ARCTIC ENVIRONMENTAL IMPACT ASSESSMENTS
Indigenous Involvement in EIAs in Yukon and NWT
OVERVIEW

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- Gwich’in Land Claims Agreements
- Environmental Impact Assessment Processes in the Northwest Territories and Yukon
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About Gwich’in Council International
GWICH’IN COUNCIL INTERNATIONAL (GCI) REPRESENTS 9,000 GWICH’IN IN THE NORTHWEST TERRITORIES (NWT), YUKON, AND ALASKA AS A PERMANENT PARTICIPANT IN THE ARCTIC COUNCIL; THE ONLY INTERNATIONAL ORGANIZATION TO GIVE INDIGENOUS PEOPLES A SEAT AT THE DECISION-MAKING TABLE ALONGSIDE NATIONAL GOVERNMENTS.

GCI SUPPORTS GWICH’IN BY AMPLIFYING OUR VOICE ON SUSTAINABLE DEVELOPMENT AND THE ENVIRONMENT AT THE INTERNATIONAL LEVEL TO SUPPORT RESILIENT AND HEALTHY COMMUNITIES.
In Canada, GCI’s membership is comprised of two land claims bodies: Gwich’in Tribal Council (NWT) and Vuntut Gwichin First Nation (Yukon).

Each organization has several sub-organizations who are directly or indirectly responsible for Environmental Impact Assessments.
RELEVANT ORGANIZATIONS

GWICH’IN COUNCIL INTERNATIONAL

VUNTUT GWICHIN FIRST NATION
- VUNTUT GWICH’IN LIMITED PARTNERSHIP

GWICH’IN TRIBAL COUNCIL
- GWICH’IN SETTLEMENT CORPORATION
- GWICH’IN RENEWABLE RESOURCE BOARD
- GWICH’IN LAND AND WATER BOARD
- GWICH’IN LAND USE PLANNING BOARD
- GWICHIN DEVELOPMENT CORPORATION
GWICH’IN LAND CLAIMS
In April of 1992, the Gwich’in Comprehensive Land Claim Agreement was finalized and signed:

**Gwich’in-owned lands:** The Gwich’in own approximately 22,330 square kilometres of land in the Northwest Territories, and 1,554 square kilometres in the Yukon. This includes subsurface (mineral) rights to 6,158 square kilometres of land in the Northwest Territories.

**Economic benefits:** The Gwich’in receive a tax-free payment of $75 million (1990) paid over a 15-year period, a share of resource revenues from development in the Northwest Territories, and a 15-year subsidy of property taxes on certain Gwich’in municipal lands.

**Land and environmental management:** The Gwich’in participate in land use planning and in the management of renewable resources, land, water, and Gwich’in heritage resources.

**Hunting and fishing:** The Gwich’in obtained exclusive rights to be licensed to conduct commercial wildlife activities on Gwich’in lands and preferential rights in the whole settlement area.

**Self-government:** The Land Claim Agreement provides for negotiation of self-government which will be brought into effect through legislation.
The Yukon Umbrella Final Agreement (UFA) was reached in 1988 and finalized in 1990. It is the overall ‘umbrella’ agreement of the Yukon Land Claims package and provides for the general agreement made by the three parties in a number of areas. While the agreement is not a legal document, it represents a ‘political’ agreement made between the three parties (Yukon First Nations, Yukon Territorial Government, and the Government of Canada).

While the Umbrella Final Agreement provides a framework within which each of the 14 Yukon First Nations will conclude a final claim settlement agreement, all UFA provisions are a part of each First Nation Final Agreement (FNFA). The Final Agreements contain all of the text of the Umbrella Final Agreement with the addition of specific provisions which apply to the individual First Nation.

The Vuntut Gwichin First Nation Final Agreement was signed in 1993.
ENVIRONMENTAL IMPACT ASSESSMENT PROCESSES AND GWICH’IN INVOLVEMENT
The Mackenzie Valley Resources Management Act (MVRMA) has created and provided authorities to co-management boards to carry out land use planning, regulate the use of land and water and, if required conduct environmental assessments and reviews of large or complex projects.

The regulatory regimes in the NWT came about as a direct result of the negotiation of comprehensive land claim agreements and are based on two principles:

- Integration and coordination; and
- Co-management of resources between governments and Aboriginal groups.
Mackenzie Valley Environmental Impact Review Board consists of nine members, all appointed by the Minister of Aboriginal Affairs and Northern Development Canada.

The chairperson is typically appointed after being nominated by the other Review Board members. The other eight Board members are appointed in equal numbers from nominations submitted by the federal and territorial governments and from aboriginal land claimant organizations.

The Review Board is a co-management board, comprised of an equal number of aboriginal land claimant nominees and government nominees.
There are four land and water boards in the Mackenzie Valley Region that perform these functions, but in different jurisdictions:

- Gwich’in Land and Water Board
- Sahtu Land and Water Board;
- Wek’eezhii Land and Water Board; and the
- Mackenzie Valley Land and Water Board.
Land Management in the Gwich'in Settlement Region

Aklavik
Fort McPherson
Tsiigehtchic

Primary Use Area
Secondary Use Area

Gwich'in Settlement Area

Government of Northwest Territories - Surface and Subsurface
Gwich'in Tribal Council - Surface
Government of Northwest Territories - Subsurface
Gwich'in Tribal Council - Surface and Subsurface

Kilometers

NT
YT
Northwest Territories
Yukon Territory

Gwich'in Territorial Park
Special Harvest Areas (Harvesting Rights)

Gwich'in Tribal Council - Surface
Government of Northwest Territories - Subsurface
Preliminary screening

- All proposed developments that require a license, permit, or other authorization must apply for and go through a preliminary screening.

- A land and water board, such as the Mackenzie Valley Land and Water Board, or other regulating authority, manages this process.

- Preliminary screening is a quick review of a proposed development's application to decide if the development might have significant adverse impacts on the environment, or might cause public concern.

- If so, the application is referred to the second stage - environmental assessment, handled by the Mackenzie Valley Environmental Impact Review Board.

- If not, then the application can proceed to the permitting and licensing process, carried out by the Mackenzie Valley Land and Water Board or other regulator.
EIA PROCESS (PHASE 2)

» Environmental assessment

» All proposed developments go through a preliminary screening, and only a small number of them must go through an environmental assessment.

» The Mackenzie Valley Environmental Impact Review Board conducts these assessments which are a more thorough study to decide if the development is likely to have significant adverse impacts on the environment, or likely to cause public concern.

» If the assessment shows this to be so, the Review Board recommends to the federal Minister for Aboriginal Affairs and Northern Development one of the following:

  » a) the project can proceed to regulatory permitting and licensing as is;

  » b) the project can proceed to regulatory permitting and licensing provided some mitigative measures recommended by the Review Board as a result of the assessment are in place; or

  » c) the project should be rejected. Alternatively, the Review Board or the federal and responsible ministers may order an environmental impact review for a much more detailed review by an independent panel.
Environmental impact review

An environmental impact review follows an environmental assessment when the Review Board or the federal responsible ministers deem a more comprehensive examination of a proposed development is needed.

The review is conducted by an independent panel, which may consist of both Review Board members and non-Review Board members, all appointed by the Review Board.

The environmental impact review provides a more focused study of the issues raised during the environmental assessment.
Primary Habitat of the Porcupine Caribou Herd

- Traditional Homeland of the Gwich’in Indians
- Range of the Porcupine (River) Caribou Herd
- "1002" Area
- Coastal Plain of the Arctic National Wildlife Refuge
- National Park and Wildlife Refuges
- Oil Fields and Wells

Gwich’in Steering Committee
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Yukon Environmental and Socio-Economic Assessment Board

Appointed under the auspices of the Yukon Environmental and Socio-Economic Assessment Act (YESAA).

Executive Committee = Council of Yukon First Nations (CYFN) (1) + Yukon Territorial Government (1) + federal minister (1)

Board = CYFN (2 representatives) + Yukon Territorial Government (1) + federal minister (1)

CYFN must consult with Yukon First Nations before appointing someone to the board.
The Council of Yukon First Nations was originally formed as the ‘Council for Yukon Indians’ in 1973 specifically to negotiate land claims.

The Council is formed under the Societies Act of the Yukon and operates under a constitution which has been adopted by its member First Nations at a General Assembly.

At present, the CYFN is made up of 10 Yukon First Nations: the Champagne and Aishihik First Nations, the Teslin Tlingit Council, the First Nation of Nacho Nyak Dun, the Selkirk First Nation, the Little Salmon Carmacks First Nation, the Tr’ondek Hwech’in First Nation, the Ta’an Kwach’an Council, the Kluane First Nation, the Carcross/Tagish First Nation and the White River First Nation. Four other First Nations in the Yukon Territory, the Vuntut Gwitchin First Nation, Liard First Nation, Kwanlin Dun First Nation, and Ross River Dena Council have chosen to work independently of CYFN at the present time.

Represented in the Arctic Council by Arctic Athabaskan Council.
There are three levels of assessments under YESAA:

- Designated Office Evaluation: majority of assessments; or
- Executive Committee Screening: for larger projects or those referred up by the Designated Office; or
- Panel of the Board Review: for projects with potential significant adverse effects likely to cause significant public concern, or involve the use of controversial technology.
“FEDERAL, TERRITORIAL OR FIRST NATION GOVERNMENTS [VGFN, FOR EXAMPLE] OR AGENCIES WITH A REGULATORY OR STATUTORY RESPONSIBILITY IN RELATION TO A MAJOR PROJECT ARE IDENTIFIED AS DECISION BODIES TO THE PROJECT AND WILL MAKE DECISIONS BASED ON THE RECOMMENDATIONS OF THE EXECUTIVE COMMITTEE. DECISION BODIES CAN ACCEPT, REJECT OR VARY YESAB’S RECOMMENDATION – THEIR DECISION IS COMMUNICATED THROUGH THE ISSUANCE OF A DECISION DOCUMENT.”
(3) A review of a project by a panel of the Board or a joint panel may include public hearings in any location chosen by the panel and, except in the case of a review requested under subsection 60(4) that is not a public review, shall include public hearings

(a) in a community within the territory of each first nation, other than the Tetlit Gwich’in, whose settlement land is identified under subsection (2) – unless the panel and the first nation agree otherwise;

(b) in a community within the Gwich’in settlement area referred to in the Gwich’in Agreement, if Tetlit Gwich’in Yukon land is settlement land identified under subsection (2) – unless the panel and the Gwich’in Tribal Council agree otherwise; and

(c) in the community in Canada closest to the project, if non-settlement land is identified under subsection (2) – unless another location in Canada is agreed on for that purpose by the panel, the proponent, the decision bodies for the project and any first nation whose settlement land is identified under subsection (2).
RELEVANT DEVELOPMENT PROJECTS IN GWICH’IN COMMUNITIES
MACKENZIE VALLEY GAS PROJECT
THE ISSUE

- Mackenzie Gas Project proposes to develop natural gas fields in the Mackenzie Delta of Canada's Northwest Territories and deliver the natural gas to markets through a pipeline system built along the Mackenzie Valley.

- Originally proposed in the 1970s as the Mackenzie Valley Pipeline.

- Led to the Berger Inquiry (Mackenzie Valley Pipeline Inquiry), which concluded that recommended that no pipeline be built through the northern Yukon and that a pipeline through the Mackenzie Valley should be delayed for ten years while land claims were settled.

- Pipeline re-introduced in 2004.
Mackenzie Valley Aboriginal Pipeline Limited Partnership (MVAPLP). MVAPLP holds the Aboriginal Peoples Group’s financial interest in the Mackenzie Valley Pipeline. MVAPLP is to be owned primarily by organizations under the direction of the Deh Cho, Sahtu, Gwich’in and Inuvialuit. The other Northwest Territory settlement areas (the Akaitcho, Dogrib, Salt River, North Slave Metis Alliance and South Slave Metis Alliance) will be given an opportunity to participate in the MVAPLP at the discretion of the Deh Cho, Sahtu, Gwich’in and Inuvialuit.

The Producer Group consists of four oil and gas companies (Imperial Oil, Connoco Phillips, Exxon Mobil, and Shell) that hold interests in the Niglintgak, Taglu and Parsons Lake natural gas fields in the Mackenzie Delta. In addition to being co-owners of the Mackenzie Valley gas pipeline with the APG, the producers will also be joint owners of a smaller system of pipelines that will gather the natural gas from those natural gas fields, a gas processing facility near Inuvik that will separate natural gas liquids from the natural gas, and a liquids pipeline from the facility.
The National Energy Board gave an extension of the sunset clause from the end of 2015 to 2022 to give the proponents time to respond to changes in the energy market.

The National Energy Board

- Regulates the construction, operation, and abandonment of pipelines that cross international borders or provincial boundaries, as well as the related pipeline tolls and tariffs.

- Responsibilities are set out in the National Energy Board Act, Canada Oil and Gas Operations Act and the Canada Petroleum Resources Act.

- Also does an environmental assessment when it reviews applications for facilities and activities.
PEEL WATERSHED PLANNING REGION, YUKON, CANADA
RESOURCES

- Iron ore
- Lead-zinc
- Copper
- Nickel
- Uranium
- Coal
- Oil and gas
THE ISSUE

- Over the course of seven years the Peel Watershed Planning Commission developed a plan supported by the First Nations and the majority of the public that ultimately called for **80% of the region to be off limits** to roads, mining and oil and gas development.

- The YTG imposed a unilateral plan to **open 71% of the Peel to industrial development**.
The First Nation of Na-Cho Nyak Dun, Tr’ondëk Hwëch’in and Vuntut Gwitchin First Nation have taken the Yukon Government to court over the constitutionally mandated land use planning process.

Case heard before the Supreme Court of Canada to protect the integrity of the First Nations Final Agreements and restore a plan that would have protected the ecological integrity of the Peel.

Ruling expected by Fall 2017.
GCI INPUTS TO ARCTIC EIA PROJECT
Review of Indigenous-led or driven Environmental Assessment processes according in Canada, according to a spectrum of EA frameworks (collaborative, co-managed, independent).

Case studies:

- Tlicho Land Claim
- Squamish Nation’s Woodfibre Liquified Natural Gas Independent EA
- Tseil-Wetuth Nation’s independent assessment of Trans-mountain pipeline and tanker project

Dr. Ginger Gibson at Firelight Group (www.thefirelightgroup.com)
Adam Chamberlain is National Leader of the Team North, Aboriginal Law and Climate Change Groups and Toronto Regional Leader of the Forestry Law Group at Borden Ladner Gervais (BLG). Certified as a Specialist in Environmental Law by the Law Society of Upper Canada, Adam has practised environmental and energy law for most of his career, focused on infrastructure development. Adam’s practice encompasses diverse matters related to the environmental and other regulatory requirements involved with project development. Adam is also extensively involved in relationships between Indigenous communities and project proponents related to all manner of developments.

Specifically, Adam has extensive experience with:

- Environmental Assessment (EA) of projects including energy, mining and wastewater facilities.
- Providing strategic legal advice regarding Indigenous involvement in infrastructure development as proponents of communities being consulted and accommodated, and regarding the provincial and federal environmental regulatory framework.
- Assisting with compliance with provincial and federal environmental legislation and regulations generally.
- Acting as counsel regarding litigation related to EA and other environmental approvals, including judicial review of government decisions and related appeals.
- Assisting regulatory agencies with matters related to the development of EA regimes for specific forms of infrastructure and also a territorial government with issues related to natural resource regulatory jurisdiction.
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