

Mackenzie Valley  
**Review Board**



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# **GUIDELINE 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* (MVRMA). If there is a conflict between the definition in the MVRMA and these guidelines, the definition in the MVRMA should be used.

## DEVELOPMENT

means 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.<sup>1</sup>

## 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.

## LOCAL GOVERNMENT

means any local government established under the laws of the Northwest Territories, including a city, town, village, hamlet, charter community, settlement or government of a Tłıchǫ community, whether incorporated or not, and includes the territorial government in the case where it is acting in the place of that local government in accordance with those laws. It also includes the Déline Got'ine Government in the case where it is exercising the jurisdiction and authority set out in 9.1 of the Déline Agreement.

## 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.

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<sup>1</sup>The word “project” is used in place of “development” throughout this document because it is a more commonly used and recognized term in the Mackenzie Valley. The word “development” is used only when quoting legislation from the MVRMA. Otherwise “project” is used throughout the Guideline.

# 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”.

This *Guideline for Preliminary Screeners* (the Guideline) provides guidance to screeners on conducting effective preliminary screenings. Individuals or organizations who participate in preliminary screenings may also find this guideline informative; however, the primary audience for this guideline is the preliminary screeners themselves.



## 2. INTRODUCTION

Environmental impact assessment (EIA) is a process which examines the potential impacts of proposed projects 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 required by comprehensive land claim and self-government agreements.<sup>2</sup> The impact assessment system is enabled through Part 5 of the MVRMA. Section 114 of the MVRMA establishes:

[...] 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 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.*

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<sup>2</sup>The Gwich'in Comprehensive Land Claim Agreement, S.C. 1992, the Sahtu Dene and Métis Comprehensive Land Claim Agreement, S.C. 1994, and the Tłıchǫ Land Claims and Self-Government Agreement, S.C. 2005.



This Guideline is produced by the Mackenzie Valley Environmental Impact Review Board (Review Board) under the authority of section 120 of the MVRMA.<sup>3</sup> It provides guidance for preliminary screeners on how to conduct preliminary screenings. The Guideline complements the Review Board's other guidelines, including its *Environmental Impact Assessment Guidelines* (2004) (the EIA Guidelines).<sup>4</sup>

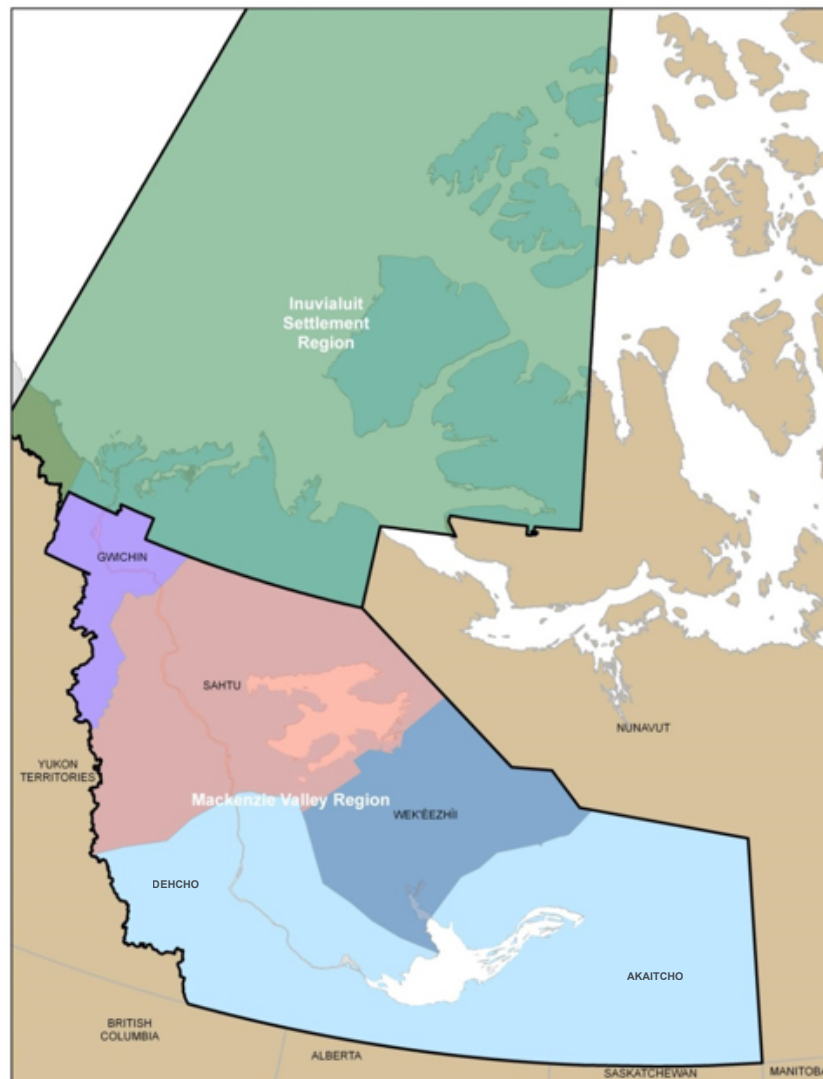


Figure1: Regions of the Mackenzie Valley, Northwest Territories.

<sup>3</sup>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.

<sup>4</sup>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 consider a wide range of impacts from a project, including environmental, social, and cultural impacts in order to make decisions in the interest of protecting the environment and people. This is described in greater detail in Section 4.4.

## 2.2 Purpose of this Guideline

The purpose of the Guideline is to describe how to conduct preliminary screenings. The Guideline:

1. describes the purpose of preliminary screening;
2. discusses key considerations in preliminary screening;
3. provides instructions for conducting the might test; and
4. suggests 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 Guideline where they are described.

	Preliminary screening steps	Section in Guideline (linked)
<b>Pre-application for a project</b>	<ul style="list-style-type: none"> <li>- Applicant undertakes engagement</li> </ul>	<ul style="list-style-type: none"> <li>- Early Community Engagement <a href="#">4.2</a></li> <li>- Land use plans <a href="#">4.3</a></li> <li>- Traditional Knowledge <a href="#">4.7</a></li> </ul>
<b>Application for a project <sup>5</sup></b> <b>Received by screener</b>	<ul style="list-style-type: none"> <li>- Application or project deemed complete before screening</li> <li>- Conformity with land use plans</li> <li>- Regulators determine if screening is required</li> <li>- Screening begins</li> </ul>	<ul style="list-style-type: none"> <li>- When is a preliminary screening needed <a href="#">3.1</a></li> <li>- The Preliminary Screening Requirement Regulations <a href="#">3.2</a></li> <li>- Exemptions from preliminary screening <a href="#">3.3</a></li> <li>- Screening the whole project <a href="#">4.4</a></li> <li>- Screening project amendments <a href="#">10</a></li> <li>- Identifying potential impacts on the whole environment <a href="#">4.5</a></li> <li>- Getting the right information <a href="#">4.6</a></li> <li>- Complete the preliminary screening early for complex projects <a href="#">4.8</a></li> <li>- Traditional Knowledge <a href="#">4.7</a></li> </ul>
<b>Public review</b>	<ul style="list-style-type: none"> <li>- Notification of Screening</li> <li>- Coordination with other screeners</li> <li>- Create Distribution list</li> <li>- Public Review</li> </ul>	<ul style="list-style-type: none"> <li>- Duration of a preliminary screening <a href="#">4.1</a></li> <li>- Notifying the public <a href="#">5.1</a></li> <li>- Notifying the Review Board <a href="#">5.1</a></li> <li>- Coordinating with other screeners <a href="#">5.1</a></li> <li>- Adopting a preliminary screening <a href="#">5.1</a></li> <li>- Public review <a href="#">5.2</a></li> </ul>
<b>Analysis by screener</b>	<ul style="list-style-type: none"> <li>- Compile comments and responses</li> <li>- List and consider impacts and mitigations</li> </ul>	<ul style="list-style-type: none"> <li>- Identifying potential impacts on the whole environment <a href="#">4.5</a></li> <li>- Describing potential impacts and mitigations <a href="#">6</a></li> <li>- Determining if there might be significant adverse impacts <a href="#">7.1</a></li> <li>- Determining if the project might be a cause of public concern <a href="#">7.2</a></li> <li>- Carry out the might test <a href="#">7.3</a></li> </ul>
<b>Decision</b>	<ul style="list-style-type: none"> <li>- Reasons for Decision</li> </ul>	<ul style="list-style-type: none"> <li>- Writing reasons for decision <a href="#">8</a></li> </ul>
<b>Pause period</b>	<ul style="list-style-type: none"> <li>- Submit Screening Report and notify Review Board</li> <li>- 10 day pause period and issue authorization, or for projects not requiring authorization, proceed with project</li> </ul>	<ul style="list-style-type: none"> <li>- The 10-day pause period <a href="#">9</a></li> </ul>

<sup>5</sup>Some projects may not require an application. See Section 3.



# IS AN ENVIRONMENTAL ASSESSMENT NEEDED?

The project gets screened to see if there might be significant impacts on the environment and people

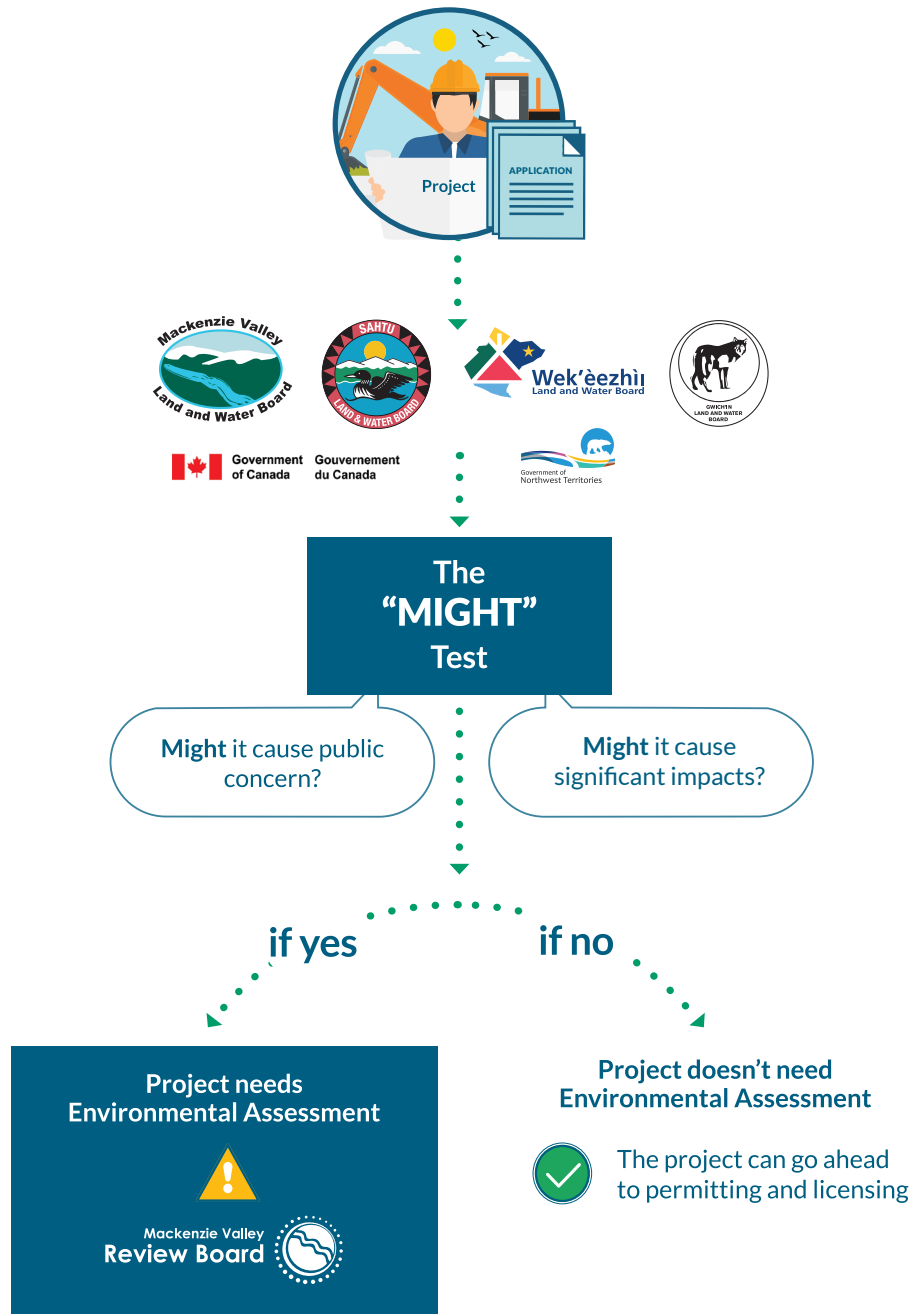


Figure2: Simplified preliminary screening steps.

### 3. WHAT IS A PRELIMINARY SCREENING?

**Preliminary screening is an initial examination of a proposed project's potential impacts on the environment, including the potential to cause public concern. It is the first stage in the EIA process. Of all the projects screened in the Mackenzie Valley, most (>98%) have not been referred to further environmental assessment.**

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

The preliminary screening framework set out in the MVRMA is shaped and controlled primarily by regulations. These include the *Preliminary Screening Requirement Regulations* (Section 3.2 of the Guideline) and the *Exemption List Regulations* (Section 3.3 of the Guideline). Most projects are subject to these preliminary screenings. Only a small number of projects require more than a preliminary screening. Very few projects require an environmental assessment, the next step in EIA.

The MVRMA is firmly rooted in land claims. The EIA process as described in the MVRMA applies broadly and is comprehensive.



## 3.1 When is a preliminary screening needed?

The environmental impact assessment process in the Mackenzie Valley generally begins when an applicant applies for a regulatory authorization (such as a permit or license) to carry out a project that requires a preliminary screening.<sup>6</sup> The regulator (often a Land and Water Board) must complete a preliminary screening 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.<sup>7</sup>*

While the term “undertaking” is not defined in the MVRMA, it has been interpreted broadly to include any physical work, such as a sampling program, construction of a winter road, or cleaning up an abandoned mine site.

In some instances, projects that do not require an authorization may still require a preliminary screening.<sup>8</sup> Examples of these kinds of projects could include establishment of a park or protected area. In such cases, the organization conducting the screening will apply the same test (the “might” test) to decide whether to refer the project to the Review Board for an environmental assessment.

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<sup>6</sup>See the [Preliminary Screening Requirement Regulations](#).

<sup>7</sup>See subsection 111(1) of the MVRMA. In this document “project” is used in place of “development” except when quoting legislation.

<sup>8</sup>See subsection 124(2) of the MVRMA.





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

### The MVRMA provides for two main categories of preliminary screenings in the Mackenzie Valley.<sup>9</sup>

1. The majority of screenings are initiated through 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 (such as the Office of the Regulator of Oil and Gas Operations) who receive applications for licences, permits, or other authorizations. While these screenings are triggered by an application for an authorization, the screening must still consider the whole proposed project, and not just the part for which an application is required. See section 4.3 below for more details.
2. For projects proposed by the Gwich'in or Sahtu First Nation, the Tłıchǫ Government, or a department or agency of the territorial and federal governments, and that do not require any authorization,<sup>10</sup> under federal or territorial law, the MVRMA requires the applicant to self-screen the project proposal unless:
  - the proposed project is exempt under the Exemption List Regulations (this applies to both categories of screenings); or
  - in the opinion of the screener, the impact of the project on the environment will be manifestly insignificant (that is, there is no reasonable possibility that the project might cause a significant adverse impact).

<sup>9</sup>See subsections 124(1) and (2) of the MVRMA. Subsection 124(3) of the MVRMA describes an optional screening that may be conducted by the Gwich'in or Sahtu First Nation, or the Tłıchǫ Government. This discretionary type of screening has never occurred since the MVRMA came into force. If used, this type of screening should generally follow the principles covered in this Guideline.

<sup>10</sup>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 under which authorizations require preliminary screening. The application for an authorization triggers the requirement for a preliminary screening. Any proposed project that requires one or more of these authorizations needs to undergo a preliminary screening<sup>11</sup> before these authorization(s) can be issued.

<sup>11</sup>unless the proposed project 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

Some projects may be exempt from preliminary screening. These are described in the *Exemption List Regulations* and sections of the MVRMA as follows:

The *Exemption List Regulations* describe projects for which preliminary screening is not required because the impacts of these projects are expected to be insignificant.

Under the MVRMA, a project may also be exempt from preliminary screening if:

- it is required in response to a national emergency under the *Emergencies Act*;<sup>12</sup>
- it is required to be carried out in response to an emergency in the interests of protecting property or the environment or in the interests of public welfare, health or safety;<sup>13</sup> or
- a screening is declared inappropriate for reasons of national security.<sup>14</sup>

#### PROJECTS WITH MANIFESTLY INSIGNIFICANT IMPACTS MAY BE EXEMPT FROM SCREENING

A project is exempt from preliminary screening if, in the opinion of the preliminary screener, the impact of the project on the environment will be manifestly insignificant. This category of exemption only applies to projects proposed by the federal or territorial governments, the Gwich'in First Nation, the Sahtu First Nation, or the Tłıchǫ Government where no licence, permit or other authorization is required.<sup>15</sup>

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

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

When screeners conclude that a proposed project's impacts are manifestly insignificant, they will include clear written reasons, preferably in plain language, for their conclusion (that is, the reasons why they concluded that there is no reasonable possibility that the project might cause a significant adverse impact).<sup>16</sup>

Governments have determined some classes of projects, such as highway maintenance activities, to have impacts that are manifestly insignificant. Governments are encouraged to describe classes of other types of projects and activities that may fit into the category of manifestly insignificant with accompanying rationales. Projects that are manifestly insignificant and exempt from preliminary screening cannot be referred to environmental assessment.

<sup>12</sup>See p.119(a) of the MVRMA.

<sup>13</sup>See p.119(b) of the MVRMA.

<sup>14</sup>See p.124(1)(b) of the MVRMA.

<sup>15</sup>See ss. 124(2) of the MVRMA.

<sup>16</sup>See s.121 of the MVRMA.



## HISTORIC AUTHORIZATIONS MAY BE EXEMPT FROM SCREENING

Section 157.1 of the MVRMA addresses the application of Part 5 to historic projects 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 exemption applies to only a small number of authorizations, most notably related to projects which were approved before the *Environmental Assessment and Review Projects Guideline Order* came in to force in 1984.

Preliminary screeners need to consider the application of this section to applications for historic projects. If the application proposes to significantly alter, abandon, or decommission a historic project, the s. 157.1 exemption does not apply. Unless another exemption applies, the project in these cases must be screened. The onus is on project applicants to provide their rationale for why its project should benefit from the section 157.1 exemption.



## 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. However, the preliminary screening must be completed before regulators issue any type of authorization (such as a permit or licence) that is the subject of the screening. Screenings are intended to be an initial scan of a proposed project's potential impacts on the environment and people. How long this takes depends on:

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

Preliminary screening is often completed within the overall time period allowed for the authorization review and decision (such as issuance). For example, the preliminary screening of a land use permit application for which potential impacts are well understood and can be mitigated by standard conditions may be completed within the timeframe set out in the *Mackenzie Valley Land Use Regulations*. More complex screenings have timelines on a case-by-case basis and may take several months to complete.

If it appears that a screening is more complex and will take longer, that may be an indicator that an environmental assessment is needed.

Referral to environmental assessment should be considered if there are still relevant questions about potentially significant adverse impacts after the applicant has responded to reviewers' questions.

The intent of preliminary screening is not to understand the potential impacts of a proposed project in great detail; a screening does not need to involve in-depth study. Just as medical triage in a hospital emergency room is intended to efficiently evaluate and categorize patients to quickly ensure they get an appropriate level of medical attention, preliminary screening serves a similar function for assessing proposed projects. If a triage nurse determined that a patient needed emergency surgery, he or she would not do the surgery themselves, but would promptly send the patient to a doctor. Similarly, a screener should not conduct a mini environmental assessment. Rather, it is meant to be a cursory examination to determine if a project might cause a significant adverse impact on the environment or cause public concern, to determine if a project should be sent for an environmental assessment.



## 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.<sup>17</sup> This pre-submission or “early” engagement must be completed by the applicant before the start of the preliminary screening (that is, before applying for authorizations). Early engagement with communities promotes collaboration in project planning and design. It can set the tone for ongoing communications and relationships throughout the life of project. Land and Water Boards of the Mackenzie Valley have a policy and guidelines to assist applicants with early engagement. Many Indigenous Governments and organizations have their own engagement policies that need to be adhered to. It is best practice to ask Indigenous Governments and organizations potentially affected by a project how they would like to be engaged in a culturally appropriate manner.



Figure 5: Community meeting in Whati for the proposed all-season road.

For details on engagement for land use permit and water licence applications, please refer to the Mackenzie Valley Land and Water Board’s policy and guidelines on engagement.<sup>18</sup>

<sup>17</sup>In addition, there are specific mandatory land claim requirements for consultation that need to be followed.

<sup>18</sup>[MVLWB policies and guidelines.](#)

## 4.3 Land use plans

Approved land use plans exist in the Gwich'in Settlement Area, Sahtu Settlement Area, and for Tłıchq titled land portions of the Wek'èezhìi Management Area.

These plans are legally binding to regulators. Applicants are encouraged to consult land use plans and engage with relevant Land Use Planning Boards and the Tłıchq Government before submitting an application for a proposed project. Screeners will use information in the land use plans to ensure proposed projects conform to the plans and will explain why they concluded that an application conforms or does not conform to the plan.

During preliminary screening, screeners will consult land use plans to check if project applications conform with the plans. A screener may also refer a project application to the Sahtu Land and Water Board or the Gwich'in Land Use Planning Board for a determination on conformity with the Sahtu or Gwich'in land use plans. Screeners should include the relevant Land Use Planning Board or Tłıchq Government on the distribution list during public reviews of project proposals. Screeners must ensure that the project still conforms with the applicable land use plan(s) if the project changes or proposed mitigations change during preliminary screening.

Draft plans (such as the draft Dehcho Land Use Plan or other draft land use plans) may assist project applicants and screeners. While not legally-binding, draft plans are the result of many workshops and diligent input from communities, industry, government officials, and others. For example, information from planning processes, such as reports from community engagement and reports supporting the planning process, may help screeners identify sensitive areas or areas where development is more likely to be a cause of potential concern to communities.

## 4.4 Screening the whole project

Part 5 of the MVRMA requires the preliminary screener to consider the whole project when conducting screenings. In other words, the screener must not focus only on impacts related to the specific authorization being applied for, or the screener's specific regulatory responsibilities, but must look at potential impacts from the whole project, including cumulative effects. 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.

There is a clear distinction between the scope of a (regulatory) application and the project 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 project), **the screening must look at and consider the whole project being proposed.** This includes the activities that require an authorization(s), as well as all other activities required for the project to proceed.

If a permit or licence application is required for only a portion of a project, the preliminary screening must consider all aspects of the project. For example, a land use permit may be required for use of drilling equipment and construction of a camp for a mineral exploration program. Other activities that are part of the overall project but not specific to the land use permit application could include installing a bridge to cross a wide stream to access the area. The stream crossing activities are part of the preliminary screening of the whole mineral exploration project but not part of the land use permit application. In this example, the preliminary screening considers all activities of the project even though there may be multiple individual regulatory applications.



Preliminary screening of the whole project as a package allows for all components of a project to be considered. This allows for a holistic understanding of potential impacts from the project on the environment and people, and the opportunity for the applicant to present a complete suite of mitigation. During a preliminary screening, the onus is on the applicant to consider all the potential impacts when proposing appropriate mitigation.



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

## TRANSREGIONAL PROJECTS

Transregional projects refer to projects that overlap a region of the Mackenzie Valley and another jurisdiction.<sup>19</sup> When a preliminary screener is screening a transregional project, they should consider whether the project might have significant adverse impacts or cause public concern in either or both the Mackenzie Valley and the adjacent jurisdiction. The preliminary screener should communicate and share information with screeners in adjacent jurisdictions<sup>20</sup> where possible. When screening transregional projects engagement should occur with Indigenous groups and other potentially affected parties in all jurisdictions.



Figure 7: Trenching and laying the Fibre optic cable along the Mackenzie Valley, March 2016. Review Board photo.

<sup>19</sup>Adjacent jurisdictions include the Inuvialuit Settlement Region, Nunavut, Yukon, B.C., Alberta, and Saskatchewan.

<sup>20</sup>If a project might cause impacts in an adjacent jurisdiction, and is referred to environmental assessment, the Review Board must coordinate and cooperate with other assessment agencies to assess impacts from the project.



## 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.”<sup>21</sup>*

Preliminary screening must consider a wide range of impacts. *As discussed above, the screening is not limited to considering the impacts that will be regulated by the authorizations* the project will need. The screening needs to consider potential environmental impacts from the whole project on the whole environment. Impacts on the environment are not limited to the biophysical environmental impacts. They include 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 project might cause significant adverse impacts on water, wildlife, and air quality, as well as cultural and social impacts.

### SOCIAL, CULTURAL, AND ECONOMIC CONSIDERATIONS

The Review Board’s *Socio-economic Impact Assessment Guidelines* (2007) help applicants and screeners consider socioeconomic impacts during preliminary screening.<sup>22</sup> For projects that may have social and economic impacts, preliminary screeners and reviewing parties will consider 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 project;
- d. there are gaps in the data or methodology, such as whether there is general uncertainty about social and economic issues;
- e. the valued social and economic components, benchmarks and indicators are relevant, adequate, and accurate; and
- f. there are potential social and economic or cultural impacts missing from the applicant’s information.

Early engagement by the applicant with communities potentially affected by a project and reporting in an engagement log can help address these considerations.

<sup>21</sup>See subsection 111(1) of the MVRMA.

<sup>22</sup>MVEIRB Socio-economic Impact Assessment Guidelines (2007) pp43-47.





Figure 8: Technical sessions, Wek'ezhìr Land and Water Board photo.

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 should have the expertise to properly consider potential social, economic, and cultural impacts, and potential public concern, on a preliminary basis, regardless of the screener's regulatory mandate.

Screeners may seek input from the applicant 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 of a project, screeners should have access to all information relevant to potential impacts from the project, including whether those impacts might occur after implementation of mitigation, and whether they might be significant.<sup>23</sup> Preliminary screeners typically require that applicants provide this information along with a complete description of the project. Having a thorough application or information package from the applicant:

- 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 the time it takes to conduct a screening and the risk of a referral to environmental assessment due to uncertainty about impacts and mitigations.

To determine the completeness of information from applicants, screeners must remember to screen the whole project and its impacts on the 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. While this information may be adequate to fulfill application requirements, screeners may need additional information about the whole project to conduct the preliminary screening. Some 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 applicants (licencee/permittee) on how to prepare Land Use Permit and Water Licence applications.<sup>24</sup>

Screeners other than Land and Water Boards, including government departments, typically have their own information requirements for regulatory applications.

Other screeners, including government departments, typically have specific 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 PROJECTS

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

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<sup>23</sup> For more information on what “significance” means, see [The Significance Spectrum and EIA Significance Determination](#).

<sup>24</sup> [Land and Water Board policies and guidelines](#).





## 4.7 Traditional knowledge

The MVRMA requires Land and Water Boards to consider available Traditional Knowledge in decision-making, including for preliminary screening.<sup>25</sup> This is necessary for all preliminary screeners. The Review Board's *Guidelines on Incorporating Traditional Knowledge in Environmental Impact Assessment* also provide guidance for considering traditional knowledge in preliminary screenings.<sup>26</sup>

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 of the environment;
- 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.

Project applicants are encouraged to work with communities to undertake Traditional Knowledge studies. The breadth of these studies should depend on the location, size, scope and complexity of the proposed project. Indigenous Governments and organizations may have their own archived Traditional Knowledge, or their own guidelines



Figure 9: Elders in Nahanni Butte discuss Traditional knowledge for a proposed project. Review Board photo.

for applicants on how to respectfully gather, meaningfully consider and appropriately include Traditional Knowledge in applications submitted for preliminary screening.

It is likely that only pre-existing Traditional Knowledge studies or information will be available to the preliminary screener. If an applicant has worked with Traditional Knowledge holders prior to application, the applicant should acknowledge the use and inclusion of any Traditional Knowledge in its submissions.<sup>27</sup> This will let the preliminary screener determine to what extent Traditional Knowledge has been incorporated into project design, impact predictions and mitigations. It may also help the preliminary screener determine whether a proposed project should be referred to the Review Board for environmental assessment.

In the reasons for decision, screeners should specify how any Traditional Knowledge was submitted and meaningfully considered, if the applicant gathered it and applied it appropriately, and if and how it affected the screening decision. Further guidance for screeners on writing reasons for decisions is provided below in section 8.

<sup>25</sup>See paragraph 60.1(b), 114(c) and 115(1)(c) of the MVRMA. The Review Board recognizes that language is evolving, and that Indigenous Knowledge is now often used to refer to Traditional Knowledge. The Review Board uses the term "Traditional Knowledge" here to remain consistent with the MVRMA.

<sup>26</sup>[Guidelines for Incorporating Traditional Knowledge in Environmental Impact Assessment \(2005\) p20.](#)

<sup>27</sup>The applicant and screener should be aware of, and respectful to, relevant Traditional Knowledge policies of individual Indigenous communities.

## 4.8 Complete the preliminary screening early for complex projects

The preliminary screening process must be completed before any activity related to the project can begin. Preliminary screening is distinct and separate from the regulatory (permitting and licensing) process. For small, routine and non-controversial projects, it may be efficient and satisfactory for the screening and the permit or licence processes to be conducted simultaneously and share a public review process.

For screenings of large or complex projects, 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 applicants about whether the project will be referred to environmental assessment, and the overall timing of the regulatory process.

For Type A Water Licence applications in particular, valuable regulatory time may be used in an extended screening if the eventual screening determination is a referral to environmental assessment.

For example, a project that requires a Type A water licence will require a robust regulatory process including information requests, technical sessions, and a public hearing. In this case, it is preferable that a preliminary screening decision be made before the regulatory process progresses. This early screening decision increases process certainty, saves time, and can reduce duplication of effort if an EA is needed. Preliminary screeners should indicate in their workplan when they will make the preliminary screening decision.

The preliminary screener may discover during the screening that more information is needed. The screener may ask for more information to be confident in its might test decision. If based on the information available, important questions about impacts on the environment or people remain, the screener may conclude that there might be significant adverse impacts and the application should be referred to environmental assessment. If the screening decision is very difficult for the screener to make, that usually indicates that 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 regulatory 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.<sup>28</sup>

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<sup>28</sup>See section 118 of the MVRMA.



## 5. NOTIFICATION, COORDINATION, AND PUBLIC REVIEW

The screening begins once the screener has determined that the application is complete and 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 applicant and external parties to determine whether there might be potential significant adverse environmental impacts or public concern.



Figure 10: Barren-ground caribou.



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

Once the preliminary screener deems the application to be complete, the screener identifies communities, Indigenous Governments and organizations, and 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 Governments and organizations, territorial and federal governments, and the general public.

### NOTIFYING THE REVIEW BOARD

The preliminary screener must notify the Review Board in writing of an application for a project and conduct a preliminary screening.<sup>29</sup> 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.<sup>30</sup>

### COORDINATING WITH OTHER SCREENERS

Unless exempt, a preliminary screening must be completed for every project that requires an authorization listed in the *Preliminary Screening Requirement Regulations*.<sup>31</sup> The MVRMA allows a regulator to adopt a screening conducted by another regulator<sup>32</sup> (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 project, 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 project, even if they have not yet received an application for an authorization. The regulators can then coordinate their efforts, and either:

- choose a main preliminary screener among themselves;
- conduct a joint screening; or,
- conduct their own screening (if two or more regulators choose to).

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<sup>29</sup>See section 124 of the MVRMA.

<sup>30</sup>[Preliminary Screening Registry](#).

<sup>31</sup>And ss. 124(2) developments.

<sup>32</sup>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 conducts a screening, other regulators are not required to conduct their own screening, although they may choose to.** Allowing a single screening prevents duplication while still permitting other regulators to provide input to the Land and Water Board and ensure that the screening covers the whole project (including those parts over which they have regulatory authority).

During public review (described below), organizations, communities, and Indigenous Governments and organizations can 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 project and whole environment are considered.<sup>33</sup>

#### **Coordination - Example of other regulators adopting a screening**

Consider a project being screened by a Land and Water Board, and for which it will later issue an authorization for only one aspect of the project (in this case, a Water Licence). The MVRMA requires that the Land and Water Board ensure the preliminary screening covers the whole project and its impacts on all parts of the environment (including 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 project to proceed. If the Land and Water Board screening considers potential impacts from the whole project, including activities related to the fisheries authorization, it may be more efficient for DFO to simply participate in, and if it agrees with the conclusion, adopt the Land and Water Board screening, rather than conducting its own.

## **ADOPTING A PRELIMINARY SCREENING**

If a Land Use Permit or a Water Licence is required for a project, other regulators that also need to screen that same project 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 project which has not been modified since that screening, and a new or renewed application for a listed authorization is received, no additional preliminary screening of that project is required.<sup>34</sup>

<sup>33</sup>See Appendix A for a list of preliminary screeners and other resources.

<sup>34</sup>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.<sup>35</sup> The participation and input of affected parties is an integral part of the preliminary screening. **The Preliminary screener relies on the knowledge and experience of parties when screening a project.** These parties:

- provides recommendations and advice to the screener;
- identify potential impacts of the proposed project; and
- make recommendations for minimizing or mitigating these impacts.

These contributions help the screener consider impacts from the project on the whole environment.

The guiding principles for the environmental impact assessment process under the MVRMA require screeners to consider how a proposed project 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.<sup>36</sup> 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 for requesting public comments and applicant responses on project applications. The Land and Water Board policy requires applicants to carry out pre-submission engagement with Indigenous Governments and organizations and other potentially affected parties. Public comments on the online review system supplement this engagement. 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 Governments and organizations. For example, face to face meetings, video, or audio recordings may be more effective ways of communicating public concern and impacts on the well-being and way of life of Indigenous people. Section 7.2 describes considerations that may help screeners weigh the relevance of public comments.

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<sup>35</sup>Consultation is specific to Section 35 rights.

<sup>36</sup>See subsection 115(1) of the MVRMA.



## 6. DESCRIBING POTENTIAL IMPACTS AND MITIGATIONS



Figure 11: Enbridge pipeline replacement at Mackenzie River crossing, 2018 GNWT inspection report photo.

Once the preliminary screener has received comments and recommendations from Indigenous Governments and organizations, governments, and other stakeholders, they will analyze the proposed project'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 project fits into the bigger picture of the region, including contributing to the impacts of other projects and environmental pressures that already exist (that is, cumulative effects).

Under the MVRMA, preliminary screening must consider social and cultural as well as biophysical impacts (see section 4.5). 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 Governments and 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 project description, including any planned mitigation measures to reduce or avoid potential impacts. Good project 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 projects that reduce or avoid environmental impacts, and the reliability and effectiveness of these features.

Submissions from Indigenous Governments and organizations, other reviewers and members of the public will be added to the public record for the screening and will be considered by the screeners when they weigh the evidence as they apply the might test. The screener should describe how submissions were considered, whether they affected the screening decision, and if so, how. This will help assure the groups providing comments that their comments and views were duly and appropriately considered. Section 8 (below) provides screeners with more guidance on writing reasons for their decisions.

When considering potential socio-economic and cultural impacts, screeners should consider if the proposed project might affect the valued components listed in Table D in Appendix D of the Review Board's *Socio-Economic Assessment Guidelines*.<sup>37</sup> This includes components such as stable and healthy communities, health and well-being, and maintenance of traditional culture. It includes criteria and indicators that may be useful to screeners.

## 7. HOW TO CARRY OUT THE “MIGHT TEST”

The primary objective of preliminary screening (for projects located outside of local government boundaries<sup>38</sup>) is to determine if a project proposal:

- *might* have a significant adverse impact on the environment; or
- *might* be a cause of public concern.<sup>39</sup>

Where a preliminary screener determines that one or both of these tests (together referred to as “the might test”) are met after considering proposed and available mitigation, then the screener must refer the project to the Review Board for an environmental assessment.

Preliminary screeners are not required to determine if there will be a significant adverse impact, only if there might be one. Preliminary screeners’ analyses should go no further than needed to determine that this test has been met; screeners are not required to quantify or describe the magnitude of impacts or public concern, only whether they might occur.

One reasonable approach to conducting the might test is to ask the following key question: **Are there unanswered questions about the project related to potentially significant adverse impacts or public concern?** If, after a public review period and applicant’s responses, there are still unanswered questions about potentially significant adverse 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 an environmental assessment), not to determine answers to those questions.<sup>40</sup> Preliminary screeners should refer a project 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.

### Screening for projects located within local government boundaries

Screenings for projects wholly within local government boundaries use a slightly different test than that used for projects outside of local government boundaries. Under subsection 125(2) of the MVRMA, screeners must determine if the project 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 projects.

<sup>37</sup>The Review Board is updating its *Socio-Economic Assessment Guidelines*.

<sup>38</sup>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 (i.e. not the whole environment), where “likely” means having a greater than 50% chance. If so, in the professional judgment of the preliminary screener, then the project should be referred to the Review Board for an environmental assessment. The public concern test under this section is the same for projects within or outside of local government boundaries.

<sup>39</sup>See subsection 125(1) of the MVRMA.

<sup>40</sup>The might test must be considered in the context of the overall EIA process. The EIA process, including preliminary screening, environmental assessment and impact review is designed to assess potential significant adverse environmental impacts or public concern associated with any project proposal. Each step in the EIA process builds upon the previous step, using the information provided and gathering more information to complete a more thorough assessment and analysis where needed.



## 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;
- **geographical area** that the impact might affect;
- **duration** that the impact might have - how long will the impact occur;
- **reversibility** of the impact that might occur;
- **nature** of the impact - how important is the component that the impact will affect; and
- **possibility** that the impact could occur.

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

Screeners should consider the following factors when conducting the might test:

1. **Project scale:** Larger projects often have more potential to cause significant adverse impacts.
2. **Project 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;
- contribution of the project to greenhouse gas emissions and risk of the project components to impacts from a changing climate and extreme events
- 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 project “might” have environmental impacts. The test in s.125, however, is about whether a project might have *significant* adverse impacts.



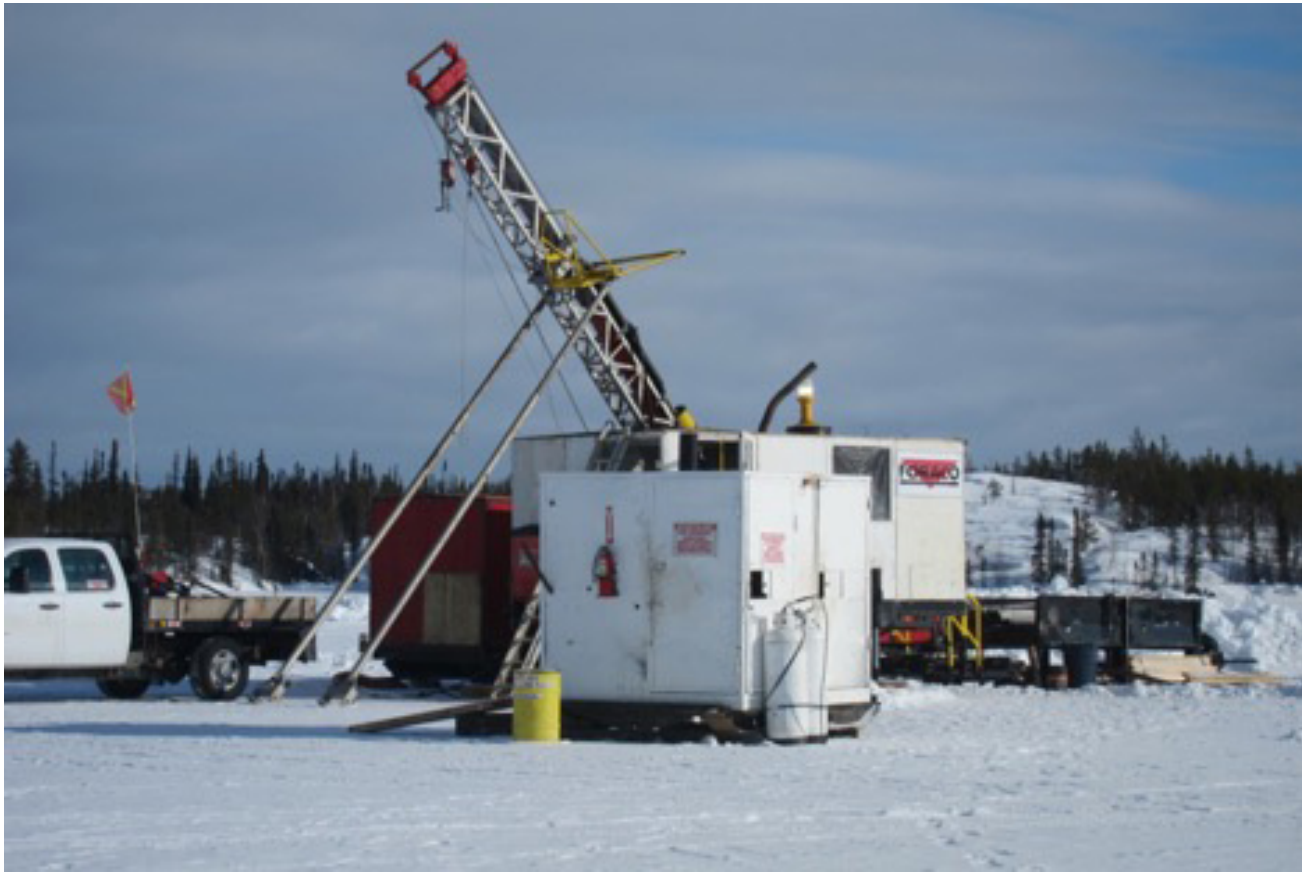


Figure 12: Mineral exploration project Gold Terra Resources near Yellowknife, March 2015. Review Board photo.

## MITIGATION MEASURES TO ADDRESS IMPACTS

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

- mitigation of impacts of activities in the project description and applicant's commitments;
- standard conditions of regulatory authorizations; and
- recommended mitigations or commitments from parties, including Indigenous Governments and organizations, federal and territorial governments, and co-management bodies such as Renewable Resource Boards, made during the public review.

Screeners relying on mitigations to satisfy the “might” test should consider their ability to ensure that the mitigation is implemented by the authorizations within their regulatory jurisdictions. The screener should be confident that mitigations to avoid or reduce impacts will be included in a permit, licence, or plan under a regulatory authority even if that authority is not within the regulatory mandate of the organization conducting the screening.

## 7.2 Determining if the project might be a cause of public concern

One of the preliminary screening tests for referral to environmental assessment is the question of whether a project “might be a cause of public concern”.<sup>41</sup> The screener uses the evidence available and their professional judgment to make this determination. This evidence includes comments from Indigenous Governments and organizations, federal and territorial governments, communities, and the public. The following sections can assist screeners when they receive applications for a project that may cause public concern.

### ROLE OF THE APPLICANT IN IDENTIFYING PUBLIC CONCERN

The screener relies on the project applicant 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 applicant through good engagement practices, such as in-person meetings. This can be an effective way of clarifying the project description, describing appropriate mitigations and commitments, and reporting back to communities on project changes resulting from engagement. 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**, localized, or was concern 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 a project in an area may indicate the likelihood of more public concern. The applicant can identify nearby projects and review public registries to assist in identifying past concerns.
3. **Has ample opportunity been provided for public engagement and input prior to the start of the screening process?** For example, has the proposed project 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?

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<sup>41</sup>See subsection 125(1) of the MVRMA.



Figure 12: Public hearing in Behchoko. Wek'eezhii Land and Water Board photo.

## ADDITIONAL TIPS FOR GAUGING PUBLIC CONCERN

Public concern needs to be reasonably linked to the proposed project, including its 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 consider the concerns of Indigenous people and the

general public,<sup>42</sup> and protect the well-being of residents and communities in the Mackenzie Valley.<sup>43,44</sup>

Generally, the focus of screening (and the entire EIA process) is on the concerns of those most potentially affected by a project. However, some sites in the Mackenzie Valley, such as National Parks and World Heritage Sites have specific territorial, national or international designations implying a broader duty of care and merit considering comments and concerns from outside the Mackenzie Valley. Concerns about impacts from transregional projects or transboundary impacts that affect a region outside of the Mackenzie Valley may also be important considerations for screeners.

<sup>42</sup>See subsection 114(c) of the MVRMA.

<sup>43</sup>See paragraph 115(1)(b) of the MVRMA.

<sup>44</sup>See section 9.1 of the MVRMA.

## 7.3 A practical approach to the might test

A practical interpretation of the might test may be helpful for screeners. The following approach breaks the might test into seven specific questions or parts.

Using this approach, the screener asks:

[1] Has the applicant **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 project** [7] that **might not be mitigated** through regulatory conditions?

If not, the screener must refer the project to environmental assessment. This approach is based on the following principles (the numbers below match the numbering parts of the screening question above):

1. The legal onus is on the applicant to prove their case to the screener. As the one proposing the project or activity, the applicant bears the burden of proof.
2. The screening organization has the legal responsibility to make a screening decision. The screener must be confident in the evidence before it to make an informed decision.
3. Legal decisions by screeners must be reasonable. The screener's conclusions must include reasons that are clear and describe how the screener considered and analyzed the evidence on the record.
4. For most proposed projects, the might test is about whether the project might cause impacts that are significant.<sup>45</sup> Significant adverse impacts are those that would be unacceptable if they are not avoided or reduced, and include ecological, social, economic, and cultural impacts.
5. The screener must consider if the project might be a cause of public concern. Unlike when considering impacts, the test does not say that the concern must be significant, just that concern might arise.
6. The test must consider the potential impacts of the whole proposed project. The whole project includes the components and activities that require an authorization(s) (such as a water licence or fisheries authorization) as well as those that do not.
7. The test will consider whether significant adverse impacts might occur. If there is a possibility that significant adverse impacts will not be mitigated through conditions in regulatory authorizations or through other recommended mitigations (see page 33), then they might occur.

<sup>45</sup>Inside a local government boundary, the test changes to ask if the project is likely to cause significant adverse impacts, a higher test than asking if the project might cause significant adverse impacts.



## 8. WRITING REASONS FOR DECISION

Once the preliminary screener has applied the might test, it will decide whether to refer the project 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 that are publicly available. 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 applicant, 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 based on the evidence—it should include the logic and rationale linking its conclusion(s) to the information on the record. Reasons should describe the potential impacts and mitigations and, if not referring the project to environmental assessment, why the mitigations are adequate to reliably prevent significant adverse impacts or address public concern. If screeners are relying on mitigations for socio-economic or cultural impacts, the reasons should describe how those will be ensured by regulatory processes or other instruments.

Reasons for decision may weigh impacts and mitigations differently. The screener should focus on impacts with the greatest potential for environmental harm and the mitigations that can prevent or minimize those impacts. The screener will consider cumulative effects, impact probability and severity (risks), and context, and may consider other factors.

If the screener concludes that it is true that a proposed project might cause significant adverse impacts or public concern, then the screener must refer the project to environmental assessment. If the screener concludes that it is not true, then the screener will not refer it.<sup>46</sup>

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 adverse 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.

In addition, a precautionary approach can be used when considering if the applicant's proposed mitigations will be carried out or be effective, and where these proposed mitigations are needed to prevent serious environmental harm. Reasons should refer to and may rely on other forms, documents, or tools the screener used to make their decision.

<sup>46</sup>As described in s. 4.8 above, if the screening decision is very difficult for the screener to make, that usually indicates that the project should be referred to environmental assessment.





Figure 14: Behchoko, Wek'èezhìi Land and Water Board photo.

In the case of a referral to environmental assessment, 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, if possible, a screener should base its referral to EA on potential impacts on specific water bodies or wildlife species due to a particular part of the project or activity, rather than “potential impacts on water and wildlife” generally. Similarly, rather than stating that a project is being referred “due to issues related to cumulative impacts”, the screener should identify the issues, and what parts of the project may combine with specific impacts of past, present, or future projects.

If a preliminary screener has decided that an environmental assessment is required, the screener will refer the project proposal the Review Board. When the Review Board receives a referral, it is obligated to conduct an

environmental assessment.<sup>47</sup> From this point, no authorizations for work related to the project may be issued before the requirements of Part 5 of the MVRMA have been complied with.<sup>48</sup>

Any permits for early works that are related to a project that is in environmental assessment but are not in the scope of development for that EA still require preliminary screening as described in Section 62 of the MVRMA. Past examples include geotechnical work that was part of basic project routing for a pipeline, and geohydrology that was part of designing a proposed mine. These activities were each part of defining and describing a separate project, which was necessary for the main projects to be meaningfully assessed, but were not included in the scope of development for the larger projects. Section 3.8 of the Review Board's EIA Guidelines describes the criteria the Review Board applies when deciding whether a proposed activity is within the scope of development for an environmental assessment.

<sup>47</sup>See subsection 126(1) of the MVRMA.

<sup>48</sup>See section 62 of the MVRMA.

## 9. THE 10-DAY PAUSE PERIOD

The MVRMA requires a ten-day pause period following preliminary screening decisions that do not result in a referral to environmental assessment.<sup>49</sup> During this period, no authorizations can be issued, or if it is issued, authorizations would only come into force after the 10-day pause period and if no referral to environmental assessment is made. The ten-day pause provides an opportunity for the Review Board or other referral authorities where appropriate, to exercise their discretion to order an environmental assessment notwithstanding the preliminary screening decision.

### 9.1 How the 10-day pause period works

The preliminary screening report with the screening decision, must be sent to the Review Board,<sup>50</sup> which maintains a public registry of all completed preliminary screenings.<sup>51</sup> The ten-day pause period will begin on **the day after** the Review Board receives a preliminary screening decision.<sup>52</sup> The screener should copy its decision to the applicant and the distribution list that was used for the preliminary screening.

The Review Board will post the screening decision to its public registry,<sup>53</sup> 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 environmental assessment is made by the end of the tenth day of the pause period, regulatory authorizations can be issued or will come into force on the following day.**<sup>54</sup>

For example, a screening decision received by the Review Board on April 2<sup>nd</sup> would result in a ten-day pause period from April 3-12, and authorizations could be issued on April 13<sup>th</sup>.

Larger projects, such as those that require a Type A Water Licence, require additional regulatory steps, such as public hearings after the screening is complete but prior to a regulator issuing an authorization. **Any s. 126(2) referral organization**

<sup>49</sup>See subsection 125(1.1) of the MVRMA. Bill C-88 received Royal Assent on June 21, 2019.

<sup>50</sup>See section 125 of the MVRMA.

<sup>51</sup>See paragraph 142.1(1)(c) of the MVRMA. Registry accessible through [reviewboard.ca/registry/preliminary-screenings](https://reviewboard.ca/registry/preliminary-screenings).

<sup>52</sup>Typically by email to [preliminaryscreening@reviewboard.ca](mailto:preliminaryscreening@reviewboard.ca).

<sup>53</sup>See [reviewboard.ca/registry/preliminary-screenings](https://reviewboard.ca/registry/preliminary-screenings).

<sup>54</sup>The days will be calculated as calendar days beginning and ending at midnight Mountain Daylight Time.

<sup>55</sup>Under section 126(3) of the MVRMA.





may decide to refer a project to environmental assessment after the ten-day pause period, but before an authorization is issued. Similarly, the Review Board may order an environmental assessment on its own motion<sup>55</sup> after the ten-day pause period, but before an authorization is issued. The ten-day pause period provides a minimum time for considering whether an environmental assessment is required. It is not a maximum time limit for referral organizations to exercise their legal authorities.

Section 126(2) referral authorities and the Review Board should only exercise their authorities to refer or order an environmental assessment after the 10 day pause period and prior to the issuance of a permit, licence or authorization when new and substantive evidence is provided that leads to a determination that a project might be a cause of significant adverse impacts or a cause of public concern.

**If an environmental assessment 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 (if applicable). At this point, **no authorizations can be issued** until after the environmental assessment is completed.

If the same project undergoes more than one preliminary screening, the ten-day pause period starts on the day after the Review Board receives the last screening decision.<sup>56</sup> The Review Board encourages screeners to coordinate their screenings to ensure all aspects of the project are considered and to ensure an efficient process.

The MVRMA allows several parties to refer a project to environmental assessment.<sup>57</sup> Notwithstanding the preliminary screening decision, for example by a Land and Water board, a project 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, Tłıchǵ Government, or Sahtu First Nation;<sup>58</sup>
- a local government;<sup>59</sup> or
- the Review Board itself.<sup>60</sup>

If a government department, the Gwich'in or Sahtu First Nation, and the Tłıchǵ Government conduct a preliminary screening of their own project proposals where no licence, permit, or other authorization is required, the ten-day pause period applies and such projects cannot proceed until it ends.<sup>61,62</sup>

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<sup>56</sup>See subsection 125(1.3) and 125(5) of the MVRMA.

<sup>57</sup> See section 126 of the MVRMA.

<sup>58</sup>in the case of a project to be carried out in its respective settlement areas or a project that might, have an impact on the environment within its boundaries.

<sup>59</sup>in the case of a project to be carried out within its boundaries or a project that might have an adverse impact on the environment within its boundaries.

<sup>60</sup>Under subsection 126(3) of the MVRMA, the Review Board can refer a project to environmental assessment on its own motion.

<sup>61</sup> See subsection 124(2) of the MVRMA.

<sup>62</sup> See paragraph 125(1.1)(b) of the MVRMA.



# 10. SCREENING CHANGES TO PROJECTS

## 10.1 Screening project changes

If an applicant is proposing to change an existing or approved project (that is, applying to amend an authorization), the regulatory authority must consider whether there are differences between the scope of the project that was previously screened or assessed and the project which is now being proposed. If a proposed change is within the scope of the previously screened or assessed project, the requirements of Part 5 have already been met and it need not be screened.<sup>63</sup>

When screening a proposed minor change or extension of an existing project (which the screener has determined is not within the scope of the previously screened or assessed project), the change may be screened on its own, without a re-assessment of the whole project that it is part of.<sup>64</sup> This type of screening should include cumulative effects of the proposed change in combination with the main project.

When screening project changes, the preliminary screening should focus on the impacts of the activities not previously screened or assessed under Part 5 of the MVRMA. This includes considering changes in the context or setting (such as climate changes, wildlife population changes, or social changes) that may have occurred since the assessment of the original project that relate to the potential impacts of the proposed change.

The screener may need to consider changes to:

1. geographic scope (such as, an increase in the area where an activity is proposed)
2. the intensity of activity or impacts of an existing project

3. the scale of the activity
4. the duration of impacts
5. the type of access
6. technology used (for example, the use of a new technology in an unfamiliar setting)
7. listed species at risk
8. legislative and regulatory requirements
9. management plans
10. cumulative effects

If changes are proposed after the screening of that proposal is complete, but before authorizations have been issued, it may be most efficient to re-screen the proposal.

To consider the total cumulative impact, the preliminary screening of the proposed change or amendment should consider the potential impacts of the proposed change in combination with the effects of:

- all past activities (which for project changes, includes impacts of the existing project);
- present activities and projects (which may include activities that did not exist during the assessment of the original project); and
- reasonably foreseeable future projects (such as projects that are now proposed but were not during the assessment of the original project).

<sup>63</sup>Under section 118 of the MVRMA, no authorizations can be issued unless the requirements of Part 5 have been complied with.

<sup>64</sup> If a proposal involves a major change to a previously assessed project that exceeds the scope of project for a previous assessment, the Review Board, or any party with referral authority, may require an environmental assessment under MVRMA s. 126(2)(3). The proposed change must still be screened.



Figure 15: Mackenzie River at Tulita, traditional moose hide boat and modern boat. Review Board photo.

In addition to screening project changes, the screener must consider past screenings or assessments for the project.<sup>65</sup> Note that for cumulative effects, the preliminary screening should consider the potential impacts of the project change in combination with the effects of all past activities, including impacts of the existing project, to consider the total impact. Screeners are encouraged to include information from past screenings in the screening report. Note that the scope of the project that was screened or assessed previously is exempt from further screening.

## 10.2 Screening changes after a project has gone through environmental assessment

Every screening and every environmental assessment is conducted in relation to a project as described by the applicant itself. This is the basis for the scope of the project. If changes to the project are proposed later that were not considered in the original screening or environmental assessment, and they trigger the *Preliminary Screening Requirement Regulation*, then the changes must be screened, unless they are exempted by the *Exemption List Regulations*.

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

1. the extent and impacts of the proposed changes to the project; and
2. how these changes might lead to significant adverse impacts or reduce the effectiveness of any mitigation, including those in approved measures from the EA.

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.

A project change that affects an approved measure from a Report of Environmental Assessment would require an environmental assessment under Part 5 of the MVRMA and a subsequent s. 130 Ministerial decision.<sup>66</sup>

<sup>65</sup>See subsection 115(2) of the MVRMA.

<sup>66</sup>Once in force, Development Certificates will clarify this issue. See subsection MVRMA 131.3. See also MVEIRB Reference Bulletin on Development Certificates.

## 11. 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.

## 12. CONCLUSION

This Guideline 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 this Guideline.



# APPENDIX A: LIST OF PRELIMINARY SCREENERS AND OTHER RESOURCES

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

Organization	Contact method
<b>Land and Water Boards</b>	<b>Land and Water Boards</b>
Mackenzie Valley Land and Water Board	<a href="http://mvlwb.com">mvlwb.com</a>
Gwich'in Land and Water Board	<a href="http://glwb.com">glwb.com</a>
Sahtu Land and Water Board	<a href="http://slwb.com">slwb.com</a>
Wek'eezhii Land and Water Board	<a href="http://wlwb.ca">wlwb.ca</a>
<b>GNWT Environment and Natural Resources</b>	<a href="http://www.enr.gov.nt.ca/en">www.enr.gov.nt.ca/en</a>
<b>GNWT Infrastructure</b>	<a href="http://www.inf.gov.nt.ca/en">www.inf.gov.nt.ca/en</a>
<b>GNWT Industry, Tourism and Investment</b>	<a href="http://www.iti.gov.nt.ca/en">www.iti.gov.nt.ca/en</a>
<b>Parks Canada</b>	
Nááts'jích'oh National Park Reserve	<a href="http://www.pc.gc.ca/en/pn-np/nt/naatsihchoh">www.pc.gc.ca/en/pn-np/nt/naatsihchoh</a>
Thaidene Nene National Park Reserve	<a href="http://www.pc.gc.ca/en/pn-np/nt/thaidene-nene">www.pc.gc.ca/en/pn-np/nt/thaidene-nene</a>
Saoyú-?ehdacho National Historic Site	<a href="http://www.pc.gc.ca/en/lhn-nhs/nt/saoyuehdacho">www.pc.gc.ca/en/lhn-nhs/nt/saoyuehdacho</a>
Nahanni National Park Reserve	<a href="http://www.pc.gc.ca/en/pn-np/nt/nahanni">www.pc.gc.ca/en/pn-np/nt/nahanni</a>
Tuktut Nogait National Park (Sahtu area portion)	<a href="http://www.pc.gc.ca/en/pn-np/nt/tuktutnogait">www.pc.gc.ca/en/pn-np/nt/tuktutnogait</a>
<b>Fisheries and Oceans Canada</b>	<a href="http://www.dfo-mpo.gc.ca/contact/regions/central-arctic-eng.html">www.dfo-mpo.gc.ca/contact/regions/central-arctic-eng.html</a>
<b>Office of the Regulator of Oil and Gas Operations</b>	<a href="http://www.orogo.gov.nt.ca">www.orogo.gov.nt.ca</a>
<b>Canada Energy Regulator</b>	<a href="http://www.cer-rec.gc.ca/index-eng.html">www.cer-rec.gc.ca/index-eng.html</a>
<b>Canadian Nuclear Safety Commission</b>	<a href="http://www.cnsccsn.gc.ca/eng">www.cnsccsn.gc.ca/eng</a>
<b>Crown-Indigenous Relations and Northern Affairs Canada</b>	<a href="http://www.canada.ca/en/crown-indigenous-relations-northern-affairs.html">www.canada.ca/en/crown-indigenous-relations-northern-affairs.html</a>
<b>Gwich'in Tribal Council</b>	<a href="http://gwichintribal.ca">gwichintribal.ca</a>
<b>Sahtu Secretariat</b>	<a href="http://www.sahtu.ca">www.sahtu.ca</a>
<b>Tłıchǵo Government</b>	<a href="http://www.tlıcho.ca">www.tlıcho.ca</a>
<b>Gwich'in Land Use Planning Board</b>	<a href="http://www.gwichinplanning.nt.ca">www.gwichinplanning.nt.ca</a>
<b>Sahtu Land Use Planning Board</b>	<a href="http://sahtulanduseplan.org">sahtulanduseplan.org</a>
<b>Tłıchǵo Government, Tłıchǵo Land Use Plan</b>	<a href="http://www.tlıcho.ca/government/culture-lands-protection">www.tlıcho.ca/government/culture-lands-protection</a>

# Mackenzie Valley Review Board



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