

**Public Engagement Guidelines of the
Mackenzie Valley Land and Water Board –
August 2007
DRAFT**

1.0 Introduction

The Mackenzie Valley Land and Water Board (Board or MVLWB) is a regulatory authority established pursuant to the *Mackenzie Valley Resource Management Act*, S.C. 1998, c. 25 (*MVRMA*). The Board's primary function is the issuance of Land Use Permits and Water Licences in the unsettled land claims areas of the Mackenzie Valley. The Board also processes transboundary Land Use Permit and Water License applications in the Mackenzie Valley where the proposed development is likely to have an impact in more than one management area.

The Board has created these Public Engagement Guidelines under the authority of Section 65 of the *MVRMA*. Section 65 states:

“Subject to the regulations, a board may establish guidelines and policies respecting licences, permits and authorizations, including their issuance under this Part¹.”

These guidelines replace the Board's “*Public Involvement Guidelines for Permit and Licence Proponents to the Mackenzie Land and Water Board - October 2003*.”

For the purposes of these guidelines, the term ‘public’ consists of all residents of the Northwest Territories. In the Mackenzie Valley, public engagement activities will involve affected communities, First Nations, aboriginal groups, aboriginal governments and other interested groups or associations.

The MVLWB requires proponents to conduct their public engagement before submitting an application to the Board. When the application is submitted to the Board, detailed information documenting all public engagement activities must be included. To accomplish this goal, proponents will have to start engaging the public well in advance of submitting any applications.

The purpose of these guidelines is to provide assistance and guidance to proponents in conducting their public engagement activities for their proposed developments. These guidelines may be used by proponents, communities, First Nations, aboriginal groups and the public in order to understand the Board's public engagement process and requirements.

¹ Section 65 is in Part 3 of the *MVRMA* but the MVLWB has the same powers as a Board described in Part 3, as set out in s. 102(1) of Part 4 of the *MVRMA*.

The purpose of conducting public engagement before submitting an application to the MVLWB is:

- to allow the proponent the opportunity to discuss the proposed development with the public;
- to address or resolve any concerns expressed on the proposed development;
- to gather any traditional knowledge that might be relevant to the development;
- to identify impacts of the development and demonstrate how the negative impacts will be mitigated; and
- to advise that an application to the MVLWB is forthcoming.

As part of its application to the MVLWB, the proponent will be asked to provide details to demonstrate the extent of its public engagement process, to indicate what concerns or issues were resolved and to indicate what aspects of the development were modified in response to the public's concerns.

The proponent must make reasonable efforts to conduct the public engagement process and to include members of the public that may be affected by the development. However, the public also has a duty to actively participate in the process and must take the opportunity to learn about the development and to comment on it.

The proponent's public engagement process is separate from the consultation process with First Nations conducted by the Government of Canada under Section 35 of the *Constitution Act, 1982*. As an interim approach, when allegations of potential adverse impacts on asserted aboriginal and/or treaty rights are raised in relation to proposed developments, the Department of Indian and Northern Affairs-Northwest Territories Region is conducting preliminary assessments to determine if the legal duty to consult arises in each specific situation and if so, whether its legal duty to consult has been met or how it may be discharged.

It is important to note that public engagement conducted by proponents is important information that may be considered by the Government of Canada when investigating allegations of potential adverse impacts on asserted aboriginal and/or treaty rights. In addition, the procedural aspects of the Board's regulatory process and the work that is done by the Board in reviewing applications also are important to assist the Government of Canada in investigating these allegations.

2.0 Background

The *MVRMA* was enacted as a result of the Gwich'in Comprehensive Land Claim Agreement and the Sahtu Dene and Metis Comprehensive Land Claim

Agreement. The *MVRMA* was amended in 2005 after the coming into force of the *Tlicho Land Claims and Self-Government Act*. The *MVRMA* also contemplates the completion of other land claims agreements.

The *MVRMA* provides for an integrated approach to environmental assessment and resource management in the Mackenzie Valley. The environmental assessment process under the *MVRMA* includes First Nations as an integral part of the decision making process. The *MVRMA* requires certain First Nations' membership on the MVLWB and its regional panels. The environmental assessment process also includes the public, the federal and territorial government departments, communities and municipalities and other organizations with vested interests.

The purpose of setting up the boards, including the MVLWB, is outlined in Section 9.1 of the *MVRMA*. Section 9.1 states:

“The purpose of the establishment of boards by this Act is to enable residents of the Mackenzie Valley to participate in the management of its resources for the benefit of the residents and of other Canadians”.

The public engagement process is part of the process that allows the residents of the Mackenzie Valley to actively participate in the management of resources in the Mackenzie Valley.

The mandate of the MVLWB and the other regional panels is defined under Section 101.1 of the *MVRMA*. Section 101.1 states:

“The objectives of the Board are to provide for the conservation, development and utilization of land and water resources in a manner that will provide the optimum benefit generally for all Canadians and in particular for residents of the Mackenzie Valley”.

The MVLWB receives applications for Land Use Permits and Water Licences and determines whether they require a preliminary screening. A preliminary screening allows the Board to decide if the development should be referred to the Mackenzie Valley Environmental Impact Review Board for an environmental assessment. The Board will refer a proposed development if it determines the development might have a significant adverse impact on the environment or might be a cause of public concern. The Mackenzie Valley Environmental Impact Review Board's "*Environmental Impact Assessment Guidelines March 2004*" try to define how the "might test" can be practically applied to a development.

The *MVRMA* outlines the purpose for Preliminary Screening and Environmental Assessment in Section 114. Section 114 states:

“ The purpose of this Part is to establish a process comprising a preliminary screening, and 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.”

The purpose of ensuring that the impact on the environment receives careful consideration before actions are taken includes the Board’s issuance of Land Use Permits and Water Licenses for proposed developments. The term “impact on the environment” is defined under the *MVRMA* as:

“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.”

Therefore, this term includes a wide range of information that may be discussed in the public engagement process and which the proponent could include with its application to the Board.

The MVLWB requires that proponents for Land Use Permits and Water Licences must inform the public about their proposed developments prior to submitting a Land Use Permit or Water License application.

The *MVRMA* stresses that the concerns of aboriginal people and the general public should be taken into account in the decision making process, and this is one of the outcomes of the public engagement process. The process allows aboriginal people and the general public to discuss their concerns with the proponent before the application is made to the MVLWB. The public engagement process allows impacts on the environment to be considered by the proponent and appropriate mitigation measures included with the application submission. The public engagement process also allows for concerns and issues expressed by the public to be resolved before the application is submitted.

An application to the MVLWB is part of the process described in Part 5 of the *MVRMA*. A preliminary screening, an environmental assessment and an environmental impact review are also included in this process. The guiding

principles of the process are also outlined under Part 5 and these should also be considered by the proponent. Section 115 of the *MVRMA* states:

“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 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.”

Based on this section of the *MVRMA*, the public engagement process could include a consideration any of the issues in Section 115(a) to (c).

3.0 Principles of Public Engagement

The proponent’s public engagement process must include the following general steps:

Inform – the proponent must provide the public with balanced and objective information on the proposed development to allow the public to understand the development, its alternatives, any associated opportunities and/or solutions to issues that arise.

Consult – the proponent must obtain public feedback on the proposed development as well as feedback on alternatives to the development and/or decisions about the development.

Involve – the public must have the opportunity to review the development proposal and to make comments. Working directly with the public throughout the process ensures that any public concerns and issues can be resolved.

Collaborate – the proponent should incorporate the public’s input into the proposed development and the subsequent application. The proponent should include the public in developing alternatives within the proposal and in identifying the preferred solution to any issues that arise in the public engagement process.

During the public engagement process the proponent must inform the public as well as consult with, involve and collaborate with the public. The public engagement process should have these elements:

Early Notification – the proponent must notify the public early enough to give the public the chance to have input into development planning before the proponent makes any irrevocable decisions.

Transparency – all relevant information must be provided. If the public believes that the proponent is not providing all of the information or that it is providing selective information, trust will not be fostered. In addition, the development description must be clear on the purpose for the development.

Accessible Information – the proponent should give the public the information the public needs to participate effectively and in a timely way. The proponent should consider that some members of the public may have limited knowledge of technical and scientific terms. Proponents should make their presentations regarding their proposed development using language that can be understood by a wide range of culturally diverse people. Communication methods should be culturally sensitive. The only limits placed on access to the information should be those related to access to information and privacy legislation.

Inclusiveness - all affected people must have the opportunity to be involved. This does not mean that the entire population of the Mackenzie Valley must be informed of and involved in each development. However, public engagement cannot be held only with select groups, it must involve all members of the public that may have an interest in a particular development.

Traditional Knowledge – the *MVRMA* requires the MVLWB to consider traditional knowledge “that is made available to it” along with scientific knowledge in making its decisions. The proponent should make an effort to include and use traditional knowledge in developing the final design aspects of the proposed development.

Respect – a proponent must respect the views, opinions, culture, language and input of all participants in the process. The proponent must also be sensitive to the values of communities and aboriginal people. The proponent must respect the protocol and the traditional communication structure of the communities involved in the process. It is also important that the public respect the proponent and try to work cooperatively with the proponent.

Reasonableness - the proponent must ensure that the public engagement process is reasonable. For example, it is unreasonable to expect the residents of an isolated community to attend an open house in Yellowknife and it is unreasonable to expect a small First Nation community to respond to a highly technical application. Reasonableness also includes giving the public the time necessary to review the information and to respond. The proponent should avoid conflicts with busy times such as public engagement processes for other developments or seasonal hunting times.

4.0 Steps in the Public Engagement Process

The proponent will need to demonstrate to the MVLWB the steps it has taken to inform the public early and to resolve any issues or concerns expressed by the public regarding the proposed development. Each development will affect some members of the public, including unique communities and First Nations. The focus of the effects should be on physical effects on land and water but other effects include socio-economic effects and effects on rights held by members of the public. The proponent must determine who will be affected and should be advised about the development and the public engagement process.

As a starting point, the MVLWB can provide the proponent with a distribution list used by the Board for a particular area of the Mackenzie Valley. The proponent should provide written material outlining the proposed development to those that will be affected. The proponent should then follow up with the public to arrange a face to face meeting. The public must have a reasonable amount of time to review the information, to make meaningful comments and have advance knowledge of the meeting. The proponent must also have time to respond to the comments and, if necessary, modify the proposed development prior to submitting its application to the MVLWB.

Effective public engagement requires the proponent to use excellent communication skills in both its written and verbal communication with the public. In some cases this may require the use of translators in the process or the re-writing of material to ensure that people can fully understand the proposed development.

The process of public engagement involves various steps which the proponent may modify to reflect the development's scale. The steps that the proponent should follow in the public engagement process in order to satisfy the Board's requirements are outlined below:

A. Prepare the Project Description

The project description must provide sufficient information for the public to understand the development and its potential impacts. The proponent can

develop the project description to be used only for public engagement purposes, or the project description can also be used as supporting information when the application is submitted to the Board.

The language of the project description must be non-technical and must provide sufficient illustrations for the public to clearly understand the implications of the development. The project description should include maps showing community locations, project location, camp locations, prospecting permits, mineral claims, mineral leases, oil and gas exploration licences, quarry locations, sump locations, access routes, major water bodies, etc. For smaller developments, most of this information can be included in the permit or licence application.

B. Provide Information and Meet with the Public

The proponent will work towards holding a face to face meeting(s) with the public about the development. With the assistance of Board staff, the proponent must also determine which members of the public to contact.

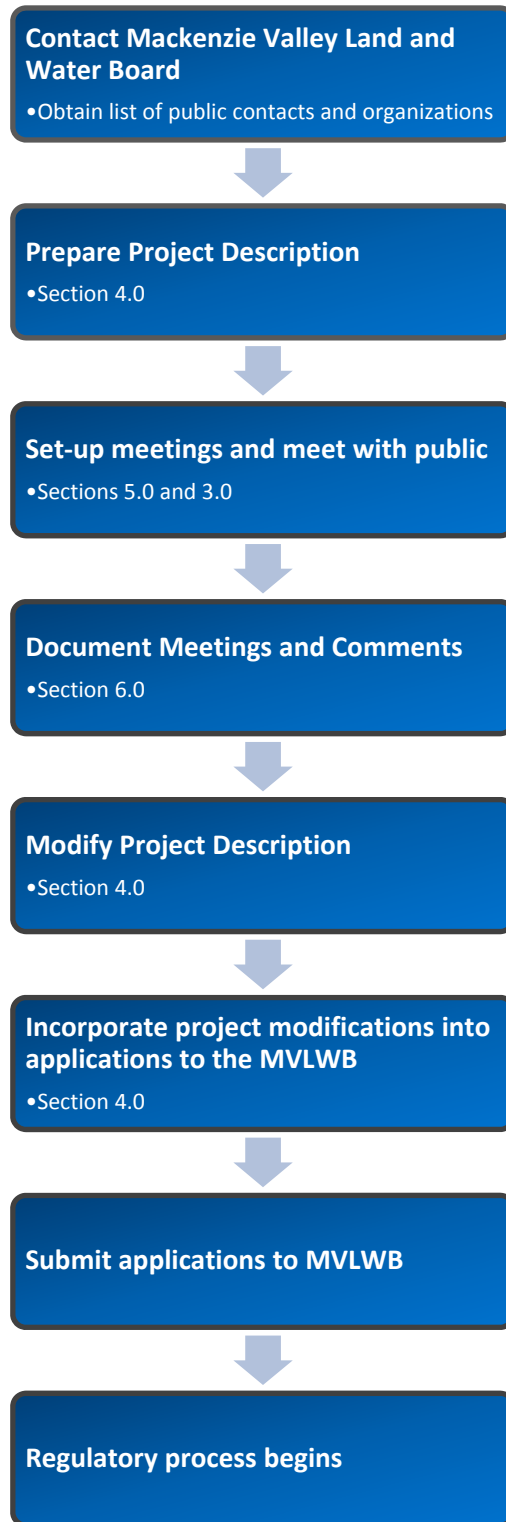
C. Document all Meetings and Comments

The proponent must document the public engagement process including details of all contacts with communities, First Nations and other organizations. A record of the comments and concerns raised by the public during the process should be maintained. This is a very important component of the application to the MVLWB. The proponent's documentation must report on the comments provided by the public. Section 6.0 of these guidelines outlines the required information that must be submitted with an application.

D. Modify the Project Description

The final step in the public engagement process requires the proponent to document how the initial project description or option selected has been influenced and, if necessary modified to resolve any issues or concerns expressed by the public. This should include information on how the development's effects will be mitigated, what the positive effects are and what changes occurred to the proposed development as a result of the public engagement process.

Figure 1.1: The complete public engagement process.
Section numbers in square brackets indicate the corresponding section of these guidelines.



5.0 Methods to Conduct Public Engagement

The Board would like to stress that proponents are expected to discuss their proposed development with the public by holding face to face public meetings. Meetings can be informal and should allow for an open and productive discussion regarding the proposed development.

To assist proponents in setting up face to face meetings, the information outlined below provides some 'how-to' points to ensure that the public can get involved and attend the meetings;

- Contact the MVLWB to get assistance in contacting the appropriate communities.
- Contact the appropriate local government(s) or First Nation(s) to arrange the meeting date, venue rental, food and refreshments, and translators.
- Once the venue and meeting date has been finalized, advance notice of the public meeting should be advertised in local media, some examples are:
 - Local newspapers (e.g., Deh Cho Drum, Yellowknifer, News North, Hay River Hub, Inuvik Drum);
 - Local radio broadcasts (e.g., CBC North);
 - TV advertisements; and
 - Postings in public areas or bulletin boards.
- Large maps showing the proposed project should be presented and available for viewing and discussion at the meeting.
- Presentations on the proposed project should be held in a plain language format with a minimum of technical language or terminology used.
- Arrangements to have translators present at the meetings should also be made. The local government or First Nation should be able to assist proponents in obtaining these services.
- Many communities or First Nations like to have an opening and closing prayer held for meetings or public sessions. Usually, a member of the local community or First Nation can be contacted to conduct an opening and closing prayer.
- Ensure that the meeting is arranged so that there is adequate time to present your proposed project, view and discuss project maps, answer questions, resolve issues and have an open discussion. Additional meetings may be required.

In addition to conducting face to face meetings, ongoing public engagement should also be conducted for developments that are longer in duration or multi-phased. There are various methods of public engagement that the proponent may consider for its process. The methods listed below relate to the distribution of information about the development:

Publications – printed public information materials, information repositories, technical reports, project brochures (either mailed or hand delivered), periodic newsletters;

Media - advertisements in local and national newspapers, newspaper inserts, feature stories, press releases, news conferences, television, radio spots;

Internet – company web sites, web sites for a particular development; email of material to members of the public upon request;

Other information distribution methods - telephone calls, information meetings, information centers and field offices, expert panels, briefings, central information contact, technical information contact, information hot line, interviews.

There may be some overlap in the methods used for information distribution and direct consultation. Examples of methods for direct engagement are:

Verbal methods - some examples are: open houses, public meetings, site visits, workshops, focus group sessions and invited presentations to stakeholder groups.

Written methods - some examples are: in-person surveys, response sheets, mailed surveys and questionnaires, telephone surveys/polls, internet surveys/polls.

This is an extensive list of methods and some would be more suited to a particular proponent's public engagement process than others, depending on the size, scope and location of the proposed development.

6.0 Public Engagement Requirements

The MVLWB requires the proponent to provide certain information with an application outlining their public engagement activities. The proponent must hold face to face public meetings with affected members of the public and provide details of these meetings with the application. Details should include:

- When contact was first initiated.
- Names of individuals who attended the meetings.
- Dates and locations of meetings held.
- Issues discussed at the meeting and any issues that may have been resolved.

If a proponent is unable to contact and meet with members of the public an explanation must be provided outlining why the meeting could not be held. A

listing must also be included outlining the dates of any phone calls or other means that may have been used to provide information about the project and to hear any interests or concerns of the public with respect to the proposed development.

If this information is not provided, the application will likely be declared incomplete and will not proceed further into the regulatory process until the requested information is provided and deemed adequate.

Section 5.0 of these guidelines also outlines other methods of public engagement that can be used by proponents. These other methods cannot be used in place of face to face meetings to meet the Board's requirements, but they can be used to supplement those meeting activities and efforts.

It is important to note that in order for proponents to obtain the required information as outlined above, public engagement efforts should be initiated well in advance of application submission. This will help to minimize delays in the processing of applications.

Technical information requirements for Water Licenses are outlined under the Board's '*Guide to Completing Water License applications to the Mackenzie Valley Land and Water Board*'. This document is available at the Board's website: www.mvlwb.com. Schedule III of the *Northwest Territories Waters Act* also outlines Water License information requirements.

Information requirements for Land Use Permits are outlined under the Board's '*Guide to Completing Land Use Permit applications to the Mackenzie Valley Land and Water Board*'. This document is also available at the Board's website: www.mvlwb.com. Schedule II of the Mackenzie Valley Land Use Regulations also outlines Land Use Permit information requirements

The process of public engagement must not be a "token" effort. The proponent must meet the requirements of the *MVRMA*, regulations and the Board. The proponent must make its best efforts to incorporate the public's input into the proposed development and reflect these changes in the application submitted to the Board. This will enable the Board to see how the proponent's public engagement activities have potentially resolved issues or concerns regarding the project. If this work is not done, the application may be deemed incomplete and this creates time delays in the application process. As stated previously, public engagement efforts must be initiated well in advance of application submission to minimize delays.

Some communities, First Nations, aboriginal groups, aboriginal governments and other organizations may have their own protocols in place regarding their participation in meetings or discussions with proponents. As stated previously, the MVLWB requires that proponents meet face to face with affected members of

the public to discuss their proposed development. However, when reviewing applications to determine if they are complete, the MVLWB does not use individual community protocols as the standard to determine if the proponent has done adequate community engagement. If additional commitments or agreements arise during face to face meetings between the proponent and the public then this can help to build working relationships and the proponent should include that information when they submit their application to the MVLWB.

7.0 Summary

These Public Engagement Guidelines have been developed by the MVLWB, to ensure that residents of the Mackenzie Valley can participate in the management of resources and maximize their opportunities to be involved in the regulatory process. The guidelines have also been developed to provide clarity to proponents so that they can meet the Board's requirements for public engagement. There are many benefits of a detailed public engagement process and some key benefits are listed below:

- The proponent's reputation with the public may be enhanced.
- The proponent can build or improve relationships with members of the public.
- Delays in processing applications will be minimized.
- Members of the public will have a greater ability to participate in the decision making process.
- Members of the public will have better knowledge of potential economic opportunities resulting from development.

Any questions about these guidelines may be directed to the Board at the address below.

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7th Floor – 4922, 48th Street
Yellowknife, NT X1A 2P6
Phone: (867) 669-0506
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Website: www.mvlwb.com
Email: permits@mvlwb.com

Appendix

Definitions from the *MVRMA*

These definitions from the *MVRMA* may assist the proponent in understanding the Public Engagement Guidelines.

"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. (s. 111 *MVRMA*)

"First Nation" means the Gwich'in First Nation, the Sahtu First Nation or bodies representing other Dene or Metis of the North Slave, South Slave or Deh Cho region of the Mackenzie Valley, but does not include the Tlicho First Nation or the Tlicho Government. (s. 2 *MVRMA*)

"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 (s. 111 Part 5 of the *MVRMA*)

"licence" means a licence for the use of waters or the deposit of waste, or both, issued by a board under the *Northwest Territories Waters Act* and this Part [Parts 3 & 4 of the *MVMRA*],

"mitigative or remedial measure" means a measure for the control, reduction or elimination of an adverse impact of a development on the environment, including a restorative measure. (s. 111 for Part 5 of the *MVRMA*)

"permit" means a permit for the use of land issued by a board under this Part [Parts 3 & 4 of the *MVRMA*], and "permittee" has a corresponding meaning.

"Tlicho First Nation" means the aboriginal people of Canada to whom section 35 of the *Constitution Act, 1982* applies, consisting of all Tlicho citizens. (s. 2 *MVRMA*)

"Tlicho Government" means the government of the Tlicho First Nation established in accordance with chapter 7 of the Tlicho Agreement. (s. 2 *MVRMA*)