



# **Engagement Policy**

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**Mackenzie Valley Land and Water Board  
Gwich'in Land and Water Board  
Sahtu Land and Water Board  
Wek'èezhìi Land and Water Board**

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## Definitions and Acronyms

Term	Definition
Aboriginal organization/government	An organization representing the rights and interests of a First Nation (as defined in section 2 of the MVRMA), Metis, or Inuit and a Tlicho First Nation or the Tlicho Government
affected community	A community that is predicted to be affected - either adversely and/or beneficially - by a proposed project
affected party	A party that is predicted to be affected - either adversely and/or beneficially - by a proposed project, such as a community, organization, individual, or business
Boards	Land and Water Boards of the Mackenzie Valley, as established by the <i>Mackenzie Valley Resource Management Act</i>
consultation	<p>Wherever in the MVRMA reference is made, in relation to any matter, to a power or duty to consult, that power or duty shall be exercised, as stated in section 3 of the MVRMA:</p> <p>(a) By providing, to the party to be consulted:</p> <ul style="list-style-type: none"> <li data-bbox="584 1146 1462 1220">(i) notice of the matter, in sufficient form and detail to allow the party to prepare its views on the matter;</li> <li data-bbox="584 1252 1462 1305">(ii) a reasonable period for the party to prepare these views; and</li> <li data-bbox="584 1336 1462 1410">(iii) an opportunity to present those views to the party having the power or duty to consult; and</li> </ul> <p>(b) By considering, fully and impartially, any views so presented.</p>
Crown's duty to consult	Federal, provincial, and territorial governments have a legal obligation to consult when the Crown contemplates conduct that might adversely impact potential or established Aboriginal or Treaty Rights.
engagement	The communication and outreach activities a proponent is required, by the Boards, to undertake with affected parties prior to and during the operation of a project, including closure and reclamation phases
GLWB	Gwich'in Land and Water Board
MVLWB	Mackenzie Valley Land and Water Board

MVRMA	<i>Mackenzie Valley Resource Management Act</i>
NWT	Northwest Territories
project	Any development that requires a land use permit or water licence
proponent	Applicant for, or holder of, land use permits and/or water licences
SLWB	Sahtu Land and Water Board
stakeholders	Industry, federal agencies, the territorial government, Aboriginal organizations/governments, affected communities, and other parties with an interest in a project
WLWB	Wek'èezhii Land and Water Board

## **1. Introduction**

The Land and Water Boards (the Boards) of the Mackenzie Valley work with proponents, affected parties, and other stakeholders to ensure that all potential impacts of proposed projects are understood and carefully considered before decisions are made with respect to the issuance of land use permits and water licences.

Proponents are required by the Boards to carry out communication and outreach activities with affected parties before they submit their applications and throughout the life of the project once approved (engagement). The MVRMA directs the Boards, under certain circumstances, to consult with specified parties (consultation). Throughout the Mackenzie Valley there is also a duty of the Crown to consult (Crown's duty to consult).

## **2. Purpose and Objectives**

This *Engagement Policy* (the Policy) describes the Boards' expectations with respect to proponent engagement. The Boards believe that this Policy is necessary to ensure consistency and transparency.

The objectives of this policy are to:

- Distinguish between engagement carried out by proponents, the Boards' statutory consultation obligation, and the Crown's duty to consult; and
- Provide clarity and certainty regarding the Boards' expectations of proponents in relation to engagement activities.

This Policy is supported by detailed *Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits* (the Guidelines), which include specific requirements and suggested best practices for pre-submission engagement activities and life of project engagement planning.

## **3. Authority**

Section 65 of the MVRMA provides the Boards with the authority to establish guidelines and policies respecting licences, permits, and authorizations, including their issuances.

## **4. Policy Development**

This Policy was developed by the Engagement and Consultation Working Group, one of the Standard Procedures and Consistency Working Groups established by the Boards in 2008. This draft of the Policy is based on input from Land and Water Board staff and research on current best

practices in both the regulatory and industry communities respecting public engagement and consultation approaches.

## 5. Application

This Policy will be applied by all Land and Water Boards operating under the MVRMA. The Gwich'in Land and Water Board (GLWB), Mackenzie Valley Land and Water Board (MVLWB), Sahtu Land and Water Board (SLWB), and the Wek'èezhii Land and Water Board (WLWB) are each responsible for administering engagement expectations in accordance with this Policy.

This Policy applies to all new applications and submissions made before the Boards after the effective date of the Policy. It may also apply to existing permits and licences, depending on activities, submissions, or applications made in relation to those permits and licences.

## 6. Guiding Principles

The following principles will guide the Boards' decisions on any matter related to engagement activities occurring throughout its process. The principles are not listed in order of priority and they carry equal weight:

- **Shared responsibility:** meaningful participation by all stakeholders is essential in our co-management system.
- **Appropriate disclosure:** all information<sup>1</sup> relevant to the application is made available in a timely and understandable manner and considers the particular culture(s) of the affected party.
- **Inclusiveness:** all stakeholders are given the opportunity to be involved.
- **Informed participation:** project outcomes are shaped through organized and continuous engagement.
- **Reasonableness:** all stakeholders must be reasonable when setting expectations for engagement processes and be willing to enter into these processes in the spirit of cooperation.

## 7. Distinguishing Between Engagement, the Boards' Statutory Consultation Obligation, and the Crown's Duty to Consult.

As outlined in the introduction of this Policy, engagement, the Boards' statutory consultation obligation, and the Crown's duty to consult are distinct and unique processes but ones which often

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<sup>1</sup>This does not pertain to information which is protected by law or commercially confidential or proprietary.

intersect throughout the regulatory process. The Boards consider all of the information put before them in their decisions<sup>2</sup>.

## **Engagement**

Engagement refers to the communication and outreach activities a proponent is required, by the Boards, to undertake with affected parties prior to and during the operation of a project, including closure and reclamation phases. The Boards' requirements with respect to engagement are outlined in section 8 of this Policy.

### **Boards' statutory consultation obligation**

The Boards have an obligation under certain circumstances to consult with specified parties<sup>3</sup>.

The MVRMA directs the Boards to consult with:

- the Tlicho Government, in the case of sections 63(4);
- the territorial Minister responsible for Commissioner's Land, or minister of the Crown responsible for Crown Land, or the owner of the land, in the case of section 69;
- resource management authorities, in the case of section 80(4); and
- authority responsible for authorizing uses of land or waters or deposits of waste in National Parks or historic sites - 52(3), 97(3).

The MVRMA, in section 3, defines consultation as:

*Wherever in the MVRMA reference is made, in relation to any matter, to a power or duty to consult, that power or duty shall be exercised,*

*(a) by providing, to the party to be consulted,*

- (i) notice of the matter, in sufficient form and detail to allow the party to prepare its views on the matter;,*
- (ii) a reasonable period for the party to prepare these views, and*
- (iii) an opportunity to present those views to the party having the power or duty to consult; and,*

*(b) by considering, fully and impartially, any views so presented.*

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<sup>2</sup>Proponents, affected communities and Aboriginal organizations/governments should be aware that information provided during each phase of engagement processes and the independent consultation efforts of the Crown to the extent that there is evidence on the record of a proceeding will be reviewed alongside any information gathered in the Boards' process for the purposes of Board decision-making, including preliminary screening decisions.

<sup>3</sup>This obligation should not be confused with the Boards' general procedure to invite stakeholders and the public to comment on applications or submissions received by the Boards.

## Crown's duty to consult

The Crown's 'duty to consult' is an obligation of the government as a whole. Federal, and territorial, governments have a legal obligation to consult when the Crown contemplates conduct that might adversely impact potential or established Aboriginal or Treaty Rights<sup>4</sup>.

Information obtained by the Boards through their own processes, information submitted by proponents and stakeholders during each phase of the engagement process, and information submitted by the Crown regarding the discharge of its legal duty to consult, are all part of the public record<sup>5</sup>.

## 8. Requirements for Engagement

Before the Boards will deem an application complete or commence with the review of any other type of submission<sup>6</sup>, they must be satisfied that the proponent or permit/licence holder has carried out an appropriate level of engagement. This engagement must ensure that potentially affected parties have been informed of and have had the opportunity to comment on a project or aspects of a project to which a submission is related.

The level of engagement required by the Boards is determined by the type of application or submission, along with the stage of development (e.g. in mining development: exploration, advanced exploration, or mining phase). Additionally, the scale, nature, location, and duration of the project and the potential for impacts are also considered when setting engagement expectations.

The types of engagement that the Boards consider appropriate include: written notification, community public meetings, face-to-face meetings, and workshops. The Boards will require an engagement record to be provided and specific types of information to be included in that record in order for an application to be deemed complete. The Boards' expectations on engagement practices are further described in the *Engagement Guidelines*.

Additionally, the Guidelines provide a list of recommended best practices to assist proponents with ideas on how best to engage with affected parties.

The pre-submission engagement section of the Guidelines describes the minimum engagement expectations that apply to all projects, as well as an exemption process. Only in extraordinary circumstances will the Boards consider requests for exemptions from engagement activities by proponents, or requests for additional engagement activities by affected parties.

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<sup>4</sup> March 2011, '*Aboriginal Consultation and Accommodation*' Updated Guidelines for Federal Officials to Fulfill the Duty to 'Consult.' Minister of the Department of Indian Affairs and Northern Development, Government of Canada.

<sup>5</sup> The Boards maintain a Public Registry at their respective offices, as prescribed through section 72 of the MVRMA. Although the Boards may provide access to various application documents online, the official Public Registry remains to be the paper copy of file documents at the Boards' offices.

<sup>6</sup> Including, but not limited to, renewals, amendments, extensions, management, or monitoring plan submissions, and closure and reclamation plan submissions.

All mineral, oil and gas, and power projects will require the proponent to develop an engagement plan with affected parties, which will determine the expectations for engagement throughout the life of a project. Approval of the engagement plan is contingent on the agreement of the contents by both the proponent and the affected parties. The engagement activities outlined within any approved engagement plan will satisfy the Boards' minimum engagement requirements. Prior to the approval of the plan, the Boards' pre-submission engagement requirements will apply to these projects.

The Boards may require an engagement plan for other projects, based on evidence presented.

## **9. Policy Implementation**

Section 106 of the MVRMA gives the MVLWB the responsibility to "issue directions on general policy matters or on matters concerning the use of land or waters or the deposit of waste that, in the Board's opinion, require consistent application throughout the Mackenzie Valley". This Policy is issued under section 106 and, as such, the MVLWB will establish the procedures necessary to ensure that this Policy is appropriately implemented and periodically reviewed.

The MVLWB may establish working groups from time to time to address specific policy matters related to engagement, including the revision of the *Engagement Guidelines*.

## **10. Monitoring and Performance Measurement for this Policy**

Mechanisms will be required to monitor and measure performance and to evaluate the effectiveness in achieving the Policy objectives articulated above. In accordance with the principles of a management systems approach (i.e., plan-do-check-act), the MVLWB will develop a performance measurement framework that specifies reporting requirements against the Policy objectives including indicators, sources of information, and frequency of reporting. This Policy will be reviewed and amended as necessary within that framework. The framework will also describe how stakeholders will be involved in the Policy review process.

## **Appendix A: Documents Reviewed**

### **Engagement and Consultation Documents/Guidelines**

*Aboriginal Consultation and Accommodation: Updated Guidelines for Federal Officials to Fulfill the Duty to Consult*, Government of Canada, March 2011

### **Regulatory/Environmental Assessment**

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

*Guidelines for Mineral Exploration Companies Seeking to Engage the Akaitcho Dene First Nations*

*Interim Guide for Consulting the Aboriginal Communities - Quebec*

*A Guide to Public Engagement and Appropriate Dispute Resolution - OGC*

*Early Aboriginal Engagement: A Guide for Proponents of Major Resource Projects - Major Projects Office*

*Gwich'in Comprehensive Land Claim Agreement*

*Sahtu Dene and Metis Comprehensive Land Claim Agreement*

*Land Claim and Self Government Agreement Among the Tlicho and the Government of the Northwest Territories and the Government of Canada*

### **Mining**

Mining Association of Canada. Aboriginal and Community Outreach Program: *Towards Sustainable Mining (TSM) Assessment Tool*. 2009.

Prospectors and Developers Association of Canada (PDAC). *E3Plus: A Framework for Responsible Exploration: Principles and Guidance*. 2009.

### **Oil and Gas**

Canadian Association of Petroleum Producers (CAPP). Industry Practices: *Developing Effective Working Relationships With Aboriginal Communities*. 2006.

Canadian Association of Petroleum Producers (CAPP). *Guide for Effective Public Involvement*. 2003.