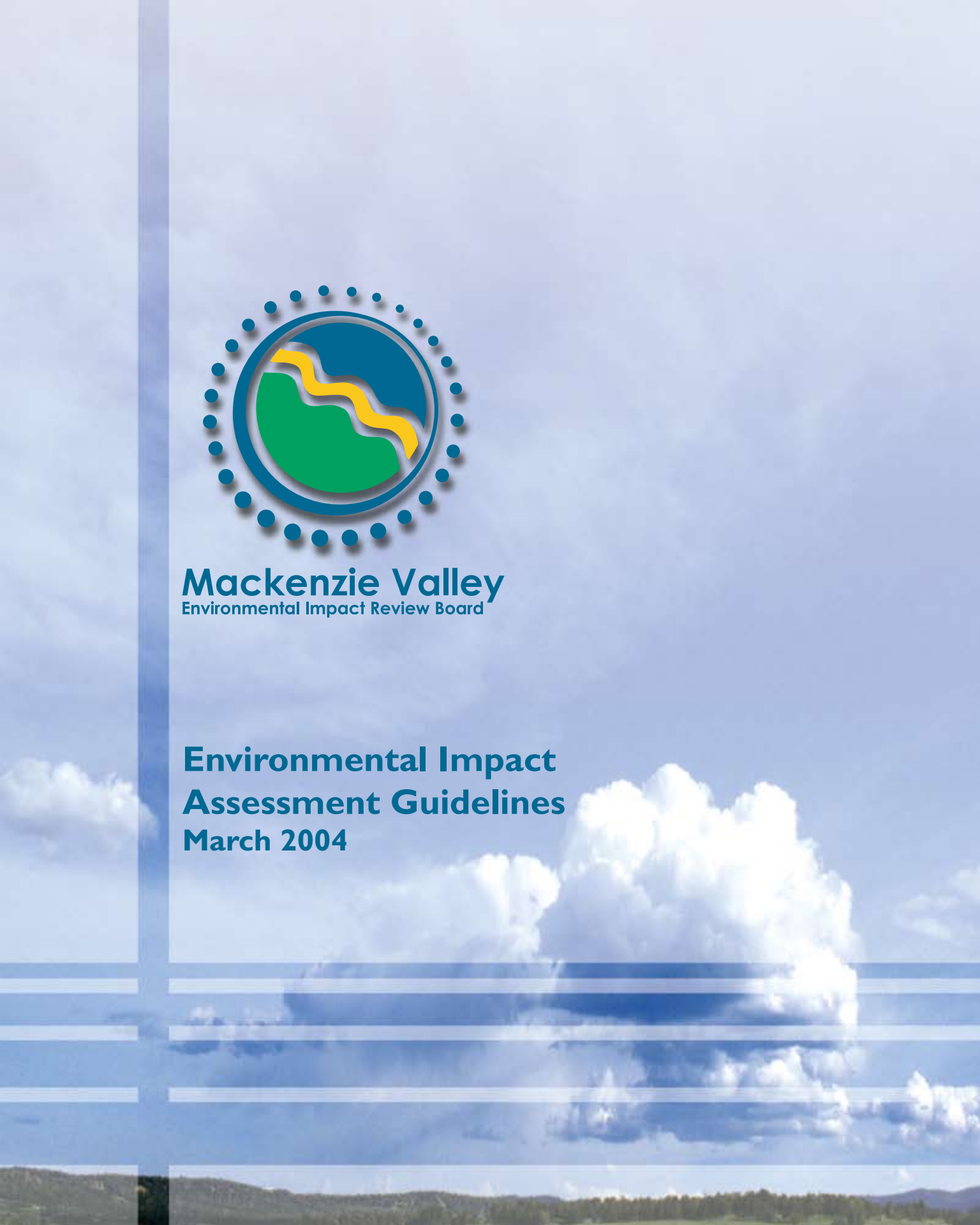

Mackenzie Valley
Environmental Impact Review Board

Environmental Impact Assessment Guidelines

March 2004

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Section 1: Introduction

1.1 Preamble

The *Mackenzie Valley Resource Management Act* (MVRMA or Act) delivers commitments from land claim agreements[1]. It does this, in part, by establishing boards that give Aboriginal peoples a greater role in making decisions about environmental protection and resource management in the Mackenzie Valley. One of these organizations is the Mackenzie Valley Environmental Impact Review Board (Review Board). The Review Board has produced these *Guidelines for Environmental Impact Assessment in the Mackenzie Valley* (referred to here as the Guidelines), according to s.120 of the MVRMA.[2]

Environmental Impact Assessment (EIA) is a process which examines the potential impacts of proposed developments to promote sustainability and avoid costly mistakes. Through EIA, it is possible to anticipate and avoid environmental problems, rather than reacting and fixing them after they occur.

The EIA process contributes to good decisions about the conservation, development and use of land and water resources for the optimum benefit of the residents of the settlement areas, the Mackenzie Valley and Canada.

This document provides guidance for the three parts of the EIA process. These are:

- Preliminary screening;
- Environmental Assessment; and,
- Environmental Impact Review.

This EIA system, established in law and delivered by the MVRMA, was agreed to in land claim settlements in the Mackenzie Valley. The Mackenzie Valley includes unsettled claim areas in the NWT. The Review Board's operational processes were developed based on legal principles, EIA best practices, ongoing consultation, practical experience in the implementation of the MVRMA since its proclamation in 1998, and common sense. These Guidelines are also designed to ensure that any processes are fair, with an open and public process. The procedures for the management, conduct and completion of EIA in the Mackenzie Valley are described in these Guidelines.

1.2 About These Guidelines

These Guidelines are primarily intended for those responsible for implementing parts of the EIA processes and for those planning to undertake a development on land or water in the Mackenzie Valley. Specifically, the MVRMA and these Guidelines apply to regulatory authorities (such as the land and water boards), the National Energy Board (the designated regulatory agency), government departments and agencies, Gwich'in Tribal Council, Sahtu Secretariat Inc., local governments and developers. They may also be used as a reference for communities, First Nations and the public at large. Where conflict occurs between these Guidelines and the Act, the Act applies.

The Review Board may amend or add to these Guidelines as required. Readers are encouraged to contact the Review Board to ensure that they are using the most recent version of the Guidelines. These Guidelines are also available in electronic form and can be found on the Review Board web site at www.mveirb.nt.ca. (See Section 5 for information on periodic review and future amendments of these Guidelines).

[1] Gwich'in Comprehensive Land Claims Agreement and Sahtu Dene and Métis Comprehensive Land Claim Agreement.

[2] S.120 of the MVRMA authorizes the Review Board to establish guidelines respecting the processes of Part 5 of the Act, including guidelines a) for the determination of the scope of developments by the Review Board; b) for the form and content of reports made under Part 5; and c) for the submission and distribution of environmental impact statements and for public notification of such submission pursuant to s. 134(1)(b) and (c).

1.3 Mackenzie Valley Resource Management Act

The MVRMA applies to the Mackenzie Valley only, although, under certain circumstances, the Review Board may share EIA responsibility with organizations outside the area. The Mackenzie Valley is defined as the area in the Northwest Territories bounded by:

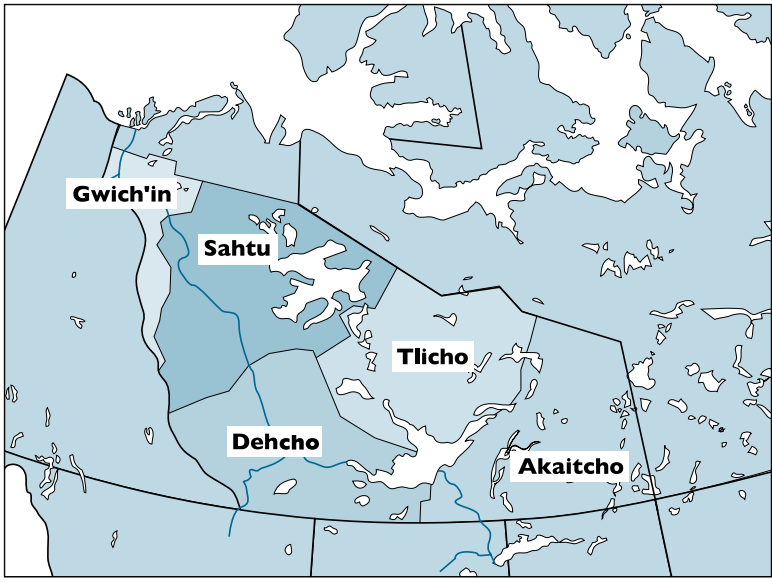
- the Inuvialuit Settlement Region to the north
- Nunavut to the east
- the Yukon Territory to the west
- the 60th parallel of latitude on the south (excluding Wood Buffalo National Park)

The Mackenzie Valley covers most of the NWT[3]. The Mackenzie Valley is commonly divided into five regions, the Gwich'in, Sahtu, Tlicho, Dehcho, Akaitcho and South Slave regions. Of those, the Gwich'in and the Sahtu have settled land claims[4] (please see Map 1 below). These latter two are referred to here as settlement areas.

The MVRMA implements a system for land and water management laid out in the Gwich'in Comprehensive Land Claim Agreement and the Sahtu Dene and Métis Comprehensive Land Claim Agreement. Both agreements take precedence where a conflict between the Act and the agreement exists. The land claim agreements also take precedence over these Guidelines where conflicts exist.

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



Map 1: Regions of the Mackenzie Valley
This map illustrates settlement regions of the Mackenzie Valley, including settled and unsettled claim areas. Boundaries are approximate.

The Act establishes processes for land use planning, land and water use regulation, environmental impact assessment, and environmental monitoring and audit. These processes are to be implemented primarily through institutions of public government (i.e. boards). Although the Act applies throughout the entire Mackenzie Valley, only the regions with settled land claims have regional land use planning and land and water boards. The boards are the settlement area land use planning boards, the regional panels of the Mackenzie Valley Land and Water Board (the Sahtu and Gwich'in land and water boards), and the Mackenzie Valley Environmental Impact Review Board.

[3] This is an area of over one million square kilometres. It is larger than the province of British Columbia, and is roughly 14 times the size of New Brunswick.

[4] At the time of writing (March 2004), the Tlicho land claim is ratified but federal legislation approving it has not yet been passed.

[5] Copies of these land claim agreements or of the MVRMA can be obtained by contacting the Department of Indian Affairs and Northern Development.

As further land claims are settled, land use planning boards or regional panels of the Mackenzie Valley Land and Water Board may be established in other regions.

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

1.4 Regional Land Use Planning Boards

The Gwich'in Land Use Planning Board and the Sahtu Land Use Planning Board are responsible for preparing and implementing a land use plan within their settlement areas. Each land use plan will deal with the conservation, development and use of land, waters and other resources. Following the approval of a land use plan by the respective First Nation and the territorial and federal governments, each board will monitor its implementation and consider applications for exceptions to the plan.

Land use planning boards work independently from each other and from other boards. Although each board is responsible only for the land use plan in its respective settlement area[6], the boards may cooperate with agencies responsible for land use planning in an adjacent area.

[6] Some Gwich'in and Sahtu settlement lands fall outside of their respective settlement areas.

1.5 Regional Land and Water Boards

The Gwich'in Land and Water Board and the Sahtu Land and Water Board, as regional panels of the Mackenzie Valley Land and Water Board, regulate the use of land and water as well as the deposit of waste in their own settlement areas. 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. Whereas land use planning boards may specify conditions that apply to the use of land, water and other resources on a region wide basis, the land and water boards issue land use permits and water licences for individual developments or activities. Both land and water boards also perform preliminary screenings in their respective settlement areas. Section 2 of this document provides more detail about preliminary screening.

Regional land and water boards have jurisdiction over land and water within their own settlement areas. These regional land and water boards form part of the Mackenzie Valley Land and Water Board (MVLWB). The Mackenzie Valley Land and Water Board has jurisdiction over transboundary developments that occur across different settlement areas, and is responsible for regulating developments that cross regional boundaries within the Mackenzie Valley.

1.6 Mackenzie Valley Land and Water Board

The MVLWB is responsible for the unsettled areas (Dehcho, Tlicho, South Slave; see section 1.3 above). In this capacity, it has the same objectives as the Gwich'in and Sahtu land and water boards and also performs preliminary screenings (see section 1.7 below). The

MVLWB also regulates the use of land and water, as well as the deposit of waste where a development is located or is likely to have an impact beyond the boundaries of a settlement area. Finally, the MVLWB is responsible for ensuring equal and consistent standards of land and water regulation in the entire Mackenzie Valley. The jurisdiction of the MVLWB is the Mackenzie Valley, as defined in the MVRMA (see above, sec. 1.3, and Map 1).

1.7 Mackenzie Valley Environmental Impact Review Board

The Mackenzie Valley Environmental Impact Review Board (Review Board) is the main instrument responsible for the environmental impact assessment (EIA) process in the Mackenzie Valley[7]. The Review Board must ensure that the potential environmental impacts of proposed developments receive careful consideration before any irrevocable actions take place.

The first step in the EIA process, the preliminary screening, is generally conducted by a land and water board or a government agency. The Review Board reviews all preliminary screenings in the Mackenzie Valley and conducts environmental assessments (EAs) and appoints the panels that conduct environmental impact reviews (EIRs).

The Review Board's area of jurisdiction is the Mackenzie Valley. This includes certain responsibilities for developments that take place partly within and partly outside the Mackenzie Valley, as well as developments outside the Mackenzie Valley that may have significant adverse environmental impacts on the Mackenzie Valley. The Review Board is the main body for environmental assessment and environmental impact review. It has certain roles, responsibilities and decision making authorities in environmental assessment[8] and environmental impact review[9], as well as for the implementation of Part 5[10] of the MVRMA.

The Review Board is made up of at least seven members including a chairperson. Half of these members are nominated by First Nations and half by government. All are appointed by the Minister of Indian Affairs and Northern Development Canada (INAC).

The Review Board must operate in a fair and unbiased manner independent of government and nominating bodies (i.e. operating at "arm's length"). The Review Board decides what recommended measures and suggestions to make in EA and EIR. These recommendations sent to the Minister of INAC[11] for final decision. This final decision of the federal Minister is set out by the provisions of the Act[12]. The process leading up to the Review Board's report and recommendation (including recommended measures) to the federal Minister is entirely at the discretion of the Review Board. As an independent decision making tribunal[13], the Review Board understands the expectation of the courts, the public and government to maintain and exercise "independence of decision-making" to fulfill its roles and responsibilities, subject to the principles of natural justice.

[7] The Canadian Environmental Assessment Act (CEAA) no longer applies in the Mackenzie Valley, except under very specific circumstances. Appendix B identifies some major differences between the MVRMA and CEAA assessment processes.

[8] See s.126 through s.131 of the MVRMA.

[9] See s.132 through s.137 of the MVRMA.

[10] See s.114, s.115 and s.120 of the MVRMA.

[11] In some cases, this may include other responsible ministers and the NEB. Decision on the EA report is made in a consensual manner between the federal and responsible ministers.

[12] See s.130, s.131, s.135, s.137, s.138, s.139, s.140 and s.141 of the MVRMA.

[13] See for example s.21, s.25, s.29 and s.30 of the MVRMA.

1.8 Overview of the EIA Process

Each step in the EIA process builds on the previous step, as illustrated below (Fig. 1). Experience to date shows that most developments go only through preliminary screening. Some then go through environmental assessment. Fewer still proceed to an environmental impact review.

Preliminary screening typically has taken about six weeks. Once preliminary screening is completed, a decision is made to allow the development to proceed or to refer it for environmental assessment.

Once a development has entered the preliminary screening step, development activities may not proceed until the preliminary screening is completed and the development is allowed to proceed through the regulatory process. If a development proposal is referred to the Review Board, then no aspect of the proposed development may be undertaken until the environmental assessment is completed and the development is allowed to proceed through the regulatory process[14].

Preliminary screening results in most developments requiring no further assessment. This focuses environmental assessment resources on the developments where they are most needed.

Environmental assessment builds upon the work completed during preliminary screening and looks closely at any possible environmental implications or public concerns. On average, an environmental assessment takes about eight months, depending on the scale, complexity and location of the development and the magnitude of concerns. Once the environmental assessment is completed, a decision is made whether or not to allow the development to proceed to the regulatory stage or refer it to environmental impact review.

Environmental impact review is a possible third and final step in the Mackenzie Valley EIA process that a development could undergo. This builds upon the work completed at the environmental assessment step. Environmental impact review may involve a detailed review by a panel of technical experts and/or individuals representing jurisdictions potentially affected by the development. Once an environmental impact review is completed, a decision is made whether or not to allow the development to proceed.

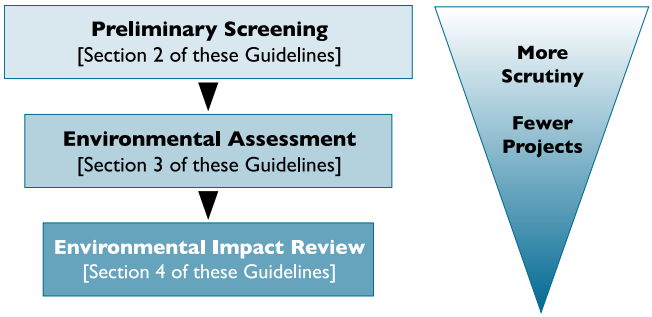


Figure 1: Summary of the MVRMA Process for environmental impact assessment

To ensure that EIA occurs before a development's impacts happen, the MVRMA requires that no irrevocable actions are taken before EIA requirements are met. This means that no authorizations[15] should be issued before the preliminary screening is conducted. This applies to permits issued under either federal or territorial law, or both. For developments proposed by the Gwich'in or Sahtu First Nations or the federal or territorial governments, no actions can be taken before preliminary screening, even if no permit or license is required.[16]

[14] s.118

[15] For the purposes of these Guidelines, the term authorizations includes permits, licenses and other authorizations.

[16] Please see s.118 for details.

1.9 Key EIA Definitions and Terms

The following definitions and terms are based on the MVRMA or the Gwich'in and Sahtu Land Claim Agreements. A more complete listing of definitions and abbreviations can be found in Appendix A of this document.[17]

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

Developer - the person or organization responsible for a development proposal that is subject to a preliminary screening, environmental assessment or environmental impact review.

Development - any undertaking or part of an undertaking, on land or water that is subject to a preliminary screening, and may include activities carried out by private agencies, local, territorial or federal government, or extensions thereof.

Environment - the components of the Earth including (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 by the Review Board (as per MVRMAs.126)

Environmental Impact Review - means an examination of a proposal for a development by a review panel (as per MVRMAs.132)

Federal Minister - means the Minister of Indian Affairs and Northern Development (INAC).

First Nation - means the Gwich'in First Nation, the Sahtu First Nation or a body representing other Dene or Métis of the North Slave, South Slave or Dehcho region of the Mackenzie Valley.

Government - refers to the federal government and the Government of the Northwest Territories

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 - 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 - Gwich'in Comprehensive Land Claim Agreement or Sahtu Dene and Métis Comprehensive Land Claim Agreement. These agreements take precedence over the MVRMA where conflicts between the agreement and the act exist.

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.

Mitigation measure - a measure to control, reduce, eliminate or avoid an adverse environmental impact.

[17] This list is provided to describe selected terms and acronyms in non-technical and non-legalistic terms for the clarity of general readers. It is not intended as a list of legal definitions. Readers seeking the legal definitions of any term defined in the MVRMA should refer directly to the Act. With respect to EIA, most of the relevant legal definitions are in MVRMA s.2, s.51 and s.111.

Preliminary Screener - any body or agency responsible for completing a preliminary screening

Preliminary Screening - means an initial environmental examination of a development proposal for potential significant adverse environmental, social and cultural impacts, and public concern.

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, such as land and water boards, Department of Fisheries and Oceans, Department of Resources, Wildlife and Economic Development. It does not mean the NEB or any local government.

Responsible Minister- any federal or territorial minister with jurisdiction relating to the proposed development.

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

Territorial Government - means the government of the Northwest Territories.

[18] For reference purposes, preliminary screening is described in sections 124 and 125 in the *Mackenzie Valley Resource Management Act.*

[19] S.120 of the MVRMA authorizes the Review Board to establish guidelines respecting the processes of Part 5 of the Act. This includes the form and content of reports. Preliminary screening is described under Part 5 of the MVRMA. That is why these Guidelines include a section on preliminary screening, even though it is not conducted by the MVEIRB. The land and water boards, which conduct most preliminary screenings, have requested this detailed guidance and encouraged and assisted the MVEIRB in the drafting of this document.

Section 2: Preliminary Screening

2.1 Introduction

The Mackenzie Valley is home to many different development initiatives. Very few proposed developments need an environmental assessment, but most require a preliminary screening. Preliminary screening is the initial examination of a development's potential for impact on the environment, and the potential for public concern.[18] It is the first, and often last, stage in the EIA process. This section provides details on what is involved in a preliminary screening, when it is done, who is involved, and how it is done[19]. This section will also provide guidance on how to approach the main questions of preliminary screening. It provides a step-by-step tour of the process.

The chart in Figure 2.1 illustrates the preliminary screening process. Each step is described later in this section.

What is looked at during a preliminary screening?

Preliminary screenings are focused on the task of deciding whether there might be significant impacts of developments on the environment and potential public concern. For preliminary screeners to look at this, they require information about the developer, the proposed development and its setting, and the predicted effects of the development, among other items (see section 2.4 and Appendix D for details). Even if an authorization[20] is required for only a small part of the development, the preliminary screening must consider the whole development and its potential effects on the ecological, social and cultural environments.

Preliminary screenings have a broad focus, but usually do not involve in-depth study. This is typically the shortest of the three possible stages of the EIA process, usually taking less than 45 days. A preliminary screening is not intended to determine what the details of the impacts of a proposed development would be. It is intended only to determine whether or not a development might cause a significant adverse impact or public concern.

As the initial investigation into the potential effects of a development, preliminary screening functions like a trip wire or early warning system, identifying when an environmental assessment is necessary. If, at the conclusion of a preliminary screening, it is determined that the proposed development might cause significant adverse impacts or generate public concern[21], then the development is sent to the Review Board for an environmental assessment.

Who conducts the preliminary screening?

Many organizations conduct preliminary screenings. Preliminary screenings are triggered by an application for an authorization for a development. The regulator that receives the application usually initiates the preliminary screening. Land and water boards conduct most preliminary screenings (because most developments require land use permits or water licenses). The Mackenzie Valley Land and Water Board conducts preliminary screenings, and has a larger role than the Review Board in coordinating the preliminary screening process. Developments that do not require land use permits or water licences are screened by other regulators.

Other agencies, such as the Department of Fisheries and Oceans (DFO), the Department of Resources, Wildlife and Economic Development (RWED), the National Energy Board and Municipal and Community Affairs (MACA) may also lead preliminary screenings or conduct simultaneous preliminary screenings. The

[20] For the purposes of this section of the Guidelines, the term "authorization" is used broadly to include licenses, permits and any other regulatory authorizations.

[21] For developments within local government boundaries, the question becomes "is it likely to have a significant adverse impact" in accordance with MVRMA s.125(2)(a).

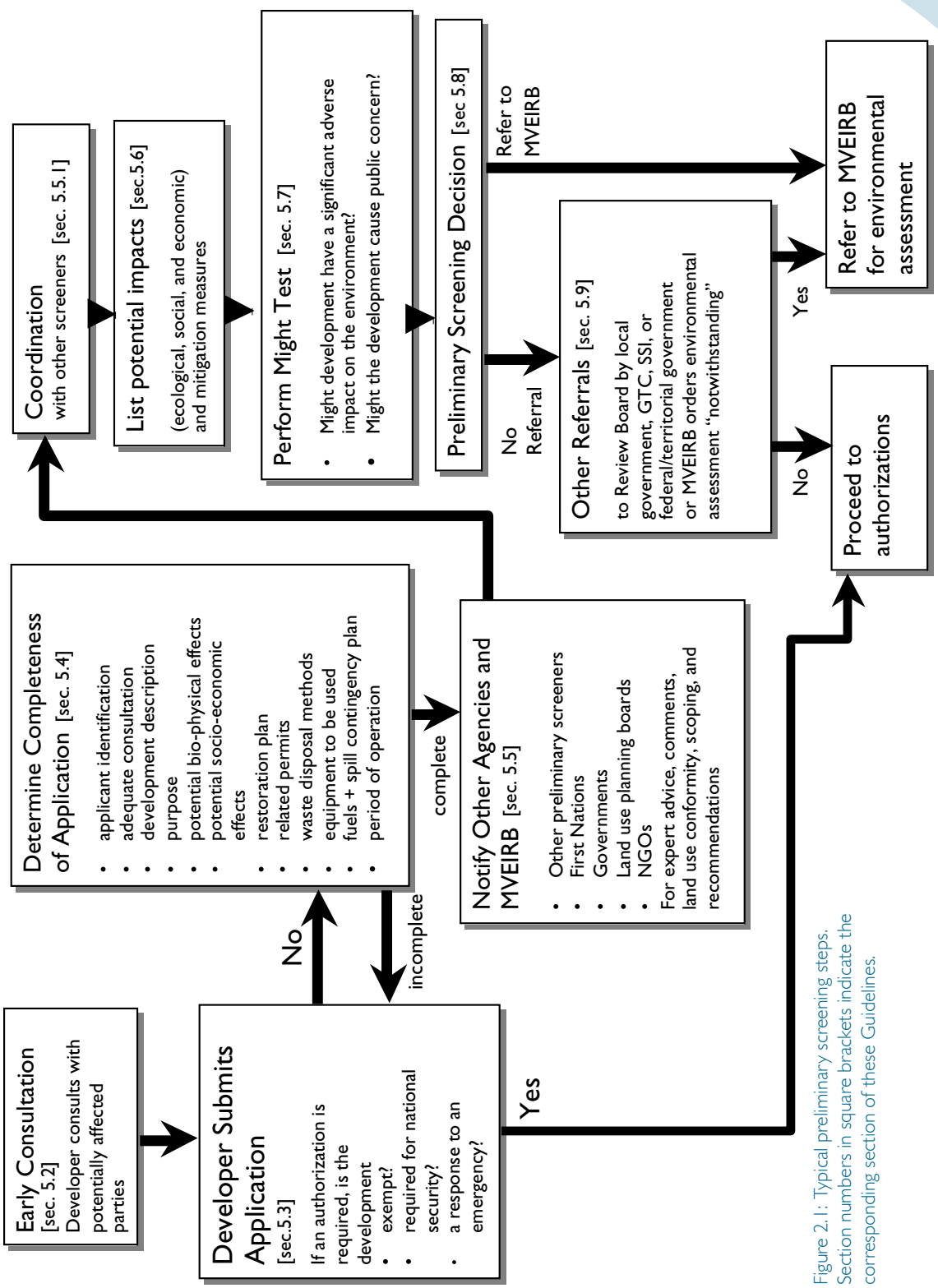


Figure 2.1: Typical preliminary screening steps. Section numbers in square brackets indicate the corresponding section of these Guidelines.

recognized regulatory authorities can then coordinate their efforts and choose one agency to lead the preliminary screening (with others adopting the resulting preliminary screening report), perform a joint screening, or perform individual screenings (for details, please see Fig. 2.1 and section 2.5.1 below).

If a development not requiring a specific authorization is proposed by the Gwich'in or Sahtu First Nations, or the territorial or federal governments, a preliminary screening is required.[22] In this case, the body proposing the development is responsible for the preliminary screening.

2.2 Early Community Engagement

Prior to entering the EIA process, developers are advised to engage parties that could potentially be affected by the development, early in the planning stage.[23] Preliminary screeners require developers to consult before submitting an application. Developers should contact regulatory authorities to find out what their community engagement requirements are.

By consulting before the start of the preliminary screening, the developer's engagements are not constrained by the time limits of the process[24].

The amount of community involvement should match the size of the development and should be appropriate for the types issues involved. Preliminary screeners can provide developers with more detail as to the appropriate level of engagement for the preliminary screening of the proposed development.

Community engagement can be valuable to the proponents, by better enabling them to evaluate whether or not concerns exist and to identify and resolve issues prior to the preliminary screening. Thorough and early engagement often results in better development design and a smoother approvals process. Preliminary screeners require community involvement to include:[25]

- notice of the matter in sufficient form and detail to allow the party to prepare its views on the matter;
- a reasonable period for the party to prepare those views; and,
- an opportunity to present those views to the party having the power or duty to engage the community.

Community involvement can take the form of solicitation and review of comments, public meetings, facilitated and mediated community engagement, and workshops. During community involvement, at a minimum, developers should document:

- the dates of meetings;
- individuals and organizations who attended;
- a list of concerns that were raised, who they were raised by, and descriptions of how the developer will address them;
- comments or suggestions regarding impacts, traditional knowledge, and mitigation that are incorporated into the design of the development.
- a copy of any letters or material submitted to the preliminary screener regarding the proposed development; and,
- any identified or suggested need for further public involvement.

Developers should also be prepared to describe:

- the status of permission from a land owner to occupy the land where the development proposal is planned; and,
- information on any arrangements or agreements with people potentially affected by the proposed development.

For more details regarding community engagement in preliminary screenings, please refer to the Mackenzie

[22] Unless the development is exempt (MVRMA s.126 (4)(b)) or its impacts are manifestly insignificant (MVRMA s.126 (4)(c)).

[23] Land and Water Boards can provide a list of potentially affected parties in the area of the proposed development.

[24] s.63, s.64

[25] As per MVRMA s.3

Valley Land and Water Board's *Public Consultation Guidelines for Development*. Where other agencies are conducting the preliminary screening, the developer should contact those agencies.

2.3 Application Submission

The environmental impact assessment process in the Mackenzie Valley begins when a regulatory authority receives an application for authorization. With some exceptions, all applications must go through preliminary screening. To determine if a preliminary screening is necessary, preliminary screeners will answer the following questions:

- Does the development require an authorization listed in the Preliminary Screening Requirements Regulation?
- Is the development exempt from preliminary screening because it is on the Exemption List Regulations, or is it exempt for national security or emergency purposes or because of section 157.1 of the Act?

The Preliminary Screening Requirements Regulation contains a list of authorizations that require a preliminary screening[26] before they are issued. If the development requires one or more of these listed authorizations, then no part of the development may proceed without a preliminary screening. Developers are encouraged to avoid unnecessary delays by providing a full development description, identifying all the authorizations, and applying for all authorizations at the same time. This also ensures that all parts are screened at once, avoiding unnecessary delays.

The Exemption List Regulations describes developments for which preliminary screening is not required because the impacts of these developments are insignificant.[27] For example, an engineering study that 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 from preliminary screening for reasons of:

- a national emergency under the Emergencies Act[28];
- an emergency in the interests of protecting property or the environment or in the interests of public welfare, health or safety[29]; or,
- national security[30].

Some developments which have been in place since before June 22, 1984 may also be exempt based on s.157.1 of the Act.

2.4 Determining Completeness of the Application

Once the preliminary screener has determined that the development needs a preliminary screening, the completeness of the application must be determined. To evaluate the potential for environmental impacts and public concern, the preliminary screener needs a complete application. This will involve an internal check by the agency conducting the screening to ensure that all of the necessary information has been included and that the proponent has conducted consultation adequately and appropriately.

A preliminary screening normally relies on the information submitted with the development application to the regulatory body and input

[26] unless exempt

[27] The MVRMA requires preliminary screening of some developments that do not need regulatory authorization and are proposed by First Nations or government. Such developments are proposed by a department or agency of the federal or territorial government, the Gwich'in Tribal Council (GTC) or Sahtu Secretariat Incorporated (SSI). The organization is responsible for conducting the screening and notifying the Review Board of the proposed development, unless the effects of the development are considered to be manifestly insignificant. This does not apply to privately proposed developments.

[28] See s.119(a) of the MVRMA.

[29] See s.119(b) of the MVRMA.

[30] See s.124(1)(b) of the MVRMA.

from the agencies and communities to which this information is referred. Regulatory authorities can provide developers with a list of those agencies and communities routinely consulted on receipt of applications.

The information requested by preliminary screeners will vary, depending on the issues and concerns associated with a particular development proposal. For example, larger scale developments, developments near sensitive areas, and developments applying new or unproven technology are more likely to be subject to a higher level of scrutiny. However, when compared to an environmental assessment, preliminary screenings typically require less information, do not require original research, do not normally initiate any studies, and do not require as much rigorous analysis.

For any application to develop, there is a need for preliminary screeners to have a sufficiently detailed understanding of the proposed development to allow a decision on the potential for impacts. Developers may get a sense of what is expected of them by accessing previous (successful) applications in a public registry (i.e. at any of the land and water boards or the Review Board). Also, developers are encouraged to contact the appropriate regulator in advance of an application to receive first hand information.

Generally, the developer is asked to provide the following information:

- Applicant's identification: Who is the proponent, and how can they be contacted?
- Description of development or operation: What is being proposed? What is the purpose of the activities? What, in detail, will be involved? Where and when will this occur? Will a camp be required?
- Description of potential bio-physical impacts: How will the development change the water, air or land? What impacts will each of these changes have on land, water, fish and wildlife?
- Description of social (including socio-economic) and cultural impacts: How will the development affect surrounding communities, archaeological and cultural sites, harvesting activities and land users?
- Restoration plan: Following the development, how will the site be cleaned up, reclaimed or remediated?
- Related permits: What other authorizations (such as mineral rights, timber permits, or water licences) are required for this development? Are any roads required? If so, will they be new roads? Have the routes been ground-truthed?
- Waste disposal methods: In detail, how will garbage, brush, sewage and overburden be dealt with?
- Equipment to be used: What kinds of equipment, such as vehicles, drills, and pumps, will be used?
- Fuels: What kinds of fuel will be used, and how and where will it be stored? How will it be transferred, and what is the contingency plan in the event of a spill?
- Period of operation: When will each phase of the work be conducted (including restoration)?

These and other questions are included in the application form. This information must be submitted in all applications. Preliminary screeners will not process incomplete applications, but may require additional information or re-submission with appropriate new information to the preliminary screener.

As described below in this section, the preliminary screener will use much of this information to determine whether there might be potential significant adverse environmental impacts or public concern. A detailed application increases the likelihood that the screener can answer all relevant questions in the screening. The preliminary screener may discover, in response to issues identified during the preliminary screening, that more information is needed. If the information presented is insufficient to exclude significant environmental impacts, the preliminary

screener will attempt to gather the relevant information. If questions remain after the developer has had an opportunity to respond, the screening decision may be that there might be significant impacts and the application will be referred to an environmental assessment. For this reason, proposals lacking adequate information are more likely to be referred to an environmental assessment.

Some developers have encountered difficulties with applications in the past. To avoid these, developers completing an application should be sure to keep in mind the following items, which are typically requested by preliminary screeners:

1. Development descriptions should contain details. Developers should not simply state the type of activity that is being undertaken, but should describe in detail the construction, operation, maintenance, and decommissioning of the development. This should include a description of the activities that will occur there.
2. Developers must be thorough in their community involvement before submitting their application. Applications are often not accepted because developers have not conducted sufficient, effective, consultation with those who are potentially affected.
3. Developers should ensure that the consideration of potential environmental impacts is thorough. It is not sufficient for a developer to simply write "none" when describing the potential impacts of a development, without explaining why no impacts are expected. Is the development going to use space that was formerly used by wildlife or fish? Is it going to disturb water bodies, by diverting flows, stirring up sediment, adding waste, or any other way? How potentially harmful are any substances used for processing, or waste products? Is the development going to result in changes in access to an area? This is a very important part of the application, and should be carefully and thoroughly considered by the developers before submission.
4. Developers should include a description of the existing environment at the proposed site. This should include an account of vegetation, water bodies and flows, soil and ground, and current land use. Without this, the potential effects cannot be properly evaluated.
5. Developers should expect their application to take more than the 45 days required for an application to be processed, and schedule accordingly. Developers often need more time to properly involve affected communities in order to submit an application that is complete enough for preliminary screening. Consequently, more time than the minimum set out in regulations may be needed before an authorization is issued.
6. Developers should outline reasonably foreseeable operational contingencies in their applications. Otherwise, an amendment to the development plan may require another preliminary screening. For example, when describing a river crossing, describe alternate methods that would be used if the first option proves to be unfeasible.
7. Developers should expect preliminary screeners to consider not only the effects of the proposed development, but also the combined effects of the proposed development in combination with all other past, present and reasonably foreseeable future activity. For this reason, the developer should try to include information on other developments that are likely to affect the same area and environmental components.

2.5 Notification of Other Agencies, Review Board and the Public

The nature of the development and its location will determine which agencies are included in the distribution. This distribution alerts these groups about the application, allows them to identify themselves and indicate whether they are also preliminary screeners for the development, and provides them with an opportunity to coordinate activities (see below). Once included in the distribution, these groups may provide their own information about the development.

Once the completed application is accepted, the preliminary pcreener identifies other organizations that should be part of the preliminary screening. This involvement is an integral part of the preliminary screening. The preliminary screener does not rely only on its own knowledge and experience when performing a screening. Instead, a number of government agencies, First Nations, communities and other groups that may be affected by the development or have knowledge about the development area are consulted. Each of these groups provides comments and advice in its own area of expertise; each is asked to identify potential environmental or socio-economic impacts of the proposed development; and, each is asked to make recommendations for minimizing or mitigating these impacts.

The following is a list of agencies and groups that are typically included in the distribution. This list is not exhaustive, nor are all groups necessarily included for each development. (For a more complete listing see the preliminary screening report form in Appendix D).

- Indian and Northern Affairs Canada
- Department of Fisheries and Oceans
- Environment Canada
- First Nations (e.g. Gwich'in Tribal Council, Sahtu Secretariat, Tlicho Government, DCFN, Métis organizations and others)
- Land Owners
- Land Use Planning Board (where one exists)
- Regional Land and Water Board
- Local Governments / communities
- Local Renewable Resource Councils or Hunters and Trappers Associations
- Review Board
- MVLWB
- National Energy Board
- Non Governmental Organizations
- Prince of Wales Northern Heritage Centre
- Renewable Resources Board (where one exists)
- GNWT Department of Municipal and Community Affairs
- GNWT Department of Resources, Wildlife and Economic Development
- GNWT Dept. of Health and Social Services (including Planning, Accountability and Reporting Division and Regional Health and Social Services Authorities)

The MVLWB is included to determine whether or not the development raises transboundary issues. The preliminary screener must notify the Review Board in writing when a preliminary screening begins.[31] This notification should include a copy of the completed application, with any background documents and relevant correspondence. Preliminary screeners should also send the Review Board any other pertinent information, including results from public involvement and, where known, the developer's environmental performance record. The Review Board maintains a public registry which includes information on all preliminary screenings.

[31] See s.124 of the MVRMA.

Land use planning boards are included in the above distribution to determine whether the development is compatible with existing land use plans. These plans are prepared by the Gwich'in Land Use Planning Board and the Sahtu Land Use Planning Board for their respective settlement areas. All proposed developments in settlement areas must conform to the applicable[32] land use plan before proceeding through the EIA and regulatory processes[33].

Public involvement throughout the preliminary screening process

Preliminary screening is an open, transparent and consultative process. There are many ways that the public, including those who may be affected by a proposed development, can be involved.

- Before submitting an application, developers are expected to ensure that community involvement has taken place, including with First Nations (as described in 2.2).
- Public notices are often published in newspapers and on the internet by preliminary screeners to announce the start of the preliminary screening, to announce hearings, and to announce referrals or granting of authorizations.
- Information is available on a public registry that is created by the land and water boards when they are the preliminary screener. This registry contains all relevant documents related to the development proposal.

Public involvement must occur before the submission is made and up until when the preliminary screener reaches a decision. Written reasons for decision on preliminary screenings must be prepared and are also publicly available.

2.5.1 Coordinate with Other Screeners

Many developments require more than one authorization. Oil and gas exploration, for example, usually requires at least a land use permit from a land and water board and an authorization from the National Energy Board. Often several agencies may be required to perform a preliminary screening on the same development. The MVRMA allows a regulatory authority to adopt a screening conducted by another regulatory authority[34] (making it their own) or to perform a joint screening (as in Section 2.1, above). This is one of the ways that the MVRMA provides for an integrated system of environmental management in which the separate parts work together as a coordinated whole. The need for multiple, adopted, or joint screenings requires coordination between screening agencies.

To achieve this coordination, the first agency to receive an application should notify other possible regulatory authorities of its screening. These agencies may then identify themselves as being likely regulatory authorities for the development, even if they haven't yet received an application. The recognized regulatory authorities can then coordinate their efforts and either choose a lead preliminary screener among themselves, perform a joint screening, or perform individual screenings. This, and the distribution described (see above, Section 2.5), also enables organizations

[32] 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".

[33] Where there is no applicable land use plan, the development proceeds through the EIA and regulatory processes. For developments in areas where there are established land use planning boards, preliminary screeners will contact the appropriate boards to inform them of the application. The land use planning board will evaluate the application to determine if it conforms to the land use plan. Where the development does not conform, the application is rejected or the plan is amended or an exemption be granted to allow the development to fit.

[34] MVRMA s.124(3)

to contribute to the preliminary screening, or to determine for themselves if the development should be referred for environmental assessment, irrespective of the decision taken by the preliminary screener.

If a land use permit or a water licence is required, the land and water board is the only agency that is required to conduct a preliminary screening. Other regulatory authorities will provide the land and water board with input on the scope of the screening, potential environmental and socio-economic impacts, and measures to minimize or mitigate impacts. In this way, regulatory authorities can ensure that their screening needs are being addressed without having to perform a separate screening. A regulatory authority may then choose to not perform a screening, to adopt the land and water board's screening, or to conduct a separate screening. For example, a regulatory authority may wish to conduct a separate screening if aspects of the environment important to the organization have not been adequately addressed or if the organization has a different view on public concern.

2.5.2 Scoping the Development: Separating the Dual Roles of Preliminary Screener and Regulator

One of the tasks undertaken by the preliminary screener in coordination with other regulators is development scoping. This involves examining the development proposal to determine what is included in the preliminary screening. It is essential that preliminary screeners consider the proposed development as a whole when conducting screenings, rather than focusing only on the aspects related to their regulatory responsibilities. Although this seems straightforward, it is complicated by the fact that the organizations that conduct preliminary screenings are the same regulators that issue authorizations and conditions. Preliminary screenings are required under the MVRMA. The regulatory duties of these agencies are not prescribed by the MVRMA. Regulatory agencies have different processes, different focuses and information needs.

Although agencies that conduct preliminary screenings are also regulatory authorities that issue authorizations, when they are conducting screenings they are in a non-regulatory role. At the time of the preliminary screening, screeners are encouraged to separate the dual roles of preliminary screener and regulator. The Review Board has a responsibility to ensure that Part 5 of the MVRMA is upheld with respect to preliminary screening[35], but does not have responsibilities that pertain to the regulatory duties of organizations.[36]

The broad focus of preliminary screening usually requires that agencies doing preliminary screening go beyond the (more narrow) scope of the authorizations they will later issue as regulators. Although the preliminary screening might be conducted by only one agency, the MVRMA requires that it be broad enough to detect any of a wide range of different types of impacts (ranging from impacts on vegetation and wildlife to social effects).[37] This breadth makes it possible for other agencies to adopt a preliminary screening report rather than having every agency complete a preliminary screening for each development.

For example, consider an application in which DFO is the agency conducting a preliminary screening and for which it will later be a regulator that issues an authorization for only one aspect of the development

[35] s.120(b), s.126(3)

[36] except for those described in s.130(5) and s.131.

[37] If preliminary screeners only examined issues within their regulatory mandate, many of the current subjects investigated in a preliminary screening would be forever unexamined. No permits exist for effects such as social impacts.

(in this case, a *Fisheries Act* authorization). DFO should separate its roles and conduct the preliminary screening on the whole development and its effects (including non-fisheries subjects). It should consider effects on wildlife, on cultural resources, and the direct social effects of the development -- much more than the effects of the part of the development for which it must issue a *Fisheries Act* authorization.

2.6 Listing Potential Impacts and Mitigation Measures

Once the preliminary screener has received the comments and expert advice from aboriginal organizations, local governments, expert advisors and others described above, it will analyze the proposal and comments received to create a list of the potential impacts of the development. This requires the expertise of predicting how the environment (including people) will interact and be affected by the specific activities proposed. This also involves considering how the proposed development fits into the bigger picture of the region, and the other developments and environmental pressures that already exist.

Under the MVRMA, the term "impact on the environment" includes social and cultural impacts, as well as biophysical impacts. Preliminary screeners have the challenging task of identifying potential impacts from all these fields. To do this, they often must rely heavily on the specialist advice from government agencies, the knowledge of surrounding communities, and the issues raised by the people who may be affected. Although preliminary screeners ultimately bear the responsibility for predicting potential impacts, they do not do this alone.

When listing potential impacts, preliminary screeners will consider the whole proposed development, including any mitigation measures which reduce or avoid possible impacts. (Please see the sample screening form in Appendix D). Good development proposals have mitigation measures incorporated into their design and planning. A standard range of regulatory conditions, if enforced, also serves to avoid environmental problems. Preliminary screeners are expected to consider any design features of developments that reduce or avoid environmental effects, and the reliability or effectiveness of these features.

2.7 Performing the "Might Test"

The primary objective of preliminary screening (outside of local government boundaries[38]) is, in accordance with s.125 of the MVRMA, to determine if a development proposal:

- might have a significant adverse impact on the environment; or,
- might be a cause of public concern.

Where a preliminary screener determines that one or both of these tests (the *might* tests) are met, then the development must be referred to the Review Board for an environmental assessment.

Preliminary screeners are not required to determine if there will be a significant impact, but only if there might be one. Preliminary screener's analyses should go no further than needed to determine that this test has been met, considering factors in s.114 and s.115 of the MVRMA.

[38] Inside of local government boundaries, the test becomes whether the project is likely (as opposed to simply "might") to have a significant adverse impact on air, water or renewable resources. "Likely" means having a greater than 50 per cent chance. If so, in the professional judgement of the preliminary screener, then the development should be referred to the Review Board for an environmental assessment. The rest of this section applies equally to developments within or outside of local government boundaries.

How can the "might" test be practically applied?

The term "might" is very broad and does not require the same level of certainty as the word "likely" would. Thus, the MVRMA has a more sensitive trigger for further assessment than many other EIA processes. Preliminary screeners have sometimes been unclear on how to best apply this test. The wording of the Act has not helped to clarify this.

One reasonable approach to this is to ask the following key question: "Are there relevant unanswered questions about this development?" This applies both to environmental impacts and public concern. If there are relevant unanswered questions, then an environmental assessment should be considered. It is the preliminary screener's decision to refer, and it is the Review Board's responsibility to conduct the environmental assessment. The purpose of preliminary screening is to identify whether or not there are questions that should be assessed further, and not to determine answers to those questions.[39]

Preliminary screeners should refer a development to an environmental assessment if:

- the professional judgement of the preliminary screener enables them to recognise that the "might" test has been met;
- it cannot be determined that the "might" test has been met without further analysis (or without new information, beyond that of the preliminary screening); or,
- there are uncertainties about the potential impacts or the effectiveness of proposed mitigation measures that require analysis to be resolved

Determining if there might be significant adverse environmental impacts

When determining if there might be significant adverse environmental impacts, preliminary screeners should consider:

- The magnitude, or degree, of change of the impacts that might be caused;
- The geographical area that the impact might affect;
- The duration that the impact might have, i.e., how long will the effect will occur;
- The reversibility of the impact that might occur;
- The nature of the impact, i.e., how important is the component that the impact will affect? and,
- The possibility that the impact could occur.

The threshold for making such a determination is low, due to the sensitivity of the "might" test. If there are doubts, the development should be referred to the Review Board for environmental assessment.

The following are some examples where, in the Review Board's experience, there might be significant adverse environmental impacts:

- Development scale: Larger developments often have more potential to cause significant adverse impacts.
- Development location: Development projects in, near or upstream of protected or potential protected areas, areas used for hunting, fishing, and trapping, or areas of known ecological sensitivity might cause significant adverse environmental impacts;
- Nature of the activity: Some activities typically involve more environmental risk than others, due to factors such as (but not limited to):
- the degree of disturbance;
- involvement of hazardous chemicals or effluents;
- major infrastructure requirements;
- changes to access;
- use of a new technology, or known technology in an unfamiliar setting;

[39] The sensitivity of the "might" test makes more sense when considered as a part of the overall EIA process. As a whole, the several steps of the EIA process in Part 5 can deal with any potential significant adverse environmental impacts or public concern associated with a development proposal. Recall that each step in the EIA process builds upon the previous step, using the information provided and gathering more information as required to complete a more thorough assessment and analysis.

- social changes to community structure (i.e. influx of migrant workers to a community); or,
- changes to stress on existing social services.

Preliminary screeners correctly point out that "might" means possible, and that any development "might" have environmental effects. The test in s.125, however, is "significant adverse effects". Preliminary screeners can consider standard mitigation conditions and any mitigation commitments made by the developer in deciding on the "might" test. To apply the test meaningfully, the professional judgement of the Preliminary screener must play an important role. The Preliminary screener must consider, at a preliminary level[40], the significance of a development's potential effects (e.g. their magnitude, duration, geographic extent and likelihood). Throughout the preliminary screening, the preliminary screener should bear in mind the sensitivity of the test, asking itself "Should this development go to an environmental assessment?"

Determining public concern

One of the preliminary screening tests for referral to environmental assessment is the question "Might the development be a cause of public concern?"[41] This has proven problematic for preliminary screeners to apply, partly due to the subjective nature of the test. As with the rest of the "might" test, the professional judgment of the preliminary screener plays a vital role.

Although there is no clear formula for determining public concern, the following are examples where, in the Review Board's experience, public concern could be an issue. Note that this list is similar to that of the factors that might cause significant adverse environmental impacts (above). The two are sometimes, but not always, related.

1. Development scale: Larger developments often affect more people, and their proposal may generate public concern.
2. Proximity to communities: People are often concerned with developments in their vicinity, so the closer a development is to a community, the more concern may be caused.
3. New technology: Where a proposed development uses a new type of technology or one that has never been used in the North before, people's unfamiliarity with the type of development could generate concern.
4. Severity of Worst Case Scenarios: Typically, there will be more concern over a development the more severe its worst case malfunction scenario is.
5. Proximity to protected or sensitive areas: There is typically more potential for public concern for developments in, around or upstream of protected areas (such as parks or reserves), or ecologically sensitive areas (such as calving or spawning grounds).
6. Areas known for harvesting: The closer a development is to a good hunting, fishing or trapping area, the more there may be public concern associated with it.

Where a development involves any of these, the preliminary screener should be particularly careful to identify and gauge concerns, for consideration in the "might" test.

The number of concerns voiced may be a factor to the screener in gauging public concern, but is not necessarily the only factor. Although a large number of voiced concerns could lead to a referral, even a small number of voiced concerns may do so, depending on the reasons for the concern. If a single concern is well justified by relevant reasons, this could be more important to the preliminary screening than many unsupported letters.

[40] As opposed to in the depth at which it is considered during an environmental assessment.

[41] MVRMA, s.125 (1).

When identifying public concern, it may be valuable to consider whether the proposed development is being discussed in the media (radio, TV, newspapers, etc.), whether letters of concern have been submitted, whether there is a history of concerns about the area, whether the proposed type of development has caused controversy in the past, and so on.

The location of the person or group voicing concern may also be relevant. The MVRMA specifies that it must ensure that the concerns of Aboriginal people and the general public are taken into account[42], and that it is to protect the well-being of residents and communities in the Mackenzie Valley[43] and other Canadians[44]. However, some sites in the Mackenzie Valley have specific territorial, national or international designations implying a broader duty of care when considering comments. For example, it is reasonable to consider concerns from across Canada when they relate to potential impacts on a National Park, because it is designated as such for the people of Canada. Similarly, consideration of Canada's international environmental commitments may lead to a referral.

2.8 Preliminary Screening Decision and Written Reasons

Once the preliminary screener has applied the "might" test, it will reach a screening decision of whether to refer the development to an environmental assessment, or to allow the development to proceed to permitting. In reaching this decision, the preliminary screener gives consideration to all of the information on the public record collected during earlier stages of the preliminary screening process. The final decision is released and made available to the developer and the public, with an accompanying Preliminary Screening Report Form (see Appendix D) for the development. Reasons for decisions are written, and the report is signed by the appropriate regulator, the chairperson of the preliminary screening body, or a legally designated alternate. The written reasons should be provided to the developer, First Nations, any other preliminary screeners, the Review Board, relevant regulatory authorities and the general public.

The preliminary screening decision will, in the event of a referral, help the Review Board scope the environmental assessment. For this reason, preliminary screeners are encouraged to provide reasons for decisions that are clear and detailed. For example, it is preferable to report that a development is being referred because of potential impacts on a specific water body or wildlife species due to a particular part of the development than to simply report that the referral is being made due to "potential impacts on water" or "potential impacts on wildlife" in general. As another example, rather than state simply that a development is being referred "due to issues related to cumulative effects", the preliminary screening should state what those issues are, specifying concerns over which effects of the proposed development acting in combination with what effects from existing developments on what particular components.

If the preliminary screener has decided that an environmental assessment is required, a development proposal is referred to the Review Board. In this case, no regulatory agencies can do anything that would allow the development to proceed before the environmental assessment is complete. When the Review Board receives a referral, its duty is to conduct an environmental assessment[45]. The MVRMA does not give the Review Board any option to refuse, for any reason.

[42] MVRMA s.114(c).

[43] MVRMA s.115 (b).

[44] MVRMA s.9.1

[45] See s.126(1) of the MVRMA.

2.9 Other Referrals

Almost always, if a preliminary screening is completed and the development does not get referred for an environmental assessment, the EIA process ends. However, there are other ways that a development can be required to undergo an environmental assessment.

The MVRMA allows several parties to refer a development to the Review Board for an environmental assessment, even if the preliminary screening decision did not do so.[46] This means that a screener may reach a conclusion that no environmental assessment is necessary, but an organization with a different perspective may refer that same development for an environmental assessment regardless of the findings of a preliminary screening.[47] This may occur when one of the bodies indicated below disagrees with the results of a preliminary screening.

Notwithstanding the preliminary screening report, referrals may come to the Review Board from:

- A regulatory authority, the National Energy Board, or department or agency of the federal or territorial government;
- the Gwich'in Tribal Council or Sahtu Secretariat Incorporated[48]; or,
- a local government.[49]

Any of these organizations is expected to provide the same level of detail in its reasons for referral as preliminary screeners provide in their referrals (see s.2.8 above).

Under extraordinary circumstances, a development may also undergo an environmental assessment despite the decision on the preliminary screening, if the Review Board decides that an environmental assessment is required.[50] The Review Board would consider exercising this authority if, for example:

- in the Review Board's opinion, the quality of the preliminary screening was inadequate;
- the preliminary screening did not consider all components of the development;
- in the Review Board's opinion, the "might" test has been met;
- the context of the preliminary screening did not adequately consider s.114 and s.115;
- it is justified by public concerns; or,
- the Review Board disagrees with the decision of the preliminary screening based upon its own review of the evidence.

The Review Board will release written Reasons for Decision document when exercising this authority.

After the Preliminary Screening Report is released, the Review Board requests that regulators not issue permits for three days. This pause period gives the Review Board a chance to consider the exercise of its authority to conduct an environmental assessment notwithstanding the results of the preliminary screening.

[46] See s.126(2), (3) & (4) of the MVRMA.

[47] People often express surprise at this, particularly when they do not look at Part 5 as a whole. This referral power is complementary to the option that preliminary screeners have to adopt the screening of another organization for the same development. Although not every regulatory authority must complete a preliminary screening for each development, they retain the power to act on issues that their different perspectives allow them to recognize.

[48] 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

[49] 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

[50] MVRMA s.126(3)

Section 3: Environmental Assessment

3.1 Introduction

Environmental assessment is the second stage in the EIA process. It involves in-depth study of a proposed development's potential for impacts on the environment[51]. Environmental assessment identifies, evaluates and reports potential ecological, social, cultural and economic impacts, and the mitigation measures to reduce or avoid these impacts. The goal is to produce good decisions about whether or not a project should proceed, and if so, under what conditions. Most developments that undergo preliminary screening do not require environmental assessment, but those that do are subject to more detailed and rigorous analysis.

The Review Board is the only body in the Mackenzie Valley that conducts environmental assessments. As described previously (see Section 2), it must conduct an environmental assessment for all projects that are referred to it and, in some cases, may exercise its discretion and conduct an environmental assessment even when no referral occurs[52].

This section provides details on the environmental assessment process. It describes the roles and responsibilities of the Review Board and other involved groups, as well as the process and possible outcomes of environmental assessments. Figure 3.1 illustrates the environmental assessment process.

3.2 About the Review Board

The Review Board is a co-management board created by the MVRMA as a result of negotiated land claim agreements[53]. It is an independent institution of public government, and is the principal instrument for conducting environmental assessment and environmental impact reviews in the Mackenzie Valley[54]. The Review Board maintains a staff with expertise to support the Review Board in its duties. Staff members follow the direction of the board members and are the primary points of contact during environmental assessments.

During an environmental assessment, the Review Board is required to complete certain tasks[55]. These include determining what the scope of the development is and what the scope of the environmental assessment will be (see section 2.5.1.2 for details), as well as taking into account past preliminary screening or environmental assessment reports related to the development. The Review Board must consider:[56]

- the impacts of the development (including cumulative impacts and impacts from malfunctions);
- the significance of those impacts;
- public comments;
- mitigation measures; and,
- anything else that the Review Board deems relevant[57].

[51] For reference purposes the environmental assessment (EA) process is described in s.126 through s.131 of the *Mackenzie Valley Resource Management Act* (MVRMA or Act).

[52] Where, in the opinion of the Review Board, a development should have an environmental assessment but no referral occurs, the Review Board may choose to conduct one on its own motion under s.126(3) of the Act (see Guidelines Section 2.9).

[53] The Review Board has a minimum of seven members. Not including the Chairperson, half of the members are nominated by First Nations, and half by government. Its members do not represent or act on behalf of the group that nominated them.

[54] s.114(a)

[55] These are described in MVRMA s.126-128

[56] s.117(2)

[57] Because the Review Board is required to consider any other matter it deems relevant, it is important to recognize that the other points are the minimum that must be included, and do not represent the limits of what is considered.

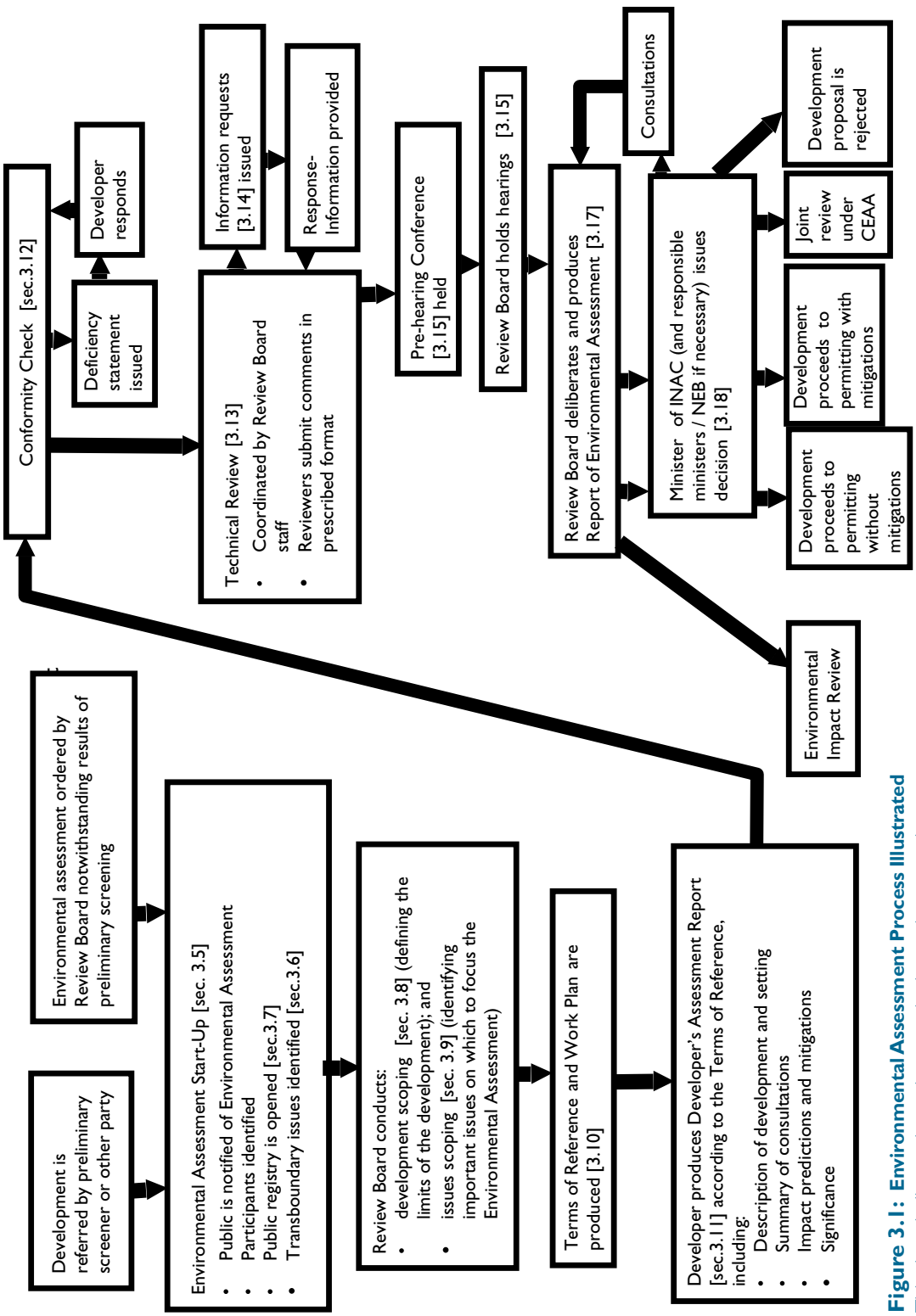


Figure 3.1: Environmental Assessment Process Illustrated
This chart indicates the major steps in the environmental assessment process. Section numbers in square brackets "[ ]" correlate to sections in the EIA Guidelines, and not the MVRMA.

The Review Board must make a determination on the impacts of the development and public concern, and produce a Report of Environmental Assessment for the Minister of INAC (and for the National Energy Board in certain cases) who then distributes it to the responsible ministers. It also identifies areas outside of the Mackenzie Valley in which the development is likely to cause a significant adverse impact or significant public concern.

In carrying out its duties, the Review Board must conduct its processes in a fair manner. It does this by following the rules of natural justice and procedural fairness. This means that:

- Review Board processes provide fair opportunities for participants to prepare and state their positions;
- Participants have opportunities to correct or contradict statements made against their position;
- The Review Board cannot prejudge cases and will not give the appearance of doing so;
- Decisions are made by the board members who hear the evidence; and,
- The Review Board ensures that its members are free to exercise their full authority without conflict.

Although the Review Board is bound by these elements of administrative law, and has some of the powers of a superior court[58], it is not bound by its own precedent. Each case must be decided on its own merits. (See Appendix C for the Review Board's *Rules of Procedure for Environmental Assessment and Environmental Impact Review Proceedings*).

3.3 The Roles of Other Organizations[59]

Many other organizations play roles in the environmental assessment process. They are known as the participants involved in the environmental assessment, and they include:

- The developer, who is responsible for designing and describing the development and mitigations, producing the Developer's Assessment Report and responding to information requests.
- Directly affected parties, which may include First Nations, some government departments and NGOs. These are parties that may experience impacts of a development first hand. Directly affected parties may participate in many parts of the environmental assessment, including issue scoping, generating, and possibly responding to, information requests, and, participating in hearings. (Note: being included in the category of Directly Affected Party does not mean that there has been any determination that the party will necessarily be directly affected, but only that the party could be directly affected).
- Intervenors are those who are not directly affected by a proposed development, but would like to participate in the environmental assessment and any hearings that may occur. Intervenors have the same rights as Directly Affected Parties.
- Technical reviewers, which have specialized knowledge that improves the accuracy of impact predictions and analysis. This can include territorial and federal government agencies, traditional knowledge holders, the National Energy Board, NGOs, and independent expert advisors hired by the Review Board.[60]

[58] s. 25

[59] Many of these terms are described in the Rules of Procedure. Please note that although the EIA Guidelines were originally published in 2004, the second printing run in 2005 includes recently updated Rules of Procedure. One important difference is that the updated Rules of Procedure no longer make the distinction between "directly affected parties" and "intervenors". All are now referred to collectively as "parties". The remainder of this document should be read bearing this change in mind. When the next version of the EIA Guidelines is published, these changes will be reflected throughout the document. Until that time, readers are directed to the new Rules of Procedure in Appendix C.

[60] Independent experts obtained by the Review Board may serve as "external" experts, whose submissions are placed on the Public Registry (in the same manner as those of parties) or as "internal" experts, who function as an extension of the Board for its analysis of technical issues during deliberations. Material produced by "internal" experts to the Review Board is treated as privileged information.

- Members of the public, who may submit comments, but cannot ask questions and are not subject to cross-examination-type questioning during hearings.
- Regulatory authorities, which are responsible for producing authorizations, licenses and permits for the development in accordance with environmental assessment recommendations after the process is finished. This may include land and water boards, government regulators and the National Energy Board.
- The Minister of Indian Affairs and Northern Development is the "federal Minister" who must consider the Review Board's Report of Environmental Assessment and make a decision[61] (and the National Energy Board for some oil and gas related developments).
- Responsible ministers, when a development may affect a component that is under their jurisdiction. Decisions by the Minister of INAC or the NEB are made in consultation with responsible ministers.

Each participant's role is distinct, but some organizations (such as government departments) may be involved in more than one of these roles.

3.4 General Principles of Environmental Assessment

The environmental assessment process follows the specific requirements of the MVRMA, and is done by the Review Board in such a way as to ensure that the best decisions possible are made about proposed developments. An environmental assessment includes a carefully designed fair process to anticipate and avoid impacts rather than reacting to them after they have occurred. The decisions that come out of an environmental assessment deal with:[62]

- whether or not the development can proceed: An environmental assessment can result in a development proposal being rejected or allowed to proceed to permitting;
- how the development can proceed: If the development is allowed to proceed, the environmental assessment may recommend mitigation measures (in addition to those proposed by the developer). These are changes to the design and management of a development to avoid or reduce environmental impacts.
- whether an environmental impact review is required: When an environmental assessment finds that significant adverse environmental impacts or significant public concern are likely, the development may be required to proceed to further review by a panel.

These decisions are intended to result in better developments with fewer or smaller undesirable impacts. These often offer developers less liability and lower clean up costs.

Just as no two proposed developments are the same, no two environmental assessments are the same. For example, the duration of an environmental assessment and its complexity depend on the nature, location and scale of the proposal[63]. The environmental assessment for most developments generally takes about eight months.

Environmental assessments under the MVRMA follow certain generic steps that are common to most environmental impact assessments in other jurisdictions. These include:

- Receiving a description by the developer of what is being proposed and the setting in which it is proposed;
- Identifying issues (known as "issue scoping");

[61] This is done in consultation with the responsible ministers - those other federal and territorial ministers whose jurisdictions are potentially affected by the development.

[62] s.128(1)

[63] The Review Board may modify its process to reflect different scales, locations and types of development. For example, a very small development may undergo a simplified environmental assessment process, at the discretion of the Review Board.

- Forming and refining impact predictions, with the help of consultations and expert knowledge (including traditional knowledge);
- Identifying mitigation measures to reduce or avoid adverse impacts;
- Evaluating the predicted impacts in terms of their significance;
- Determining what follow up monitoring, analysis and management is required; and,
- Making a final decision on development approval or rejection[64].

Environmental assessment in the Mackenzie Valley follows this generic model, but has certain unique features. This section of the Guidelines will examine the individual steps involved in conducting an environmental assessment, and will describe the unique features of each.

3.5 Environmental Assessment Start-Up

The environmental assessment starts once the development description is received by the Review Board (by the means described in sections 2.8 or 2.9 of these Guidelines). The Review Board begins by giving notice to the developer and potential participants that an environmental assessment of the proposed development has started. It also asks potential participants to identify if they would like to be involved in the environmental assessment as directly affected parties, intervenors or members of the public. A distribution list that includes all interested groups is made for each environmental assessment. At the same time, a newspaper notice of the environmental assessment is published.

Once an environmental assessment has begun, no irrevocable action can be taken by any agency issuing authorizations under any federal or territorial law until the assessment process is complete.[65] This ensures that no part of the development proceeds before it can be assessed.

3.6 Transboundary Developments

If a development or its effects cross the boundaries of the Mackenzie Valley, the Review Board will take certain actions early in the environmental assessment to ensure that the development's effects are assessed adequately:

- If the development is entirely in the Mackenzie Valley, but might have significant adverse environmental impacts in other areas, the Review Board will notify the authority responsible in that region and request cooperation during the environmental assessment.
- If the development itself crosses the boundaries of the Mackenzie Valley, the Review Board will try to coordinate its environmental assessment with that of the authority responsible in the adjacent region, province or territory.
- If the whole development is outside of the Mackenzie Valley, the Review Board may, with the approval of the federal Minister, enter into an agreement with the authority in the adjacent region, province or territory. This agreement would allow the Review Board to participate in the examination of environmental effects of the development by that authority.

[64] The Review Board makes decisions on what to recommend, and the federal Minister and responsible ministers collectively make a final decision. See sections 3.16 and 3.17 of this document for details.

[65] s.118 (1),(2)

3.7 Opening a Public Registry

When the environmental assessment is started, a public registry is opened. This is a complete set of all documents relating to the environmental assessment. It includes documents from the preliminary screening file, plus the Terms of Reference, the Developer's Assessment Report, all information requests, rulings, technical reviews, letters, Reasons for Decision and any other documentation. The public registry is open to the public, and is located at the Review Board office.

The part of the public registry that the Review Board considers when making its decisions is known as the public record. Items that arrive at, or are generated by, the Review Board during and after deliberations are all added to the public registry, but may not form part of the public record. The Review Board's Report of Environmental Assessment, for example, is part of the public registry, but is not part of the public record, because it is completed after the Review Board conducts its deliberations. Even after the public record is closed, the Review Board can ask for clarification from the developer, government, or other parties. If a document is inadmissible as evidence, it will be placed on the public registry, but not on the public record.

Confidential items are considered in the public record, but are not included in the public registry. When a party submits confidential information (for example, details of a business-sensitive technology or detailed traditional knowledge information on sensitive sites) the party submitting it may ask the Review Board to handle the information confidentially. The process for handling confidential information can be varied, depending on the information and the level of confidentiality requested. The Review Board and the party will discuss the handling of the information, which may be considered by the Review Board but not made available to the public. This will be determined on a case-by-case basis and subject to the rules of fairness. The Review Board is subject to Access to Information and Privacy laws.

3.8 Scoping the Development

In order to conduct the environmental assessment, the Review Board must understand what is being proposed. At times it can be challenging to determine what is - and what is not - part of the development. Development scoping is the term used to describe how the Review Board reaches this determination. Practice has shown that it is both ineffective and inefficient to separately assess the many individual components of a large development, even if developers apply for these components separately[66]. To assess these parts individually risks missing the bigger picture, by failing to recognize impacts related to scale and combined effects of the separate parts. The Review Board avoids this by ensuring that the entire development undergoes environmental assessment.

When scoping the development, the Review Board may require a more detailed and complete description of the proposed development than was submitted during preliminary screening. The developer is responsible for providing a development description that is technically suitable for regulatory authorities and government, and also suitable for consultation with Aboriginal people and other public participants.

In scoping the development, the Review Board will consider what is the principal development, and what other physical works or activities are accessory to the principal development.

[66] This undesirable practice is known as "project splitting".

Three criteria will be used to determine whether or not a physical work or activity is an accessory development, and therefore should be included in the development[67]. The first test is dependence: that is, if the principal development could not proceed without the undertaking of another physical work or activity, then that work or activity is considered part of the scoped development. The second test is linkage: if a decision to undertake the principal development makes the decision to undertake another physical work inevitable, then the linked or interconnected physical work or activity will be considered part of the scoped development. The third test is proximity: if the same developer is undertaking two physical works or activities in the same area, then the two may be considered to form one development.

A complete development description means the full explanation of the proposed development, its component parts, and development time frames. It includes all the parts of the undertaking that are necessary for the development to proceed, and all aspects of the development that are planned. The description can be written, represented by diagrams and photographs, and shown on maps.

3.9 Scoping the Issues

Prior to the production of the Terms of Reference efforts are made early on to identify the most relevant issues, because of the need to focus resources on assessing the important issues. This is known as scoping the issues, and it helps focus the Terms of Reference on the most important matters. Issues are identified primarily by considering:

- the Preliminary Screening Report;
- the types of impacts known to result from other developments with similar features;
- known sensitivities in the area of the proposed project; and,
- issues raised during earlier development consultations.

An early analysis of the issues is conducted during development scoping. When scoping the issues, the Review Board separates and confirms the identified issues. It may gather new information to identify any other issues. Note that scoping will consider social, economic and cultural issues in addition to ecological issues.

3.10 Producing Terms of Reference and Work Plan

Once the environmental assessment is started, the public has been informed and the parties have been identified, the Terms of Reference and Work Plan are produced. The Terms of Reference portion of the document is like a recipe for a Developer's Assessment Report. It specifies what information the developer must provide in its report for the Review Board and others to consider.

The Terms of Reference help to focus the developer's resources on assessing the issues that are most likely to be important. A draft version is usually circulated to all parties (including the developer) for comments[68] before the Review Board finalizes it. The Terms of Reference ask the developer to describe the development in some detail, to describe the surrounding environment (including relevant ecological, social, cultural and economic conditions), and to predict the impacts that might occur. The developer is also asked to identify mitigation measures, and to describe the importance of the impacts that cannot be avoided.

[67] Adapted from the Canadian Environmental Assessment Act *Responsible Authority's Guide*

[68] The Review Board may choose not to circulate a draft, in the interest of expediency, for smaller developments with few complex issues, or other reasons.

The Terms of Reference will usually require, but are not restricted to, the following information:

- title (of the development proposal);
- non-technical summary (translated into appropriate aboriginal languages);
- description of the development (i.e. phases, timetables, location, technology used, alternatives to the development, aspects of environmental considerations in development design);
- description of the existing environment including environmental interactions (i.e. natural and human setting);
- impacts of the development on the ecological, social, cultural and economic environments, including those caused by malfunctions or accidents, and any cumulative impact(s);
- proposed ecological, social, economic and cultural 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.

The Terms of Reference may also provide direction to the developer on the number of copies and translation requirements for the document, and issue direction on document distribution.

A Work Plan document is produced to accompany each Terms of Reference. This helps to clarify the process for the environmental assessment. The Work Plan describes the steps of the environmental assessment, identifies key milestones, and describes the roles of those involved. It also provides a schedule showing the estimated timelines for each step. Participants usually have a chance to comment on the Work Plan before it is finalized by the Review Board, as it is circulated in draft form along with the Terms of Reference.

While the developer is preparing its Developer's Assessment Report, the Review Board organizes its assessment The Review Board may coordinate technical reviewers to ensure that responses to every item in the Terms of Reference can undergo an appropriately rigorous review. Where expertise is required beyond that available in government, the Review Board can hire specialist advisors to provide it.

3.11 Preparing Developer's Assessment Report

The developer prepares the Developer's Assessment Report, addressing each information item in the Terms of Reference. Developers will include a concordance table correlating each item in the Terms of Reference to a specific page or sub-section in the Developer's Assessment Report. This allows the Review Board and others to quickly and easily find responses to the items in the Terms of Reference. The timing and delivery of the Developer's Assessment Report is the developer's responsibility. If it takes longer than is scheduled, the environmental assessment process will be extended accordingly.

The developer will describe, within the context of the Terms of Reference:

Issue Identification: This describes how the developer identified which valued components (ecological, social, cultural and economic) to focus on. This could include results of consultations, traditional knowledge, field studies, literature reviews, professional expertise, etc. The assessment should focus on the issues that are most likely of importance.

Mitigation or Remedial Measures: The developer will describe what measures have been designed or added into the development to reduce or avoid impacts. Where an impact is unavoidable and cannot be mitigated on site, then off site mitigation suitable to the impacts will be implemented. For example, where fish habitat must be destroyed on site and none can be created on site[69], then off-site mitigation may involve creating fish habitat elsewhere. This will also be applied to other types of impacts.

Impact Predictions: Using a clear methodology, the developer will describe how the predicted impacts are expected to arise from the proposed development. This will include describing the mechanisms for cause and effect and providing supporting references (including where traditional knowledge was used). Where professional judgment has been used in determining impacts, this must be made clear. An explicit account of the level and nature of uncertainties involved in each prediction is required[70]. For each predicted impact, the developer will also describe:

- the nature or type of the impact;
- the geographical range of the impact;
- the timing of the impact (including duration, frequency and extent);
- the magnitude of the impact (what degree of change is expected);
- the reversibility of the impact; and,
- the likelihood and certainty of the impact[71].

Significance: Using the above factors, the developer will rate, in its opinion, the overall significance of each predicted impact. (Ultimately, the final determinations of significance rest with the Review Board. However, the developer's perspective on significance should be stated in the Developer's Assessment Report). This will help to characterize the importance of each impact.

Cumulative Effects Assessment: The developer will assess the impacts of the development in combination with the impacts of all other past, present and reasonably foreseeable future developments and human activities. Developers will:

- identify the valued components likely to be affected by this project in combination with other developments;
- identify the other human activities and developments that will affect these same valued components;
- determine the combined impacts of the proposed development in combination with the other developments and activities on these valued components; and,
- identify ways to manage these cumulative impacts[72].

Identifying reasonably foreseeable future developments involves a broad prediction for which less detail is expected than when identifying present or past human activities. See Appendix I for further details regarding Cumulative Effects Assessment.

[69] Sometimes mitigation on-site is not financially feasible, may involve unacceptable uncertainties of success, or may not be physically feasible.

[70] For example, providing statistical confidence intervals, or rating levels of certainty as high, medium-high, medium, medium-low, or low.

[71] In this sense, likelihood is based on the probability of an event (such as an early frost) occurring, while certainty refers to the limits of our theoretical accuracy in predicting.

[72] Managing these cumulative effects may require working with other contributors to these cumulative effects or government.

3.12 Conformity Check

The developer then submits its Developer's Assessment Report to the Review Board. It is sent out to all directly affected parties, interveners, members of the public, and any others on the distribution list. The Developer's Assessment Report is also posted on the Review Board web site.

The first step in reviewing the Developer's Assessment Report is called the conformity check. This determines whether the developer has responded to every item required by the Terms of Reference with enough information to address the impacts on the environment, but does not investigate the quality of the responses in detail. Because the conformity check is a straightforward examination, it is usually completed internally. Where warranted, the Review Board may request conformity comments from any or all of the environmental assessment participants.

During the conformity check, if it is found that the Developer's Assessment Report has not responded to all items in the Terms of Reference, a deficiency statement is issued telling the developer what information is missing. If the missing information is believed to be pivotal, the environmental assessment will be put on hold until the information is received. Otherwise, the deficiency report is issued but other aspects of the assessment continue. If it there is a disagreement as to whether the Developer's Assessment Report is in conformity with the Terms of Reference, the Review Board will settle the issue by making a ruling[73].

[73] When disputes arise pertaining to the environmental assessment process, the Review Board will settle them by issuing rulings. Parties in the environmental assessment may request a ruling on any issue at any time.

3.13 Technical Review

Once the conformity check has established that the Developer's Assessment Report (DAR) contains an answer to every item in the Terms of Reference, the report is given a detailed technical review. At this stage, technical reviewers look at the contents of the Developer's Assessment Report for completeness, logical flow, and consistency, to determine if it adequately identifies and characterizes the potential issues and impacts of the proposed development.

The Review Board's staff coordinates the analysis of the DAR. During the technical review there are opportunities for participants to express their ideas, and present their evidence and facts (i.e. traditional knowledge holders, scientific experts, and directly affected parties) to the Review Board. This is usually intended to reach and assert supported conclusions related to causes and effects, usually focusing on:

- which parts of the development are predicted to cause impact;
- what kinds of impact will be caused;
- what valued component will be affected; and,
- how significant the impact will be.

The result of this step is to find and focus on unresolved or unclear issues, and to provide the Review Board with information that will contribute to its decision. Some issues will be scientific or based on traditional knowledge, and others will be value-based. All meetings related to technical issues are open to the public, to ensure that all participants can voice their opinions and can hear relevant discussions pertaining to impacts.

Technical reviewers submit their comments in a format that has been designed by the Review Board in consultation with several organizations that often do technical reviews. Because some parties to environmental assessments do not have technical

backgrounds, each technical review must include a non-technical summary. This should not be longer than one page (see Appendix E for details).

The Review Board may hold technical sessions to facilitate discussion between parties regarding technical issues. This is intended to help parties reach consensus where possible, and identify and prioritize the issues on which there is remaining disagreement. Review Board staff facilitates these sessions, and members of the Review Board are not in attendance.

3.14 Information Requests

Usually there are questions that arise during the technical review. If possible, they should be settled informally by discussion. Similarly, participants are encouraged to get any needed information informally by discussion amongst themselves. Records of discussions between participants and the developer may be filed and form part of the public record. For more substantial questions, the Review Board seeks facts and opinions by issuing information requests. Information requests and their responses form part of the public registry and the body of evidence the Review Board considers when reaching its decisions.

Although all information requests are issued under the authority of the Review Board, some may originate from other organizations, such as technical reviewers or interveners. These information requests are provided to the Review Board. If the Review Board approves them, it will issue them to the intended recipients. Information requests follow a format determined by the Review Board (see Appendix F for the format of a proposal for an information request, and a sample information request).

Section 25 of the MVRMA states that the Review Board "has the powers, rights and privileges of a superior court with respect to the attendance and examination of witnesses and the production and inspection of documents". Although the Review Board prefers that required information is produced in response to information requests, it could use its subpoena powers to secure the information necessary to reach an informed decision. As well, section 22 of the MVRMA gives the Review Board the authority to "obtain from any department or agency of the federal or territorial government any information in the possession of that department or agency that the board requires for the performance of its functions".

During an environmental assessment there may be one or more rounds of information requests, as needed. In its Work Plan, the Review Board will identify milestone dates for the submission of information requests and also identify response dates.

3.15 Hearings

During an environmental assessment, the Review Board may choose to hold hearings. The Review Board decides on a case-by-case basis whether or not there is a need to hold public hearings at any time during an EA. Hearings may occur by written submissions (on paper) or in person or they may involve both.

At least 45 days before a hearing, the Review Board will give public notice to ensure that people know that a hearing will be held and to provide participants with time to prepare. At least 25 days before a hearing, participants must declare their intention to make a submission and describe any issues that they will be raising. By the same time, any parties that wish to participate must also file notice that they wish to do so. These parties may appear on their own behalf, or be represented by counsel or an agent.

If anyone wants to make his or her views known to the Review Board, but does not want to be an intervenor

in the hearing, that person may submit written views in advance, or may make an oral presentation during an appropriate part of the hearing.

Before a hearing, a pre-hearing conference may be held, to finalize and identify hearing issues, to schedule information exchanges and to clarify hearing procedure. Board members do not attend the pre-hearing conference. The pre-hearing conference is also intended to help resolve issues by alternative means where possible. At pre-hearing conferences, the Review Board may ask parties to describe the issues they do not agree on, the steps they have taken to come to agreement, why they cannot do so, and how the Review Board is expected to resolve the issue (see Appendix G for a sample guide to pre-hearing conferences.)

Participants in the hearing will be asked to submit their hearing presentations to the Review Board by a set date before the hearings. This need not be a verbatim script, but should summarize the arguments made by the parties, presenting each point and their intended conclusions. This is necessary to ensure that all parties have adequate and fair opportunity to prepare for the hearing. This must include a plain language summary of key points and their arguments. This plain language summary must be no more than one page.

At a set date before the hearing, no new material may be added to the record without the permission of the Review Board. This is to prevent material from being filed at the last minute, to ensure that all parties have fair opportunity to prepare responses.

Hearings are presided over by the Chairperson of the Review Board or a designated alternate. The hearing is informal as compared to a court of law, with translation provided where appropriate and necessary. The Review Board can also arrange for written transcripts or electronic recording.

Video- or tele-conferencing presentations are permitted during a hearing. During the hearing, any parties (except for members for the public) that present information will be subject to questioning by other participants and the Review Board and will have the opportunity to respond.

Following the hearing, the public record will be stay open until the parties to file any additional evidence that is requested by the Review Board during the hearing. Any transcripts or notes will also be added to the public record at this point.

Community hearings or sessions can also be organized for the Review Board to hear the views of potentially affected communities. The Review Board may vary the level of formality at these hearings as is appropriate.

Rules on hearings are included in the *Rules of Procedure of Environmental Assessment and Environmental Impact Review Proceedings*. They are included in Appendix C.

3.16 Deliberating and Preparing the Report of Environmental Assessment

Once the Review Board has sufficient evidence for its consideration, the public record for the proceeding will be closed. At this time, the Review Board will, in a timely manner, consider the Developer's Assessment Report and the evidence on the record. It will reach decisions about whether the development should proceed, and if so, with which mitigation measures. These measures may recommend mitigations to prevent, reduce or avoid impacts[74], if any. The Review Board may also recommend measures including programs for follow-up monitoring, analysis and management. The Review Board can issue supplementary information requests if an important issue is still unclear.

[74] MVRMA s.128(1)

During the deliberation, the Review Board has to decide whether or not the development is likely to have significant adverse environmental impacts on the environment or be a cause of significant public concern. If the Review Board finds that the development is likely to cause significant adverse environmental impacts, it may order an environmental impact review or impose mitigation measures to reduce or avoid the impact[75]. If the Review Board finds that the development is likely to cause significant public concern, it will require an environmental impact review. The Review Board may also decide to recommend that the proposal be rejected with no further assessment.

Throughout the environmental assessment, the onus is on the developer to convince the Review Board that the proposed development won't be likely to cause significant adverse impacts. To do this, developers must be sure to place adequate evidence on the public record. The risk of failing to provide adequate evidence is that, without evidence proving otherwise, the Review Board will conclude that the development will cause significant adverse impacts.

Sometimes impacts can be reduced by the actions of other organizations besides the developer. Where actions that could reduce an impact are within the mandate or policy of another organization, such as a government body, the Review Board's recommended measure may not be directed at the developer. For example, a mitigation measure might be recommended for government to help manage a cumulative effect, when this is in accordance with government policy. However, the Review Board's recommended measures are usually directed at the developer.

In addition to recommendations (i.e. recommended measures), the Review Board may offer non-binding suggestions for good environmental management.

The recommended measures and suggestions are written into a document called the Report of Environmental Assessment, which describes the factors considered and serves as the Reasons for Decision. The Report of Environmental Assessment will include a concise non-technical summary of the key findings of the Review Board. The Report of Environmental Assessment is sent to the Minister of INAC, the developer, the National Energy Board (in some cases), the preliminary screener, and the referral body and is then placed on the public registry.

3.17 Ministers' Decision

Once the Review Board has completed its deliberations and has issued the Report of Environmental Assessment, that report is sent to the Minister of INAC (or, in some cases, the National Energy Board)[76]. The Minister of INAC must then distribute the Report of Environmental Assessment to every responsible minister.

On receiving the Report of Environmental Assessment, the Minister of INAC and the responsible ministers must consider the report[77] and then may choose from a limited number of responses[78].

[75] The Review Board may recommend the imposition of mitigation measures to prevent impacts, thus avoiding a significant impact, or to reduce the magnitude of impacts if a significant impact is found.

[76] The Review Board must also provide a copy of its report to the preliminary screener(s), or to any body that referred the development proposal to environmental assessment, as per s.128(3) and 128(4).

[77] s.130(1)

[78] Unless the INAC Minister delegates this to another minister.

If the Review Board recommends that the development be approved with mitigations or rejected, the ministers may, or may not, agree to:

- adopt the Review Board's recommendation;
- refer it back to the Review Board for further consideration;
- consult the Review Board and then adopt the recommendation with modification; or,
- consult the Review Board and then reject the reasons for decision and order an environmental impact review.

The Minister may decide to order an environmental impact review regardless of the Review Board's recommendation. Or, the INAC Minister may consult the Minister of the Environment, and then refer the proposal to him or her for a joint review under the Canadian Environmental Assessment Act.

Should the Minister (or the NEB) and responsible minister(s) choose to consult with the Review Board (as per the last two points, above), they will notify the Review Board, and work together with the Review Board to determine the consultation process.

3.18 Completing of the Environmental Assessment

The environmental assessment is completed when one of two things happens:

1. The Review Board sends the Report of Environmental Assessment to the Minister of INAC (or in certain cases the NEB) and it is accepted; or

2. The development is sent for an environmental impact review.

The ultimate result of the environmental assessment process is to support sustainable development. This is achieved by preventing unacceptable developments that are ecologically, socially or economically harmful, or by improving the design and environmental management of projects that may be acceptable through recommended measures to make them better. The steps described above provide a timely and efficient assessment process that is open and fair. Ultimately, this process will help safeguard the well-being of the environment and people of the Mackenzie Valley.

Section 4: Environmental Impact Review

4.1 Introduction

This section provides details on the environmental impact review process.[79,80] An environmental impact review (EIR) means the examination of a development proposal undertaken by a Review Panel[81] to determine and assess impacts and mitigations. An EIR will also identify any public concern. As with preliminary screening and environmental assessment, this stage of assessment looks at the environment in a broad sense, including the ecological, social, economic and cultural aspects. By the end of the EIR, a ministerial decision is made regarding whether or not the project may proceed to permitting and, if so, under what conditions[82].

Environmental impact review is the third and final level of evaluation in the Mackenzie Valley EIA process described in the MVRMA[83]. It builds on the work completed at the environmental assessment step. Please see Figure 4.1 for an illustration of the EIR process.

The Review Board is responsible for starting the EIR and has oversight responsibilities once the Review is underway. A Review Panel, appointed by the Review Board, is required to conduct the review of a development proposal that is referred for EIR following an environmental assessment. The Review Board is the main instrument for EIR in the Mackenzie Valley[84].

4.2 About The Review Panel

The Review Panel is an independent body whose members are not acting on behalf of, or in the interests of, their nominating agency or any other organization. Its deliberations are independent of the developer, government or interested parties. This enables the Review Panel to have an objective and distinct perspective. As the federal Operating Manual for Environmental Assessment Panel Chairs (p.3) states, "Panels have a unique opportunity and responsibility... to contribute to good decision making on projects by providing sound and relevant conclusions and recommendations to ministers on the environmental and... social issues raised in the terms of reference".

The appointed Review Panel has, with respect to the EIR, all the powers of the Review Board including the ability to hold hearings, subpoena witnesses and make rules and rulings. The Review Panel is accountable to the public, its members acting on behalf of the residents of the Mackenzie Valley.

The Review Panel is made up of three or more members appointed by the Review Board, including a Chairperson. Panel members may be members of the Review Board. The Review Board can also select Review Panel members who are not members of the Review Board, if those persons have expertise related to the evaluation of the development. Where the development being reviewed is wholly or partly in a settlement area, the members on the Review Panel must include an equal representation of First Nation and government appointees not including the Chairperson.

[79] For reference purposes the environmental impact review process is described in s.132 through s.140 of the Mackenzie Valley Resource Management Act (MVRMA or Act)

[80] This section primarily describes a Review undertaken by a Review Panel established by the Review Board for a development occurring within the Mackenzie Valley. For details of a Review with transboundary implications, where there is cooperation between the Review Board and an assessment authority in another jurisdiction, or where a joint review panel is established, please refer to part 4.9 of this section.

[81] established under s.132 to s.140 of the Act

[82] This decision may also be made by the National Energy Board. Section 7.7, below, describes how this decision is made

[83] See Part 5 of the MVRMA.

[84] See s.114(a) of the MVRMA.

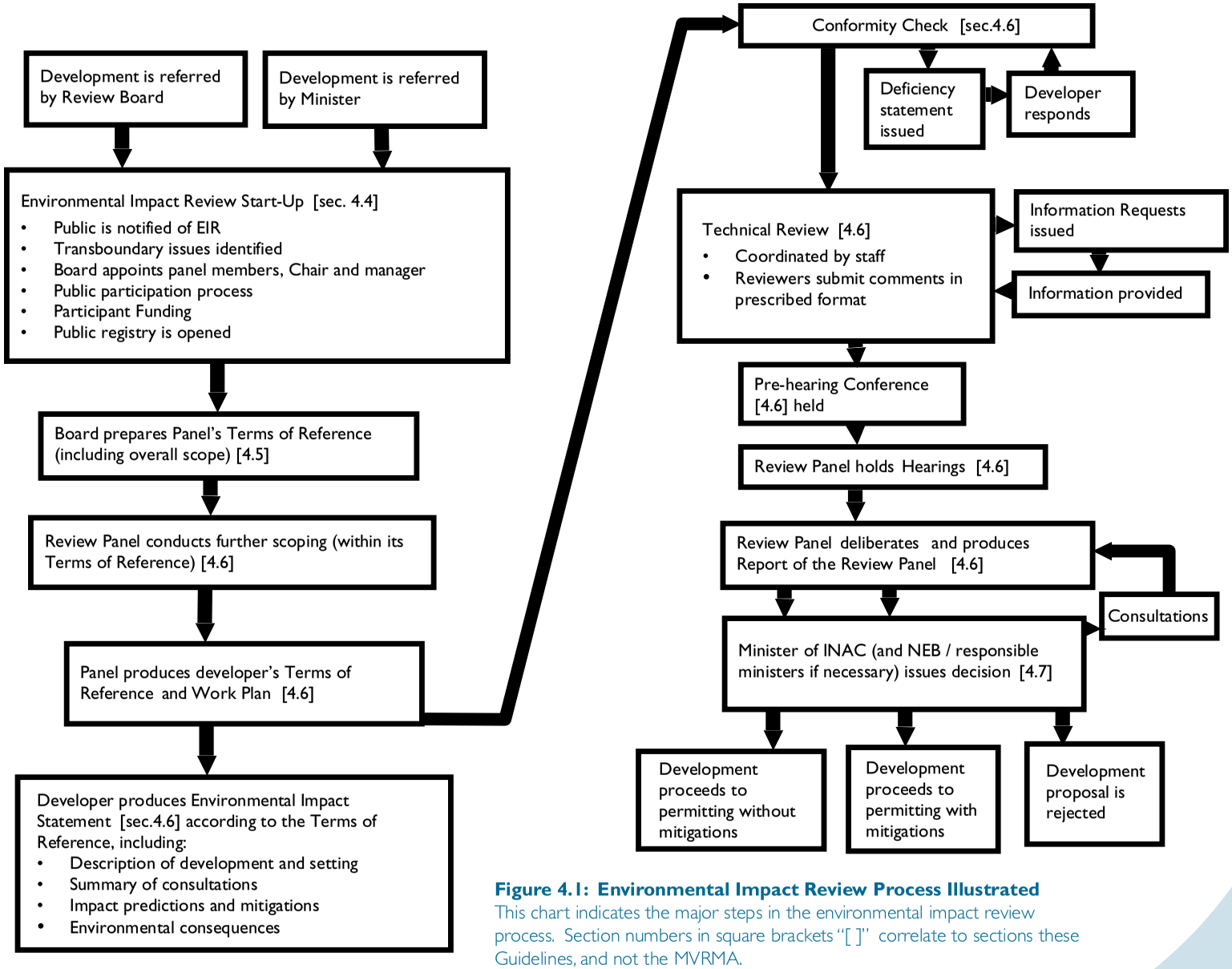


Figure 4.1: Environmental Impact Review Process Illustrated
This chart indicates the major steps in the environmental impact review process. Section numbers in square brackets "[ ]" correlate to sections these Guidelines, and not the MVRMA.

In selecting Review Panel members, the Review Board will also try to create a balance of expertise and assemble a group that can form an effective team that can make good decisions based on both technical and public input. Panel members are nominated because of their personal qualifications, and not as stakeholder representatives.

4.3 General Principles of the Environmental Impact Review

Many aspects of the environmental impact review are similar to aspects of environmental assessment. The commitment to principles of justice and fairness are the same, as is the commitment to function in a timely and efficient manner.

The Review Board assigns a staff for the Review Panel, and issues a Terms of Reference for the Review Panel. During an environmental impact review, the Review Panel must consider[85] at a minimum:

- the purpose of the development;
- alternative means of carrying out the development[86], and the impacts of these alternatives;
- the impacts of the development (including cumulative impacts and impacts from accidents and malfunctions);
- the significance of those impacts;
- public comments;
- mitigation measures;
- need for and requirements of follow-up programs;
- the capacity of renewable resources that are likely to be significantly affected by the development to meet existing and future needs; and,
- anything else that the Review Board or any responsible minister deems relevant[87].

During an EIR, the Review Panel must make a determination on the impacts of the development and public concern, and produce a Report of the Review Panel submitted to the Minister of INAC (and to the National Energy Board in certain cases).

Many other organizations will have roles to play during a review. The roles of participants in an EIR are very similar to the roles of participants during environmental assessment (please see section 3). The few exceptions are indicated in each step described below.

4.4 Environmental Impact Review Start-Up

There are two ways that a development may be required to undergo an EIR. As described in section 3.16, the Review Board may decide at the environmental assessment stage to refer the development for an EIR. The federal Minister, responsible ministers or NEB may also decide to do so. No other group can refer a development to an EIR.

As in environmental assessment, a public registry is opened. The public record from the environmental assessment of the development may, at the Review Board's discretion, be filed in the public registry for the EIR. As in environmental assessment, the portion of the public registry that will be considered during deliberations is called the public record. (See Section 3.7 of these guidelines for more information on the public registry and public record).

[85] See s.117 (2) and s.117(3)

[86] ...that are technically and economically feasible

[87] Because the Review Board is required to consider any other matter it (or any responsible minister) deems relevant, it is important to recognize that the other points are the minimum that must be included, and do not represent the limits of what is considered. For example, the need for the development and viable alternatives to the development will likely be standard Terms of Reference items.

During environmental impact review start-up, the Review Board will identify whether the development or its impacts cross the boundaries of the Mackenzie Valley. If so, then the Review Board would follow one of the transboundary approaches described in section 4.8.

The Review Board will determine its needs for financial and administrative support for the Review Panel[88] and convey them to the federal Minister. It will appoint a panel manager and support staff. Then, it will appoint members and a chairperson to the Review Panel[89]. In the process of appointing a Review Panel, there will be participation by an equal number of Review Board members appointed by First Nations and Review Board members appointed by government (excluding the chairperson). Also, more considerations arise if the development is partly or entirely in a settlement area[90]. If the development is:

- wholly within the First Nation's settlement area, the Review Board members nominated to the Review Board by First Nations will comprise half of the Review Panel, other than the chairperson;
- predominantly within the First Nation's settlement area, the Review Board members nominated will comprise at least two on the Review Panel; and
- partially, but not predominantly within the First Nation's settlement area, the members nominated will comprise at least one on the Review Panel.

The Review Board may appoint experts to sit as Review Panel members. For example, this may be done when:

- the type of development is new to the Mackenzie Valley;
- the development is proposing to use new technologies or techniques previously not used in the Mackenzie Valley;
- the development is proposing to use specialized or complex technologies;
- specific traditional knowledge is required; or,
- the reasons for referral to EIR are based on complex or extensive environmental impacts or public concern.

Ideally, any experts appointed should also possess interdisciplinary expertise, to ensure that they can contribute effectively to the functioning of the Review Panel as a team.

Before a ministerial decision is made, no authorization can be given for the carrying out of the development, nor can any irrevocable action be taken by the Gwich'in or Sahtu First Nation, a local government, or a department or agency of the federal or territorial government that would allow the development to proceed[91].

4.4.1 Public Participation

The panel manager may prepare a draft public participation program. As soon as possible after appointment, the Review Board office, the panel manager and staff shall conduct an orientation meeting with Review Panel members to explain the Review Panel's Terms of Reference, and outline the Review Panel's responsibilities. At this meeting, the Review Panel will be provided with a clear understanding of its mandate and the context in which it has been issued.

[88] This involves preparing a general plan for the conduct of the Review that will assist the Review Board in developing budget forecasts and preparing and submitting a budget for the Review to the federal Minister. The budget may include the hiring of a panel manager and any required support staff, travel, incidentals, honorarium, administrative costs for the operation of the panel, and intervenor funding. The amount of funding approved for the Review will influence the drafting of the terms of reference for the panel.

[89] As per s.132.

[90] A development that is proposed to be carried out wholly or partly in a settlement area, the 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.

[91] See s.118 of the MVRMA.

At the orientation meeting or shortly afterward, the Review Panel may finalize the public participation program. Included in the public participation program will be an invitation to organizations and individuals to register as intervenors or directly affected parties (as described in the *Rules of Procedure* [Appendix C]). The program will take into consideration communities that could be affected by the development, interested parties (and their location and time availability), and the need to complete the review in a timely and cost-efficient manner.

In finalizing its public participation program, the Review Panel will:

- determine language requirements;
- determine the most appropriate means for communication;
- provide the opportunity for interested parties to indicate their interest in participating in the review;
- take into account cultural and community considerations such as important hunting periods, key community gatherings, and general assemblies of Aboriginal communities;
- take into account seasonal, economic and social considerations;
- plan meetings in communities; and,
- develop a mailing list of all members of the public and participants in the review, using electronic mail where possible.

These determinations may be made by consulting potentially affected parties and the public in general.

At start up, once the Review Panel has been established, participants in the process will be identified and public notice will be issued as it is during environmental assessment (See section 3.5).

The Role of the Panel Manager

In addition to preparing a draft public participation program (for finalization by the Panel) and conducting the orientation meeting for the Review Panel, the Panel Manager may fulfill other duties during the EIR, such as:

- conducting or overseeing mailing lists and the public registry;
- providing general advice on the process and clarification of the Review Panel's Terms of Reference;
- coordinating all required support services for hearings and meetings;
- responding to media inquiries;
- providing the Review Panel with financial information;
- assisting with the final report; and,
- serving as the main point of contact between the Review Panel and other participants.

4.4.2 The Review Board Participant Funding Program

During EIR start-up, the Review Board will determine the need for participant funding from the federal Minister to help the intervenors and directly affected parties to participate for meaningfully in the EIR. In deciding to seek participant funding, the Review Board would, among other things, take into consideration the following:

- the nature, complexity, size and location of the development proposal;
- the geographic extent of the development and its possible effects;
- any significant public concerns associated with the development;
- the reasons for referral to EIR;

- the anticipated time frame for completing the EIR; and,
- the validity of the reasoning put forward by interveners who wish to receive funding.

Formal guidance would be produced to cover such points as eligibility, accounting requirements, maximum funds granted, and application details.

An independent committee of people not on the Review Board or Review Panel will be appointed to select eligible parties from the applicants seeking participant funding. This committee will operate independently from the Review Board and the Review Panel. The Review Panel is not responsible for the participant funding process, amounts involved, or recipients selected. This will be handled by the independent committee. Typically, participant funding would be advertised and distributed in the early stages of the EIR. Once the funding is allocated, the group would be disbanded and the participant funding program would terminate.

The Review Panel will allow enough time for financial administration and the receipt of funds related to participant funding when planning relevant stages of the environmental impact review. This will ensure that those receiving funding are aware of, and are able to use, the funding resources at appropriate times during the EIR.

4.5 Terms of Reference for the Panel

The Review Board will produce the Review Panel's Terms of Reference, after consultation with responsible ministers and potentially affected First Nations[92]. This provides guidance to the Review Panel on its mandate and the procedure to follow. It will also include the factors to consider as described above in section 4.3. The Review Panel is also guided in conducting the EIR by any guidelines issued under s.120 of the MVRMA, including these *Guidelines for Environmental Impact Assessment in the Mackenzie Valley*, and Section 4 in particular.

The Terms of Reference set the bounds of the EIR for the Review Panel. The Terms of Reference may include a complete description of the development, the scope of the issues to be considered, and the main steps of the process to be followed. It may also include the timeframe within which the work should be completed.

The Review Board may provide instructions in its terms of reference on 1) whether the Review Panel needs to prepare a Terms of Reference for the developer's Environmental Impact Statement and 2) how this should be done (i.e. community scoping sessions).

The Review Board will have completed an EA on the development proposal and it may be that only certain issues remain unresolved in the EA that must be addressed in an EIR. In this case, the Review Board may provide a narrow scope of issues for the EIR. This would be provided in the Terms of Reference for the Review Panel. Along with this, the Review Board would also have to provide rationale and supporting evidence that some of the factors to be considered in an EIR[93] have been satisfactorily addressed (i.e. to justify a narrower scope for the EIR).

[92] See s.134 (1)(a) of the MVRMA.

[93] See s.117 (2) and s.117 (3) of the MVRMA.

In summary, the Terms of Reference may include, but not be limited to:

- how the Review Panel is to be structured and operated;
- the scope of the EIR;
- the factors to be considered ;
- any instructions from the Review Board regarding the developer's Environmental Impact Statement, or on the process for the Review Panel to determine the need for or to issue the Terms of Reference for the developer's Environmental Impact Statement[95];
- public notification requirements[96];
- direction to perform such analysis as is required to complete the EIR[97];
- public consultation or hearing requirements;
- the respective roles and responsibilities, and expectations of the Review Board and the Review Panel in the EIR;
- direction on the contents of the report of the EIR[98]; and,
- instructions for submission of the report[99].

Once the Terms of Reference for the Panel are issued, the Review Panel conducts the EIR in accordance with its Terms of Reference until its completion.

4.6 Scoping, Conformity Check, Hearings and Deliberation

Many of the steps of an environmental assessment are also part of the EIR. Two main differences from environmental assessment are that the EIR is conducted by a Review Panel (and not the entire Review Board) and that the document produced by the developer is called an Environmental Impact Statement (and not the Developer's Assessment Report). The steps taken during an environmental impact review are listed here in general order of occurrence:

Scoping the development and issues: Generally, the Review Board will produce a Terms of Reference for the Review Panel. This will deal with the scope of the assessment, the scope of the development, and may include public involvement. Within its Terms of Reference, the Review Panel may further scope the development and the issues to be assessed. Issue scoping will try to focus the EIR on the issues that will be addressed in the EIS and may be reflected in the Review Panel's Report. This is done as in an environmental assessment (see Section 3.8 and 3.9). The Review Panel will consider previous reports, including the Report of Environmental Assessment. If the development proposal has changed (as a result of the environmental assessment), this will be reflected in the Review Panel's development scoping. If any particular issues have been flagged during the environmental assessment, this will be considered during issue scoping by the Review Panel. The Review Panel will make all efforts to conduct site visits and may consult the public as part of scoping.

Producing EIS Terms of Reference and Workplan for the Developer.[100] This will address the issues identified during issue scoping, and may focus on issues unresolved by the environmental assessment. It must conform to the Terms of Reference for the Review Panel. (See Section 3.10 of this document for additional details).

[95] See s.134(1)(b) of the MVRMA.

[96] See s.134(1)(c) of the MVRMA.

[97] See s.134(1)(d) of the MVRMA.

[98] See s.134(2) of the MVRMA.

[99] See s.134(3) of the MVRMA.

[100] If required by the Review Board (see section 4.5): The Review Panel will produce a Terms of Reference for the developer's Environmental Impact Statement. This is produced as it was for the Developer's Assessment Report during Environmental Assessment.

Developer Produces the Environmental Impact Statement: The developer then follows its Terms of Reference to produce an Environmental Impact Statement. This document is similar to the Developer's Assessment Report, in that it presents the proponent's views in identifying, describing and evaluating impacts and identifying potential mitigations. However, the scope and subjects may be focussed differently in an EIR[101]. (See section 4.6 of this document for more information).

Conformity Check and Technical Review: The Review Panel conducts the conformity check with deficiency statements as needed. The Panel may seek public comment on conformity. Following this, the Review Panel conducts a technical review. If potentially important information is missing at this point, the Review Panel may, considering the disadvantages of a delay, decide how important the missing information may be. Both the conformity check and technical review, including information requests, are done as during an environmental assessment (see Section 3.12, 3.13 and 3.14 for more information).

Pre-Hearing Conferences and Hearings: The process followed by the Review Panel is similar to that followed by the Review Board during an environmental assessment. (See section 3.15 for details. More information can be found in Appendix C, the Rules of Procedure for Environmental Assessment and Environmental Impact Review Proceedings, and Appendix H (additional notes on hearings)). As in an environmental assessment, pre-hearing conferences will be used to shape and manage the material brought forth in hearings.

As the federal Operating Manual for Environmental Assessment Panel Chairs (p.17) states,

> "The public hearings are the raison d'être of the public review. Everything that precedes them merely serves to ensure that the hearings are held in an effective and productive manner. In this context, the hearings provide the main opportunity for participants to convey their ideas and the reasons for their ideas about the proposal. Panel members must not allow their minds to be made up about issues until the hearings are finished and the final information is received."

Panel members have an obligation to prepare for the hearings carefully by reading the materials and deciding which questions need to be answered at the hearings. Discussing the issues at the panel's planning meetings helps the panel to prepare for the hearings and identify those issues that are particularly important. At the direction of the panel, the Panel Manager can assist by:

- preparing a draft list of questions to be asked at the hearings; and,
- consulting and providing an analysis of the issues

Rulings if needed: If disputes or procedural questions arise pertaining to the EIR process, the Review Panel will settle them by issuing rulings. Participants in the EIR may request a ruling on any issue at any time. When a ruling is required, the parties involved, with help from the panel staff, will follow the procedures outlined in the Review Board's Rules of Procedure, which would apply equally to a Review Panel established by the Review Board, found in Appendix C of this document. Rulings will be consistent with the MVRMA, the Rules of Procedure, the Review Panel's Terms of Reference and these guidelines. Any future Review Panel established for an EIR are not bound by any rulings made during a previous EIR.

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

The Review Panel itself may, as required, seek clarification and direction from the Review Board at any time during an EIR. Any such direction would, however, only be with respect to process or directions provided for in the Review Panel's Terms of Reference. The Review Board will not provide any direction or advice on any decisions made by the Review Panel.

Panel Deliberation and Reporting: Soon after the hearings, the Review Panel will discuss the content of its report. The deliberation of the Review Panel is similar to the deliberation of the Review Board during an environmental assessment (see Section 3.16 of these Guidelines). However, there are a few differences. Deliberations are held by the Review Panel and considerations include the Environmental Impact Statement (as opposed to the Developer's Assessment Report as during environmental assessment).

As in environmental assessment, the closing of the public record signifies the end of the public portion of the EIR. The developer, regulatory authorities, directly affected parties, the NEB (if involved) and the public will be notified of any schedule set by the Review Panel, including any anticipated delay. The Review Panel decision will be based on the consideration of all of the evidence received while the public record was open during the EIR process, including available information received from:

- site visits;
- public consultations of the Review Panel;
- public hearings;
- written submissions that were received;
- information received through the information request process (if used);
- information provided by participants in the EIR process; and,
- other information deemed acceptable by the Review Panel.

The Report of the Review Panel will include a summary of public comments, an account of the Review Panel's analysis, and the Review Panel's conclusions[102]. The Review Panel will make a recommendation that the development proposal be approved, (with or without mitigative or remedial measures or a follow up program) or rejected. If mitigation measures are presented (as conditions), the report will state clearly what the condition is and why it is required.

The Review Panel may choose to consult with regulatory authorities and the NEB (when involved) prior to releasing its final report. The purpose of this consultation would be to determine the technical feasibility of measures or follow up programs being considered as recommendations (i.e. recommended measures).

The Review Panel will then submit its report to the federal Minister (i.e. Minister of INAC), who will distribute it to every responsible minister and the National Energy Board in the case where it is required to issue an authorization for the development to proceed.[103]

4.7 EIR Decisions

The EIR decision step is a shared responsibility among several parties. The Panel decides what measures to recommend, such as mitigations to avoid or reduce impacts, and gives reasons for its decision. The Minister of INAC and responsible ministers or the National Energy Board make a final decision. This part outlines the responsibilities of each of these parties.

[102] s.134 (2)

[103] as per s.134

4.7.1 Review Panel

The decision of the Review Panel consists of its conclusions and recommendation as to whether the development proposal will be:

- approved as proposed;
- approved with mitigative or remedial measures;
- approved with a follow-up program;
- approved with mitigative or remedial measures and a follow-up program; or,
- rejected.

4.7.2 INAC Minister (or National Energy Board) and Responsible Ministers

The Review Panel's report is sent to the Minister of INAC[104] or to the NEB. The Minister is required to distribute it to every responsible minister. After considering the Review Panel's report, the federal Minister and responsible ministers (or the NEB) may agree to[105]:

- adopt the recommendations of the Review Panel;
- refer the report back to the Review Panel for further consideration[106];
- after consulting the Review Panel[107], adopt the recommendation with modifications; or,
- reject the recommendation.

After consultations and after any modifications or changes the Review Panel makes to its report, the Review Panel will send it back to the federal Minister. The federal Minister and responsible ministers will decide to adopt any recommendation with modifications by the Review Panel, or reject it.

The federal Minister will prepare written reasons for decision and distribute the decisions to every first nation, local government, regulatory authority and department or agency of the territorial or federal government affected by the decision. These written reasons will also be made available to the public[108].

Although the INAC Minister and responsible ministers make the final decision in the EIR, the process is a shared responsibility among several parties, which may include the federal Minister of INAC and any of the following:

- the NEB, where it is required to issue a licence, permit or other authorization for the development to proceed;
- any number of responsible ministers who have jurisdiction in relation to a development proposal under federal or territorial law; and,
- the Review Panel.

Several things could happen before a final decision is made, including a decision on modifications to the report and recommendations. Discussions or changes could be initiated by the federal Minister together with the responsible ministers, or by the NEB. As the decision options for the federal Minister, responsible ministers and the NEB are similar, then these parties may coordinate between themselves at this stage.

[104] If the NEB is required to issue an authorization, the review panel will send the report to both the Minister of INAC and the NEB. In this case, the NEB will perform the same role as described above for the Minister of INAC and responsible ministers.

[105] See s.135(1) of the MVRMA.

[106] Where the panel is required to consider further its report, the federal Minister and responsible ministers will provide a clear indication of what requires further consideration in the report. After the panel has given its report further consideration, the report will be sent back to the federal Minister.

[107] When the panel's report is sent back and the federal Minister and responsible ministers consult with the panel, the panel may work with these parties to clarify the report or refine the recommendations to be acceptable to all decision-making parties. If the federal Minister and the responsible ministers consider any new information or matter that was not before the panel, including public concern not in the panel's reasons, the new information or matter will be identified in consultations with the panel, as per s.135.

[108] See s.121 of the MVRMA.

Once the final decision is made, then the affected First Nation, local government, regulatory authority or department or agency of the federal or territorial government[109], or the NEB[110] will implement the recommended measures to the extent of their authority.

4.8 Determining Need for Cooperation and Joint Reviews

Normally, an EIR is done by the Review Board (or a panel created by the Review Board). There are different scenarios under which a Joint Review can take place (e.g. when the Minister decides that a proposed development is in the national interest). In some cases, the EIR that follows an environmental assessment is not a standard environmental impact review, but is instead a joint review undertaken by the Review Board with one or more organizations. This can happen when a development crosses the boundaries of the Mackenzie Valley. For example, a pipeline or road could start in or go through the Mackenzie Valley and end in Alberta. It could also happen when the impacts of a development cross the boundaries of the Mackenzie Valley, even though the development itself does not. For example, a hydroelectric development in BC upstream of a river flowing into the Mackenzie Valley could cause impacts inside the Mackenzie Valley. Another example would be a mine inside the Mackenzie Valley that might cause an impact on wildlife in a way that affects hunters in Nunavut.

Even when there is no transboundary issue, the federal Minister or the NEB may require a joint review[111]. In these cases, an independent joint review panel will be set up between the Review Board and a different authority will replace a Review Panel.

4.9 Undertaking Cooperation and Joint Reviews

In the cases described in section 4.8 (above), different processes are followed in initiating the joint or cooperative reviews. This section describes some of these processes.

4.9.1 Cooperation With Other Bodies

The Review Board may cooperate with a variety of other bodies, including the Canadian Environmental Assessment Agency, the National Energy Board, and assessment authorities in regions neighbouring the Mackenzie Valley (e.g. the [Inuvialuit] environmental impact review Board or the Nunavut Impact Review Board). The following common elements will apply to any processes with these cooperating bodies:

- The Review Board and representatives from the cooperating body will meet to agree upon a mutually acceptable panel structure and process for conducting a joint panel review to stand in lieu of an EIR. However, requirements of the MVRMA will still apply with such modifications as are required to facilitate the joint review[112].
- Once these processes have been agreed upon, appropriate mechanisms for informing the public and directly affected parties will be established, and details of the joint process will be made available.
- A joint panel will operate in a similar fashion as a Review Board appointed Review Panel described earlier in this section. However, the exact nature and details of its operation will be worked out in the agreement and made public once the joint review is underway.

[109] See s.136(2) of the MVRMA.

[110] See s.137(3) of the MVRMA.

[111] See s.130(1)(c) of the MVRMA.

[112] See s.138(2) , 139(3), 140(4), and 141(5), of the MVRMA.

- For every joint panel review carried out in cooperation with another body, separate agreements for its conduct will be established.

4.9.2 Cooperation with the Canadian Environmental Assessment Agency or the National Energy Board

A review will be established jointly under CEAA where it is determined by the federal Minister and the responsible ministers at the time of referral to EIR that it is in the national interest to do so[113]. Once the joint review under CEAA is completed, the panel report will, in addition to satisfying the requirements of CEAA[114], also be submitted to the federal Minister[115] (who will distribute it to every responsible minister); and to the National Energy Board (where it is required to issue an authorization for the development to proceed).

Where a proposal undergoing an EIR requires an authorization issued by the National Energy Board, the Review Board and the National Energy Board may enter into an agreement for a joint panel review[116]. Once the joint review is completed, the panel will submit its report to the federal Minister[117], who will distribute it to every responsible minister; and the National Energy Board. If the NEB is involved as the Designated Regulatory Authority, the Review Board will submit its report directly to the NEB.

Where coordination is agreed to, the Review Board would establish a Review Panel to conduct an EIR, and instruct the Review Panel in its Terms of Reference to coordinate its activities and share information with the responsible authority for assessment in the area outside the Mackenzie Valley. The nature and extent of this coordination would in part be determined by any rules governing such coordination in the area outside the Mackenzie Valley. Where coordination is agreed to, the type of joint review would be very similar to the type of EIR undertaken by a Review Panel, examined earlier in this section. Once the joint review is completed, the panel shall submit its report to[118] the federal Minister, who will distribute it to every responsible minister, and the National Energy Board.

4.9.3 Developments that Cross the Boundaries of the Mackenzie Valley

An EIR may be ordered following an EA for a development located partly in the Mackenzie Valley and partly in another area (such as another region of the Northwest Territories (i.e. the Inuvialuit Settlement Region, Nunavut, the Yukon, or a province)). Linear developments such as road or pipelines are examples of when this might occur. In such a case, several review options are available to the Review Board. The Review Board may, with the approval of the federal Minister[119]:

- enter into an agreement with the Minister of the Environment to provide for a Review Panel where the CEAA applies in that region or province; and,
- in any other case, enter into an agreement with an authority responsible in that region to coordinate their respective examinations of the development's environmental impact or undertake the examination of the development proposal by a joint panel.

[113] See s.130(1)(c) of the MVRMA.
[114] See s.41(f) of the CEAA.
[115] See s.138(1) of the MVRMA.
[116] See s.139(1) of the MVRMA.
[117] See s.139(2) of the MVRMA.
[118] See s.140(3) of the MVRMA.
[119] See s.141(2) of the MVRMA.

Where a panel is established in an agreement with the Minister of the Environment and the development being examined is proposed to be carried out partly in a region of the Northwest Territories and partly in an adjacent territory or province, at least one quarter of the panel's members, excluding the chairperson, must be appointed by aboriginal groups affected by the proposed development[120]. In this case, the Review Board and representatives of the Minister of the Environment would meet to agree upon a mutually acceptable panel structure and process for conducting a joint panel review to stand in lieu of an EIR.

Where coordination is agreed to, the Review Board would establish a Review Panel to conduct an EIR, and instruct the Review Panel in its Terms of Reference to coordinate its activities and share information with the responsible authority. The nature and extent of such coordination would in part be determined by any rules governing such coordination in the jurisdiction outside the Mackenzie Valley. The type of EIR would be very similar to the normal one undertaken by a Review Panel, examined earlier in this section.

As with any other joint reviews, in each of these cases separate agreements for the conduct of the review would have to be worked out.

Where a Review Panel is established with the Minister of the Environment or for the purposes of coordination with another authority responsible for the examination of environmental effects, or a joint Review Panel is established, the panel will make its report to[121]:

- the Minister, who will distribute it to every responsible minister;
- the National Energy Board if an authorization is required from this agency; and,
- in the case of a joint panel, the minister of the federal, provincial or territorial government with jurisdiction over the environmental effects that were examined.

4.9.4 Impacts that Cross the Boundaries of the Mackenzie Valley

The MVRMA provides a mechanism for the Review Board to be involved in the examination of a development proposal that is wholly outside of the Mackenzie Valley where it might have a significant adverse impact on the environment in the Mackenzie Valley[122]. In this case, the Review Board would have to gain the approval of the federal Minister. It would then enter into an agreement for the participation of the Review Board with the authority responsible for the examination of environmental effects in that region.

The nature and extent of such an agreement would, in part, be determined by any rules governing such participation in the jurisdiction outside the Mackenzie Valley. Once these processes have been agreed to, appropriate mechanisms for informing the public and directly affected parties would be established, and details of the process would be made available.

The Review Board may order an EIR following an environmental assessment of a development entirely in the Mackenzie Valley, in which it is determined that it is likely to a have significant adverse environmental impact in a region outside the Mackenzie Valley[123]. In this case, the Review Board may, with the approval of the federal 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 for the coordination of the respective examinations of the environmental impact of the development, or, the examination of the environmental impact of the development by a joint panel[124].

[120] See s.141(3) of the MVRMA.

[121] See s.141(4) of the MVRMA.

[122] See s.142 of the MVRMA.

[123] See s.128(4), s.130(2) and s.131(3) of the MVRMA.

[124] See s.140(2) of the MVRMA.

Section 5: Conclusions and Future Amendments

This document has been prepared by the Review Board under the authority of s.120 of the *Mackenzie Valley Resource Management Act*. Several other parties assisted, particularly the EIA Guideline Review Committee that met regularly over the course of several months in 2002, and provided additional review in 2003 and 2004. It is the hope of the Review Board and all others involved that this document helps to clarify the processes of preliminary screening, environmental impact assessment and environmental impact review.

These guidelines reflect the law affecting EIA in the Mackenzie Valley (i.e. the MVRMA) and the current thinking and good practices for implementing EIA specifically in the North and generally in Canada. As experience is gained through implementation, as societal values change, and as EIA good practices are further refined and improved, amendments to these Guidelines can be expected.

These guidelines may be amended because of:

- changes to the MVRMA that affect EIA in the Mackenzie Valley (such as settlement of land claims);
- changes or additions to regulations of the MVRMA (s.143) that affect EIA in the Mackenzie Valley (such as Tlicho amendments); and,
- changes to operational processes established to implement the MVRMA that affect EIA in the Mackenzie Valley.

These guidelines will be revisited after three years, and then periodically every five years for improvements based on the growing experiences of all organizations involved. The accompanying appendices will be updated on an ongoing, as-needed basis to ensure that they reflect best current practice.

For additional copies of these guidelines, for more information on the Review Board and its processes, or to comment on these guidelines, please contact:

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Mackenzie Valley Environmental Impact Review Board
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The Guideline Review Committee consisted of representatives from the Government of the Northwest Territories Department of Resources, Wildlife and Economic Development, Government of the Northwest Territories Department of Health and Social Services, the Mackenzie Valley Land and Water Board, the Sahtu Land and Water Board, the Gwich'in Land and Water Board, the National Energy Board, the Department of Indian Affairs and Northern Development, Environment Canada, and the Department of Fisheries and Oceans, in addition to the Mackenzie Valley Environmental Impact Review Board. The Review Board wishes to express its gratitude to these organizations for their efforts conducting revisions to this document from 2002 to 2004.

Appendices

Appendix A: Definitions and Abbreviations

The following list of definitions and abbreviations is provided to describe selected terms and acronyms for the clarity of readers. It is not intended as a list of legal definitions. Where the legal definition of a term has been simplified in the text, the original legal wording has been provided in the corresponding footnote. Readers seeking the legal definitions of any term defined in the MVRMA should refer directly to the Act. With respect to this document, most of the relevant legal definitions are in s.2, s.51 and s.111.

Designated Regulatory Agency (DRA) - an independent regulatory agency. The National Energy Board (NEB) is currently the only DRA under the MVRMA.[a]

Developer - the person or organization responsible for a development proposal that is subject to a preliminary screening, environmental assessment or environmental impact review.

Development - any undertaking or part of an undertaking, on land or water that is subject to a preliminary screening, and may include activities carried out by private agencies, local, territorial or federal government, or extensions thereof.

Developer's Assessment Report (DAR) - The impact prediction report submitted by a developer to the MVEIRB during an environmental assessment

DFO - The Department of Fisheries and Oceans.

Environment - the components of the Earth including (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 (a) and (b).

Environmental Assessment - means an examination of a proposal for a development by the Review Board (as per MVRMA s.126)

Environmental Impact Assessment (EIA) - The process of systematically considering the effects of development in decision-making. In the Mackenzie Valley, preliminary screening, environmental assessment and environmental impact review are all parts of the EIA system of the MVRMA.

Environmental Impact Review - means an examination of a proposal for a development by a review panel (as per MVRMA s.132)

Environmental Impact Statement (EIS) - The impact prediction report submitted by a developer to the MVEIRB during an environmental impact review.

Federal Minister - means the Minister of Indian Affairs and Northern Development (DIAND).

[a] an agency named in the schedule, referred to in a land claim agreement as an independent regulatory agency

First Nation - means the Gwich'in First Nation, the Sahtu First Nation or bodies representing other Dene or Métis of the North Slave, South Slave or Dehcho region of the Mackenzie Valley.

Government - refers to the federal government and the Government of the Northwest Territories

GLWB - The Gwich'in Land and Water Board

GNWT - The Government of the Northwest Territories

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 - 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 - Gwich'in Comprehensive Land Claim Agreement or Sahtu Dene and Métis Comprehensive Land Claim Agreement. These Agreements take precedence over the MVRMA where conflicts between agreement and Act exist.

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.

Mitigation measure - a measure to control, reduce, eliminate or avoid an environmental impact.[b]

MVEIRB - The Mackenzie Valley Environmental Impact Review Board

MVLWB - The Mackenzie Valley Land and Water Board

NEB - The National Energy Board

Preliminary Screener - any body or agency responsible for completing a preliminary screening

Preliminary Screening - means an initial environmental examination of a development proposal for potential significant adverse environmental, social and cultural impacts, and public concern.[c]

Regulatory Authority - a body or person responsible for issuing a licence, permit or other authorization required for the development under any federal or territorial law, such as the land and water boards, Department of Fisheries and Ocean, and the Department of Resources, Wildlife and Economic Development. It does not include the NEB or local governments.[d]

Responsible Minister - any federal or territorial minister with jurisdiction relating to the proposed development[e].

SLWB - The Sahtu Land and Water Board

Scoping - (of issues): the identification and prioritisation of relevant issues to focus the resources during assessment; (of the development): the decision of what will be included or excluded as a part of the development proposal being assessed.

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

Territorial Government - means the government of the Northwest Territories.

[b] "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.

[c] an examination of a proposal for a development undertaken pursuant to section 124

[d] 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] in relation to a proposal for a development, means any minister of the Crown of Canada or of the territorial government having jurisdiction having jurisdiction in relation to the development under federal or territorial law.

Appendix B: EIA under the MVRMA and CEAA - Selected Differences

Although all EIA systems share many aspects, certain differences between the MVRMA and CEAA processes are frequently asked about by those new to the MVRMA.

EIA Under MVRMA	EIA Under CEAA
Three levels: • Preliminary Screening • Environmental Assessment • Environmental Impact Review	Four levels: • Screening • Comprehensive Study • Panel Review • Mediation
Both direct and indirect socio-economic impacts are considered.	Socio-economic impacts are only considered if they are a result of a biophysical impact.
All stages conducted by independent bodies, except preliminary screenings that are sometimes conducted by government. The Review Board does preliminary screening and environmental assessment, and independent panels struck by the Review Board conduct environmental impact review.	Screening and Comprehensive Studies are conducted as self-assessments by government bodies. Review Panels and Mediation are independent.
Stages occur in sequence. Only after each stage is completed can a development be sent to the next stage of EIA.	Not strictly sequential. Projects can go directly to Comprehensive Study without completing Screening, may undergo Comprehensive Study without Screening, or may be referred directly rom Screening to Panel of Mediation.
Terminology: • Developments • Impacts	Terminology: • Projects • Effects

Appendix C: Rules of Procedure 2005 for Environmental Assessments and Environmental Impact Review Proceedings – Revised May 01, 2005

Note: These Rules of Procedure are available as a stand-alone document, with table of contents, on the MVEIRB web site.

Introduction and Interpretation

These are the Rules of Procedure for environmental assessment and environmental impact review proceedings of the Mackenzie Valley Environmental Impact Review Board contemplated by s. 30 of the Mackenzie Valley Resource Management Act.

These Rules are intended to ensure that the Review Board's environmental assessment and environmental impact review proceedings fulfill the spirit and principles of the MVRMA, particularly Part 5 of the Act.

Any word or term defined in the MVRMA has the same meaning when used in these Rules.

These Rules will be interpreted in a manner consistent with the MVRMA.

The common law duty of procedural fairness applies to all decision-making by and proceedings of the Review Board.

Part 1: General Rules for Review Board Proceedings

This part applies to all parts of all Review Board proceedings.

Definitions

"clarification" means the process by which the Review Board seeks an explanation of any document or information on the public record without seeking new evidence or information in a proceeding.

"community hearing" means an informal oral hearing held in a community under Part 5 of these Rules.

"developer" means the individual, corporation or other organization responsible for a development proposal that is subject to environmental assessment or environmental impact review;

"direction on procedure" means a direction issued by the Review Board at any time in a proceeding, and may include work plans or terms of reference for an environmental assessment or environmental impact review proceeding.

"document" means papers, reports, documents, maps and photographs and any other records filed in a proceeding, including audio or video tapes or any type of electronic records.

"environmental assessment" means an examination of a proposal for a development undertaken by the Review Board under section 126 of the MVRMA.

"environmental impact review" means an examination of a proposal for a development undertaken by a panel of the Review Board established under section 132 of the MVRMA.

"first nation" means the Gwich'in First Nation, the Sahtu First Nation or bodies representing other Dene or Metis of the North Slave, South Slave or Dehcho region of the Mackenzie Valley, but does not include

the Tlicho First Nation or the Tlicho Government.
"formal hearing" means an oral hearing conducted under Part 4 of these Rules.
"hearing" means a written hearing, a formal hearing and a community hearing forming part of an environmental assessment or environmental impact review proceeding where the Review Board receives information or evidence either orally or in writing from the parties and members of the public.
"Information Request" means written questions exchanged in the course of an environmental assessment or environmental impact review under Rules 37 to 41.
"MVRMA" means the Mackenzie Valley Resource Management Act.
"member of the public" means a person other than a party, who is allowed to participate in an environmental assessment or environmental impact review proceeding subject to these Rules.
"party" means an individual or an organization which is granted standing in an environmental assessment or an environmental impact review proceeding on the terms set out by the Review Board and may include but is not limited to a developer, a first nation affect by a proposed development, the federal or any responsible minister, a designated regulatory agency or the owner or occupier of any land affected by the development.
"proceeding" includes an environmental assessment or an environmental impact review, or any part thereof and any process resulting in a determination by the Review Board but does not include a meeting of the Review Board.
"public notice" means an announcement made through newspaper, radio, community poster or other public means, according to whatever terms are set by the Review Board.
"public record" includes information or documents relevant to a proceeding filed with the Review Board during the period described in Rule 20.

"Request for Ruling" means a written request for a ruling made under Rules 48 to 52 and Rule 63.

"Review Board" means the Mackenzie Valley Environmental Impact Review Board.

"Rules" means these Rules of Procedure for Environmental Assessment and Environmental Impact Review Proceedings

"Ruling" means a decision or order made by the Review Board in response to a Request for Ruling or in an oral hearing under Rule 87.

"specialist" means an expert engaged by the Review Board to assist with a Review Board proceeding by providing expert opinion, evidence or analysis.

"Tlicho Government" means the government of the Tlicho First Nation established in accordance with chapter 7 of the Tlicho Agreement.

Notice and Participation in Proceedings

1. The Review Board will, upon receipt of a referral for environmental assessment or upon ordering an environmental assessment or an environmental impact review, publish a public notice of the proceeding. The notice will include a brief description of the development proposal and will identify the staff contact within the Review Board for the proceeding.
2. Subject to Rule 21, any member of the public may provide written information or comments to the Review Board at any time during a proceeding. Parties to a proceeding will be given the opportunity to respond to such information or comments before the conclusion of the proceeding.
3. Any party may participate in a proceeding on its own behalf and is encouraged to do so. Parties represented by a contact person or counsel will

notify the Executive Director of the identity of their representative. If a change in representation takes place, the Executive Director must be informed as soon as practicable.

4. All Review Board proceedings are public unless otherwise ordered by the Review Board.

Parties

5. An application for party status in a proceeding will be filed with the Review Board within the time specified by the Review Board. The application will clearly state why party status should be granted and outline any information or other assistance the party may provide to the Review Board during the proceeding. The application should be filed in Form 1.
6. The developer is automatically a party to a Review Board proceeding.
7. The Review Board may grant party status to an applicant under Rule 5 and may request additional information or clarification from any person before granting party status.

Conduct of Review Board Proceedings

8. The Review Board may, in any proceeding, dispense with, vary or supplement these Rules by way of a direction on procedure.
9. The Review Board may issue a direction on procedure at any time during an environmental assessment or environmental impact review proceeding.
10. Where reference is made in any direction on procedure to a number of days, it will mean business days. Where a time fixed falls on a statutory holiday or a Saturday or a Sunday, the time fixed will extend to the following business day.
11. The Review Board may, on its own motion, or on a Request for Ruling by any party, lengthen or shorten the time for any action to be taken in an environmental assessment or environmental impact review proceeding subject to any conditions the Review Board may impose.
12. Where any issue arises during the course of a proceeding, the Review Board may take any action necessary consistent with these Rules, or permitted by law, in order to enable it to fairly and effectively decide on the issue.
13. Where there is a conflict between these Rules and a direction on procedure issued by the Review Board, the direction on procedure prevails.
14. All Requests for Rulings, filing of information and contact in relation to a proceeding will be made through the Executive Director of the Review Board or the staff person designated by the Executive Director.
15. The Review Board may require additional information from any party to a proceeding at any time during a proceeding.
16. The Review Board may engage specialists to provide evidence relevant to the issues raised in any proceeding. Any evidence received from a specialist will be disclosed to all parties. The specialist may be questioned by any party to the proceeding.
17. Any party or member of the public seeking to convince the Review Board of any point or position in a proceeding bears the burden of proof in so doing and has the responsibility to introduce information or evidence to support their position.
18. Copies of documents filed in a proceeding will be made available to all parties by the Review Board and the parties will be given an opportunity to respond to the documents. In the case of an oral presentation made during a proceeding, the parties will be allowed to ask questions of the person who made the presentation.
19. Members of the public who choose to participate

in a Review Board proceeding may respond to or ask questions about any document or oral presentation.

The Record and Privacy Matters

20. The public record in a Review Board proceeding is opened when the matter is referred to the Review Board for environmental assessment or when the Review Board exercises its discretion under section 126(3) of the MVRMA. The public record is closed at the time set by the Review Board in its direction on procedure.
21. No new information will be accepted for consideration in a proceeding after the public record has been closed unless the Review Board decides to reopen the public record on its own motion or a Request for Ruling to reopen the public record has been made and approved by the Review Board.
22. The Review Board may, upon notice to the parties, make appropriate arrangements to seek clarification of any evidence or information on the public record without causing the record to be re-opened.
23. The Review Board is subject to federal Access to Information and Privacy legislation. Unless a Request for Ruling to protect the confidentiality of information is filed with and approved by the Review Board under Rule 24, all information and documents received during a proceeding will be placed on the public record.
24. The Review Board may make a Ruling or issue a direction on procedure to limit the introduction of or to prevent the disclosure of information or documents to protect information of a confidential or sensitive nature, including but not limited to matters involving security, business, personal or proprietary interests.
25. The Review Board will notify parties to a proceeding of any Request for Ruling under Rule 23 involving the filing of confidential information and will deal with any issues that arise as the Review Board deems appropriate.
26. All information received by the Review Board from the time the public record is opened until the closing of the public record by the Review Board in its direction on procedure will be considered in the Review Board's decision.
27. If, after an environmental assessment proceeding, further examination of a proposed development by way of an environmental impact review is ordered , the Review Board will transfer all information on the public record from the environmental assessment proceeding to the public record for the environmental impact review proceeding.

Translation of Documents

28. The Review Board may direct a party to arrange for the translation of any documents into or from French or an aboriginal language(s) including the following documents:
    (a) the Executive Summary of a Developer's Assessment Report;
    (b) the Executive Summary of an Environmental Impact Statement;
    (c) plain English summaries of relevant documents; or
    (d) any relevant document provided by a party that, in the Review Board's opinion should be translated in order to conduct a fair proceeding.
29. A party will pay the cost of translation and provide the number of translated copies of a document directed by the Review Board. Translated materials may, subject to direction from the Review Board, be produced in printed or electronic format.

Flexibility in Review Board Proceedings

30. In conducting its proceedings the Review Board is not bound by the strict rules of evidence.

31. To the extent consistent with its duty of procedural fairness, the Review Board will emphasize flexibility and informality in the conduct of its proceedings and in the manner in which it receives information or documents.

Traditional Knowledge

32. The Review Board will encourage the submission of any first nation's traditional knowledge including oral history, during its proceedings.

33. The Review Board may make arrangements to secure information from or hear the testimony of an elder or the holder of traditional knowledge at any time during a proceeding.

The Exchange of Information or Documents in a Proceeding

34. Any information or document to be relied on during a proceeding must be provided to all parties in advance and in accordance with any timelines set by the Board.

35. Failure to disclose information or documents as required by the direction on procedure and these Rules may result in the Review Board ruling that the information or documents are inadmissible in the proceeding.

36. The Review Board may direct an exchange of information or documents among the parties to a proceeding to ensure that the proceeding, including a hearing, is focused, efficient and fair.

Information Requests

37. The Review Board may seek information from any party to a proceeding at any time by way of a written Information Request.

38. Subject to Rule 40, the parties to a proceeding may seek information within the scope of the terms of reference for the proceeding from other parties by way of written Information Requests at a time fixed by the Review Board.

39. The approval of a party's Information Requests is subject to the Review Board's discretion.

40. All Information Requests by parties will be submitted to the Review Board for approval. Copies of approved Information Requests will be placed on the public record. Information Requests approved by the Review Board will be transmitted to the party from which information is being requested.

41. The response to each Information Request will be provided to the Review Board and will be placed on the public record.

Copies of Documents and Service

42. Any party wishing to file documents during a proceeding may be directed by the Review Board to provide sufficient copies for distribution to the other parties to the proceeding.

43. The Review Board may, in its discretion, direct that documents be filed in printed or electronic format.

44. The Review Board may direct that certain information or documents be provided to the parties to a proceeding, by way of personal delivery, mail, electronic transmission or any other way directed by the Review Board.

45. When proof of delivery of information or documents is required, it may be provided by affidavit, by document showing electronic transmission and receipt by another party or by any other reasonable means acceptable to the Review Board.

Requests for Rulings by the Review Board

46. Any issue raised by a party to a proceeding that requires a Ruling from the Review Board will be brought to the Review Board's attention by way of a written Request for Ruling The Request will include a clear, concise statement of the relevant facts, an indication of the Ruling being sought from the Review Board and the reasons why the Ruling should be granted. The Request for Ruling should be filed in Form 2.
47. All Requests for Rulings will be filed with the Executive Director. The Executive Director will ensure that a copy of the Request for Ruling is provided to the parties to a proceeding no later than ten (10) days before the Review Board plans to consider the Request for Ruling in order to allow the parties to respond.
48. A party wishing to respond to a Request for Ruling will provide a written response and supporting documents to the Executive Director no less than three (3) days before the Request for Ruling is scheduled to be heard by the Review Board. The Executive Director will ensure that all parties are provided with any responses provided to the Review Board at least two (2) business day before the Review Board considers the Request for Ruling.
49. The Review Board may, in its discretion, vary any time period prescribed for the filing and hearing of a Request for Ruling or a response.
50. The decision making process for a Request for a Ruling may in the Review Board's discretion, include an oral hearing and in such a case, the parties may participate via teleconference.

Technical Sessions

51. The Review Board may at any time during a proceeding and upon such terms as it deems appropriate, organize technical sessions or workshops or take such other steps as are necessary to encourage the parties to communicate and attempt to resolve technical and other questions.

Dispute Resolution

52. Any party in a proceeding may ask the Board to establish a mediation process prior to a hearing to resolve issues, reach possible agreement on facts or recommendations in relation to the application or clarify the issues in dispute and the reasons for any disagreement.
53. The Chairperson may designate a person including a Board member to act as a mediator. A Board member so designated shall not take further part in the hearing of the application.
54. The mediator will determine which parties to the proceeding intend to participate in the mediation.
55. The mediator will, prior to the start of the mediation process and in consultation with the participants, determine the procedure for the mediation including the issues to be addressed, the agenda for the mediation and the dates and times for mediation sessions.
56. The mediator will chair the mediation process. Discussions in the mediation process can, by agreement of the participants, be undertaken on a confidential and without prejudice basis. In such cases, mediation sessions will not be recorded and formal minutes will not be taken.
57. A participant may withdraw from the mediation process without prejudice to its position in the proceeding.
58. The mediator will prepare a Record of Agreement for the Board which summarizes any issues where consensus was reached. The Record of Agreement will set out the results of the process and not the substance of the discussion. The Record of Agreement will only address issues on which consensus was reached.

59. The mediator will verify the accuracy of the Record of Agreement with the participants to the mediation. All participants to the mediation must sign the Record of Agreement to indicate their agreement to the content of the document before it is presented to the Board.
60. A Record of Agreement must be finalized at least 21 days prior to the date set for a Hearing.

Site Visits

61. At any time during a proceeding, the Review Board may schedule a site visit to the proposed development.

Failure to Comply with the Rules

62. Where a party has not complied with these Rules or a direction on procedure issued by the Review Board in the proceeding, the Review Board may:
    (a) adjourn the proceeding until satisfied that its Rules or directions on procedure have been complied with; or
    (b) take such other steps as it considers just and reasonable, including withdrawing the status of the party in the proceedings.
63. A Review Board proceeding is not invalid because of an objection based only on a technical irregularity or a defect in form.

PART 2: Proceedings with a Hearing

This part includes provisions that apply to all hearings held in environmental assessment and environmental impact review proceedings.

Call for a hearing

64. The Review Board may direct that a hearing be held as part of a proceeding.
65. The Review Board may cancel a hearing at any time.

Hearings General

66. The Review Board may issue directions on procedure consistent with these Rules to ensure the efficient conduct of a hearing.

Hearing Notice

67. When a proceeding is to include a formal or community hearing, the Review Board will, at least 30 days in advance of that hearing, ensure that public notice of the date of a hearing is given to the parties and to the public.
68. The notice of hearing will include the following information:
    (a) the date, time, place and nature of the hearing whether formal or a community hearing;
    (b) the matters to be considered at the hearing;
    (c) the opportunity for members of the public to participate;
    (d) the date by which information to be considered in the hearing must be filed; and
    (e) any other information relevant to the conduct of the hearing.
69. Notice of any preliminary, legal or jurisdictional issue in a hearing will be raised as a Request for Ruling and filed in Form 2 with the Review Board at least 15 days before the scheduled hearing date. The Review Board will ensure that all parties are notified of the Request at least 10 days before the matter is addressed.

PART 3: Proceedings with a Written Hearing

This part applies to proceedings that will be conducted by written submissions.

70. The Review Board may, in its discretion, issue a direction on procedure specifying that all or portions of a proceeding or hearing be conducted by way of written submissions.

71. The parties and members of the public may provide written information, documents or submissions to the Review Board in a proceeding or hearing conducted by written submissions. This evidence or information will be provided to the Executive Director or designated staff person in a manner consistent with the direction on procedure issued by the Review Board.
72. The parties and members of the public may respond to written information, documents or submissions received by the Review Board pursuant to Rule 71 before a Review Board decision is made.

PART 4: Formal Hearings

This part applies to proceedings with formal oral hearings.

Participants in a Hearing

73. Any party may appear in a hearing on its own behalf. A party represented by a contact person or counsel will notify the Executive Director no later than ten (10) days prior to the hearing of any change in that representation.
74. The Review Board may in its discretion direct parties with similar interests to make a joint presentation at a hearing.
75. The Review Board will maintain a list of parties registered for a hearing under Rule 5.
76. Any person or organization who does not wish to seek status as a party in a hearing but who wishes to make his or her views known to the Review Board may:
    (a) provide his or her views, in writing, to the Review Board in advance of the hearing; or
    (b) make an oral presentation during that portion of the hearing that has been set aside by the Review Board to hear the views of the public.

Pre-hearing Conferences

77. The Review Board may call a pre-hearing conference among the parties to:
    (a) finalize the list of issues to be discussed at the hearing;
    (b) seek a clear description or amplification of the issues in a hearing;
    (c) encourage the resolution of an issue by alternative means;
    (d) set a time table for the exchange of information and for preparations for the hearing;
    (e) adopt procedures to be used at the hearing; and
    (f) consider any matter that may aid in the simplification and disposition of the hearing.
78. The Review Board will provide notice of a pre-hearing conference to the parties in a proceeding. The notice will include the date, time and place of the pre-hearing conference and a brief description of the agenda and will identify the point of contact within the Review Board for the pre-hearing conference.

Conduct of a Formal Hearing

79. The Chairperson of the Review Board or designate will preside at all hearings.
80. Hearings will be conducted in an orderly and professional manner.
81. Hearings may be conducted with one or several of the parties participating in person, by way of video-conference or by telephone conference call.
82. Parties, members of the public and specialists presenting information in hearings will be subject to such questioning by the parties to the proceeding as the Review Board may allow.
83. The Review Board may set time limits for oral submissions and questions by any or all parties and participants at a public hearing.

84. The Review Board may address any issue raised by a party during the course of a formal hearing and dispose of it by way of a Ruling.
85. Any party may apply for an adjournment of a hearing. If made in advance of a hearing, such an application will be made by way of Request for Ruling in accordance with these Rules.
86. The Review Board may on its own motion adjourn or reschedule a hearing at any time.

Language of a Hearing, Transcripts and Recording

87. The Review Board may, in its discretion, arrange for any hearing to be electronically recorded or for transcripts of the proceeding to be produced.
88. Where appropriate and necessary, simultaneous oral translation into an aboriginal language of the Mackenzie Valley, or from an aboriginal language of the Mackenzie Valley into English, will be arranged by the Review Board.
89. Where appropriate and necessary, translation from or into French may be arranged by the Review Board.

PART 5: Community Hearings

This part applies to proceedings with oral community hearings.

Community Hearings or Sessions

90. The Review Board may hold informal hearings to hear the views of any community potentially affected by a development proposal.
91. When it decides to hold a community hearing the Review Board will give directions for procedure at the community hearing in advance. The developer will be present at a community hearing.
92. The Chairperson of the Review Board or designate will preside at those community hearings. All comments and questions will be directed through the Chairperson.
93. Any members of the public or organization from the community wishing to make a presentation should advise the Executive Director or the designated staff person on the day of the hearing or earlier. Oral presentations and written submissions will be accepted.
94. Members of the public or organizations appearing in a community hearing may be questioned by the Review Board and other parties.
95. The Review Board will prepare a summary of the information resulting from a community hearing and after providing the parties to the proceeding the opportunity to comment on the summary will file the final summary on the public record for the proceeding.

PART 6: Coordinated Hearings

This part applies to proceedings with coordinated hearings.

96. The Review Board may, in accordance with the MVRMA, conduct a coordinated hearing in cooperation with other Boards established by the MVRMA or with other boards and authorities responsible for environmental assessment or environmental impact review in neighbouring jurisdictions.

FORM 1 Request for Party Status

Name of Organization:	
Name of Proceeding:	

Reasons for requesting Party Status in these proceedings.
Participation: Please describe how you or your organization intends to participate in this proceeding, such as what information, witnesses, or presentations you plan to submit.
If you represent a Responsible Minister or Responsible Authority please state which one. List the licences, permits or authorizations issued by your organization relevant to this proceeding.
Contact Information: Please confirm the organization's contact information and the name of the primary contact person for Board correspondence purposes.
Dated at_____, Northwest Territories, on (MM/DD/YY)_____. _____ (Signature of Party's Representative)

FORM 2 Request for Ruling

Name of Proceeding	

TAKE NOTICE that a Request for Ruling will be made to the MVEIRB by

_____

(name of party making the Request)

at _____ (time) in _____ (place), in the Northwest Territories, on the _____ (day) of _____ (month), 200__ or as soon after that time as the Board may decide to address the Request.

The Ruling requested from the MVEIRB is as follows: (State the relief sought as clearly as possible)
The facts or information relevant to this Request for Ruling and which should be considered by the MVEIRB are as follow: (State the information relevant to the Request in as much detail as needed)
The authority or grounds for the Ruling which should be considered by the MVEIRB is as follows: (State the Rules or any law or enactment relied on and the grounds for the Ruling).
AND FURTHER TAKE NOTICE that in support of this Request for Ruling the following documents or information have been attached (Set out all materials to be used to support the Request).
Dated at _____ , Northwest Territories, on (MM/DD/YY) _____ _____ (Signature of Party's Representative)

Appendix D: Sample Preliminary Screening Form

The following is an example of a Preliminary Screening Report Form. It is intended to help readers understand the breadth of factors considered during in a Preliminary Screening. This example is from the Mackenzie Valley Land and Water Board. Other agencies may conduct as well, and may use different forms. However, a similar breadth of factors is considered. In this example, no referral to environmental assessment is made.

PRELIMINARY SCREENING REPORT FORM

PRELIMINARY SCREENER: MVLWB REFERENCE / FILE NUMBER: TITLE: ORGANIZATION:	EIRB REFERENCE NUMBER:

Type of Development:
(CHECK ALL THAT APPLY)

- ❑ New
- ❑ Amend, EIRB Ref. #
- ❑ Requires permit, license or authorization
- ❑ Does not require permit, license or authorization

Principal Activities (related to scoping)
(CHECK ALL THAT APPLY)

- ❑ Construction
- ❑ Installation
- ❑ Maintenance
- ❑ Expansion
- ❑ Operation
- ❑ Repair
- ❑ Water Intake
- ❑ Other: _____
- ❑ Exploration
- ❑ Industrial
- ❑ Recreation
- ❑ Municipal
- ❑ Quarry
- ❑ Linear/Corridor
- ❑ Sewage
- ❑ Decommissioning
- ❑ Abandonment
- ❑ Aerial
- ❑ Harvesting
- ❑ Camp
- ❑ Scientific/Research
- ❑ Solid Waste

Principal Development Components (related to scoping)

- ❑ Access Road
  - ❑ construction
  - ❑ abandonment/removal
  - ❑ modification e.g., widening, straightening
- ❑ Automobile, Aircraft or Vessel Movement
- ❑ Blasting
- ❑ Building
- ❑ Burning
- ❑ Burying
- ❑ Channeling
- ❑ Cut and Fill
- ❑ Cutting of Trees or Removal of Vegetation
- ❑ Dams and Impoundments
  - ❑ construction
- ❑ Waste Management
  - ❑ disposal of hazardous waste
  - ❑ waste generation
  - ❑ Sewage
  - ❑ disposal of sewage
- ❑ Geoscientific Sampling
  - ❑ trenching
  - ❑ diamond drill
  - ❑ borehole core sampling
  - ❑ bulk soil sampling
- ❑ Gravel
- ❑ Hydrological Testing
- ❑ Site Restoration
  - ❑ fertilization

- ❑ abandonment/removal
- ❑ modification

❑ Ditch Construction
❑ Drainage Alteration
❑ Drilling other than Geoscientific
❑ Ecological Surveys
❑ Excavation
❑ Explosive Storage
❑ Fuel Storage
❑ Topsoil, Overburden or Soil
- ❑ fill ❑ removal
- ❑ disposal ❑ storage

- ❑ grubbing
- ❑ planting/seeding
- ❑ reforestation
- ❑ scarify
- ❑ spraying
- ❑ recontouring

❑ Slashing and removal of vegetation
❑ Soil Testing
❑ Stream Crossing/Bridging
❑ Tunneling/Underground
❑ Other (describe):

NTS Topographic Map Sheet Numbers
(LIST ALL THAT APPLY)

Latitude / Longitude and UTM System:

Nearest Community and Water Body:

Land Status (consultation information)

❑ Free Hold / Private ❑ Commissioners Land ❑ Federal Crown Land
❑ Municipal Land

Transboundary Implications

❑ British Columbia ❑ Alberta ❑ Saskatchewan ❑ Yukon
❑ Nunavut ❑ Wood Buffalo National Park ❑ Inuvialuit Settlement Region

Type of Transboundary Implication: ❑ Impact / Effect ❑ Development

❑ Public Concern

(DESCRIBE)

PHYSICAL - CHEMICAL EFFECTS

IMPACT 1. Ground Water	MITIGATION
❑ water table alteration	
❑ water quality changes	
❑ infiltration changes	
❑ other	
❑ N/A	

IMPACT 2. Surface Water	MITIGATION
❑ flow or level changes	
❑ water quality changes	
❑ water quantity changes	
❑ Drainage pattern changes	
❑ temperature	
❑ wetland changes / loss	
❑ other:	
❑ N/A	

IMPACT 3. Noise	MITIGATION
❑ noise in/near water	
❑ other: noise increase	
❑ N/A	

IMPACT 4. Land	MITIGATION
❑ geologic structure changes	
❑ soil contamination	
❑ buffer zone loss	
❑ soil compaction & settling	
❑ Destabilization / erosion	
❑ permafrost regime alteration	
❑ other: explosives/scarring	
❑ N/A	

IMPACT 5. Non Renewable Natural Resources	MITIGATION
❑ resource depletion	
❑ other:	
❑ N/A	

IMPACT 6. Air/Climate/ Atmosphere	MITIGATION
❑ Other	

IMPACT 7. Vegetation	MITIGATION
❑ species composition	
❑ species introduction	
❑ toxin / heavy accumulation	
❑ other:	
❑ N/A	

IMPACT 8. Wildlife & Fish	MITIGATION
❑ effects on rare, threatened or endangered species	
❑ fish population changes	
❑ waterfowl population changes	
❑ breeding disturbance	
❑ population reduction	
❑ species diversity change	
❑ health changes (Identify)	
❑ behavioural changes (Identify)	
❑ habitat changes / effects	
❑ game species effects	
❑ toxins / heavy metals	
❑ forestry changes	
❑ agricultural changes	
❑ other:	
❑ N/A	

IMPACT 9. Habitat and Communities	MITIGATION
❑ predator-prey	
❑ wildlife habitat / ecosystem Composition changes	
❑ reduction / removal of keystone or endangered species	
❑ removal of wildlife corridor or	
buffer zone	
❑ other:	
❑ N/A	

IMPACT 10. Social and Economic	MITIGATION
❑ 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:	
❑ N/A	

IMPACT 11. Cultural and Heritage	MITIGATION
❑ effects 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:	
❑ N/A	

NOTES:

Consultation

- Pursuant to Section. 27 Subsections (a) and (b) of the Dehcho First Nations Interim Measures Agreement, the MVLWB determined that written notice was given to the DCFN and that a reasonable period of time was allowed for DCFN to make representations with respect to the application.
- Pursuant to Section 1 (a)(b)(c) and Section 2(a) of the Dogrib Treaty 11 Claim Interim Provisions Agreement, the MVLWB determined that the Permittee has participated in consultations and due process with respect to the issuance of a land use permit within the subject land use area.

The Board provided timely notice and the necessary information required under Section 1.6 (a) and (b) of the Akaitcho Territory Dene First Nations Interim Measures Agreement.

PRELIMINARY SCREENER / REFERRING BODY INFORMATION
(CHECK ALL THAT APPLY)

	RA or DRA	ADVICE	PERMIT REQUIRED
Federal			
CANADIAN HERITAGE	❑	❑	❑
CANADIAN NUCLEAR SAFETY COMMISSION	❑	❑	❑
CANADIAN TRANSPORTATION AGENCY	❑	❑	❑
ENVIRONMENT CANADA	❑	❑	❑
FISHERIES & OCEANS	❑	❑	❑
INDIAN AFFAIRS & NORTHERN DEVELOPMENT	❑	❑	❑
INDUSTRY CANADA	❑	❑	❑
NATIONAL DEFENSE	❑	❑	❑
NATIONAL ENERGY BOARD	❑	❑	❑
NATURAL RESOURCES CANADA	❑	❑	❑
PUBLIC WORKS & GOVERNMENT SERVICE	❑	❑	❑
TRANSPORT CANADA	❑	❑	❑
NOGD	❑	❑	❑
Territorial			
RESOURCES, WILDLIFE AND ECONOMIC DEVELOPMENT	❑	❑	❑
MUNICIPAL AND COMMUNITY AFFAIRS	❑	❑	❑
TRANSPORTATION	❑	❑	❑
HEALTH BOARD	❑	❑	❑
Aboriginal / First Nation			
_____	❑	❑	❑
_____	❑	❑	❑
_____	❑	❑	❑
_____	❑	❑	❑
Local Government (IDENTIFY) _____	❑	❑	❑
Communities	❑	❑	

Reasons For Decision (List All Reasons and Supporting Rationales for Preliminary Screening Decision)

Decision:

The Mackenzie Valley Land and Water Board (The Board) is satisfied that the preliminary screening of application LUP and/or WL number, Applicant Name, Type of Operation has been completed in accordance with Section 125 of the Mackenzie Valley Resource Management Act.

The Board is satisfied that a reasonable period of notice was given to communities and First Nations affected by the application as required by Subsection 63(2) of the MVRMA so that they could provide comments to the Board.

Having reviewed all relevant evidence on the Public Registry, including the submissions of the Applicant, the written comments received by the Board and any staff reports prepared for the Board, the Board has decided that in its opinion that:

- there is no likelihood that the proposed development might have a significant adverse impact on the environment; and
- there is no likelihood that the proposed development might be a cause of public concern.

The Board is also of the opinion that the application can proceed through the regulatory process and that any impacts of the development on the environment can be mitigated through the imposition of the terms and conditions in the attached [land use permit and/or water license].

As a result, the Board, having due regard to the facts and circumstances, the merits of the submissions made to it, and to the purpose, scope and intent of the Mackenzie Valley Resource Management Act and the Mackenzie Valley Land Use Regulations has decided that [land use permit and/or water license number(s)] be issued subject to the terms and conditions contained therein.

	PRELIMINARY SCREENING DECISION
❑	*Outside Local Government Boundaries*
❑	The development proposal might have a significant adverse impact on the environment, refer it to the EIRB.
❑	Proceed with regulatory process and/or implementation.
❑	The development proposal might have public concern, refer it to the EIRB.
❑	Proceed with regulatory process and/or implementation.
❑	*Wholly within Local Government Boundaries*
❑	The development proposal is likely to have a significant adverse impact on air, water or renewable resources, refer it to the EIRB.
❑	Proceed with regulatory process and/or implementation.
❑	The development proposal might have public concern, refer it to the EIRB.
❑	Proceed with regulatory process and/or implementation.

Preliminary Screening Organization

Mackenzie Valley Land and Water Board

Signatures

Appendix E: Format Instructions for Technical Reviewers

The following format for technical reviewers was designed during a multi-stakeholder workshop in Nov. 2001. Government, industry and co-management board representatives participated. The following suggested format for technical reports resulted from this workshop.

Format for Technical Reports

Non-Technical Summary

Each technical report must include a non-technical summary, briefly describing the key points, conclusions and rationale of the report. This should be written in plain language, suitable for community members and the general public without a technical background. This must not exceed one page.

Introduction

- relevant aspects of organization's mandate
- list of general subjects reviewed
- indication that comments have been submitted for all issues identified
- statement of the capacity in which comments are provided (e.g. are responses in offered as expert advisor, responsible minister, federal minister or intervenor, etc.)

Specific comments

For each specific issue reviewed, please:

1. Identify the issue (using Terms of Reference line and section numbers for reference)
2. State the developer's conclusion relating to the issue (referencing source [page or section in EA report or Information Request number] where possible)
3. State your conclusion relating to the issue, (including an indication of agreement of disagreement).
4. Provide a clear rationale (including any relevant evidence) in enough detail to support your conclusion.
5. Provide recommendations relating to the issue.

Preliminary Screening References

If reviewers wish to reference comments made during preliminary screening, these should be linked to specific items in the Terms of Reference.

Outstanding Information Request Issues

IR issues constraining the technical review should be identified.

Summary of Recommendations

Reviewers are requested to provide an itemized summary of recommendations.

Sample Technical Report

The following is a sample Technical Report (excluding non-technical summary). It was deliberately based on a fictional development and developer, to emphasize the format, as opposed to the comments.

Introduction

The Department of Resources, Wildlife and Economic Development (RWED) is pleased to offer the following technical comments on the Developer's Assessment Report (DAR) of the proposed expansion of the Mackenzie Minerals Inc. Mine (EA03-012). The Wildlife Act charges this department with responsibility for the sustainable management of wildlife in the NWT.

We have conducted a technical review of the following general subjects in the Mackenzie Minerals DAR and related information requests:

- Effects on terrestrial wildlife
- Effects on wildlife habitat
- Tourism related social impacts

Specific comments follow. Where no comments have been offered, no concerns were identified.

RWED serves in this assessment as both an expert advisor and a regulator. The comments included here are offered in our departmental capacity as an expert advisor, except where it is specifically indicated otherwise.

Specific Comments

1. Changes to lynx distribution as a result of noise disturbance

Reference: ToR line # 42, DAR Section 6.3 (p. 60)

Developer's Conclusion:

Mackenzie Minerals Inc. concluded that disturbance from mining would have no effect on local lynx distribution. Mackenzie Minerals Inc. suggests that no change is predicted because the area was historically used for other development activities, and that there is no recorded change to baseline levels as a result of noise from past activities. The developer therefore concludes (DAR, sec. 2.5.4.5) that further development activity is unlikely to cause any additional change to lynx distribution.

Our Conclusion:

RWED does not agree with the developer's assessment of this impact. Noise from mining and processing is likely to have a considerable lasting effect on lynx distribution.

Our Rationale / Evidence:

Although there have been development activities in the area in the past, these have not been comparable to the development activity proposed. Past activity has been limited primarily to seismic exploration and tourism. Although seismic exploration does involve comparable noise levels to those proposed (approx. 95dB), the noises from seismic were infrequent and seasonal, while the noise from the processing plant will be ongoing.

We further note that the past activity occurred over thirty years ago. The area shows little remaining impact from that activity, and the forecasted noise levels from the proposed development will be a major change from the currently existing conditions.

Further, lynx populations fluctuate drastically over a multi-year cycle. Past records relating to the area do not consider the overall population level at that time when noting that lynx were still present. The impacts of noise on lynx density may be higher in a low-population year. Without this information, the conclusions of the developer cannot be reliably extrapolated from the record of past activity in the area, as suggested.

There is evidence in the scientific literature that lynx will change distribution in response to noise levels similar to those proposed. McNeill et al. (2001) concluded that lynx may respond to ongoing loud low frequency noises by avoiding an area, and possibly abandoning local denning sites,

Recommendation:

The developer should use the additional mitigation of the noise-reducing muffler considered as an alternative (DAR s.4.2.11). This is a proven method of reducing the sound levels to 75dB. If levels can be reduced to 75dB, the impact would be prevented.

(repeat above format for each specific comment as necessary).

Preliminary Screening References

Please note that these comments are submitted in addition to the measures suggested to the Sahtu Land and Water Board during preliminary screening, in our correspondence dated May 16th, 2012. Measures 4 and 9 (relating to ToR line 45) are still relevant and applicable. RWED would like the Review Board to consider them during this EA.

Information Request Issues

RWED would like to note that Mackenzie Minerals Inc. has not yet responded to Information Request #9 (safety issues relating to bear management). This is the second time this request has been issued. We are unable to provide technical review for this issue without the requested information. (Note: This relates to ToR lines 81 to 87).

Summary of Recommendations

1. The developer should implement noise reduction technology (as described in . DAR s.4.2.11).

...and so on.

Appendix F: Information Request Guidance and Samples

Information Request Guidance Note

To ensure that parties to the EA have access to the information necessary for the review of the developer's assessment report, the Review Board has a formal information request (IR) process.

An IR is a written request for information from a party in an EA to any other party in the EA, issued through the Review Board. The party that receives the IR is required to provide the Review Board with a written response that satisfactorily addresses the questions or issues raised by the IR.

Although IRs may originate from parties besides the Review Board, the Review Board issues all IRs. The Review Board may issue its own IRs, as well as those originating externally.

If the Review Board receives more than one IR asking for the same information, it can amalgamate them into one IR to prevent redundancy. The Review Board has the right to rule on the relevance and acceptability of IRs, and will decide whether to issue each IR. It will assign each IR an official number, and will issue them to the appropriate party.

For each IR, please submit your request in the following format:

Reference

Identify the source document, and where specifically in the document (e.g. section number, page number, table number, appendix number, etc.) your request originates.

If there is more than one source, list them individually.

Terms of Reference Section:

List the section of the ToR, and if possible, the specific item within that section (e.g. ToR s. 4.2, Aquatic Resources, 3rd bullet.).

Preamble:

Describe why you are making the request. Is the source document unclear? Are there inconsistencies or errors in the document? What will you do with the response? Why, specifically, do you need to know this information? Please be thorough and clear with your reasons.

Request:

What information do you want? What exactly is the recipient being directed to do or provide? For example:

a) Provide document X.
b) Explain why you did (whatever), as opposed to ....
c) What is your rational for the number you stated in...?

Sample Information Requests

I.R. 1.1

Source: Mackenzie Valley Environmental Impact Review Board

To: Mackenzie Minerals Inc.

Reference

DAR, s. 5.2.2.1 Physical Impacts, p. 68-74

Terms of Reference Section

ToR s. 4.9 Aquatic Resources, 2nd bullet

"Mackenzie Minerals Inc. shall provide information on aquatic resources, mitigation measures and predicted residual impacts. [...] This section shall include, but not be limited to, a discussion of the following:

- [...] species of fish present at the time of the river crossings and their life stages, movement, migration patterns and habitat use [...]."

Preamble

The movement of fish as a migratory route and habitat for fish in the Willow River is well-known. Few studies document the seasonal movements of fish species although local communities may be aware of these movement patterns.

Request

Can Mackenzie Minerals Inc. predict which species of fish will be in the Willow River at the proposed time of the operation? If so, please describe the species of fish expected, and the timing of their migrations.

I.R. 1.2

Source: Mackenzie Valley Environmental Impact Review Board

To: Mackenzie Minerals Inc.

Reference

DAR, s. 6.2.2.1 Physical Impacts, p. 80-91

Terms of Reference Section

ToR s. 4.9 Aquatic Resources, 3rd bullet

"WG shall provide information on aquatic resources, mitigation measures and predicted residual impacts. [...] This section shall include, but not be limited to, a discussion of the following:

- [...] general information on Willow River fish species at risk for which data are available in the literature [...]."

Preamble

On page 7, 2nd paragraph from the bottom of the response to the Deficiency Statement regarding material in Section 9.2.2.1 (p. 110-111 of the DAR) that there is little or no information on fish species at risk. This implies that there are no fish species at risk in the project area, but the listing on page 34 suggests otherwise.

Request

Please provide information, based upon what is known, of fish species at risk in the development area.

Appendix G: Guide to Pre-Hearing Conferences

What Is A Pre-Hearing Conference?

The Pre-Hearing Conference offers you an important opportunity to get involved in the planning for the hearing/technical sessions at an early stage and to participate in shaping these processes and their outcomes.

A Pre-Hearing Conference is a meeting of all the parties in an environmental assessment with the Review Board staff and counsel. Pre-Hearing Conferences are intended to prepare the environmental assessment for hearings and technical sessions. The primary purpose of the Pre-Hearing Conference is to set the agenda for the public hearing, to discuss the process of leading up to the hearing as well as the hearing purpose and procedures. The Pre-Hearing Conference will identify the issues in dispute, where possible reducing the scope and number of issues to be raised in a hearing, seeking agreement on procedural matters and preparing and exchanging necessary documents.

Any hearings or technical sessions will be more efficient if parties are familiar with the Review Board's procedures, are aware of any outstanding issues not resolved through the Information Request process and to ensure that no documents are introduced for the first time at the hearing. Each participant should ensure that at least one of its representatives attending has full knowledge of the environmental assessment.

Notice of a Pre-Hearing Conference

The Review Board will publish a Notice of the Pre-Hearing Conference in local and regional newspapers. Directly Affected Parties and Intervenors (parties with standing) are automatically invited to attend the Pre-Hearing Conference. Others may participate if they notify the Review Board of their intention to do so as soon as possible after the public notice of the Pre-Hearing Conference is published. The notice announcing the date, time and location of a Pre-Hearing Conference may contain a listing of topics to be addressed.

At the Pre-Hearing Conference,

- The process and procedures related to the public hearing will be discussed
- The hearing topics will be presented and discussed
- Parties to the EA will briefly state or clarify their unresolved issues, and the issues will then be slotted under the appropriate topics
- Based on the number of issues under each topic, time allotments will be assigned for the presentation of issues by the parties to be given at the public hearing
- Date, time and location of the hearing will be determined.

What to Expect at a Pre-Hearing Conference

The Pre-Hearing will be informal. In all cases, however, the actual format will reflect the style of the Chair and the objectives of the particular Pre-Hearing. For the Pre-Hearing to be successful, the participants must speak freely.

How To Prepare For The Pre-Hearing Conference

Reading the Rules of Procedure (see Appendix C) issued by the Review Board is important. It will be useful for participants to ask themselves the following questions as they prepare for the Pre-Hearing:

1. Exactly what are the issues in the environmental assessment?
2. Why are these issues being raised?
3. Is there any chance of resolving or addressing a particular issue or series of issues?
4. What are the relevant facts in the environmental assessment?

5. Do we agree with the facts?
6. Will we be calling expert witnesses?
7. On what documents will we be relying?
8. What documents should we provide to the other participants?
9. Can we provide those documents before or at the Pre-Hearing?
10. What documents do we need from the other parties and why do we need them?
11. How many days of hearing or technical session do we expect our matters to take?
12. How many days of hearing in total do we need?

After the Pre-Hearing Conference, the parties will have time to shape and prepare their presentations/interventions, which are to be submitted to the Review Board and circulated to all parties prior to the hearing.

What To Bring To The Pre-Hearing Conference

Please come to the Pre-Hearing with the following material:

- A list of the issues to be addressed in the hearing.
- A list of documents you require from the other parities and reasons why you require the documents.
- A list of expert witnesses you intend to use, if any, and why.
- Description of issues about which there is disagreement; description of efforts made to reach agreement, description of why agreement was not reached; and, resolution requested of the MVEIRB.

Need for Legal Counsel and Experts

It is not necessary that you retain the services of a lawyer to represent your interests at a Pre-Hearing Conference or hearing. However, you may wish to retain the services of a lawyer if there will be issues that involve legal complexities.

Overview of the Pre-Hearing Conference Process

The Review Board's Pre-Hearing Conference provides a structured format for the presentation of information and discussion. Typically, the Pre-Hearing Conference begins with opening remarks from the Chairperson. These may include a statement of the purpose of the Pre-Hearing Conference, and introduction of parties with standing participating in the Pre-Hearing Conference. Preliminary matters such as procedural or legal issues are usually considered next. This includes information needs of the participants, timing, location and issues to be considered at the hearing/technical session. Each participant is asked to present his or her concerns and suggestions for the upcoming hearing session starting with the developer. The developer also has an opportunity to respond after all participants have presented their views.

Appendix H: Additional Cumulative Effects Guidance

During an environmental assessment, the Review Board will consider issues relating to cumulative impacts. Cumulative effects assessment is both a challenging and important part of environmental impact assessment (EIA). This appendix is intended to provide direction to developers when assessing cumulative effects within the context of the MVRMA. Existing publications are available (such as those listed below) to provide useful guidance on cumulative effects assessment in general. This appendix is not intended to reproduce this general material, but instead to focus on expectations of the Review Board that may not be included in other material.

What are cumulative effects?

Cumulative effects are those impacts (biophysical, socio-cultural or economic) that result from the impacts of a proposed development in combination with other past, present or reasonably foreseeable future developments. The part of EIA that deals with these cumulative impacts is called cumulative effects assessment.

This is an essential part of EIA. Most people's environmental concerns are about the thing that is affected, and not where the effects come from. There are many developments in and around the Mackenzie Valley, and their effects often overlap and accumulate. Sometimes the overlapping (cumulative) effect is greater than that of any single development. People are generally more concerned about a change in the quality of the environment than they are about the individual impacts that cause it. For example, people in a given community would likely care more about the overall effects of development on a caribou herd than they would about the impact of any particular development on a caribou. For these reasons, the Board will pay attention to the cumulative effects of a development and other human activities in deciding whether or under what conditions to approve the development. To evaluate the contribution of a development to a larger impact, it is necessary to take a big picture view. Cumulative effects assessment is the way that this is done in EIA.

The Review Board uses the term "cumulative effects" to refer to the effects of a proposed development in combination with other human activities. This is distinct from the combined effects of a single project, where different impacts from the same project may interact in a synergistic or additive way. Effects that arise in conjunction with other impacts from the same development should be included in the appropriate subject area in the development-specific (non-cumulative) part of the assessment.

Steps in Cumulative Effects Assessment

There are four fundamental steps to good cumulative effects assessment[f]. These are:

a. Identifying the valued parts of the environment that are potentially affected by the proposed development;
b. Determining what other past, present or reasonably foreseeable future developments will affect these parts of the environment;
c. Predicting the effects of the proposed development in combination with these other developments; and,
d. Identifying ways to manage the combined impacts.

[f] Ross, W. 1998. Cumulative effects assessment: learning from Canadian Case Studies. Impact Assessment and Project Appraisal. 16:267-76

A. Identifying the valued parts of the environment

Just as in assessing project-specific effects, an early stage in cumulative effects assessment involves identifying and prioritizing, or "scoping", the valued components[g] (VCs) that may be affected by the proposed development. This is necessary to ensure that time and effort in the assessment are appropriately applied. Consultation is an important part of scoping. (See MVEIRB Guidelines, s.3.9 for more information on the scoping of issues).

Since the term "environment" is defined in the MVRMA to include biophysical, socio-economic and cultural components, scoping may identify purely social or cultural issues in addition to ecological ones. For example, if a development may affect wildlife harvesting or the well-being of families, and these are also affected by other human activities, then these may be included in a cumulative effects assessment. Scoping for cumulative effects assessment goes beyond scoping for project impacts. The latter identifies components affected by the proposed development. The former would select only those affected by the proposed development and also affected by other human activities. The components selected through scoping for cumulative effects would thus be a subset of the list of components selected for project effects. The cumulative effects components, of course, can only be determined after completion of the subsequent steps.

B. Determining what other developments to include

The cumulative effects assessment should include all other human activities that may substantially affect the valued components identified during the cumulative effects scoping (see "A" above). These should include past, present and reasonably foreseeable future developments, so long as they have the potential to affect the same components as the proposed development.

These other developments may be near the proposed development, with immediately overlapping zones of influence. Distant developments should also be included if they affect a mobile resource that moves into the area of a development (e.g. water in river, or caribou along a migration route) or if the effects of distant developments travel before reaching receptors (e.g. long-range contaminants). It is important to be thorough, and to include all developments that may substantially affect each cumulative valued component.

The identification of past and present developments that affect the same valued components as the proposed development requires less prediction than does the identification of reasonably foreseeable future developments. Proposed developments should be included in the reasonably foreseeable developments. Other developments that have not been formally proposed but can be reasonably foreseen should also be included. This is a challenging part of cumulative effects assessment. Developers are not expected to see the future, but are expected to make the best reasonable predictions they can. Like all prediction in EIA, this involves uncertainty but is necessary for the Review Board to reach the best decisions about a development. The Review Board will accept less detail and more predictive uncertainty the further in the future or the less certain the reasonably foreseeable development is.

For example, a developer proposing a pipeline through a previously inaccessible area with little existing development should consider reasonably foreseeable future developments. That developer could determine what is reasonably foreseeable by looking at other comparable developments in areas with similar

[g] Because the term "impacts on the environment" is defined by the MVRMA broadly to include social and cultural components, the term Valued Components (VCs) is used to include, and replace, the narrower terms "Valued Ecosystem Components" (VECs) and Valued Social Components (VSCs).

characteristics. If looking at similar cases indicated that a certain type and intensity of induced development routinely followed, then these types of induced developments should be considered reasonably foreseeable for the proposed development, even though no applications for them have been submitted. Relevant uncertainties (such as key differences between the proposed development setting and those of the case studies) should be made explicit.

C. Predicting the Cumulative Effects

The cumulative effects assessment must predict the combined effects of the proposed development in conjunction with the effects of the other developments identified (in "B" above). In addition to considering the larger picture, the cumulative effects assessment should focus the relative contribution of the proposed development. The overall method of assessment should be similar to that for environmental assessment of development-specific effects, but should consider the cumulative impact on valued components (as in "A" above, although the scope may be focused further throughout the cumulative effects assessment). Please see section three of the Review Board's EIA Guidelines for the steps in an environmental assessment.

When determining the spatial and temporal boundaries for the cumulative assessment, the limits set will generally be larger than those used in the project-specific assessment. This is because many cumulative effects can occur over a larger scale. The specific boundaries used in predicting a cumulative effect must be appropriate for that particular effect. For example, cumulative effects on a watershed may only occur downstream, social impacts may be focused on certain communities, and effects on migrating birds may only manifest themselves in a nesting ground. To use the same geographical boundary for assessing these would result in important omissions or excessive cost.

Methods of predicting cumulative impacts vary according to the nature of the valued component. Specialists in the particular subject area should determine the best specific method. However, since the objective is to consider the combined effects of multiple human activities, the predictive method chosen must be suitable to incorporate all different types of effects that could contribute to the cumulative impact on that valued component[h].

Government bodies and programs (such as the NWT Cumulative Impact Monitoring Program) may be a helpful source of information when forming impact predictions.

D. Management of Cumulative Impacts

Cumulative impacts can be managed by mitigation, and monitoring in conjunction with, evaluation and follow-up management Such measures may be proposed by the developer, or recommended by the Review Board to reduce or avoid significant adverse environmental impacts. The degree to which adaptive management may be involved depends, in part, on the degree of uncertainties in the assessment.

Because cumulative effects come from more than one source, recommendations regarding cumulative effect mitigation and management may be directed at bodies other than the developer. For example, government has many responsibilities related to cumulative effects. In past environmental assessments, the Review Board has directed recommendations pertaining to management of cumulative effects to government, as well as to developers. However, developers are responsible for management of their portion of the impact- that is, the management of their development's contributions to the cumulative effect- and recommendations may be made accordingly.

[h] Op. cit.

Additional Reading

There are several useful guides to cumulative effects assessment describing each of the steps in detail. Although these are not specific to the Mackenzie Valley, the overall process for assessing cumulative impacts is generally the same. Of these, the Review Board particularly recommends the following two:

1) Cumulative Effects Assessments in the Inuvialuit Settlement Region: A Guide for Proponents (Environmental Impact Screening Committee and the Environmental Impact Review Board); and,
2) Cumulative Effects Assessment Practitioner's Guide (Canadian Environmental Assessment Agency).

Where there are discrepancies in the details of these documents and the Review Board's EIA Guidelines, the latter prevail. Any questions about discrepancies should be directed to the Review Board staff for clarification.

Appendix I: Roles and Responsibilities in the EA Process

This part summarizes the roles and responsibilities of certain parties and those individuals and groups wishing to participate in the EA process.

The developer is responsible for, in a timely and efficient manner:

- having an in-depth understanding of the proposed development and the effects the development may have on the environment, including the social, economic and cultural environments;
- responding as completely as possible to any requests made by the Review Board for the purposes of the EA;
- responding as completely as possible to the requirements of the Terms of Reference for the EA;
- responding as completely as possible to any Information Requests made in relation to the EA; and,
- for production, revision, cost and distribution of the eventual environmental assessment report[i].

The Review Board retains the final decision making authority regarding any directions to and requirements of the developer during the EA and of the developer's environmental assessment report.

The Review Board encourages the developer to commence discussions with directly affected parties as early as possible. In conducting the EA, the Review Board will request from the developer a written record verifying their consultation, including how consultation may have influenced design and planning of any part of the development.

Regulatory authorities, government, and First Nations are responsible for and encouraged, in a timely and efficient manner, to:

- give notice of their intent to participate and the extent of their participation, in the EA process;
- provide any information they have that is relevant to the EA;
- provide input to the EA process as requested by the Review Board directly and in these guidelines;
- provide any conclusions and recommendations regarding the environmental impact and public concern of the development in written form to the Review Board, with supporting rationales; and,
- RA's and governments should fully participate in the EA process to the extent of their legislated and mandated responsibilities.

The public and other interested parties are responsible for and encouraged, in a timely and efficient manner, to:

- give notice of their intent to participate and the extent of their participation, in the EA process;
- provide any information relevant to the EA they may have in a form that is easily available to all participants in the EA process;
- provide input to the EA process as requested by the Review Board directly and in these guidelines; and,
- provide any conclusions and recommendations regarding the environmental impact and public concern of the development in written form to the Review Board, with supporting rationales.

[i] The Review Board will inform the developer how many copies of this report are required.

Appendix J: Deciding the Need for a Preliminary Screening

The environmental impact assessment process in the MVRMA begins with a development proposal. A development proposal is an undertaking on land or water. All development proposals must go through a preliminary screening unless they are exempted because they are listed in the Exemption List Regulations, or it is a proposal in relation to national security (s.124), or it is in response to an emergency (s.119).

Before starting a preliminary screening, there is a series of questions that 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 listed in the Preliminary Screening Requirements Regulation?
- Is no licence, permit or other authorization required for the development?
- Is the development exempt from preliminary screening because it is on the Exemption List Regulations, or it is exempt for national security or emergency purpose
- Is the development exempt from preliminary screening because its effects are considered to be manifestly insignificant (for developments proposed by government)?
- Does the development conform to the applicable land use plan?

Each of these questions is examined in more detail below.

Do you have a development by definition of the MVRMA?

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. The MVRMA recognizes that not all developments will be wholly within the Mackenzie Valley, so provisions for the Review Board, under s.141 and s.142, to consider transboundary developments at the environmental assessment level are provided.

The meaning of an "undertaking" is very broad in the context of the MVRMA, and includes any "physical work", such as the construction of a building or some other permanent structure, and an "activity", such as a camp, a sampling program, putting in a winter road, or cleaning up an abandoned mine site. Furthermore, the MVRMA defines two types of "developments":

- those requiring a licence, permit or other authorization for the carrying out of the development[j]; and,

those where no regulatory authorization is required and is proposed to be carried out by a department or agency of the federal or territorial government or by the Gwich'in or Sahtu First Nation[k].

[j] See s.124(1) of the MVRMA.

[k] See s.124(2) of the MVRMA.

Does the development require a licence, permit or authorization listed in the Preliminary Screening Requirements Regulation?

The Preliminary Screening Requirements Regulation contains a list of licences, permits and authorizations issued under the indicated regulatory instrument. When a regulatory authority (RA) or designated regulatory agency (DRA, in the Mackenzie Valley it is the NEB) must issue a licence, permit or other authorization listed in this regulation, a preliminary screening, unless exempt, must be conducted. The preliminary screening is conducted prior to the issuance of any authorization that would allow the development or a portion of the development to proceed.

Depending on the nature of the 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.

The MVRMA requires a coordinated approach to EIA by not allowing for the issuance of any regulatory authorizations until the requirements of Part 5 of the MVRMA have been complied with[l]. In order to avoid any possible delays in the EIA process, developers are encouraged to apply for all licences, permits or other authorizations required to carry out the development at the same time.

Is no licence, permit or other authorization required for the development?

The MVRMA requires developments that do not need regulatory authorizations to be subject to preliminary screening as well.

Where no licence, permit or other authorization is required and a department or agency of the federal or territorial government is proposing the development, then a preliminary screening may be required. It is the responsibility of that party to conduct the preliminary screening. Notification of the Review Board of such developments is required.

Where no licence, permit or other authorization is required and the Gwich'in Tribal Council (GTC) or Sahtu Secretariat Incorporated (SSI) is proposing the development, then a preliminary screening may be required. It is the responsibility of GTC or SSI to conduct the preliminary screening. Notification of the Review Board of such developments is required.

Is the development exempt from preliminary screening because it is on the Exemption List Regulations, or is it exempt for national security or emergency purposes?

The Exemption List Regulations 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 from preliminary screening for reasons of:

- a national emergency under the Emergencies Act[m];
- an emergency in the interests of protecting property or the environment or in the interests of public welfare, health or safety[n]; or reasons of national security[o].

[l] See s.118 of the MVRMA.

[m] See ss.119(a) of the MVRMA.

[n] See ss.119(b) of the MVRMA.

[o] See p.124(1)(b) of the MVRMA.

Is the development exempt because its effects are considered to be manifestly insignificant?

A development may also be exempt from preliminary screening because its effects are considered to be manifestly insignificant[P]. This category of exemption only applies to developments proposed by government and the Gwich'in Tribal Council (GTC) or the Sahtu Secretariat Incorporated (SSI) where no licence, permit or other authorization is required. For example, where a government department or agency carries out inspection activities in relation to a regulatory licence, permit or other authorization these activities would be considered an undertaking and would be subject to preliminary screening unless the decision was taken that the inspection activities were considered manifestly insignificant. Also, if a First Nation (e.g. GTC or SSI) proposes an activity on land or water, then it would be subject to preliminary screening unless determined to be manifestly insignificant. In other words, developments which obviously do not have impacts, and are something less than the thresholds identified in the Exemption List Regulations could be considered to have effects that are manifestly insignificant.

If a development is exempt from preliminary screening because its effects are considered to be manifestly insignificant, then written reasons are required to be made available to the public, as this is considered a "decision" under Part 5 of the MVRMA. A copy of these written reasons should be forwarded to the Review Board.

Does the development conform with the applicable land use plan?

Land use plans will be prepared by the Gwich'in Land Use Planning Board and the Sahtu land use planning Board for their respective settlement areas. All proposed developments in these settlement areas must conform with the 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.

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 should also contact the Gwich'in and Sahtu land use planning boards directly for assistance with determining conformity. Preliminary screeners should notify the developer if their development proposal does not conform to the land use plan. The land use planning boards make the final determination on whether or not a development is in conformity with an applicable land use plan. If the development does not conform, the developer will have to contact the appropriate land use planning board for direction.

[P] See p.124(2)(a) of the MVRMA.

Appendix K: 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
NATIONAL PARKS 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?	National Historic Parks General Regulations X National Parks Business Regulations X National Parks General Regulations X National Parks Building Regulations X National Parks Lease and Licence of Occupation Regulations (1991) X National Parks Wildlife Regulations X National Parks Act	Canadian Heritage
TERRITORIAL PARKS Does the development involve the establishment of a Territorial Park?	X Forest Management Regulations (Forest Management Act) X Pesticide Regulations (Pesticide Act) X Outfitter Regulations (Travel and Tourism) X Wildlife Business Regulations (Wildlife Act)	Resources Wildlife and Economic Development

Developments involving land and water		
INDIAN RESERVE LANDS Is the development likely to affect Indian Reserve lands?	X Indian Oil and Gas Regulations X Indian Reserve Waste Disposal Regulations X Indian Timber Regulations X Indian Act	Indian and Northern Affairs
OIL AND GAS Is the development likely to: X Involve the exploration for, production of or recovery of oil or gas? X 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. X affect an international power line or property that is used for the purpose of transmitting electricity outside the territory?	X Canada Oil and Gas Operations Act X National Energy Board Act	National Energy Board

RAILWAYS		
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?	Ammonium Nitrate Storage Facilities Regulations X Chlorine Tank Car Unloading Facilities Regulations X Liquefied Petroleum Gases Bulk Storage Regulations X Anhydrous Ammonia Bulk Storage Regulations X Canada Transportation Act X Railway Safety Act X Flammable Liquids Bulk Storage Regulations (Railroad Safety Act)	Canadian Transportation Agency and Transport Canada if Railway Safety Act is involved
RADIO-ACTIVE MATERIALS, MINING AND NUCLEAR FACILITIES 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?	X Uranium and Thorium Mining Regulations X Atomic Energy Control Regulations (Atomic Energy Control Act)	Atomic Energy Control Board
PCB Does the development involve the testing or operation of a mobile PCB treatment or destruction system?	X Federal Mobile PCB Treatment and Destruction Regulations (Canadian Environmental Protection Act)	Environment Canada
TRANSPORT OF DANGEROUS GOODS Does the development involve the transportation of dangerous goods?	X Transport of Dangerous Goods Act	Department of Transportation
BRIDGES Does the development involve replacement or repair of a bridge?	X Bridges Act	Public Works and Government Services. Department of Fisheries and Oceans if there are potential navigable waters issues

TELECOMMUNICATIONS Does the development involve the selection of a site or construction of a radio communications tower?	X Radiocommunication Act	Industry Canada
NATIONAL DEFENCE Will the development involve activities related to national defence? EXPLOSIVES Does the development involve production or holding of explosives in a magazine?	X National Defence Act X Explosives Act	Department of National Defence Natural Resources Department of Fishers and Oceans as a blasting authorization may be required if blasting within 15m of a fish bearing waterway.
LAND 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?	X Territorial Lands Use Regulations X Mackenzie Valley Resource Management Act	Gwich'in Land and Water Board, Sahtu Land and Water Board, Mackenzie Valley Land and Water Board
FORESTS AND FOREST PRACTICES Is the development likely to involve: X forest management; X forest fire management; and X timber harvesting?	X Forest Management Regulations X Forest Management Act X Forest Protection Act	Resources Wildlife and Economic Development
Developments involving water		
TAKING, DIVERSION OR DEPOSIT OF WASTE INTO WATER Does the development involve the taking or diversion of water or the deposit of waste into water?	X Northwest Territories Waters Act X Fisheries Act	Gwich'in Land and Water Board Sahtu Land and Water Board Mackenzie Valley Land and Water Board Environment Canada Department of Fisheries and Oceans

METAL MINING EFFLUENT Is the development likely to result in the deposition of metal mining liquid effluent into water frequented by fish?	X Metal Mining Liquid Effluent Regulations X Fisheries Act	Environment Canada Dept. of Fisheries and Oceans.
NAVIGABILITY AND DREDGING 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?	X Navigable Waters Protection Act X Territorial Dredging Regulations	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.
Developments involving hunting, fishing, wildlife and wildlife habitat		
FISH AND FISH HABITAT 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?	X Fisheries Act	Dept. of Fisheries and Oceans.
FISHING Is the development likely to involve the taking of fish?	X Northwest Territories Fisheries Regulations X Fisheries Act	Resources Wildlife and Economic Dev. Dept. of Fisheries and Oceans
REINDEER RESERVES Does the development involve a reindeer reserve?	X Northwest Territories Reindeer Regulations	Regulatory Authority: Indian and Northern Affairs.
WILDLIFE AREAS Does the development occur in a wildlife area as defined in the Wildlife Area Regulations?	X Wildlife Area Regulations	Environment Canada.

MIGRATORY BIRDS AND BIRD SANCTUARIES 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?	X Migratory Bird Sanctuary Regulations X Migratory Birds Regulations	Environment Canada
CONTROL OF WILDLIFE Is the development likely to involve the control of wildlife?	X Wildlife Act	Resources, Wildlife and Economic Development

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