Mackenzie Valley Review Board

DRAFT - GUIDELINES FOR PRELIMINARY SCREENERS

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Glossary

The following definitions are from Section 2 and subsection 111(1) of the Mackenzie Valley Resource Management Act:

ENVIRONMENT

means the components of the Earth and includes:

(a) land, water and air, including all layers of the atmosphere;

(b) all organic and inorganic matter and living organisms;

and

(c) the interacting natural systems that include components referred to in paragraphs (a) and (b).

IMPACT ON THE ENVIRONMENT

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

PRELIMINARY SCREENING

means an examination of a proposal for a development undertaken pursuant to section 124.

REGULATORY AUTHORITY

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

1. OVERVIEW

Preliminary screening is a vital yet challenging part of the environmental impact assessment process in the Mackenzie Valley.

This document provides guidance for organizations that conduct preliminary screenings under Part 5 of the *Mackenzie Valley Resource Management Act* (the MVRMA). These organizations, such as Land and Water Boards and other regulatory authorities (regulators), are referred to as "preliminary screeners" or "screeners".

These *Guidelines for Preliminary Screeners* (the Guidelines) provide guidance to screeners on conducting effective preliminary screenings. Individuals or organizations who participate in preliminary screenings may also find these guidelines informative; however, the primary audience for these guidelines is the preliminary screeners themselves.

2. INTRODUCTION

Environmental impact assessment (EIA) is a process which examines the potential impacts of proposed developments to prevent impacts on the environment, promote well-being and sustainability, and avoid costly mistakes. Through EIA, we can anticipate and avoid problems, rather than reacting and fixing them after they occur.

The EIA process in the Mackenzie Valley is part of the integrated resource management system established through negotiated comprehensive land claim agreements, approved by Parliament and implemented through the MVRMA. The purpose of Part 5 of the MVRMA is to establish:

> […] a process comprising a preliminary screening, an environmental assessment and an environmental impact review in relation to proposals for developments, and
>
> *a) to establish the Review Board as the main instrument in the Mackenzie Valley for the environmental assessment and an environmental impact review of developments;*
>
> *b) to ensure that the impact on the environment of proposed developments receives careful consideration before actions are taken in connection with them; and*
>
> *c) to ensure that the concerns of aboriginal people and the general public are taken into account in that process.*

[1]The Gwich'in Comprehensive Land Claim Agreement, S.C. 1992, the Sahtu Dene and Métis Comprehensive Land Claim Agreement, S.C. 1994, and the Tłı̨chǫ Land Claims and Self-Government Agreement, S.C. 2005, Déline Final Self-government Agreement, 2015.
[2]See section 114 of the MVRMA.

These Guidelines are produced by the Mackenzie Valley Environmental Impact Review Board (Review Board) under the authority granted by section 120 of the MVRMA.[3] The Guidelines provide additional and thorough advice for preliminary screeners on how to conduct preliminary screenings. The Guidelines are in addition to information contained in the Review Board's *Environmental Impact Assessment Guidelines* (2004) (the EIA Guidelines).[4]

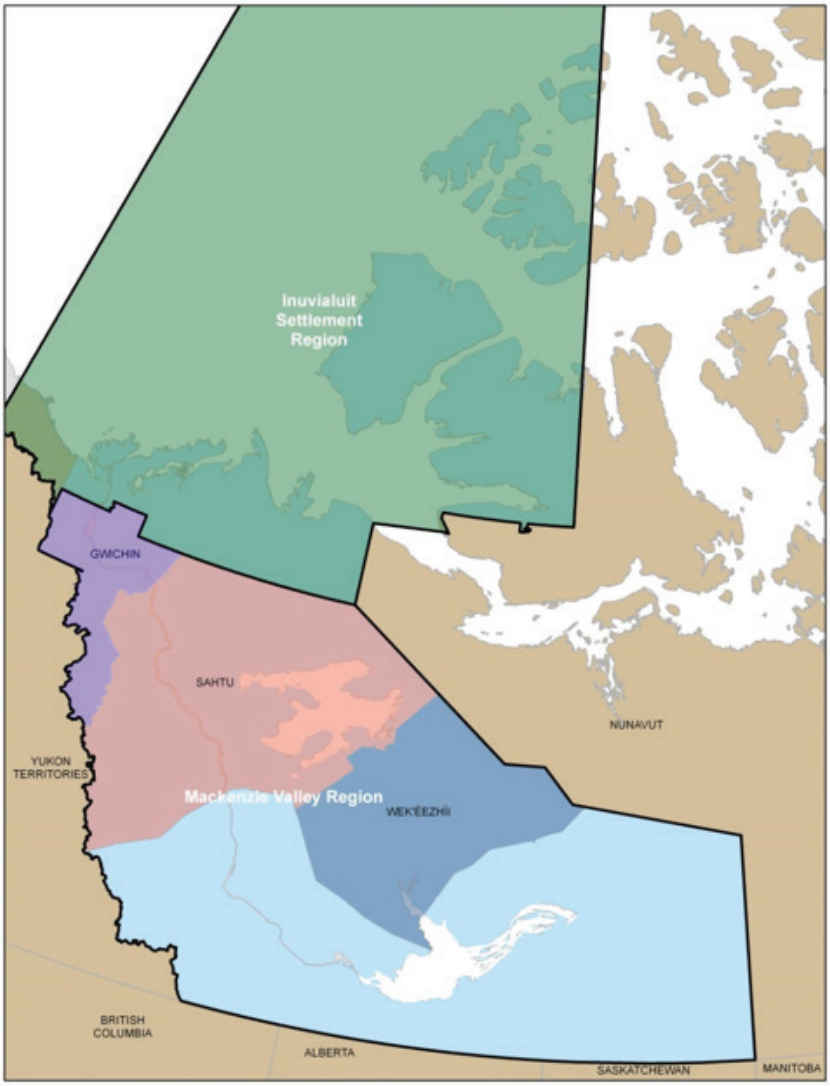

Figure1: Mackenzie Valley region in the Northwest Territories

[3]Section 120 of the MVRMA authorizes the Review Board to establish guidelines respecting the process of carrying out environmental impact assessment, including preliminary screening. The Land and Water Boards, which conduct most preliminary screenings, and other screeners have assisted the Review Board in drafting this document.
[4]See the EIA Guidelines for more information on the entire EIA process.

2.1 Guiding principles of environmental impact assessment

The guiding principles of the environmental impact assessment process set out in Part 5 of the MVRMA apply to the three steps in environmental impact assessment: preliminary screening, environmental assessment, and environmental impact review. These principles are outlined in subsection 115(1):

The process established by this Part shall be carried out in a timely and expeditious manner and shall have regard to:

a. the protection of the environment from the significant adverse impacts of proposed developments;

b. the protection of the social, cultural, and economic well-being of residents and communities in the Mackenzie Valley; and

c. the importance of conservation to the well-being and way of the life of the aboriginal peoples of Canada to whom section 35 of the Constitution Act, 1982 applies and who use an area of the Mackenzie Valley.

These principles require screeners to protect the land and people by considering a wide range of impacts from a development, including environmental, social, and cultural impacts. This is described in greater detail in Section 4.4.

2.2 Purpose of these Guidelines

This document provides a framework with guidance on how to conduct preliminary screenings. The Guidelines:

1. describe the purpose of preliminary screening;
2. discuss when a preliminary screening is needed;
3. describes the steps in a preliminary screening;
4. discuss key considerations in preliminary screening;
5. provide instructions for conducting the might test; and
6. describe how reasons for the screening decision are written.

2.3 Preliminary screening steps and where they are described in this document

This table lists preliminary screening steps and the sections in the Guidelines where they are described.

	Preliminary screening steps	Section in Guidelines (linked)
Pre-application (development)	- Developer undertakes engagement	- Early Engagement 4.2 - Land use plans 4.3 - Traditional Knowledge 4.7
Application (development) **Received by Regulator**	- Application deemed complete - Regulators determine if screening is required - Screening begins	- When is a screening needed 3.1 - Preliminary Screening Requirement Regulations 3.2 - Exemptions 3.3 - Screening the whole development 4.4 - Screening development amendments 10 - Identifying potential impacts to the whole environment 4.5 - Getting the right information 4.6 - Screening complex developments 4.8 - Traditional knowledge 4.7
Public Review	- Notification of Screening - Coordination with other screeners - Create Distribution list - Public Review	- Duration of a screening 4.1 - Notifying the public 5.1 - Notifying the Review Board 5.1 - Coordinating with other screeners 5.1 - Adopting a Preliminary Screening 5.1 - Public review 5.2
Regulator Analysis	- Compile comments and responses - List Impacts and mitigations	- Impacts on whole environment 4.5 - Describing potential impacts and mitigations 6 - Carry out the might test 7 7.3 - Determining if there “might” be significant adverse impacts 7.1 - Determining if the development might be a cause of public concern 7.2

	Preliminary screening steps	Section in Guidelines (linked)
Decision	- Reasons for Decision	- Writing RFD 8
Pause Period	- Submit Screening Report and notify Review Board - 10 day pause period and Issue authorization Or - Refer to EA	- The 10-day pause period 9

Figure2: Simplified preliminary screening steps

3. WHAT IS A PRELIMINARY SCREENING?

Preliminary screening is an initial examination of a proposed development's potential impacts on the environment, including the potential to cause public concern. It is the first stage in the EIA process. For most (>95%) projects, it is the only stage of the EIA process.

Preliminary screenings are focused on determining whether there *might* be significant impacts on the environment, public concern, or both, related to a development proposal. If the preliminary screening finds that the proposed development might cause significant adverse impacts or might be a cause of public concern, then the preliminary screener must refer the development to the Review Board for an environmental assessment.

Preliminary screenings are broad reaching and try to capture almost all developments in the Mackenzie Valley, whether or not the development requires submission of an application. The MVRMA is firmly rooted in land claims. The EIA process as described in the MVRMA applies broadly, is comprehensive, and delivers on the intent of negotiated land claims.

3.1 When is a preliminary screening needed?

The environmental impact assessment process in the Mackenzie Valley generally begins when a developer applies for a regulatory authorization (such as a permit or license) for a proposed development that requires a preliminary screening.[5] The regulator (often a Land and Water Board) must conduct a screening on the development before issuing the authorization(s).

> A development is defined in the MVRMA as:
>
> *any undertaking, or any part or extension of an undertaking, that is carried out on land or water and includes an acquisition of lands pursuant to the Historic Sites and Monuments Act and measures carried out by a department or agency of government leading to the establishment of a park subject to the Canada National Parks Act or the establishment of a park under a territorial law.*[6]

The meaning of an "undertaking" is defined very broad in the MVRMA, and includes any "physical work", such as the construction of a building or structure or clearing land, and any "activity", such as a sampling program, construction of a winter road, or cleaning up an abandoned mine site.

In some cases, developments without application for an authorization may still require a preliminary screening.[7] Examples of these kinds of developments could include establishment of a park or protected area, and engineering studies that do not require a land use permit.

[5]See the Preliminary Screening Requirement Regulations 1994, and the Tłı̨chǫ Land Claims and Self-Government Agreement, S.C. 2005,
[6]See subsection 111(1) of the MVRMA.
[7]See subsection 124(2) of the MVRMA.

Figure 3: Mineral exploration drilling at Pine Point Mine 2020, photo GNWT Inspection Report

There are two main categories of preliminary screenings in the Mackenzie Valley.[8]

1. Application screenings:

   Application screenings are initiated though an application for an authorization that is listed in the *Preliminary Screening Requirement Regulations*, such as a land use permit. These are conducted by the Land and Water Boards or other regulators who receive applications for licences, permits, or other authorizations.[9]

2. Government and First Nations' self-screenings:

   For developments that do not require a regulatory authorization,[10] the MVRMA requires the Gwich'in First Nation, the Sahtu First Nation, the Tłı̨chǫ Government, and the territorial and federal governments to self-screen any developments they are proposing, unless:

- the proposed development is exempt under the Exemption List Regulations; or
- in the opinion of the screener, the impact of the development on the environment will be manifestly insignificant (i.e. there is no reasonable possibility that the development might cause a significant adverse impact)

[8]See Subsections 124(1) and (2) of the MVRMA. A third type of screening is allowed for under subsection 124(3): it is an optional screening that may be conducted by the Gwich'in or Sahtu First Nation, or the Tłı̨chǫ Government. This type of screening is not specifically addressed in these Guidelines; however, if conducted, 124(3) screenings should generally follow the principles covered in these guidelines (for example, considering the whole environment and whole development, carrying out the might test, and providing reasons for decision), to the extent applicable.
[9]Even though these are called "Application" screenings, because they are triggered by an application, the screening still considers the whole proposed development, and not just the part for which an application is required. See section 4.3 below for more details.
[10]For these screenings, a project description may be submitted as there may not be an application form.

The overarching principles from Part 5 of the MVRMA and the guidance that follows apply to both types of screenings.

Figure 4: Exploration drilling camp . Sept 2019, GNWT photo inspection report

3.2 The Preliminary Screening Requirement Regulations

The *Preliminary Screening Requirement Regulations* contain a list of federal and territorial acts and regulations that trigger the requirement for an authorization which requires preliminary screening. Any proposed development that requires one or more of these authorizations needs to undergo a preliminary screening[11] before these authorization(s) can be issued.

[11]unless the proposed development is exempt under the Exemption List Regulations (MVRMA s. 124(1)(a)) or preliminary screening is declared to be inappropriate for reasons of national security (MVRMA s. 124(1)(b)).

3.3 Exemptions from preliminary screening

There are three types of developments that may be exempt from preliminary screening: those described in the *Exemption List Regulations*, those that are manifestly insignificant, and historic authorizations. These are described below.

SOME DEVELOPMENTS ARE EXEMPT FROM SCREENING UNDER THE EXEMPTION LIST REGULATIONS

The *Exemption List Regulations* describe developments for which preliminary screening is not required because the impacts of these developments are expected to be insignificant. A development may also be exempt from preliminary screening for reasons of:

- a previous screening, including authorization renewals, as described in Sections 2 and 2.1 of the *Exemption List Regulations*
- a national emergency under the *Emergencies Act*[12];
- an emergency in the interests of protecting property or the environment or in the interests of public welfare, health or safety;[13] or,
- national security.[14]

MANIFESTLY INSIGNIFICANT DEVELOPMENTS MAY BE EXEMPT FROM SCREENING

A development is exempt from preliminary screening if, in the opinion of the preliminary screener, the impact of the development on the environment will be *manifestly insignificant*. This category of exemption only applies to developments proposed by the federal or territorial governments, the Gwich'in First Nation, the Sahtu First Nation, or the Tłı̨chǫ Government where no licence, permit or other authorization is required.[15]

The screener may conclude that the impacts are manifestly insignificant when in combination:

1. a development is proposed by one of the above organizations, and
2. it is obvious that there is no reasonable possibility that the development might cause a significant adverse impact, and
3. no authorization is required.

When screeners conclude that a proposed development's impacts are manifestly insignificant, they will describe the reasons for the conclusion (that is, the reasons why they concluded that there is no reasonable possibility that the development might cause a significant adverse impact)[16].

Governments have determined some classes of developments, such as highway maintenance activities, to be manifestly insignificant. Governments are encouraged to describe classes of other types of developments and activities that may fit into the category of manifestly insignificant with accompanying rationales.

[12]See p.119(a) of the MVRMA.
[13]See p.119(b) of the MVRMA.
[14]See p.124(1)(b) of the MVRMA.
[15]See ss. 124(2) of the MVRMA.
[16]See s.121 of the MVRMA.

HISTORIC AUTHORIZATIONS MAY BE EXEMPT FROM SCREENING

Section 157.1 of the MVRMA addresses old, historic, or "grandfathered" development authorizations stating that:

> *Part 5 does not apply in respect of any licence, permit or other authorization related to an undertaking that is the subject of a licence or permit issued before June 22, 1984, except a licence, permit or other authorization for an abandonment, decommissioning or other significant alteration of the project.*

This means that an application for an authorization associated with a development that had an authorization issued prior to June 22, 1984 and that does not propose to significantly change, abandon or decommission the development, does not need to be screened under the MVRMA.

Preliminary screeners need to apply this section to applications for historic developments. If the application proposes to significantly alter, abandon, or decommission a historic development, the s. 157.1 exemption does not apply and, unless another exemption applies, the development must be screened. The onus is on project developers to provide rationale for why a development should not be screened under this exemption. Preliminary screeners can consider this rationale for why such a development was or was not screened in the screener's reasons for decision.

4. KEY CONSIDERATIONS FOR SCREENERS DURING A PRELIMINARY SCREENING

4.1 Duration of a preliminary screening

There is no legislated timeline for a preliminary screening. Screenings are intended to be an initial scan of a proposed development's potential impacts on the environment. How long this takes depends on:

- the scale of the development,
- the environmental and social context or setting, and
- the potential impacts on the environment and people.

For example, a land use permit application for which potential impacts are well understood and can be mitigated by standard conditions may be completed in about six weeks. More unique and complex screenings may take up to three months to complete. If it appears that a screening will take longer , serious questions should be asked about whether an environmental assessment is warranted.

One indicator that referral to EA should be considered is if there are still relevant questions about potentially significant adverse impacts after a round of public review and developer responses. One or two very specific questions that just need a bit more information or clarification may be manageable in a screening; numerous or broad questions about potentially significant impacts are an indicator that a development should potentially be referred to EA.

Preliminary screening is not intended to determine the detailed potential impacts of a proposed development. A screening should not involve in-depth study. Rather, it is meant to be a cursory examination to determine if a development *might* cause a significant adverse impact on the environment or cause public concern.

4.2 Early community engagement

Engagement with potentially affected communities, Indigenous governments and organizations and other parties is required for land use permit and water licence applications and is considered best practice for all applications. This pre-submission or "early" engagement must be completed by the developer before the start of the preliminary screening (that is, before applying for authorizations). Preliminary screeners have little involvement in this stage as it occurs before the screening starts.

Figure 5: Community meeting in Whatì

For more details on engagement for land use permit and water licence applications, please refer to the Mackenzie Valley Land and Water Board's Engagement and *Consultation Policy* (2018) and *Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits* (2018).[17] [18]

[17] MVLWB Engagement and consultation policy 2019
[18] MVLWB engagement guidelines for holders of land use permits and water licences - 2018

4.3 Land Use Plans

Land Use Plans exist in the Gwich'in Settlement Area, Sahtu Settlement Area, and Tłı̨chǫ titled land portions of the Wek'èezhìi Management Area. Proposed developments in these areas must conform with the respective land use plan. Developers are encouraged to consult land use plans and engage with Land Use Planning boards during the pre-application (development) submission stage. Certain mitigation measures may be required to be implemented by developers to meet conformity requirements in land use plans. Screeners can use information in the land use plans to identify and provide rationale for these requirements to ensure conformity with the plans.

The Land Use Plan in the Dehcho region is in draft form, but information in draft plans can still be used to assist screeners in conducting preliminary screenings. A draft land use plan, while not legally binding, is the result of many workshops and diligent input from communities, industry, government officials, and others. The meetings that are conducted while preparing a land use plan may also help screeners identify sensitive areas or potential concerns even if the land use plan is not finalized.

Screeners are required to check development proposals in areas with land use plans for conformity before determining completeness of an application and initiating the screening. Screeners should include Land Use Planning Boards on the distribution list during public reviews of development proposals to ensure that the development is compatible with land use plans during preliminary screening. If the development changes or proposed mitigations change during preliminary screening, screeners must make sure that the development still conforms with land use plans after these changes. A proposed development must be in conformity with completed land use plans at the completion of a preliminary screening determination.

4.4 Screening the whole development

Part 5 of the MVRMA requires the preliminary screener to consider the whole development when conducting screenings, rather than focusing only on those aspects related to the specific authorization being applied for, or the screener's specific regulatory responsibilities. The broad focus of preliminary screening usually requires the screener to go beyond the narrow scope of the authorizations it issues. This breadth can give other regulators a reasonable basis to adopt the report of a different preliminary screener instead of requiring each regulator to conduct their own screening.

There is a clear distinction between a (regulatory) application and the development being proposed. **While a preliminary screening is triggered by an application for an authorization** (such as a licence or permit required for certain *parts* of the development), **the screening must look at and consider the whole development being proposed**. This includes the activities that require an authorization(s), as well as all related or supporting activities.

For example, even if a permit or licence is required for only a small part of the development (such as a stream crossing), the preliminary screening must consider all aspects of the development, including its other parts and activities, and their potential impacts on the ecological, social, and cultural environment.

Figure 6: Trenching and laying the Fibre optic cable along the Mackenzie Valley, March 2016

TRANSREGIONAL DEVELOPMENTS

Transregional developments refer to projects that overlap a region of the Mackenzie Valley and another jurisdiction(s).[19] When a preliminary screener is screening a transregional development, they should consider whether the project might have significant adverse impacts or cause public concern in the Mackenzie Valley and if it might do so in the adjacent jurisdiction.[20] In doing so, preliminary screeners should communicate and share information with screeners in adjacent jurisdictions where possible. Transregional developments need to consider Indigenous rights and how those might be affected regardless of jurisdictions and borders.

[19]Adjacent jurisdictions include the Inuvialuit Settlement Region, Nunavut, Yukon, B.C., Alberta, and Saskatchewan.
[20]If it might, and is referred to environmental assessment, the Review Board is able to coordinate and cooperate with other jurisdictions to further assess impacts that cross regional boundaries.

4.5 Screening potential impacts on the whole environment

The MVRMA requires that preliminary screenings consider impacts on the whole environment. Part 5 of the MVRMA defines impact on the environment as:

> *"any effect on land, water, and 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".*[21]

Preliminary screening must consider a wide range of impacts, including environmental, social, and cultural impacts. **The screening is not limited to considering the impacts that will be regulated by the authorizations** the development will need; screening needs to consider the full range of potential environmental impacts, including social, economic, and cultural impacts, and impacts on people's well-being. For example, the screening of a Land Use Permit application should consider if a proposed development might cause significant impacts on water, wildlife, air quality, as well as cultural and social impacts from the development.

SOCIAL, CULTURAL, AND ECONOMIC CONSIDERATIONS

The Review Board's *Socio-economic Impact Assessment Guidelines* (2007) help developers and screeners consider socioeconomic impacts during preliminary screening.[22] For developments that may have socioeconomic impacts, preliminary screeners may themselves consider and **ask reviewers** to identify whether:

a. the list of potentially affected communities is comprehensive

b. the application identifies and addresses the concerns and issues of potentially affected communities adequately

c. the level of social, cultural and economic assessment effort (including proposed mitigation measures) is adequate for the size, location and complexity of the proposed development

d. there are gaps in the data or methodology

e. there is general uncertainty about socio-economic issues

f. the valued socioeconomic components, benchmarks and indicators are relevant, adequate, and accurate

g. there are potential socioeconomic or cultural impacts missing from the developer's information

[21] See subsection 111(1) of the MVRMA.
[22] MVEIRB Socio-economic Impact Assessment Guidelines (2007) pp43-47

Figure 7: Technical sessions, Wek'èezhìı Land and Water Board

Many preliminary screeners do not have a mandate to investigate and mitigate social, economic or cultural impacts in their respective licences and permits. **Whether the preliminary screener has jurisdiction to mitigate these impacts is irrelevant to the preliminary screening; preliminary screenings are not part of the regulatory process**. Preliminary screening is an impact assessment process that precedes any regulatory action. The preliminary screener must consider potential social, economic and cultural impacts, and potential public concern regardless of their regulatory mandate.

Screeners may seek input from the developer and from others with expertise on potential impacts, such as other regulators, government departments, Indigenous governments and organizations, and communities.

4.6 Getting the right information

To conduct a preliminary screening, screeners should have access to information about all potential impacts from the project, including an indication if the impacts might occur and whether they might be significant.[23] Preliminary screeners typically require that developers provide this information along with a complete description of the development. Having a thorough application or information package from the developer:

- makes it more likely that the screener can answer all relevant questions in the screening,
- can reduce the number and complexity of information requests, and
- can reduce time it takes to conduct a screening and the risk of a referral to EA due to uncertainty about impacts and mitigations.

When considering the completeness of information received from developers, screeners should look for the information needed to complete a preliminary screening of the whole development and whole environment, not just the information required by the regulatory application form.

Regulatory application forms explain what information is required for the application for a permit licence or other authorization. This information will also inform and is often adequate for the preliminary screening. Screeners may, however, request additional information at their discretion. Some screeners may have additional guidance on preparing applications. For example, the Land and Water Boards have guidelines for proponents (developers) on how to prepare Land Use Permit and Water Licence applications.[24,25] Screeners other than Land and Water Boards, including government departments, typically have their own information requirements for regulatory applications.

During the preliminary screening, screeners may also receive information from reviewers or through information requests.

REQUIREMENTS FOR LARGE-SCALE VS SMALL-SCALE DEVELOPMENTS

The information required by preliminary screeners will vary, depending on the potential impacts, issues, and concerns associated with each development proposal. For example, larger scale developments, developments near or in sensitive areas, and developments applying new or unproven technology are more likely to be subject to a higher level of scrutiny. In such cases, the screener can ask a developer to submit more detailed information to assist both the public in its review and the screener in their decision making.

[23] For more information on what "significance" means, see *The Significance Spectrum and EIA Significance Determination* at http://reviewboard.ca/reference_material/conference_papers_and_articles
[24] MVLWB Guide to the Land Use Permitting Process (2013)
[25] Guide to Completing Water Licence Applications to the Mackenzie Valley Land and Water Board (2003)

4.7 Traditional knowledge

The MVRMA requires Land and Water Boards to consider available Traditional Knowledge in decision-making, including for preliminary screening.[26] The Review Board's *Guidelines on Incorporating Traditional Knowledge in Environmental Impact Assessment* (TK Guidelines) also provide guidance for considering traditional knowledge in preliminary screenings.[27]

Traditional Knowledge is an important source of information for preliminary screeners and decision-makers. Traditional Knowledge provides information on such topics as:

- historical conditions, including variability in environmental conditions,
- present conditions, and changing conditions,
- traditional resource uses in the area surrounding the project site,
- valued components,
- sites of cultural significance and cultural meeting zones, and
- community-based concerns about the potential impacts of the project.

During preliminary screening, Traditional Knowledge holders and Indigenous governments and organizations have opportunities to submit their perspectives on environmental impacts and public concern and may submit any relevant Traditional Knowledge to the screener.

A preliminary screener, such as a Land and Water Board, may have its own guidelines for developers on how to consider and include Traditional Knowledge in submissions for preliminary screening.

Figure 8: Traditional knowledge gathering for a project in Nahanni Butte

Nevertheless, at the screening stage, it is likely that only pre-existing Traditional Knowledge studies or information will be available to the preliminary screener. If a developer has worked with Traditional Knowledge holders prior to application, the developer should acknowledge the use and inclusion of any Traditional Knowledge in its submissions. This will enable the preliminary screener to determine to what extent Traditional Knowledge has been incorporated into project design, impact predictions and mitigation. It may also help the preliminary screener determine whether a proposed development should be referred to the Review Board for environmental assessment.

[26] See paragraph 60.1(b) of the MVRMA.
[27] Guidelines for Incorporating Traditional Knowledge in Environmental Impact Assessment (2005) p20

4.8 Complete the preliminary screening early for complex developments

The preliminary screening process must be completed before any activity related to the development can begin. Preliminary screening is distinct and separate from the regulatory (permitting and licensing) process. For small and non-controversial developments, it may be efficient and satisfactory for permitting and screening to share a public review process and for decisions to be made at the same time (that is, the screening and the permit or licence processes are conducted together).

For screenings of large or complex developments, a screening determination should be made earlier rather than later. If the screening determination does not happen early, there will be uncertainty among interveners (parties) and proponents about whether the development will be referred to environmental assessment, and the overall timing of the regulatory process.

For example, screening a development that requires a Type A water licence will require a robust process including information requests, technical sessions, and a public hearing. In this case, it is preferable that a screening decision be made early, and if needed, an environmental assessment begin as soon as possible. This early screening decision increases process certainty, saves time, and can reduce duplication of effort where an EA is conducted.

The preliminary screener may discover during the screening that more information is needed. If the information presented is insufficient to prove significant adverse environmental impacts will not occur (i.e. the might test), the preliminary screener should request more information. If, based on the information available, important questions about impacts remain, the screener may conclude that there "might" be significant adverse impacts and the application should be referred to environmental assessment.

Regardless of the timelines set out in regulations (such as the 42 days to issue a Type A land use permit), the MVRMA requirements for screenings must be met before any authorization can be issued. The timing requirement in any legislation does not dictate or overrule the screening requirements and principles set out in the MVRMA. Until Part 5 has been satisfied, no licence or permit may be issued.[28]

[28] See section 118 of the MVRMA.

5. NOTIFICATION, COORDINATION, AND PUBLIC REVIEW

Once the screener has determined that the application is complete, the screening can start. A preliminary screening normally relies on the information submitted with the licence or permit application and input from potentially affected parties (such as other regulators, organizations, Indigenous Governments and communities). Because a preliminary screening involves a broad assessment of impacts, getting input from other regulators, organizations, Indigenous groups and communities is very important. These groups may have experience, expertise, and first-hand knowledge that will help inform the screener's decision.

The preliminary screener will use the information from the developer and external parties to determine whether there *might* be potential significant adverse environmental impacts or public concern.

Figure 9: Barren-ground caribou

5.1 Notification of the public, and coordination with other regulators and the Review Board

Once the preliminary screener deems the application to be complete, the screener identifies communities, Indigenous governments and organizations, other regulators and organizations that should participate in the preliminary screening.

NOTIFYING POTENTIALLY AFFECTED PARTIES, AND THE PUBLIC

The preliminary screener must notify potentially affected groups, Indigenous Government Organizations, territorial and federal governments, and for Water Licences, the general public.

NOTIFYING THE REVIEW BOARD

The preliminary screener(s) must notify the Review Board in writing when a preliminary screening begins.[29] This notification should include a copy of the completed application, along with any supporting information, engagement record, and relevant correspondence. The Review Board maintains a public registry which includes all preliminary screening notifications, reports, and decisions that the Board receives.[30]

COORDINATING WITH OTHER SCREENERS

Unless exempt, a preliminary screening must be completed for every development that requires an authorization listed in the *Preliminary Screening Requirement Regulations*.[31] The MVRMA allows a regulator to adopt a screening conducted by another regulator[32] (effectively making it their own) or to perform a joint screening. 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 ability to adopt screenings or conduct joint screenings requires coordination between regulators. An oil and gas exploration development, for example, usually requires at least a Land Use Permit from a Land and Water Board and an authorization from the Office of the Regulator of Oil and Gas Operations.

To achieve this coordination, any regulator that receives an application that requires preliminary screening should notify all other potential regulators. Each regulator may then identify themselves as being, or likely being, a regulator for the development, even if they have not yet received an application for an authorization. The regulators can then coordinate their efforts, and either:

- choose a single preliminary screener among themselves,
- conduct a joint screening, or,
- conduct two or more screenings (if two or more regulators want to perform their own screenings).

[29] See section 124 of the MVRMA.
[30] Preliminary Screening Registry
[31] And ss. 124(2) developments.
[32] See subsection 124(4) of the MVRMA.

The MVRMA establishes the Land and Water Boards as the main screeners in the Mackenzie Valley. **If a Land and Water Board is doing a screening, other regulators are not required to conduct their own screening.** Other regulators may instead participate in the screening, provide expertise to the Board, and make sure that the screening covers the whole development (including those parts over which they have regulatory authority). This prevents duplication.

Public review, described below, enables organizations, communities, and Indigenous groups to contribute to the preliminary screening. **The Review Board strongly encourages coordination amongst screeners, and whenever possible, a single comprehensive screening.** Single coordinated screenings are more efficient while still ensuring that the whole development and whole environment are considered.[33]

Coordination - Example of other regulators adopting a screening Consider a development being screened by a Land and Water Board, and for which it will later issue an authorization for only one aspect of the development (in this case, a Water Licence). The MVRMA requires that the Land and Water Board ensure the preliminary screening covers the whole development and its impacts on all parts of the environment (including non-water subjects, such as fish, wildlife, cultural resources, and direct social impacts). Consider that a fisheries authorization from Fisheries and Oceans Canada (DFO) is also required for the development to proceed. If the Land and Water Board screening considers potential impacts from the whole development, including activities related to the fisheries authorization, it may be more efficient for DFO to simply participate in and adopt the Land and Water Board screening, rather then for DFO to do its own.

ADOPTING A PRELIMINARY SCREENING

If a Land Use Permit or a Water Licence is required for a development, other regulators that also need to screen that same development have the option to adopt the Land and Water Board screening. In this scenario, other regulators can provide input on the scope of the screening, potential environmental, social, economic and cultural well-being impacts, and recommend conditions to mitigate impacts. In this way, regulators can ensure that their screening needs are being addressed without having to perform a separate screening. A regulator may then choose to adopt the Land and Water Board's screening. If a Land Use Permit or a Water Licence is not required, the regulator may either conduct its own preliminary screening, or if there are multiple screeners, adopt another screener's report or conduct a joint screening.

If a regulator has conducted a preliminary screening of a development which has not been modified since that screening, no other regulator is required to carry out a preliminary screening of that development.[34]

[33]See Appendix A for a list of preliminary screeners and other resources..
[34]See *Exemption List Regulations*, Schedule 1, section 2.

5.2 Public review

Preliminary screening is an open, transparent and consultative process. At the beginning of a preliminary screening, the screener must consult and engage with potentially affected parties.[35] This participation is an integral part of the preliminary screening. **The Preliminary Screener relies on the knowledge and experience of parties when screening a project**. Each of the parties to the screening provides recommendations and advice. Each is asked to identify potential impacts of the proposed development, and to make recommendations for minimizing or mitigating these impacts. This engagement helps the screener consider impacts from the development on the whole environment.

The guiding principles for the environmental impact assessment process under the MVRMA require screeners to consider how a proposed development could affect the social, economic, and cultural well-being of communities and all residents, and the well-being and way of life of Indigenous Peoples.[36] To satisfy these principles, preliminary screenings must provide opportunities for Indigenous people, communities, stakeholders, and the public to participate meaningfully. Land and Water Boards have distribution lists of potentially affected parties in each region of the Mackenzie Valley to assist in meeting their consultation and engagement requirements for screening.

COLLECTING PUBLIC COMMENTS AND RECOMMENDATIONS

The Land and Water Boards use a web-based online review system (ORS) for requesting public comments and developer responses on development applications. The system includes distribution lists for specific regions and is supported by pre-submission engagement that Land and Water Board policy requires proponents to carry out with Indigenous Governments and organizations and other potentially affected parties. The public review assists the screener in identifying impacts and mitigation, and making an informed screening decision before issuing authorizations or referring a project to environmental assessment. Screeners may also use other culturally appropriate ways of engaging Indigenous communities and organizations for their comments. For example, rather than written submissions, face to face meetings, video, or audio recordings may be more effective ways of capturing public concern and impacts on the well-being and way of life of Indigenous people.

[35]Consultation is specific to Section 35 rights.
[36]See subsection 115(1) of the MVRMA.

6. DESCRIBING POTENTIAL IMPACTS AND MITIGATIONS

Figure 10: Enbridge pipeline replacement at Mackenzie River crossing, 2018 GNWT inspection report photo

Once the preliminary screener has received comments and recommendations from Indigenous organizations, governments, and other stakeholders, they will analyze the proposed development's potential impacts on the environment. This involves predicting how the environment might interact with and be affected by the specific activities proposed. The screener must also consider how the proposed development fits into the bigger picture of the region, including other developments and environmental pressures that already exist (including cumulative effects).

Under the MVRMA, the term "impact on the environment" includes social and cultural as well as biophysical impacts. Preliminary screeners have the challenging task of identifying potential impacts on all aspects of the natural and human environment.

To do this, they rely heavily on specialist advice from government departments and agencies, Indigenous organizations, local knowledge from surrounding communities and traditional land users, and the issues raised by those who may be directly affected.

When determining potential impacts, preliminary screeners will consider the development description, including any planned mitigation measures to reduce or avoid potential impacts. Good development proposals have mitigation measures incorporated into project design and planning. A standard range of regulatory conditions, if adhered to, also serves to avoid environmental problems. Preliminary screeners are expected to consider any design features of developments that reduce or avoid environmental impacts, and the reliability and effectiveness of these features.

7. HOW TO CARRY OUT THE "MIGHT TEST"

The primary objective of preliminary screening (for projects located outside of local government boundaries[37]) is to determine if a development proposal:

- *might* have a significant adverse impact on the environment, or
- *might* be a cause of public concern[38].

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

Preliminary screeners are not required to determine if there will be a significant impact, only if there *might* be one. Preliminary screeners' analyses should go no further than needed to determine that this test has been met, considering the guiding principles of the MVRMA.

One reasonable approach to conducting the might test is to ask the following key question: **Are there unanswered questions about the development related to potentially significant impacts or public concern?** If, after a public review period and developer responses, there are still unanswered questions about potentially significant impacts, then an environmental assessment should be considered. Screeners need to consider the scope of these questions and any uncertainty about potential impacts or the effectiveness of mitigation measures when conducting the might test.

The purpose of preliminary screening is to identify whether there are questions that should be assessed further (in environmental assessment), not to determine answers to those questions.[39] Preliminary screeners should refer a development to an environmental assessment if:

- in the opinion of the preliminary screener, the "might" test has been met;
- there is not enough information for the screener to determine that the "might" test has been met; or,
- there are uncertainties about the potential impacts or the effectiveness of proposed mitigation measures that require more thorough analysis.

Screenings for projects located within local government boundaries Screenings for developments wholly within local government boundaries use a different test than the might test used for developments outside of local government boundaries. Under subsection 125(2) of the MVRMA, screeners must determine if the development is "*likely* to have a significant adverse impact on air, water or renewable resources or might be a cause of public concern" [emphasis added]. It is important for screeners to note that *likely* is a higher threshold than *might* when considering the possibility of environmental impacts, while the public concern test is unchanged for these developments.

[37]Inside of local government boundaries, the test becomes whether the development 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% chance. If so, in the professional judgment of the Preliminary Screener, then the development should be referred to the Review Board for an Environmental Assessment. The public concern test under this section is the same for developments within or outside of local government boundaries.
[38]See subsection 125(1) of the MVRMA.
[39]The sensitivity of the "might" test makes more sense when considered as a part of the overall EIA process. As a whole, the EIA process can deal with any potential significant adverse environmental impacts or public concern associated with a development proposal. 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.

7.1 Determining if there "might" be significant adverse 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 - how long will the impact occur?
- The **reversibility** of the impact that might occur
- The **nature** of the impact - how important is the component that the impact will affect?
- 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 factors for the screener to consider when conducting the might test:

1. **Development scale:** Larger developments often have more potential to cause significant adverse impacts.
2. **Development location:** Examples include proximity to areas:

- near or upstream of parks, protected or ecologically sensitive areas;
- used for harvesting (wildlife, plants or berries), fishing, and trapping;
- of critical or seasonally important wildlife habitat;
- containing valued ecological components (permafrost, wetlands, riparian habitat);
- of cultural, spiritual, heritage or archaeological value; and
- of recreational value

3. **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;
- social changes to community structure (such as construction camps near 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 impacts. The test in s.125, however, is about whether a development might have *significant* adverse impacts.

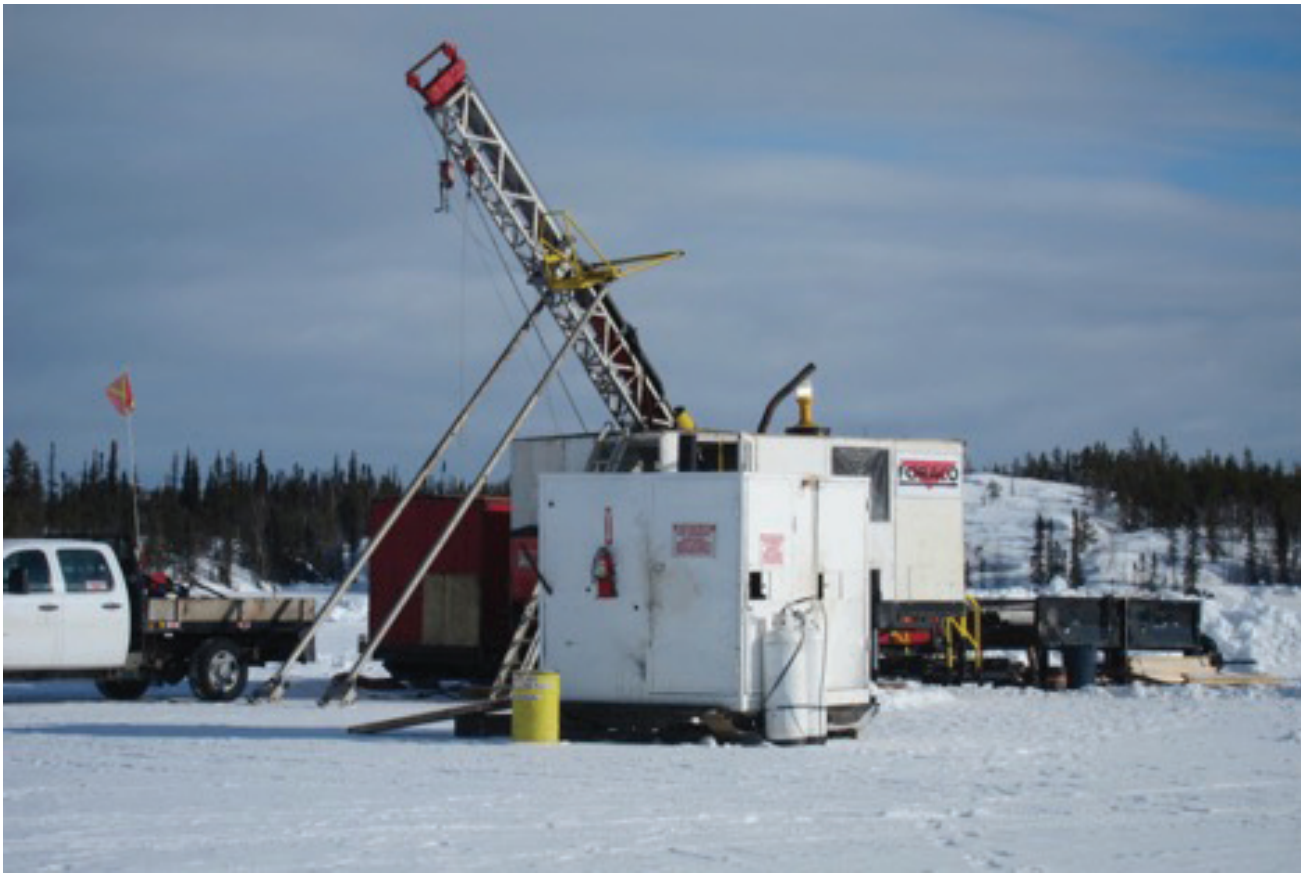

Figure 11: Mineral exploration project Gold Terra Resources near Yellowknife, March 2015

MITIGATION MEASURES TO ADDRESS IMPACTS

Preliminary screeners can consider mitigations, including those proposed by the developer, in making their decisions. Mitigation measures that may be considered include:

- mitigations in the development description and developer's commitments,
- standard conditions of regulatory authorizations, and
- recommended mitigations or commitments from other regulators made during public review.

7.2 Determining if the development might be a cause of public concern

One of the preliminary screening tests for referral to environmental assessment is the question of whether a development "might be a cause of public concern".[40] The screener uses the evidence available and their professional judgment to make this determination. The following sections can assist screeners when they receive applications for developments that may cause public concern.

ROLE OF THE PROPONENT IN IDENTIFYING PUBLIC CONCERN

The screener relies on the proponent to recognize and address public concerns raised during engagement with communities, including through meetings and information sharing. Some public concern may be addressed by the proponent through good engagement practices (such as in-person meetings or clarifying the project description), appropriate mitigations, and commitments to report back to communities throughout the life of the project. If public concern cannot be addressed or mitigated, the screener can describe this in the reasons for its screening determination.

CONSIDERATIONS FOR THE SCREENER TO HELP DETERMINE PUBLIC CONCERN

There is often a linkage between public concern and adverse impacts on the environment and people. The root cause or reason for the public concern may be linked directly to potentially adverse impacts already identified in the screening. The following additional questions may assist screeners in identifying public concern:

1. **Is public concern widespread**, or was concern was not raised? Note that a concern need not be widespread to be legitimate and worthy of consideration, but widespread concern should be considered when identified.
2. **Is there a history of concern in the area?** Past concern with development in an area may indicate the likelihood of more public concern.
3. **Has ample opportunity been provided for public consultation and input prior to the start of the screening process?** For example, has the proposed development already been subject to a comprehensive review process (such as park establishment consultations), and have comments received during the screening process already been addressed during that process?

[40] See subsection 125(1) of the MVRMA.

Figure 12: WLWB Hearing in Behchoko

ADDITIONAL TIPS FOR GAUGING PUBLIC CONCERN

Public concern needs to be reasonably linked to the proposed development and the potential for cumulative effects.

The number of concerns voiced may also be a factor to the screener in gauging public concern. 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. For example, a single well-reasoned concern may be equally or more important than many unsupported letters.

The location of the person or group voicing concerns may also be relevant. The MVRMA specifies that the EIA process must ensure that the concerns of Aboriginal people and the general public are taken into account,[41] and that it should protect the well-being of residents and communities in the Mackenzie Valley[42] and other Canadians.[43]

Generally, the focus of screening (and the entire EIA process) is on the concerns of those most potentially affected by a development. However, some sites in the Mackenzie Valley have specific territorial, national or international designations implying a broader duty of care when considering comments and concerns from outside the Mackenzie Valley, such as National Parks or World Heritage Sites. Concerns about transregional developments, or developments with impacts in other regions, may be important even if the concerns come from an adjacent region outside of the Mackenzie Valley.

[41]See subsection 114(c) of the MVRMA.
[42]See paragraph 115(1)(b) of the MVRMA.
[43]See section 9.1 of the MVRMA.

7.3 A practical approach to the might test

A PRACTICAL APPROACH TO THE MIGHT TEST

A practical interpretation of the might test may be helpful for screeners. Operationally, this allows the screener to work through the test by breaking it into 7 specific questions or parts.

Using this approach, the screener asks:

> [1] Has the developer **proven**, [2] to the **screener's satisfaction**, that [3] there is no **reasonable possibility** [4] of **significant adverse impacts** [5] or **public concern** [6] from the **proposed development** [7] that **cannot be mitigated** through standard authorization conditions?

If the screener is not confident that the above statement or test has been met, the screener must refer the development to environmental assessment.

These questions come from the following principles (the numbers below match the numbering of the parts of the screening question above):

1. The legal onus is on the developer to prove their case to the screener. The developer is proposing the development or activity, and the burden of proof is on them.
2. The screener's satisfaction matters because the screening organization is the one with the legal responsibility to make a screening decision. It will use the evidence before it to make a subjective informed judgement about the might test.
3. "Reasonable possibility" matters because "might" means "possible", but there are limits that keep this focussed. Legal decisions by screeners are required to be reasonable. There should be reasons for the conclusions made, and the reasons should consider the evidence on the record and be described clearly.
4. For most proposed developments, the might test is about whether the development might cause impacts that are significant.[44] This refers to impacts that would be unacceptable if they are not avoided or reduced. It includes the full range of ecological, socio-economic and cultural impacts considered in Part 5 of the MVRMA.
5. The screener has to consider if the development might be a cause of public concern. Unlike the above consideration for impacts, the test does not say that the concern must be significant, just that concern might arise.
6. The test is focussed on the whole proposed development. This refers to the part of the development that is authorized (such as water licence and fisheries authorization) as well as the parts of the development that do not require authorization (such as noise or social disruption).
7. The might test considers whether impacts can or cannot be reliably mitigated through standard conditions in a regulatory authorization.

[44] Inside a local government boundary, the test changes to ask if the development is likely to cause significant impacts, a higher test than asking if the development might cause significant impacts.

8. WRITING REASONS FOR DECISION

Once the preliminary screener has applied the "might" test, it will decide whether to refer the development to environmental assessment or allow it to proceed to permitting and licensing. In reaching this decision, the preliminary screener considers all the information on the public record collected during the screening process. The preliminary screener is required by s. 121 of the MVRMA to issue written reasons for their decision to the public and the developer. This decision is signed by the appropriate regulator(s), the chairperson of the preliminary screening organization, or a legally designated alternate. The written decision with reasons should be provided to the developer, Indigenous Governments and organizations, any other preliminary screeners, the Review Board, relevant regulators, and the general public.

Reasons for decision should focus on explaining how and why the screener reached its conclusions. Reasons should explain how the screener logically reached its decision on the basis of the evidence—it should clearly show the thinking and reasoning that led from the information on the record to the screener's conclusion(s). Reasons should describe the potential impacts and mitigations and, if not referring the development to EA, why the mitigations are adequate to reliably prevent significant adverse impacts.

All impacts and mitigations need not be treated equally in reasons for decision. The impacts with the greatest potential for environmental harm and the mitigations that can prevent or minimize those impacts should be the focus. The screener may also consider contextual or other factors, such as cumulative effects, impact probability and severity (risk analysis).

It is up to the developer to try to prove to the screener that the might test has not been met. In other words, the onus is on the developer to prove that the project might not result in significant impacts or be a cause of public concern.

Where uncertainty exists, the screener should indicate it in the screening decision. Written reasons should address all the issues that were considered (even where there is no finding of potential significant impacts) and explain the screener's reasoning thoroughly. One way to address uncertainty is to take a precautionary approach. Screeners can take a precautionary approach when:

1. a lack of information causes a level of uncertainty that is unacceptable, in the screener's view; and,
2. there is potential for serious environmental harm.

Screeners will use this precautionary approach when considering any uncertainties on impact predictions with the potential to cause serious harm, whether raised by project reviewers or noted by screeners themselves. In addition, a precautionary approach can be used in considering if the developer's proposed mitigations will be carried out or be effective, if the result is potentially serious environmental harm. Reasons should refer to and may rely on other forms, documents, or tools the screener used to help reach the decision.

Figure 13: Behchoko, Wek'èezhìı Land and Water Board photo

In the case of a referral to EA, the preliminary screening decision will help the Review Board scope the environmental assessment. For this reason, preliminary screeners are encouraged to provide reasons for decisions that are clear, detailed, and based on the available evidence. For example, a screening should base its referral to EA on potential impacts on *specific* water bodies or wildlife species due to a *particular* part of the development or activity, rather than simply on "potential impacts on water and wildlife" generally (unless the referral is based on a holistic suite of potential impacts). Similarly, rather than stating that a development is being referred "due to issues related to cumulative impacts", it is preferable to identify the issues, and what parts of the current development may combine with specific impacts of past, present, or future developments to cause cumulative impacts.

If a preliminary screener has decided that an environmental assessment is required, the screener will refer the development proposal the Review Board. When the Review Board receives a referral, it is obligated to conduct an environmental assessment.[45] From this point, no authorizations for work related to the development may be issued before the requirements of Part 5 of the MVRMA have been complied with.[46] Any permits for early works related to a project that is in environmental assessment still require preliminary screening as described in Section 62 of the MVRMA.

[45]See subsection 126(1) of the MVRMA.
[46]See section 62 of the MVRMA

9. THE 10-DAY PAUSE PERIOD

As part of legislative amendments passed in Bill C-88, the MVRMA requires a ten-day pause period following preliminary screening decisions that do not result in a referral to environmental assessment.[47] During this period, no authorizations can be issued.[48] The ten-day pause provides a short, formal period for the Review Board or other referral authorities to exercise its discretion under s. 126 of the MVRMA and decide whether to order an EA after a preliminary screening decision but before regulatory authorizations are issued and work begins. This pause period does not apply to developments that are exempt from screening.[49]

The preliminary screening report must be sent to the Review Board[50], which maintains a public registry of all completed preliminary screenings.[51]

9.1 How the 10-day pause period works

The ten-day pause period will begin on the day after the Review Board receives a preliminary screening decision.[52] The screener should copy its decision to the proponent and the distribution list that was used for the preliminary screening review.

The Review Board will post the screening decision to its public registry,[53] along with the date it was received and the date on which authorizations can be issued. Anyone, including referral authorities, can subscribe to receive notification of screening decisions posted to the Review Board's registry.

If no referral to EA is made by the end of the tenth day of the pause period, regulatory authorizations can be issued on the following day.[54] For example, a screening decision received by the Review Board on April 2nd would result in a ten-day pause period from April 3-12, and authorizations could be issued on April 13th.

If an EA is ordered, the referral authority should notify the screener as soon as possible and must do so before the end of the ten-day pause period. In that case, **no authorizations can be issued** until after the EA is completed.

If the same development undergoes more than one preliminary screening, the ten-day pause period starts on the day after the Review Board receives the last screening decision.[55] The Review Board encourages screeners to coordinate their screenings to ensure all aspects of the development are considered and to ensure an efficient process.

[47] See subsection 125(1.1) of the MVRMA. Bill C-88 received Royal Assent on June 21, 2019.
[48] Or, if issued, authorizations would only come into force after the ten-day period and if no referral to EA is made.
[49] MVEIRB Reference Bulletin 10 day pause period
[50] See section 125 of the MVRMA..
[51] See paragraph 142.1(1)(c) of the MVRMA. Registry accessible through reviewboard.ca/registry/preliminary-screenings.
[52] Typically by email to preliminaryscreening@reviewboard.ca
[53] See reviewboard.ca/registry/preliminary-screenings
[54] The days will be calculated as calendar days beginning and ending at midnight Mountain Daylight Time.
[55] See subsection 125(1.3) of the MVRMA.

The MVRMA allows several parties to refer a development to environmental assessment.[56] Notwithstanding the preliminary screening decision, a development may be referred to environmental assessment by:

- a regulator, or a department or agency of the federal or territorial government,
- the Gwich'in First Nation or, Tlicho Government, or Sahtu First Nation,[57]
- a local government,[58] or
- the Review Board itself.[59]

If a government department, the Gwich'in or Sahtu First Nation, and the Tłı̨chǫ Government conduct a preliminary screening of their own development proposals where no licence, permit, or other authorization is required, the ten-day pause period applies and such developments cannot proceed until it ends.[60,61]

[56]See section 126 of the MVRMA.
[57]in the case of a development to be carried out in their respective settlement areas or a development that might, have an adverse impact on the environment in that settlement area
[58]in the case of a development to be carried out within its boundaries or a development that might have an adverse impact on the environment within its boundaries
[59]Under subsection 126(3) of the MVRMA, the Review Board can refer a development to environmental assessment on its own motion.
[60]See subsection 124(2) of the MVRMA.
[61] See paragraph 125(1.1)(b) of the MVRMA.

10. SCREENING DEVELOPMENT AMENDMENTS

10.1 Screening development amendments that have not gone through EA

If a developer is proposing to modify an existing or approved development (that is, applying to amend an authorization), the regulatory authority must consider whether there are differences between the scope of the development that was previously assessed and the development which is now being proposed. If the proposed changes involve activities not previously screened or impacts not previously considered, then a new preliminary screening must be conducted.[62]

When screening project changes (amendments), the preliminary screening should focus on the impacts of activities not previously screened or assessed under Part 5 of the MVRMA. The screener may need to consider changes to:

1. geographic scope, or an increase in the area where an activity is proposed
2. the intensity of activity and of impacts of an existing development
3. the scale of the activity
4. the duration of impacts
5. the type of access
6. technology used (such as the use of a new technology in an unfamiliar setting)
7. management plans
8. cumulative effects

In addition to screening project changes, the screener must consider past screenings or assessments for the development.[63] Note that the preliminary screening should consider the potential impacts of the amendment in combination with cumulative effects of all past activities, including impacts of the existing development. Screeners are encouraged to compile and include information from past screenings in the screening report.

[62] Under section 118 of the MVRMA, no authorizations can be issued unless the requirements of Part 5 have been complied with.
[63] See subsection 115(2) of the MVRMA.

10.2 Screening development amendments that have gone through EA

For project changes made after an environmental assessment, regulators must consider:

1. the extent and impacts of the proposed changes to the development, and
2. how theses changes might affect the significance determinations and any resulting measures from the EA approved by responsible Ministers.

In addition to considering potential impacts from activities that were not already assessed, screeners must consider the Review Board's significance determinations and any measures recommended to reduce significant adverse impacts.

There is no provision in the MVRMA allowing the Board's significance determination and the resulting approved EA measures to be changed through a preliminary screening process. **If a development change has implications to the Review Board's significance determination or if there is a question about the applicability of an EA measure, screeners should contact the Review Board** before proceeding with a preliminary screening.

Figure 14: Mackenzie River at Tulita, traditional moose hide boat and modern motor boat

11. AMENDMENTS TO THE MVRMA FROM 2014 THAT ARE NOT IN FORCE

Several amendments to the MVRMA relevant to preliminary screenings received royal assent in 2014, but are not in force. These include the addition of 117.1 (1) and (2), as well as 124 (1.1). These amendments relate to the 10 day pause period, notification of exemptions and other matters. As of 2020, however, these amendments were not in force.[64]

12. INFORMAL COMMUNICATION

Review Board staff are available to discuss issues related to completing preliminary screenings. Screeners can contact Review Board staff at any time. Early communication allows an opportunity to resolve issues and minimize uncertainty for Boards and other decision makers.

13. CONCLUSION

These Guidelines reflect over two decades of preliminary screening experience in the Mackenzie Valley. The Review Board hopes that they will serve to further clarify and guide preliminary screeners in conducting their screenings, the important process upon which much environmental impact assessment in the Mackenzie Valley ultimately rests. The Review Board is particularly grateful to the preliminary screening organizations, listed in Appendix A that used their many years of first-hand experience to contribute to and improve these Guidelines.

[64]See MVRMA Amendments Not in Force pp 150-152

APPENDIX A: LIST OF PRELIMINARY SCREENERS AND OTHER RESOURCES

The following is a list of some preliminary screeners and other useful contacts:

Organization	Contact method
Land and Water Boards	**Land and Water Boards**
Mackenzie Valley Land and Water Board	https://mvlwb.com/
Gwich'in Land and Water Board	https://glwb.com/
Sahtu Land and Water Board	ttps://slwb.com/
Wek'eezhii Land and Water Board	https://wlwb.ca/
GNWT ENR	https://www.enr.gov.nt.ca/en
GNWT INF	https://www.inf.gov.nt.ca/en
Parks Canada	
Nááts'įhch'oh National Park Reserve	https://www.pc.gc.ca/en/pn-np/nt/naatsihchoh
Thaidene Nene National Park Reserve	https://www.pc.gc.ca/en/pn-np/nt/thaidene-nene
Saoyú-ʔehdacho National Historic Site	https://www.pc.gc.ca/en/lhn-nhs/nt/saoyuehdacho
Fisheries and Oceans Canada	https://www.dfo-mpo.gc.ca/contact/regions/central-arctic-eng.html
Office of the Regulator of Oil and Gas Operations	https://www.orogo.gov.nt.ca/
Canada Energy Regulator	https://www.cer-rec.gc.ca/index-eng.html
Canadian Nuclear Safety Commission	https://www.cnsc-ccsn.gc.ca/eng/
Crown-Indigenous Relations and Northern Affairs Canada	https://www.canada.ca/en/crown-indigenous-relations-northern-affairs.html
Gwich'in Tribal Council	https://gwichintribal.ca/
Sahtu Secretariat	https://www.sahtu.ca/
Tłı̨chǫ Government	https://www.tlicho.ca/
Gwich'in Land Use Planning Board	https://www.gwichinplanning.nt.ca/
Sahtu Land Use Planning Board	https://sahtulanduseplan.org/
Tłı̨chǫ Government, Tlicho Land Use Plan	https://www.tlicho.ca/government/culture-lands-protection

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