

# MVLWB/INAC/GNWT

## Guidelines for Closure and Reclamation Cost Estimates for Mines

Mackenzie Valley Land and Water Board  
Gwich'in Land and Water Board  
Sahtu Land and Water Board  
Wek'èezhii Land and Water Board  
Government of the Northwest Territories  
Indigenous and Northern Affairs Canada

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Indigenous and  
Northern Affairs Canada

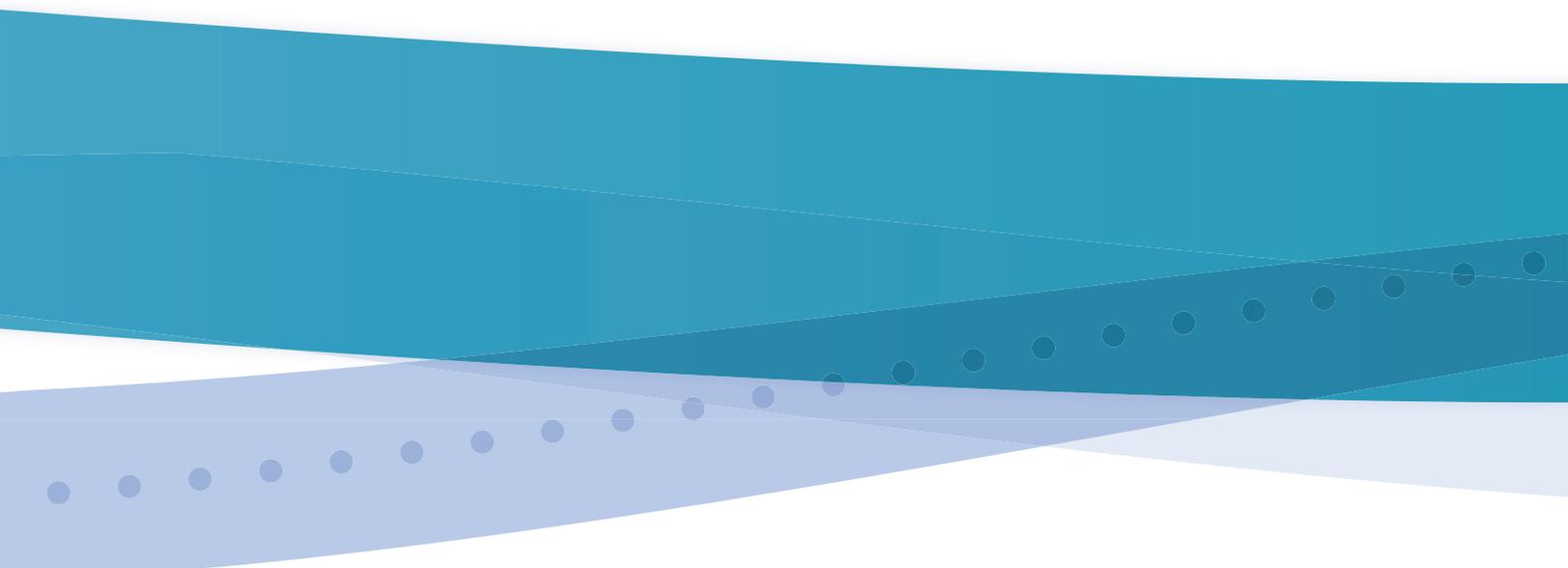
Affaires autochtones  
et du Nord Canada

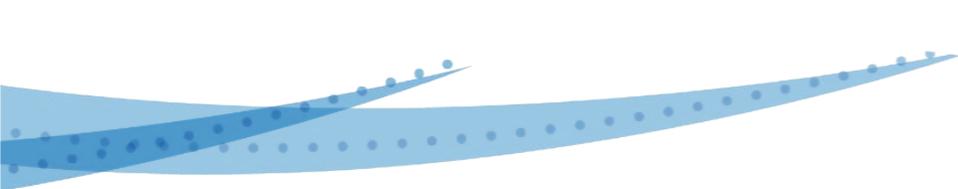
**Cover photos:**

*Left* - Image shows De Beers Gahcho Kué mine site in September 2015. Photo courtesy of Angela Love (MVLWB).

*Centre* - Image shows Outpost Island from air. Photo courtesy of Shelagh Montgomery (MVLWB).

*Right* - Image shows open pit at Diavik Diamond Mine Site. Photo courtesy of Jessica Pacunayen (WLWB).





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## Definitions and Acronyms

TERM	DEFINITION
Advanced Mineral Exploration	Advanced exploration is mineral exploration typically marked by the start of bulk sampling. It typically consists of large diameter drilling and trenching, and in larger-scale projects, development of declines or adits, and some on-site ore processing. Roads are often built, field camps can increase in size and heavy equipment may be brought in. The activities associated with advanced exploration typically trigger a land use permit and water licence.
Boards	Part 3 of the MVRMA establishes regional land and water boards with the power to regulate the use of land and water, and the deposit of waste, including the issuance of land use permits and water licences, so as to provide for the conservation, development, and utilization of land and water resources in a manner that will ensure the optimum benefit to the residents of the management area and of the Mackenzie Valley and to all Canadians. Part 4 of the MVRMA establishes the Mackenzie Valley Land and Water Board (MVLWB). Regional Land and Water Boards have been established in the Gwich'in, Sahtu, and Wek'eezhii management areas and now form Regional Panels of the MVLWB.
Closure Cost Estimate	An estimate of the cost to close and reclaim a project.
Closure Criteria	A set of standards that measure the success of selected closure activities in meeting closure objectives. Closure criteria may have a temporal component, for example, a standard may need to be met for a pre-defined number of years. Closure criteria can be site-specific or adopted from territorial/federal or other standards and can be narrative statements or numerical values.
CRP	Closure and Reclamation Plan.
Engagement	The communication and outreach activities a proponent undertakes with affected parties prior to and during the operation of a project.
GLWB	Gwich'in Land and Water Board.
GNWT	Government of the Northwest Territories.
ICRP	Interim Closure and Reclamation Plan.
INAC	Indigenous and Northern Affairs Canada.
Land use permit	A regulatory authorization required for an activity set out in sections 4 and 5 of the Mackenzie Valley Land Use Regulations; or a land use permit (type C) required by Tłı̄chǫ law for use in Tłı̄chǫ lands or by a Déline law for a use of Déline lands, respectively, for which a type A or type B land use permit is not required.
Mackenzie Valley	That part of the Northwest Territories bounded on the south by the 60th parallel of latitude, on the west by the Yukon Territory, on the north by the Inuvialuit Settlement Region as defined in the Agreement given effect by the <i>Western Arctic (Inuvialuit) Claims Settlement Act</i> , and on the east by the Nunavut Settlement Area as defined in the Nunavut Land Claims Agreement Act, but not including Wood Buffalo National Park.
MVLWB	Mackenzie Valley Land and Water Board.

MVLUR	Mackenzie Valley Land Use Regulations.
MVRMA	<i>Mackenzie Valley Resource Management Act.</i>
Progressive reclamation	Selected closure activities that can be taken at advanced mineral exploration and mine sites before permanent closure. Progressive reclamation takes advantage of cost and operating efficiencies by using the resources available from an operation to reduce the overall reclamation costs incurred. It enhances environmental protection and shortens the timeframe for achieving the closure objectives.
Project	Any activity that requires a water licence or land use permit.
Proponent	Applicant for, or holder of, a water licence and/or land use permit.
Reclamation	The process of returning a disturbed site to its natural state, or to a state which prepares it for other productive uses that prevents or minimizes any adverse effects on the environment or threats to human health and safety.
Reclamation research	Literature reviews, laboratory or pilot-scale tests, engineering studies, and other methods of resolving uncertainties. Proponents conduct reclamation research to answer questions pertaining to environmental risks; the design of reclamation research plans aims to provide data and information which will reduce uncertainties for closure options, selected closure activities, and/or closure criteria.
Reviewer	Any person or organization who submits comments on documents distributed for public review by the Boards.
Security adjustment	A change in the security deposit held under a land use permit or water licence, to reflect changes in the closure plan, progressive reclamation, etc.
Security deposit	Funds held by the appropriate authority (the GNWT, INAC, or other landowner) that can be used in the case of abandonment of a project to reclaim the site, or carry out any ongoing measures that may remain to be taken after the abandonment of the project.
SLWB	Sahtu Land and Water Board.
Type A water licence	A water licence required by Column IV of Schedules D to H of the Waters Regulations on non-federal areas; or by Column IV, Schedules IV to VIII of the Mackenzie Valley Federal Areas Water Regulations on federal areas.
Type B water licence	A water licence required by Column III of Schedules D to H of the Waters Regulations on non-federal areas; or by Column III, Schedules IV to VIII of the Mackenzie Valley Federal Areas Water Regulations on federal areas.
WLWB	Wek'eezhii Land and Water Board.

## 1 Introduction

Mining plays a large role in the economy of the Mackenzie Valley. Each mine will eventually come to the end of its operational life and will need to be closed and reclaimed. Unfortunately, in the past there have been instances where mines have been abandoned without completing closure and reclamation of the operation, leaving the cost of clean-up to the responsible landowner and/or authority. In response to these past events, the modern regulatory framework has been designed to ensure that proponents close and reclaim a project in an environmentally responsible way and pay for the cost of that clean-up. Proponents that wish to construct and operate a mine are required to post a security deposit with the owner, usually the Government of the Northwest Territories (GNWT) or Indigenous and Northern Affairs Canada (INAC; on federal areas)<sup>1</sup> to cover the costs to close and reclaim the site, should the proponent become insolvent and not meet these obligations.

The Mackenzie Valley Land and Water Board (MVLWB) and the Regional Panels (hereafter referred to collectively as ‘the Boards’) determine the amount of the security deposit based on the estimated costs of closing and reclaiming the site (i.e., the closure cost estimate). The closure cost estimate is most often developed based on the Closure and Reclamation Plan (CRP) for the project. The MVLWB/INAC (2013) *Guidelines for the Closure and Reclamation of Advanced Mineral Exploration and Mine Sites in the Northwest Territories* (the 2013 MVLWB/INAC Closure Guidelines) outline the requirements for CRPs. A proponent is required to develop a CRP and maintain a security deposit through the legally binding terms and conditions set out in the water licences and land use permits issued by the Boards.

The CRP is to be updated throughout the life of the project.<sup>2</sup> As the CRP is refined and as progressive reclamation is completed, the closure cost estimate can be adjusted accordingly.

The Boards are guided by the INAC (2002) *Mine Site Reclamation Policy for the Northwest Territories* (INAC [2002] Reclamation Policy) when approving a mine’s closure and reclamation plan and determining the corresponding security deposit. In the context of devolution of lands, rights in respect of water, and non-renewable resources, the Government of the Northwest Territories has adopted this policy on an interim basis. The GNWT also utilizes the 2013 MVLWB/INAC Closure Guidelines when preparing its submissions to the Boards.

### 1.1 Purpose and Objective

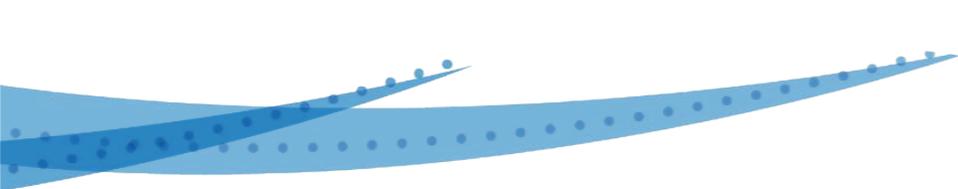
The purpose of these Guidelines is to:

1. describe the Boards’ expectations of proponents when preparing closure cost estimates (section 2.0); and
2. outline the Boards’ processes for determining how much security may be required to cover the costs of closure and reclamation (section 3.0).

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<sup>1</sup> Proponents wishing to construct and operate a mine on land under the administration and control of an Aboriginal government or organization (i.e. as a result of a land, resource, and/or self-government agreement) will need to work closely with that land manager.

<sup>2</sup> See the MVLWB/INAC (2013) *Guidelines for the Closure and Reclamation of Advanced Mineral Exploration and Mine sites in the Northwest Territories* for more information.



The Boards' objective in developing these Guidelines is to enhance transparency, process efficiency, and consistency in setting and adjusting security throughout the life of a project.

In the Mackenzie Valley, closure cost estimates are typically developed using the RECLAIM model (discussed further in section 2.2), which is developed and maintained by the GNWT and INAC. The RECLAIM model is accompanied by a RECLAIM User Manual with instructions on how to use RECLAIM. The Closure Cost Estimating Guidelines compliment the RECLAIM User Manual, and both documents should be used as references when preparing closure cost estimates.

## 1.2 Authority

The Boards' authority to require proponents to post and maintain security is granted under the *Mackenzie Valley Resource Management Act* (MVRMA, federal legislation) and the *Waters Act* (territorial legislation); this authority encompasses both federal and non-federal areas across the Mackenzie Valley.<sup>3</sup>

Subsection 11(1) of the *Waters Regulations*, subsection 12(1) of the *Mackenzie Valley Federal Areas Water Regulations*, and subsection 32(1) of the *Mackenzie Valley Land Use Regulations* authorize the Boards to determine the total amount of security to be posted:

The Board may fix the amount of security required to be furnished by an applicant in an amount not exceeding the aggregate costs of

- (b) abandonment of the undertaking;<sup>4</sup>
- (c) restoration of the site of the undertaking; and
- (d) any ongoing measures that may be necessary after the abandonment of the undertaking.<sup>5</sup>

## 1.3 Application

These Guidelines will be applied by the MVLWB, GLWB, SLWB and WLWB.

In general, these Guidelines apply to new and existing mining, milling, and advanced mineral exploration projects that require a type A or type B water licence.<sup>6</sup> For mineral exploration projects that require only a land use permit and no water licence, the Boards generally use their security estimating template,<sup>7</sup> not RECLAIM.

These Guidelines can be used to inform closure cost estimates for projects which require a water licence but are not mining, milling or advanced mineral exploration projects (e.g., oil and gas projects); the Boards' processes and expectations for estimating closure costs will typically be the same as those outlined in these Guidelines.

Please contact Board staff with any questions regarding applicability of these Guidelines.

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<sup>3</sup> See MVRMA sections 71, 72.11 and subsection 60(1.1), and *Waters Act* subsection 35(1) and paragraph 63(1)(g).

<sup>4</sup> 'undertaking': defined in the *Waters Regulations* as "an undertaking in respect of which water is to be used or waste is to be deposited" (see Schedule B of the *Waters Regulations* for types of undertakings).

<sup>5</sup> The quoted material is identical in all three Regulations except the *Waters Regulations* and the *Mackenzie Valley Federal Areas Water Regulations* include references within the quoted subsection to other parts of the respective regulations.

<sup>6</sup> Schedules D through H of the *Waters Regulations* outline thresholds for type A and type B water licences.

<sup>7</sup> The Land Use Permit Application Security Template is available on the Boards' website under "Apply for Permit/Licence".

## 1.4 How the Guidelines Were Developed

Sections 65 and 102(1) of the MVRMA authorize the Boards to develop the Guidelines:

65. Subject to the regulations, a board may establish guidelines and policies respecting permits and other authorizations, including their issuance under this Part.

The Boards implement this provision through the Areas of Operation Initiative. In 2015, under this initiative, the Boards formed several teams to work on issues identified as priorities related to various areas of operation.

The Security Team was one team established at that time, tasked to work on several identified issues related to the Boards' role in setting security. The Security Team's priority was to finalize the *Draft Guidelines for Closure and Reclamation Cost Estimates for Mine Projects*, which was developed and distributed for public review on December 22, 2014. Comments were due by February 18, 2015. Careful consideration was given to comments received during the public review of the draft document. The content of the Guidelines is based on legal and policy research, input from Board staff, and is consistent with past and present practices of the Boards.

## 1.5 Monitoring and Performance Measurement for the Guidelines

Mechanisms will be required to monitor and measure performance and to evaluate the effectiveness of these Guidelines. In accordance with the principles of a management systems approach (e.g., plan-do-check-act), the Boards will develop a performance measurement framework. These Guidelines will be reviewed and amended as necessary within that framework. The framework will also describe how affected parties, industry, and government will be involved in the review process.

## 2 Boards' Expectations for Closure Cost Estimate Submissions

This section of the Guidelines describes the Boards' expectations for closure cost estimates submitted by a proponent or a reviewer; it is intended to act as a "how-to" guide for developing closure cost estimates and should be used in conjunction with the RECLAIM User Manual.<sup>8</sup>

The Boards' expectations are the same whether the submission is made during a licensing or permitting proceeding, or during the term of a licence.

### 2.1 Collaborate with Parties Prior to Submitting an Estimate

When preparing closure cost estimates, proponents are strongly encouraged to collaborate closely with the GNWT,<sup>9</sup> INAC,<sup>10</sup> or other landowners. This collaboration should occur prior to and during the Boards' public process, with the goal of building consensus and enabling the proponent and the appropriate authority (e.g., the GNWT, INAC, etc.) to provide a thorough rationale for any differences in their cost estimates. In the case of a licencing proceeding (section 3.1), a proponent would begin this collaboration during pre-application engagement (Figure 1).<sup>11</sup> In some cases, reviewers may propose a closure cost

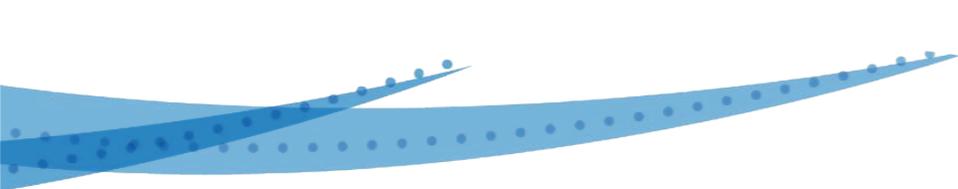
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<sup>8</sup> Contact the GNWT Department of Environment and Natural Resources to obtain a copy of the RECLAIM User Manual.

<sup>9</sup> For projects outside federal areas requiring a water licence, and for any projects on territorial lands

<sup>10</sup> For projects on federal areas

<sup>11</sup> See the MVLWB (2013) *Engagement and Consultation Policy* and MVLWB (2014) *Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits*



estimate; in which case, the reviewer should also collaborate with the proponent and the GNWT, INAC, or the appropriate landowner, prior to submission of the estimate to the Boards.

## 2.2 Obtain the Most Recent Version of RECLAIM to Develop Your Estimate

The RECLAIM model is the Boards' preferred closure cost estimation model; the model reflects the principles of the INAC (2002) Reclamation Policy (the Policy) and is based on reasonable and well-founded assumptions. For example, the unit costs in RECLAIM are based on independent third-party contractor costs, as specified in the Policy.<sup>12</sup>

In order to develop a defensible closure cost estimate in RECLAIM, users of the model should have sufficient expertise in mine closure and related fields, and in the costing of large engineering projects. RECLAIM users should follow the instructions within the model and its accompanying RECLAIM User Manual. Proponents are encouraged to contact Board staff to confirm they are using the most up-to-date version of RECLAIM prior to developing an estimate.

Closure cost estimates must be submitted using RECLAIM.<sup>13</sup> Should a proponent or reviewer wish to use an alternate method for estimation of closure costs, the onus is on the proponent or reviewer to propose an alternate method prior to submitting the estimate. Requests to use a different method must be accompanied by:

- a) a description of how the proposed method works;
- b) a description of how the method reflects the principles in the INAC (2002) Reclamation Policy; and
- c) rationale for why a different cost estimating method is being proposed.

The alternate method should be discussed with the GNWT, INAC, or other landowners, prior to requesting the Board's approval (see section 2.1 on collaboration for more information). If the Board approves use of an alternate method, the proponent (or reviewer, as the case may be) may then submit the closure cost estimate using this model.

## 2.3 Develop the Closure Cost Estimate

As stated in the introduction, the closure cost estimate for a given mine is often directly linked to the proponent's CRP; i.e., the closure cost estimate must reflect the third-party contractor costs required to implement the CRP. This includes all direct and indirect costs that would be incurred from the time the site is abandoned, through interim care and maintenance,<sup>14</sup> completion of reclamation, and post-closure monitoring and maintenance, until closure of the project has been completed in accordance with the final CRP (i.e., closure criteria have been met).

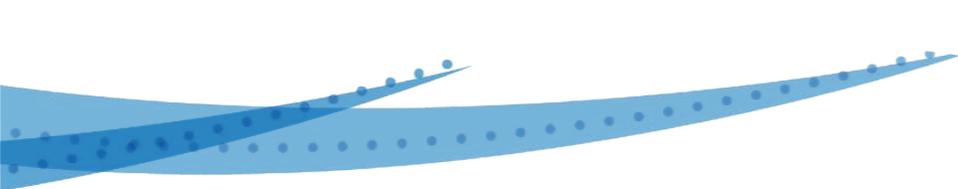
There may be costs which are not specifically identified in RECLAIM, but are required in order to implement the CRP. RECLAIM is an estimating tool which allows for the addition of line items. If a proponent or reviewer identifies closure costs for activities in the CRP that are not included in the

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<sup>12</sup> INAC (2002) *Mine Site Reclamation Policy for the Northwest Territories*, page 6.

<sup>13</sup> INAC (2002) *Mine Site Reclamation Policy for the Northwest Territories*, page 6; and MVLWB/INAC (2013) *Guidelines for the Closure and Reclamation of Advanced Mineral Exploration and Mine Sites in the Northwest Territories*, page 27.

<sup>14</sup> Refer to "Insolvencies" section in INAC (2002) Reclamation Policy for a description of the processes that may be undertaken when a company becomes insolvent or abandons a project. These legal processes would take place during a period of "care and maintenance" for the project.



RECLAIM model, these costs should be added as line items in RECLAIM. There are three regulatory compliance costs not included in RECLAIM which will likely be incurred during closure and reclamation:

- Engagement costs: the Boards' (2013) *Engagement and Consultation Policy* and their (2014) *Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits* require all holders of water licences and land use permits to engage with affected parties. Therefore, engagement costs during the closure planning, active closure, and post-closure phases should be included in the estimate.
- Regulatory compliance costs may include, but are not limited to: transfer or renewal of authorizations (e.g., submission of applications, participation in technical sessions and public hearings); preparing required submissions (e.g., annual reports required by the water licence, responses to information requests); reporting (e.g., monitoring reports, reclamation completion reports); and responding to reviewer comments during public reviews.
- All costs for finalizing the CRP prior to commencement of reclamation, which may include but not be limited to the completion of any outstanding reclamation research.

While estimates of these costs may not be well refined at the initial licensing phase, during operations a proponent will complete regulatory work, develop and update its CRP, complete reclamation research, and undertake regular engagement; therefore, these costs are anticipated to become better refined through the operational phase of the project.

## **2.4 Develop Supporting Documentation**

A document that describes the assumptions and inputs used to develop a closure cost estimate must accompany the estimate when submitted to the Board. In addition to this document, assumptions and data sources can also be directly entered into RECLAIM. When submitting a RECLAIM estimate, users must submit the EXCEL version of the estimate which the Boards will post to the public registry.

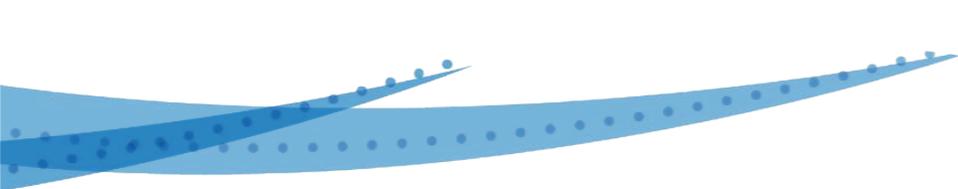
The Boards require additional supporting documentation if a proponent or reviewer wishes to use a site-specific cost, implement a phased approach to security, or request a reduction in the security deposit due to the completion of progressive reclamation. These are discussed in more detail below.

### **2.4.1 Documentation for Proposed Site-Specific Costs**

The RECLAIM model has unit costs for a suite of possible closure and reclamation activities. For example, RECLAIM has unit costs for hauling and loading reclamation materials and for removing buildings. In most cases, proponents and reviewers use the set of default unit costs provided with the RECLAIM model to develop closure cost estimates for a project. The Board encourages use of the default costs. If the default costs do not reflect site costs, the Estimator tab in RECLAIM can be used to develop certain site-specific costs, as discussed further in the RECLAIM User Manual.

Should a proponent or reviewer believe a default unit cost in RECLAIM is not reflective of site-specific costs but does not believe the Estimator is applicable, it is possible to request approval of a site-specific cost by submitting the following documentation with the RECLAIM estimate:

- a) an explanation of why the cost in RECLAIM does not apply; and
- b) an estimate of the site-specific cost being proposed, with detailed supporting calculations and documentation, including evidence that the site-specific cost represents third-party contractor costs. If a site-specific unit cost is based on confidential information (e.g., contractor bids), the



Board can consider accepting confidential information as outlined in the Board's Rules of Procedure.

When both requirements (a) and (b) are met, the Boards will consider whether the proposed site-specific cost is appropriate. Site-specific costs developed without using the Estimator should be discussed with the GNWT, INAC, or other landowners, prior to submitting them to the Board. As noted above, site-specific unit costs must reflect third-party contractor costs, not the costs that would be incurred if the proponent conducted the work.<sup>15</sup>

#### **2.4.2 Documentation for Proposed Timelines for Posting Security**

A proponent or reviewer may propose a phased payment approach for posting of the required security deposit. This allows the posted security to increase as mine development progresses (i.e., as liability associated with the closure and reclamation the site increases) through payment of security in installments.<sup>16</sup> Each phase should be based on a pre-defined milestone. For example, if a proponent proposes to submit an initial deposit prior to construction (1<sup>st</sup> milestone), an increase prior to mining (2<sup>nd</sup> milestone), and another increase prior to milling (3<sup>rd</sup> milestone), the proponent should submit one RECLAIM estimate for *each* of these phases of the project. Supporting rationale should be submitted with the RECLAIM estimate explaining how each closure cost estimate has been calculated. This rationale must include a discussion of how the proposed security deposit for each milestone ensures the estimated cost to close and reclaim the site never exceeds the posted security deposit during any phase of the project.

#### **2.4.3 Demonstrate Completion of Any Progressive Reclamation**

The Boards will consider requests to reduce security for progressive reclamation work after it has been completed. The 2013 MVLWB/INAC Closure Guidelines require proponents to submit:<sup>17</sup>

1. A Reclamation Completion Report; to be submitted once progressive reclamation is completed.
2. A Performance Assessment Report; to be submitted after monitoring has been completed assessing the performance of the reclamation work. The report must demonstrate how closure objectives and closure criteria have been met.

The MVLWB/INAC (2013) Closure Guidelines states: "with each performance assessment report there may be an opportunity to revise the security estimate, depending on the stage of the operation and the closure and reclamation plan".

Should the Boards determine security is to be refunded for completion of progressive reclamation, the closure cost estimate and security deposit will continue to include any remaining costs, for example the costs of future monitoring and maintenance.

Prior to submitting a request for a refund for completion of progressive reclamation, proponents should contact Board staff.

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<sup>15</sup> INAC (2002) *Mine Site Reclamation Policy for the Northwest Territories*, page 6.

<sup>16</sup> The practice of including phased installments in the licence is consistent with the INAC (2002) *Mine Site Reclamation Policy for the Northwest Territories*, which states that "[t]he amount of financial security on deposit will normally increase proportionately as mining proceeds. Generally, this implies that as the mine site grows, water usage increases and the costs to restore a site expand. Accordingly, reclamation costs are usually estimated to rise over the life of the mine" (Page 10).

<sup>17</sup> MVLWB/INAC (2013) *Guidelines for the Closure and Reclamation of Advanced Mineral Exploration and Mine Sites in the Northwest Territories*; pp. 26-27.

### 3 Boards' Processes for Setting Security

This section presents an overview of the Boards' processes for determining the security deposit for a project. The Guidelines describe two distinct processes for setting security.

Section 3.1 discusses the process for setting security during a licensing proceeding. During a water licensing proceeding, it is common for the Boards to also consider a land use permit application for the project. The Board will set an initial security deposit when it first issues a water licence and land use permit for a new mining or advanced exploration project. The Boards issue these authorizations for a term of several years.<sup>18</sup>

During the term of the water licence, the Boards may adjust the security deposit under the water licence. Security required by a land use permit is not commonly adjusted.<sup>19</sup> Section 3.2 presents the process for adjusting the security deposit for a project during the term of the licence.

#### 3.1 **Setting Security during Licensing**

A licensing proceeding is conducted in accordance with the Boards' Rules of Procedure,<sup>20</sup> the *Waters Act*, and the MVRMA, whenever a proponent applies for a new licence, a licence renewal, or a licence amendment.

A proceeding includes opportunities for reviewers to provide input or ask questions directly of the proponent, and for the proponent to respond to questions and recommendations from reviewers.

Figure 1 (below) depicts the steps within a licence proceeding involving a public hearing to illustrate when reviewers and the proponent provide input on a closure cost estimate.

At the end of the proceeding, the Board sets the security deposit based on all the information provided during the proceeding and includes this value in the water licence (and potentially in a land use permit, if one is being issued). Type B water licences for which a public hearing is held, and all type A water licences, are sent to the appropriate Minister for approval.<sup>21</sup> The Board prepares Reasons for Decision whenever issuing a water licence or land use permit. The Reasons for Decision will include an explanation of decisions related to the security deposit.

#### **The Role of the GNWT and INAC**

INAC and the GNWT are the authorities responsible for approving Type A water licences, setting the form of security, holding security, and ultimately for paying for the closure and reclamation of abandoned mine sites on federal and non-federal areas (respectively). Therefore, INAC and the GNWT play a central role in estimating closure costs. They also act as reviewers, providing expert advice and closure cost estimate submissions during the Boards' processes for setting security.

INAC and the GNWT are responsible for keeping the RECLAIM model current by periodically releasing updates that account for inflation and improvements to the unit costs, and reflect best practices in closure cost estimation.

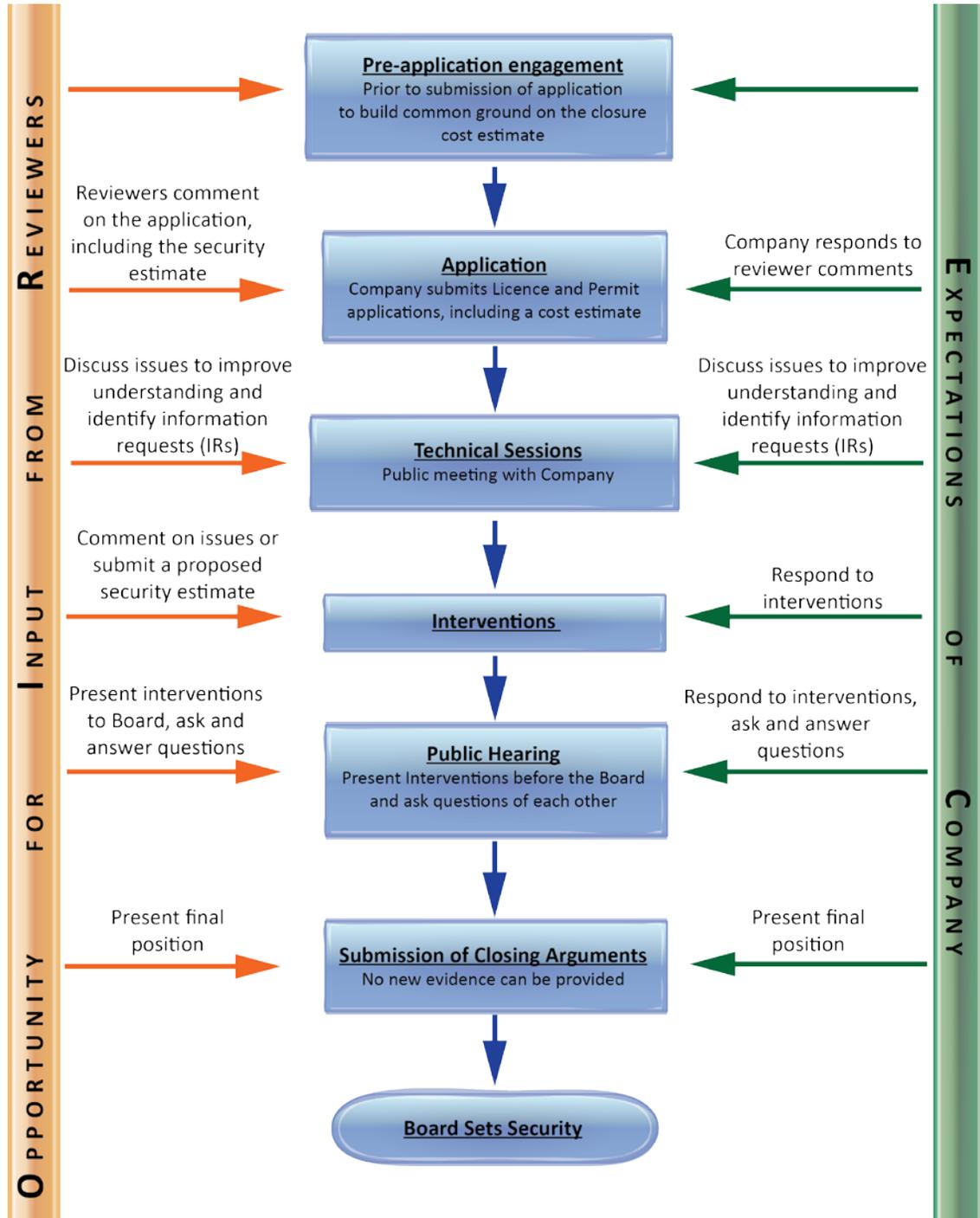
<sup>18</sup> The maximum term of a land use permit is 5 years, with a one-time opportunity to renew for two additional years; the term of a Water licence is often longer and the duration is different for each project.

<sup>19</sup> During the term of a land use permit, the only way to adjust the security deposit is to amend the permit. An amendment to a permit can only be requested by the proponent. The only other time the Board can adjust security during the term of a land use permit is if it is being assigned to a new proponent. Therefore, section 3 of these Guidelines focuses on adjustments to water licence security only.

<sup>20</sup> The Rules of Procedure can be found under "Resources - Policies and Guidelines" at [mvlwb.ca](http://mvlwb.ca).

<sup>21</sup> As per subsection 47(2) of the *Waters Act* and subsection 72.18(2) of the MVRMA.

Figure 1: Example of Board Process for Setting Security During a Licence Proceeding<sup>22</sup>



<sup>22</sup> Please note: This figure does not include all the steps of a licence proceeding; its purpose is to depict the steps within the licence proceeding when reviewers are able to provide input on a closure cost estimate and when the proponent is able to respond, prior to the Board setting the security deposit for the project. The orange arrows identify where reviewers have the opportunity to provide input and the green arrows represent where the proponent has the opportunity to respond to reviewers. Should a reviewer wish to submit a closure cost estimate, they have the opportunity to do so within the timelines of the proceeding.

### 3.2 Adjusting Security during the Term of a Licence

During the term of a water licence, the Board may adjust the closure cost estimate to ensure the amount of the security deposit posted to the water licence continues to reflect the costs to close and reclaim the project.

The timing of security adjustments is often directly linked to the closure planning process and is determined on a case-by-case basis. Typically, the process for adjusting security is different than the proceeding followed during licensing (as described in section 3.1).

Whether an adjustment to a closure cost estimate is warranted may be determined by:

- a) Licence conditions; some licences have conditions that address the timing of security adjustments.
- b) The amount of time that has passed since the security deposit for a licence was set or last adjusted; adjustments that are too frequent may place an unnecessary burden on the resources of the Boards, the proponent, the landowner, government, and reviewers; adjustments that are too infrequent can result in a security deposit that no longer reflects the estimated costs to close and reclaim the project.
- c) The information presented in the Closure and Reclamation Plan Progress Report;<sup>23</sup> each progress report includes “a list of any factors that would influence an increase or decrease in the total reclamation liability next time an updated estimate is required”<sup>24</sup> (e.g., evidence may be presented that the proponent has completed progressive reclamation).
- d) Any requests made by the proponent or other parties to adjust licence security (e.g., the proponent has proposed changes to the CRP). *Note:* any requests for adjustment to the security deposit should be accompanied by a detailed description of the proposed change, a rationale for the change, and supporting documentation (see section 2.4).
- e) Whether there has been an adjustment to the RECLAIM model since the Board last set security for the project or whether the estimate requires adjustment for inflation.
- f) Whether there is an upcoming licence renewal or amendment.
- g) Other considerations specific to the project or circumstance.

Most often, the Board relies on the information the proponent provides in the Closure and Reclamation Plan Progress Reports to decide whether an adjustment to the closure cost estimate is appropriate (item (c) in the list above).

The Boards will conduct a public review of proposed adjustments to a closure cost estimate (Figure 2). The public review process allows any party to submit written comments on the closure cost estimate, and the proponent is then provided an opportunity to respond in writing.<sup>25</sup> The Board makes a final decision regarding any adjustments to the closure cost estimate based on the information provided during the review period. The Board will provide an explanation of the basis for a security adjustment.

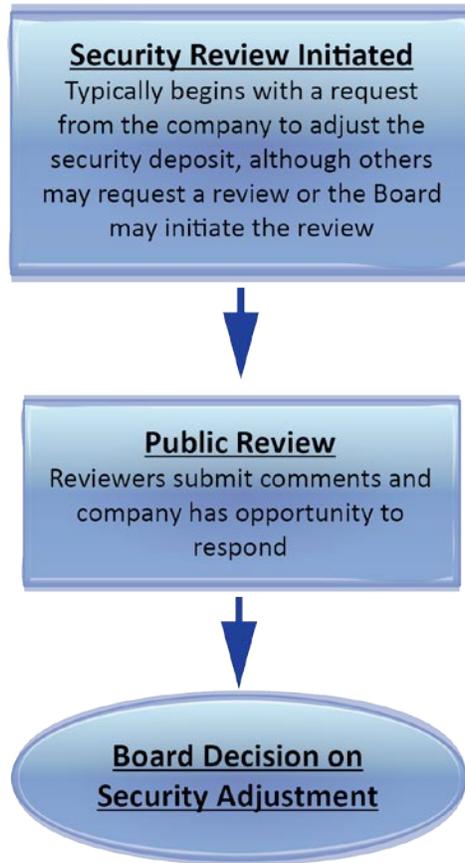
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<sup>23</sup> For more information on requirements for Closure and Reclamation Plan Progress Reports, see the MVLWB/INAC (2013) *Guidelines for the Closure and Reclamation of Advanced Mineral Exploration and Mine Sites in the Northwest Territories*.

<sup>24</sup> *Ibid.* p. 25.

<sup>25</sup> The Boards have the option to hold a public hearing, even if it is not required by the legislation (sections 24 and 72.15 of the MVRMA).

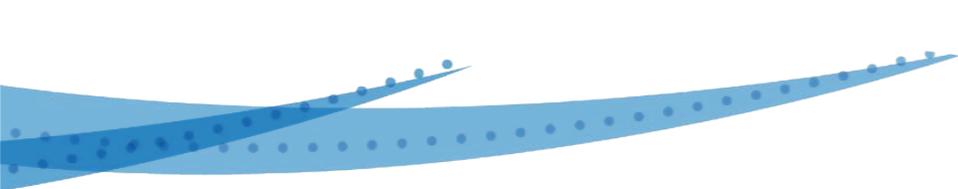
Figure 2: Example of Board Process for Adjusting Security During the Term of a Licence



Should the term of the licence end before the end of project life, the proponent must apply to renew its water licence. The Board may adjust the security deposit again in issuance of the renewed licence. Whether or not a proponent is required to submit an adjusted closure cost estimate during licence renewals depends on a number of factors. For example, the Board will likely require a new closure cost estimate during a renewal if a new version of RECLAIM was recently released by the GNWT or to reflect the status of progressive reclamation. In addition, should a proponent wish to apply for an amendment to the existing licence (i.e., a change in the requirements of the licence), the security deposit may be adjusted depending on whether the proposed amendment will affect the closure cost estimate.

Review of security adjustments during licence renewals or licence amendments follows the process outlined in Figure 1 (not Figure 2). Proponents are strongly encouraged to contact Board staff prior to submitting a renewal or amendment application to discuss the need to include an adjusted closure cost estimate.

In all cases, whether security is being set for the first time, adjusted during the term of the licence, or adjusted during a renewal or an amendment, the Boards allow for public input and ensures the process is inclusive, fair, and transparent. The proponent is always provided an opportunity to respond to information submitted by reviewers, prior to consideration by the Board.



### 3.3 Determining the Security Deposit

The security deposit reflects the amount of the Board's closure cost estimate.<sup>26</sup> Once the Board determines the closure cost estimate for a new water licence or land use permit, or determines the adjustment to an existing closure cost estimate, the Board will make a decision with reasons. The Board writes the amount of the security deposit into a schedule attached to the water licence or into a condition in the land use permit. In the case of an adjustment to the water licence security deposit, the Board will update the appropriate water licence schedule<sup>27</sup>. If necessary, the Board will adjust the proponent's RECLAIM spreadsheet to reflect the Board's decision, and post the spreadsheet on the public registry.

The proponent must post the required security deposit(s) with the GNWT (or INAC on federal areas). Timelines for posting a security deposit may be outlined within the water licence or land use permit (e.g., security is to be posted prior to commencement of construction, etc.). The Boards may include a series of phased payments in the licence based on project milestones (see section 2.4.2).

The RECLAIM model allows the user to divide each line item into land-related vs water-related liability. Based on this split, the Boards may use their discretion to determine how to allocate security between authorizations (licences and permits related to the project).

### 3.4 Preventing Duplication

The Boards may reduce security in a land use permit or water licence by an amount held under another regulatory authorization for the same project to prevent duplication. For example, if the GNWT holds security under a land lease, a proponent may request that security in the water licence or land use permit reflect this, should security be held for the same purposes/activities. To grant such a request, the Board requires agreement from the GNWT (or other authority, depending on the authorization), proof that the security is posted elsewhere, and documentation to demonstrate that the amount held under the other authorization (the land lease in this example) is for costs required to implement aspects of the closure and reclamation plan.

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<sup>26</sup> The closure cost estimate may be rounded to determine the value of the security deposit.

<sup>27</sup> Refer to footnote 20 for more information regarding adjustments to land use permit security deposits.

*Government of Northwest Territories*

**[www.gov.nt.ca](http://www.gov.nt.ca)**

Box 1320  
1st Floor Gallery Building  
4923 - 52nd Street  
Yellowknife, NT X1A 2L9

Phone: 1-855-698-5263  
Fax: (867) 765-5667

*Mackenzie Valley Land and Water Board*

**[www.mvlwb.com](http://www.mvlwb.com)**

Box 2130  
7th Floor - 4922 48th Street  
Yellowknife, NT X1A 2P6

Phone: (867) 669-0506  
Fax: (867) 873-6610

*Indigenous and Northern Affairs Canada*

**[www.aadnc-aandc.gc.ca](http://www.aadnc-aandc.gc.ca)**

Box 1500  
4923 - 52nd Street  
Yellowknife, NT X1A 3Z4

Phone: (867) 669-2500  
Fax: (867) 669-2715