

REGIONAL ENGAGEMENT INITIATIVE Phase 2

“WHAT WE HEARD”

**Feedback on “SEEKING YOUR VIEWS:
Improving our engagement practices in
the Northwest Territories”**

AND

***“SOME SUGGESTIONS FOR IMPROVING
DIAND’S ENGAGEMENT &
CONSULTATION PRACTICES IN THE
NWT”***

DIAND-NWT REGION

June 12, 2006

“We don’t know who DIAND is; we hardly know the people in the department. We don’t know all the programs and services so we aren’t sure if we’re missing opportunities.” (Gwich’in Tribal Council, November 2004)

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EXECUTIVE SUMMARY

DIAND-NWT Region is committed to the continuous improvement of its working relationships. One avenue is to improve the processes of engagement and consultation that DIAND uses to engage NWT residents, Aboriginal leaders, other governments, industry and stakeholder organizations in the full range of its everyday operations and responsibilities. Interviews with its key partners have begun to identify how this might be done. This paper summarizes suggestions for improvement and concludes with some initial and practical proposals for further suggestions toward action in the near term.

The Regional Engagement Initiative (REI) is composed of three phases:

- Phase 1: Initial consultation on the discussion paper **“Seeking Your Views: Improving our engagement practices in the NWT”**
- Phase 2: Follow-up consultation on Phase 1 findings **“What We Heard”** and **“Some suggestions for improving DIAND’s Engagement and Consultation Practices in the NWT”**
- Phase 3: Completion of an **Engagement & Consultation Action Plan** to improve regional engagement and consultation practices

1.0 WHAT WE HEARD

1.1 INTRODUCTION

In the Fall of 2004, DIAND developed a discussion paper entitled *“Seeking Your Views: Improving our Engagement Practices in the Northwest Territories”*. The paper described the many instances where DIAND engages residents, Aboriginal people, governments and other organizations in its decision-making processes. The intent was to invite suggestions on how those processes could be better understood by everyone involved, how the challenges could be overcome and then how our engagement and consultation practices could be improved.

As a foundation of the REI, it is recognized that engagement and consultation can stem from three broad sources or categories:

1. Aboriginal Rights

Section 35 of the *Constitution Act (1982)* recognizes a special relationship between the Crown and Aboriginal people which identifies a specific duty to consult in certain situations;

2. Statutory, Treaty or Contractual

Federal legislation and regulation administered by DIAND in the NWT may

further define consultation obligations on the Department in connection with certain decisions (e.g. Comprehensive Land Claim and Self-Government Agreements, Interim Measures Agreements, the *Mackenzie Valley Resource Management Act* (MVRMA), the *Canada Oil and Gas Operations Act* (COGOA));

3. Good Governance

Good governance is easier when everyone affected by government decisions has an opportunity for appropriate and meaningful participation in the design and implementation of policies, programs and services (e.g. *Contaminated Sites Management Policy 2002*).

The “*Seeking Your Views: Improving our Engagement Practices in the Northwest Territories*” paper was widely distributed and posted on the internet (http://nwt.tno.inac-ainc.gc.ca/pp_e.htm). It invited feedback to both general and specific questions. Targeted interviews¹ were initiated with Aboriginal organizations and the Government of the Northwest Territories to further explore concerns and issues.

Since then, new events have occurred that have reinforced the need to move forward with this work, and have provided additional information for our consideration:

- Federal Ministers participated in a Canada-Aboriginal Roundtable Process to build a stronger and more positive relationship between the Government of Canada and Aboriginal Canadians.²
- The Supreme Court of Canada made several rulings (e.g. *Haida Nation*, *Taku River* and *Mikisew Cree*) that gave greater clarity regarding the duty to consult flowing from the honour of the Crown, and the rationale for adequate and inadequate practices in specific circumstances. To address this ruling, the Government of Canada has begun national consultations exploring how best to develop a federal approach to consultation and accommodation in response to these decisions.

This is a time of great opportunity for political, social and economic development in the NWT. These changes will be constructive and positive for everyone involved to the extent that the way we engage and consult together on the choices available to us meet our expectations.

This paper will:

1. summarize the input provided in response to the specific questions posed in the Phase 1 discussion paper and the face-to-face interviews;
2. suggest some improvements that could be taken to address each of the issues, considering other parallel events and initiatives, and;

3. seek further input. This will require constructive responses to the suggestions for improvements, which would then lead to a set of actions that DIAND can take to improve its engagement and consultation practices in the NWT Region.

Two annexes provide a summary record of interviews with each participating organization and a summary of the responses provided to the questions in the Phase 1 Discussion Paper.

The federal government and many provincial and Aboriginal governments across the country are taking actions to address this complex and developing aspect of citizenship. There are similarities and differences in the scope and approaches taken. The suggestions outlined in this paper, therefore, can only be initial steps in the ongoing work of finding better ways to work together in building a strong and healthy territory and nation.

1.2 ISSUE THEMES

A number of key themes consistently emerged from interviews and the formal responses to the “*Seeking Your Views*” Phase 1 paper:

- 1) **DIAND must improve its relationships with its partners;**
- 2) **capacity is a critical issue;**
- 3) **better communication and information are needed;**
- 4) **consultation with Aboriginal peoples is a special situation, and;**
- 5) **engagement practices used in DIAND’s everyday operations (programs, services, administrative activities) need attention.**

The following summarizes written comments, and the discussions and meetings held with participants around these five themes. The comments have been written as transparently as possible to reflect the nature of the discussions and submissions. Some comments applied to several themes.

Participants also provided suggestions of ways to address these issues; however, it should be noted that the suggestions reported here are a record of what was said and not necessarily an endorsement by DIAND or a proposed element of this engagement strategy. A complete listing of comments is presented in Annexes 1 and 2.

1) DIAND must improve its relationships with its partners

Aboriginal groups and communities felt their relationship with DIAND-NWT was either distant or had eroded over the past few years, and that direct contact with the department was needed. DIAND’s engagements with Aboriginal people,

communities and resource development Boards tended to be focused on immediate issues rather than on long-term relationships.

Most groups felt that their relationship suffered as DIAND turned its attention to the interests of a ‘competing’ group. The perception among some Aboriginal groups was that the prospect of devolution had refocused federal attention on the Territorial government at the expense of relationships with Aboriginal organizations. On the other hand, the GNWT felt that DIAND did not treat municipal governments and First Nations in an equitable manner, with more funding and support going to First Nations. Finally, small communities were concerned that decision-making at any level of government is focused more on regional governments and organizations than communities, and doesn’t take community impacts into account.

Received suggestions included:

- Senior DIAND managers should meet with Chiefs, senior managers of the GNWT, and staff in the regions and communities on a regular basis.
- Relationships between resource development Boards and DIAND field staff should be looked at and improved, and that DIAND field staff should be more proactive in informing and updating Boards of their activities.
- A protocol or guideline should be adopted to be used when federal government staff visit communities. These guidelines should establish practices for notifying bands, chiefs, and/or communities that staff are visiting and of the purpose of the visit.

Since these comments were made, the Northern Strategy, the Canada/Aboriginal Roundtable Process, the New Deal for Communities, and the negotiations surrounding the Socio-Economic Impact Fund addressing issues of the Mackenzie Gas Project have provided a context to address some of the issues; however, consultation and engagement practices remain relatively unchanged.

2) Capacity is Critical

Capacity was the single-most important issue raised by participants, although capacity had no consistent definition. Comments about capacity were identified in every meeting during Phase 1. There is concern in the medium sized and smaller communities of the NWT, that rapid growth and development are overwhelming their ability to actively respond and participate in development decisions and development opportunities.

Communities are being challenged to their fullest and do not have adequate time, financial or technical resources to participate with government adequately or meaningfully. ‘Consultation fatigue’ has resulted from:

- the large number of consultations on any single issue;
- the large number of issues where consultation was needed;
- the large number of different and sometime interdependent decision-

- makers that needed to consult on each issue;
- the volume and breadth of expertise required to understand and meaningfully engage in any of these issues, and;
- Bigger development projects, like the Mackenzie Gas Project, have diverted community capacity away from participation in other important non-economic development issues.

Resource Boards were similarly concerned about their lack of funding capacity to fully carry out their mandates.

Received suggestions included:

- DIAND NWT should develop an integrated capacity strategy for communities;
- DIAND should promote more educational and training opportunities (like the Aboriginal Masters graduate program);
- DIAND should coordinate capacity building initiatives.

3) Better Communication and Information are needed

Participants identified communication as an important part of their relationship with DIAND. Communication pertains to technical information, processes and procedures for programs and services, and/or processes for Aboriginal consultation. These types of communication were not systematically discussed, though it might be helpful to do so in the future. There was specific mention about the lack of understanding, knowledge or awareness of what DIAND is, and what it does in the North. DIAND didn't seem to have a human face; staff and senior managers were not well known.

Received suggestions included:

- Regular communications on DIAND activities, including face to face meetings;
- Plain language formats for federal government documents;
- Aboriginal language translations to encourage elders' participation, and;
- Aboriginal awareness training for DIAND staff.

4) Consultation with Aboriginal peoples is a special situation

Aboriginal participants identified specific consultation issues around their constitutional relationship with the Crown. In general, participants stressed the 'special relationship' the Crown has with Aboriginal peoples and the resulting significance of consultation as the mechanism, or bridge, between the Crown and Aboriginal peoples. Specific comments included:

- A definition for 'consultation' and the 'duty to consult' for government and Aboriginal groups was needed; 'consultation' may be applied differently given the facts of each situation, but it still needed to be defined.
- It was proposed that if Chiefs and leaders had more interaction with DIAND-NWT, there would be fewer problems to resolve.

- The fiduciary responsibility rests with Canada, not just DIAND. The responsiveness of federal government departments as representatives of the crown to Aboriginal groups is uneven.
- The ‘regional engagement initiative’ needed to account for individual communities, not just regional and sectoral organizations.
- Canada doesn’t apply or implement court decisions that affect First Nations peoples, whether it is about consultation or band membership; follow-up action should be seen to be done. On this item, the Corbiere case was cited on three occasions.
- Consultation principles should provide explicit standards for translation, including appropriate methods of communication with elders.
- Consultation as it is described in the Royal Commission on Aboriginal Peoples (RCAP) should be implemented by the federal government. RCAP provides a rationale to develop the power, legitimacy and resources that Aboriginal governments need to govern themselves.
- DIAND-NWT needs to engage with the Métis and consult on issues important to them, in that DIAND and the Crown have a ‘duty to consult’ with Métis, as they do with all Aboriginal peoples.

Received suggestions included:

- Throughout the course of this Regional Engagement Initiative, DIAND should visit all Aboriginal communities to hear their concerns about consultation and to establish community-specific agreements on engagement and consultation processes. A staff directory should be established and maintained. Such a directory could include: the name of a DIAND staff member whom each municipal/band office could use as a contact and relevant community/regional organizations.
- The Government of Canada should develop a single consultation process that is supported by Cabinet and implemented consistently by all departments. [Note that as a result of the *Taku/Haida* Supreme Court rulings, this suggestion is in its early stages of development on the federal scene. The NWT Federal Council agreed to host federal team visits to the NWT in its visits with Aboriginal partners. The first NWT preparatory meetings occurred on 14-15 November 2005, in Yellowknife.]
- Despite the federal *Taku/Haida* initiative, DIAND-NWT should establish interim ‘crown consultation’ procedures; this might be a formal protocol or an agreement on an evolving ‘best practice’.
 - This could specify a process for determining if a particular activity required consultation or not and a method for planning a consultation process appropriate to particular circumstances.
 - This should also assign clear roles and responsibilities for consultation as it relates to third parties (federal government, GNWT, industry and MVRMA Boards).
- DIAND-NWT should develop a regular reporting mechanism on legislative initiatives and/or court cases that affect bands and Aboriginal peoples; this could include a system of legal briefs for bands.

5) Engagement practices used in DIAND’s everyday operations (programs, services, administrative activities) need attention

In addition to the more visible land development projects (diamond mines, oil and gas exploration and development projects), we heard many comments about engagement practices on other DIAND policies, programs and/or activities:

- DIAND’s decision-making processes are too slow in many areas of the department’s program operations.
- Aboriginal participants were concerned about their lack of involvement or influence in DIAND’s policy and program development. At the end of May 2005, the Canada-Aboriginal Roundtables resulted in agreements with Aboriginal groups for greater involvement in policy development.
- Communities want more say about the issuance of Prospecting Permits:
 - DIAND isn’t adequately communicating to communities information about the issuance of prospecting permits, or providing advance notice that a license may be issued. One chief commented that DIAND ‘used to provide notice but they don’t do that anymore’. DIAND should come to the community and hear what residents think about permitting.
 - An elder attending the same meeting suggested that the land claim has a mechanism for communicating these types of things. If the land claim doesn’t have a mechanism, then the board and communities should work with the federal government to identify a “working together mechanism,” to allow one another to know what is taking place on the land. It was suggested that the MVRMA Part 6 NWT Environmental Audit process might also address the permit issuance issues.
 - In addition, DIAND doesn’t appear to consider land use plans when it issues permits. Traditional Knowledge (TK) was suggested as a tool to help the exploration process.
- Specific to the DIAND-NWT District Land Offices’ relationship with communities and regions:
 - Where some were disappointed at the level of engagement with the district offices, some felt that the DIAND district office is extensively engaged in inspections, compliance, reports on development activities, etc, but doesn’t get involved with the community, regional Boards or resource committees. Better relations could be established with the regional offices through regular activity updates, and their attendance at and presentations to community meetings.
- Year-to-year funding reduces the effectiveness of DIAND staff, as well as of organizations that rely on DIAND for some or most of their funding. Predictable budgets would improve the ability of partners to commit to multi-year dialogues and actions, which are particularly important to long-term relationship building and effective engagements in the NWT.

- DIAND seems to provide inconsistent support to both Boards and Aboriginal organizations for environmental programming and environmental assessment activities.
- Pan-territorial strategies are being developed without significant involvement of Aboriginal governments.
- When developing policy, DIAND should be consistent and have a regional lens, taking into account how regional and local governments do business.
- Referencing the Auditor General of Canada there was concern that the DIAND-NWT is not implementing its own policies when it comes to consultation and engagement.
- DIAND needs to cut down the time for board appointment approvals. This issue has been observed by many players in the resource management process, and relates to consultation only to the extent that recommendations are seriously considered. Speeding the appointment process is a priority under regulatory improvement activities.

Received suggestions included:

- DIAND should work with communities to build a “single window” of access for programs, services and engagement on departmental programs and services.

2. SOME SUGGESTIONS FOR IMPROVING DIAND'S ENGAGEMENT & CONSULTATION PRACTICES IN THE NWT

2.1 Overview

Northern residents, Aboriginal organizations, and other government and non-government organizations have suggested possible actions to address each of the issues raised in Phase 1 of this Regional Engagement Initiative. The following provides a brief summary of what some of the suggested proposals entail and serve as a basis for further discussion and possible development.

Issue: RELATIONSHIPS

1a. Aligning strategic objectives and priorities with our partners

Engagement and consultation is greatly improved when there are trusting relationships between the parties. Trust is built through *competence* (performing our roles to a high professional standard), *integrity* (saying what we mean and doing what we say), and *comfort* (feeling connected to each other). To engage in decision-making on a specific issue, all parties would benefit by building competence and integrity – forms of trust. To the extent that the relationship is intended to be long-term, the cultivation of 'comfort' would be helpful as well.

One way to build 'integrity' is to strengthen an understanding of the objectives and priorities of the parties. DIAND-NWT, as part of the Government of Canada, is building a 'results based' approach to its work. This means that DIAND-NWT expects to be held accountable for achieving measurable results in improving the lives of Northerners in areas that it has the mandate to operate. These plans, priorities and performance measures are included in the Department's planning and reporting documents that are presented to Parliament annually. However, the detail regarding the specific results and measured results achieved by the NWT region are lost in the national summaries.

Some suggestions for improvements:

- 1) **DIAND could expand on or establish regular annual information-sharing forums to discuss and improve alignment between our expectations and our respective plans and strategic priorities with our partners.**
- 2) **The Region maintains a strategic plan and measures its performance (using objective data) on a compact dashboard called a Scorecard. To build legitimate expectations about what DIAND-NWT expects it can reasonably achieve, DIAND-NWT's "Strategic Plan" and its Scorecard could be posted on its public website.**

1b. Improving our overall relationships: Other actions that could improve relationships with our partners

DIAND is committed to developing and improving its intergovernmental relationships, including cross-governmental relations. In order to address the concerns voiced, the Region could consider a wide variety of actions to improve its relationships with peoples, governments and organizations in the Northwest Territories.

Some suggestions for improvements:

- 1) Establish annual meetings between DIAND-NWT Region senior staff, Aboriginal government leaders and their officials in the NWT;
- 2) Establish regular opportunities for updates between staff at the District and sub-District level and staff of the key regional and community Boards and organizations;
- 3) Publish and communicate the findings and outcomes of engagements and consultations regularly, and post that information on the DIAND regional website to improve access to all interested partners;
- 4) Develop and implement an annual NWT Region Consultation and Engagement Forum;
- 5) Work with regional Aboriginal organizations as appropriate to establish Region-specific engagement strategies;
- 6) Identify and establish a working arrangement with Métis organizations to address outstanding concerns, and;
- 7) Support the development and establishment of a regional capacity strategy focusing on community concerns about current initiatives.

Issue: CAPACITY

Capacity (or lack of it) was the most important issue raised by participants. No consistent definition of capacity emerged; however, it includes elements such as adequacy of dollars, human resources, training and technical knowledge.

2a. Developing a DIAND-NWT “Capacity Building Strategy”

Some suggestions for improvements:

- 1) Develop an integrated “*capacity building strategy*” for NWT and Aboriginal communities to participate in decision-making to guide their own political, economic and social development in collaboration with DIAND (and eventually with other federal departments), the GNWT and regional Aboriginal organizations.

2b. Identifying Consultation Participation Resources

Some suggestions for improvements:

- 1) DIAND-NWT Region could work with DIAND Headquarters and stakeholders to identify appropriate and reasonable resources to facilitate stakeholder participation in decisions that affect them.

COMMUNICATION & INFORMATION

Respondents told us in Phase 1 that DIAND has to communicate its current and proposed programs and activities in a more effective manner.

3a. Notifying stakeholders regularly on DIAND-NWT’s plans for consultation

Some suggestions for improvements:

- 1) In addition to the improvements proposed in sections 1, 4 and 5, DIAND could provide information to stakeholders about its planned engagement/consultation and key program activities on a regular basis.

3b. Improving the manner in which DIAND communicates with it Aboriginal partners

Some suggestions for improvements:

- 1) DIAND could produce more of its documents and materials in plain language formats.
- 2) DIAND could review its current Aboriginal awareness training for staff.

ABORIGINAL CONSULTATION

4a. Meeting obligations with respect to s.35 Crown Consultation: Proposed Guidelines

Many parties to Aboriginal consultation across the country are considering the impacts of the Supreme Court rulings in *Haida/Taku*, *Mikisew Cree* and other cases. These cases established that the duty to consult is grounded in the honour of the Crown. As such, there is a legal duty to consult and, where appropriate, to accommodate when the Crown has knowledge of the potential existence of an Aboriginal right or treaty right, and contemplates conduct that might adversely affect it.

Adequacy of consultation is the key outcome of these Court decisions. DIAND-NWT Region wishes to improve its consultation practices that relate to rights recognized and affirmed under s.35 of the *Constitution Act, 1982*, by establishing and implementing a consistent “guidelines” based approach.

Some suggestions for improvements:

- 1) DIAND could apply a set of Consultation principles to guide its s.35 Crown Consultation practices.
- 2) DIAND-NWT Region could develop a Consultation Plan with impacted Aboriginal groups, appropriate to each unique situation.
- 3) Development of Consultation Plans could be preceded by a Consultation Analysis, which would:
 - a) Provide consideration of the broader context in which activity is taking place
 - b) List necessary research requirements to undertake consultation
 - c) Outline of key timelines
 - d) Identify any current litigation that may be impacted by the proposed activity
 - e) Describe issue or activity
 - f) Describe Aboriginal group: rights holders, territory involved, rights affected
 - g) Describe other participants, third parties
 - h) Outline a range of possible options and decisions to be made
 - i) Assess the potential for infringement to occur (i.e. potential adverse impact on an Aboriginal or treaty right)
 - j) Decision on whether further consultation is required
- 4) Consultation Plans may consider or include:
 - a) Expectation of parties
 - b) Scope of activity
 - c) Timing
 - d) Resources - financial and human - available to participants
 - e) Sharing of information - disclosure of all relevant facts
 - f) Follow up, monitoring, accountability
 - g) A decision making process, if appropriate
 - h) An implementation plan

4b. Providing direction for other parties involved with Aboriginal Consultation

DIAND's Regional Engagement Initiative may also include actions and/or guidelines that improve and support Crown Consultation in critical areas.

Some suggestions for improvements:

- 1) **DIAND could work with NWT industry, Aboriginal communities and Boards to identify an NWT approach to engagement/consultation within resource development activities, including information and potential guidelines on:**
 - a) **Consultation – roles and responsibilities**
 - b) **Scale and scope – appropriate consultation guidelines for low level, low impact activities**
 - c) **Engaging Aboriginal communities in the NWT: practical advice, do's & don'ts**
 - d) **Community relations, community information and background**

4c. Canada's initiative to develop a comprehensive national s.35 Crown Consultation policy

As part of its commitment to a new relationship with Aboriginal groups, the Government of Canada is currently developing a federal approach to consultation in response to the Supreme Court of Canada's decisions in *Haida* and *Taku River* [2004]. DIAND has the responsibility to lead the federal approach on aboriginal consultation and has begun discussions with Aboriginal Groups. These discussions are currently taking place across the country and will inform the federal government on designing a new approach to guide s. 35 Crown Consultation with Aboriginal groups.

Based on the feedback of the participants from these rounds of discussions, a more comprehensive federal engagement initiative will follow in 2006, taking into account what was heard during the preparatory discussions. The NWT Federal Council hosted these discussions for the NWT.

Some suggestions for improvements:

- 1) **DIAND NWT Region should continue to participate in this federal initiative and inform Aboriginal governments in the NWT of progress being made.**

ENGAGEMENT

Engagement is the frequent and significant interaction that DIAND has with its partners, but it does not include s. 35 Crown consultation or specific, legislated requirements for consultation. Instead, it refers to the ongoing interactions surrounding programs and policies that are built on a foundation of good governance.

5a. Guidelines for Program and Policy Engagement

Many of DIAND's engagement practices are based on policy and/or past practices. Currently, there is no consistent approach or system, used by DIAND-NWT Region, for designing and implementing engagement practices that are not based on legislation, Aboriginal and/or treaty rights, or signed accords or agreements. Consequently, engagement practices vary across divisions because activities are guided by different policy statements or program descriptions. Some of these policy and program initiatives may contain detailed engagement guidelines, while

others may be silent on engagement.

Some suggestions for improvements:

- 1) **DIAND-NWT Region could develop and incorporate Engagement Plans into its regional policy and program activities.**
- 2) **Engagement practices could be guided by a set of Engagement Principles.**
- 3) **Engagement Plans could include the following elements:**
 - a) **Pre-engagement analysis and planning**
 - b) **Information sharing and impact analysis**
 - c) **Decision making provisions**
 - d) **Implementation and monitoring**
- 4) **Engagement Plans could take the following elements into consideration:**
 - a) **Research**
 - b) **Scale/scope**
 - c) **Impacts**
 - d) **Analysis and/or Risk Assessment**
 - e) **Engagement approach**
 - f) **Identifying the team**
 - g) **Management and decision making**
 - h) **Other consultations that have occurred to-date**
 - i) **Capacity issues**
 - j) **Aboriginal concerns**
 - k) **Scheduling issues**
 - l) **Costs**
 - m) **Accountability**
 - n) **Communications and information**

5b. An engagement/consultation coordination mechanism

Some suggestions for improvements:

- 1) **DIAND-NWT Region could coordinate its engagement and consultation activities through the establishment of an internal group with representatives from appropriate Directorates.**

2.2 Next Steps

Each of the above outlined suggestions for improvement needs to be discussed further. Some may emerge as “quick wins” that could be implemented immediately with little effort and cost. Others might be “must haves” but will be developed over a longer term. Others may need further thought prior to development and implementation. Some proposals may be deemed unnecessary, and there may be additional improvements that others may yet propose. Which of these need priority attention will be determined through consultation; an “action plan” would then be developed to implement specific proposals to improve its engagement and consultation practices.

The short-term expectation is that everyone will have a more meaningful role in the decisions that affect them, and will find that they get more satisfaction from their investments of time and energy. Everyone should have better tools to help each other engage in better decision-making.

The long-term expectation is that better engagement and consultation will result in more robust and more resilient relationships.

As part of Phase 2 of the Regional Engagement Initiative, we invite you to provide feedback on this document.

At a minimum please complete the following table that identifies suggestions for improvements that could improve your involvement with DIAND-NWT Region. In addition, interested governments and organizations will be invited to discuss these or alternative suggestions to improve DIAND’s relationships, engagement and consultation practices.

Priorities for Elements of an Action Plan for Engagement and Consultation

We want to hear from you. Your comments will be carefully considered. There are a number of ways to respond:

1. Provide written comments and fax your responses to the following questions by **September 1, 2006** (fax to: 867-669-2736), and/or
2. Request to meet with DIAND staff prior to **September 1, 2006** to discuss your comments and proposals.

Your organization: _____

Questions:

- 1) The following is a summary of the suggestions for improvements discussed on pages 10-14. What are your priorities for engagement and consultation with DIAND? Check one ‘priority’ box for each suggested improvement, including any other suggestions that you may want to add.

PROPOSED IMPROVEMENTS		PRIORITY			
		No need	Low	Med	High
1a	Aligning strategic objectives and priorities with our partners. Some suggestions for improvements: 1) DIAND could expand on or establish regular annual information-sharing forums to discuss and improve alignment between our expectations and our respective plans and strategic priorities with our partners. 2) DIAND-NWT’s “Strategic Plan” and its Scorecard could be posted on its public website.				
1b	Improving our overall relationships Some suggestions for improvements:				

	<ol style="list-style-type: none"> 1) Establish annual meetings between DIAND-NWT Region senior staff, Aboriginal government leaders and their officials in the NWT. 2) Establish regular opportunities for updates between staff at the District and sub-District level and staff of the key regional and community Boards and organizations. 3) Publish and communicate the findings and outcomes of engagements and consultations regularly, and post that information on the DIAND regional website to improve access to all interested partners. 4) Develop and implement an annual NWT Region Consultation and Engagement Forum. 5) Work with regional Aboriginal organizations as appropriate to establish Region-specific engagement strategies. 6) Identify and establish a working arrangement with Métis organizations to address outstanding concerns. 7) Support the development and establishment of a regional capacity strategy focusing on community concerns about current initiatives. 				
2a	<p>Developing a Capacity Building Strategy: Some suggestions for improvements:</p> <ol style="list-style-type: none"> 1) Develop an integrated “<i>capacity building strategy</i>” for NWT and Aboriginal communities to participate in decision-making. 				
2b	<p>Identifying Consultation participation resources. Some suggestions for improvements:</p> <ol style="list-style-type: none"> 1) DIAND-NWT Region could work with DIAND Headquarters and stakeholders to identify appropriate and reasonable resources to facilitate stakeholder participation in decisions that affect them. 				
3a	<p>Notifying stakeholders about DIAND-NWT consultation plans. Some suggestions for improvements:</p> <ol style="list-style-type: none"> 1) DIAND could provide information to stakeholders about its planned engagement/consultation and key program activities on a regular basis. 				
3b	<p>Improving the manner in which DIAND communicates with its Aboriginal partners. Some suggestions for improvements:</p> <ol style="list-style-type: none"> 1) DIAND could produce more of its documents and materials in plain language formats. 2) DIAND could review its current Aboriginal awareness training for staff. 				
4a	<p>Developing Consultation Guidelines for Aboriginal s.35 Crown Consultation. Some suggestions for improvements:</p> <ol style="list-style-type: none"> 1) DIAND could apply a set of Consultation principles to 				

	<p>guide its s.35 Crown Consultation practices.</p> <p>2) DIAND-NWT Region could develop a Consultation Plan with impacted Aboriginal groups, appropriate to each unique situation.</p> <p>3) Development of Consultation Plans should be preceded by a Consultation Analysis.</p> <p>4) Consultation Plans could address issues of scope, procedures, funding, etc.</p>				
4b	<p>Providing direction for other parties involved with Aboriginal Consultation.</p> <p>Some suggestions for improvements:</p> <p>1) DIAND-NWT Region could work with NWT industry, Aboriginal communities and Boards to identify an approach to engagement/consultation within resource development activities.</p>				
4c	<p>Providing progress reports on the federal initiative to develop a national s.35 Crown Consultation policy.</p> <p>Some suggestions for improvements:</p> <p>1) DIAND-NWT Region should continue to participate in this federal initiative and will inform Aboriginal governments in the NWT of progress being made.</p>				
5a	<p>Developing Guidelines for Program and Policy Engagement</p> <p>Some suggestions for improvements:</p> <p>1) DIAND-NWT Region could develop and incorporate Engagement Plans into its regional policy and program activities.</p> <p>2) Engagement practices could be guided by a set of Engagement Principles.</p> <p>3) Engagement Plans could address issues such as analysis, information sharing, decision making provisions, etc.</p> <p>4) Engagement Plans could be designed taking elements such as research, scope, approach, capacity issues, scheduling, costs, etc. into consideration.</p>				
5b	<p>Coordinating Engagement and Consultation Processes.</p> <p>Some suggestions for improvements:</p> <p>1) DIAND-NWT Region could coordinate its engagement and consultation activities through the establishment of an internal group with representatives from appropriate Directorates.</p>				
	OTHER SUGGESTIONS?				
	OTHER SUGGESTIONS?				

Endnotes:

- ¹ Meetings were held with the following:
- Aboriginal Finance Officers - Annual General Meeting
 - Band Managers Annual Meeting
 - Dene Nation National Assembly
 - Dene Nation - President, staff
 - Dene Nation Regional Executive
 - Dehcho First Nations Leadership meeting
 - Executive Director, Mackenzie Valley Environmental Impact Review Board
 - Fort Providence Métis Council – submission received
 - Government of the Northwest Territories – submission received
 - Gwich'in Tribal Council Executive
 - Gwich'in Tribal Council Workshop
 - Inuvialuit Game Council – submission received
 - NWT Board Forum
 - Northwest Métis Federation
 - Northwest Territory Métis Nation
 - Sahtu Land and Water Board - Chair
 - Sahtu Renewable Resources Board
 - Various DIAND staff

² The document “A First Nations-Federal Crown Political Accord on the Recognition and Implementation of First Nation Governments,” for instance, states that the first “principle” is “Upholding the Honour of the Crown: Cooperation will be a cornerstone for partnership between Canada and First Nations. This requires honourable processes of negotiations and respect for requirements for consultation, accommodation, justification and First Nations’ consent as may be appropriate to the circumstances. Upholding the honour of the Crown is always at stake in the Crown’s dealings with First Nation peoples.”

ANNEX 1: COMMENTS FROM PARTICIPANTS

Comments from specific Aboriginal Governments and/or Organizations were provided during face-to-face interviews. Summaries of those comments (and any written submissions received) follow.

The Dene Nation Executive provided comments on the Discussion Paper. Their comments are summarized below:

- There were comments about the quality of DIAND's relationship with the Dene Nation. The Dene Nation felt that DIAND-NWT Region does not respect it as a territorial Aboriginal organization. These comments were put into the context of the changing political arrangements in the NWT among Aboriginal governments at the regional level, the changing role of the Dene Nation and the emergence of the Aboriginal Summit.
- There was a feeling that the quality of engagements between DIAND regional office and Dene Nation varied between issues and activities and that some of the relations were okay but some were not. The need to foster a solid partnership with DIAND was identified, one that would allow the Dene Nation to participate in policy & program development. The need to re-establish relationships between the regional office and the Dene Nation was stressed.

The Gwich'in Tribal Council identified a number of key issues:

- The Council identified the theme of community contacts and having the department address some of the many issues faced at the community level. One of the chiefs suggested that the department focus on helping communities with community action plans.
- Gwich'in participants reported that Gwich'in communities are under a lot of stress from oil and gas activities.
- The issue of capacity at the community level was stressed and the Council put forward a number of suggestions for consideration, including a Leadership development program as a good way for department to engage with Aboriginal leaders - band managers would benefit as well.
- There was some frustration expressed over the department's financial policies, in that they are constantly changing - just when the band gets used to a certain practice a new one is introduced. As well, the relevance of certain financial practices is not explained to bands. There was a resulting suggestion for better communication around things like financial accountability practices.
- There was a comment that when new funding programs are announced they should be planned and linked to other current programs so maximum funding leverage can be attained by applicants.
- There was interest in developing the relationship the Council has with DIAND through the Arctic Council to address issues like Climate Change.
- There was a suggestion that a good example of Canada's engagement is the federal procurement policy.

The Inuvialuit Game Council (IGC) offered the following comments:

- With regard to a satisfactory engagement process with DIAND the IGC identified discussions regarding the call for companies who had an interest in exploratory licences. This engagement was successful because meetings were arranged with the Hunters and Trappers Committee (HTC).
- Emphasis was placed on ensuring that any consultation process that is developed is applied consistently and yet be adaptable to community or group needs. Consultation must have the support and input of the communities.

The Northwest Territory Métis Nation identified a number of concerns:

- The Métis leadership felt that the *Taku/Haida* ruling raised the bar and standard for consultation; DIAND is obligated to provide resources to Métis to participate in consultation in a meaningful way.
- There were comments expressed that demonstrated a high degree of frustration the Métis Nation has with DIAND and the federal government departments over what they consider is unfair treatment, in comparison with other Aboriginal groups. Many programs in the federal system have criteria that exclude or limit Métis from accessing funding.
- There were comments that a better fiscal/financial relationship is needed as the amount of time put towards accounting for and managing DIAND and federal funding doesn't match the low amount of funding received from the department for administration. Similarly, the Métis cannot access any wage replacement funds to compensate for their work on environmental assessment.
- A concern was identified that Environmental Non-Governmental Organizations (ENGOS) have a greater place and role at various negotiating tables than Aboriginal governments and organizations. The Métis Nation finds it hard to effect change when the ENGOS are stacked up against them.
- The Métis Nation would like to see DIAND enforce its inspection mandate and do something about people and businesses (i.e. in the tourism sector) operating without leases, permits, etc. There was a feeling that the federal government doesn't care about following through on its duties and obligations in this area.
- There was discussion around the point of first contact with industry when a resource development activity is being planned. The Métis Nation considered it important to get companies talking up front and early about benefits to proposed development and how Métis can be a part of development.
- The importance and need to establishing a consultation method with Parks Canada was identified.

The Northwest Métis Federation identified a number of concerns:

- The Métis Federation identified a number of areas where they felt that DIAND was not treating them fairly, especially in relation to First Nations:
 - The Federation generally expressed concerns that DIAND was deserting and failing the Métis, and that DIAND doesn't give the Métis the same opportunity and support to participate in resource development as other First Nations.
 - Métis find it difficult to access many of the funding programs that other First Nations/Inuit have access to.
 - Métis have difficulty engaging with Band Managers or the Inuit and Indian Services division of DIAND to access assistance.
- There were a number of comments about the need for DIAND to engage with the Métis and consult on issues of importance to the Métis, and that DIAND and the Crown have a duty to consult with Métis, as it does with all First Nations peoples. There was reference to scrip, and that it has not been taken up by many Métis and that it provides the basis for consultation on treaty and other issues.
- There were comments about the need for the Federation to evolve with the evolving political situation in the NWT, and that meant evaluating the relationship the Federation has with DIAND, becoming more pro-active with DIAND and other governments. There was discussion around Métis becoming more organized in promoting Métis rights in the NWT.
- There was a suggestion that the Métis have access to resources and services through the Aboriginal Finance Officers Association.

The Fort Providence Métis Council identified their concerns in a written submission:

In summary, their comments identified what they considered to be DIAND's poor historical relationship with and treatment of the Métis of the Mackenzie Valley. Their comments focused on a number of key items:

- The inadequate and inequitable manner in which DIAND treats Métis in relation to other Aboriginal groups.
- The lack of access that Métis have to Aboriginal programming.
- The lack of solid Communications between DIAND and Métis communities.
- A feeling that DIAND has contributed to marginalizing the Métis of Fort Providence.
- The belief that DIAND has to engage the Métis with a substantive new policy approach.
- The interest from the Fort Providence Métis for an overall protocol agreement between DIAND and the Métis of the Mackenzie Valley that would bring financial certainty to Métis communities.

Comments from Boards/NWT Board Forum

Boards of the *Mackenzie Valley Resource Management Act* provided comments on the Regional Engagement Initiative through individual meetings with officials and participation in the NWT Board Forum. The following comments are summarized from meetings with board staff/chairs and the meetings held with the Board Forum:

- A significant engagement issue for the NWT Board Forum is in the area of consultation. There are three primary engagement/consultation issues it would like to address with the department. The Board Forum has established a consultation working group to facilitate discussion and resolve these issues, where possible:
 - Responsibility for carrying out Crown obligations to consult – what are the roles of Boards, government, and industry?
 - What constitutes appropriate consultation? and
 - What are consultation requirements in relation to the scale and scope of the project?
- Some Boards had comments and/or issues involving the relationships between the department and the Boards, some of which are being addressed through the Board Forum process:
 - Under the more general area of engagement, it was noted that the establishment of the Board Relations Secretariat (BRS) has been helpful from an operational perspective, as long as it has access to senior management.
 - There were suggestions to identify clear protocols that would help minimize legal risk around the multiple roles undertaken by DIAND/federal government in the course of Environmental Assessments (EA). These protocols would clarify the board-department process and relationship for the various roles DIAND has in an EA: when DIAND is a technical or expert advisor; when DIAND is an intervener, and/or; when DIAND is the Responsible Minister. The Board felt that the different DIAND roles in an EA can lead to conflicting department positions and inconsistent advice to the Minister.
 - One participant commented that the current Board process and the permit guidelines were adequate mechanisms to address most issues. However, there are situations that could be improved, such as when DIAND doesn't inform Boards when a prospecting permit has been issued because the activity doesn't require a land use permit.
 - It was noted that the May/Spring training seminars were helpful (how to deal with applications, the regulatory process, etc.) for developing technical capacity.
 - In some regions, better relationships between the DIAND inspectors and the Boards should be encouraged; there were comments that the inspectors don't always

enforce the terms and conditions set by Boards. There was a feeling that DIAND didn't play fair, and that there were situations where DIAND intervened on the part of the proponent and didn't support the board and/or the Board's decision.

- One respondent wondered why the word/concept "consultation" was missing from the discussion paper.
 - It was suggested that the Auditor General's report could offer some guidance to the Engagement Initiative in the general area of managing complexity, better coordination, and addressing capacity.
 - A comment was directed at the difficulty to discern at times the differences, and/or similarities, between cultural impacts and s.35 issues.
- There was interest in having the Region become a partner in the validation process for Traditional Knowledge (TK); this is a project that could result from the engagement strategy. As TK becomes more prevalent in the EA process, and as it relates directly to the cultural impacts element within an EA, there is a need to develop guidelines for how TK is used in that process.

Comments from Departments of the Government of the Northwest Territories

DIAND has significant relationships with the Government of the Northwest Territories (GNWT). A number of Government of the Northwest Territories departments provided comments on the discussion paper. The following is a summary of those comments:

- DIAND needs to balance its shared mandate of "Indian Affairs" with "Northern Development". Support provided to municipal governments is minor compared to Aboriginal community governments on issues that affect both. Similarly, DIAND uses the word "communities" to refer primarily to Aboriginal communities, leaving out non-Aboriginal governing structures.
- DIAND should consider using the IGF to engage and consult with stakeholders.
- Both governments should implement the GNWT-DIAND senior managers meetings on key issues and activities.
- In addition to senior manager meetings, the Minister of DIAND should meet regularly with his counterpart to address issues.
- Affected staff needs to be involved in discussions on Devolution.
- There should be a more coordinated approach on funding provided to Aboriginal organizations by regularly exchanging information.
- It is important that DIAND and the GNWT work together on future governance issues and structures that include self-government agreements and a strong central government. To achieve this, establish communication approaches at all levels where there is contact. Use innovative ideas or approaches to sharing information.

ANNEX 2: SUMMARY OF RESPONSES TO QUESTIONS POSED IN DIAND'S PHASE 1 DISCUSSION PAPER

During the Phase 1 meetings, discussions with participants focused on the questions posed in the discussion paper that solicited comments on DIAND-NWT Region relationships and current engagement and consultation practices.

The following comments represent a short summary of the feedback received from participants on the questions posed in the discussion paper. Some of the information is also cross-referenced in the previous 'themes' section.

Question 1: What can DIAND do to improve its overall relationship with you and the people you represent?

- In general, we learned that some of the relationships DIAND-NWT Region has with Northern people, governments and organizations require attention.
- While Aboriginal leaders were encouraged that DIAND-NWT Region was promoting the Regional Engagement Initiative, they were strongly vocal that DIAND-NWT Region should focus on building relationships with Aboriginal governments and organizations.
- There were a number of comments about the eroding relationship between the Crown and Aboriginal peoples in the NWT and that DIAND, as the major Crown department in the NWT, should address this situation.
- We heard that various individual sections of DIAND's regional operations have developed and maintained healthy and proactive relationships with their particular audiences. However, the strength of DIAND's relationships vary depending on the sector, issue, and/or party – some relationships are solid, some weaker.
- A number of participants stated that they don't have regular contact with DIAND senior staff, and were interested in establishing or implementing more consistent contacts with those staff. Similarly, there were comments about the importance and need for regular contact between DIAND field staff and the various peoples and organizations they serve.
- In summary, comments tell us that the Region needs to focus on building, re-affirming and/or re-establishing relationships.

Question 2: How well does DIAND-NWT Region keep you informed of engagement activities and issues?

- Primarily, Aboriginal governments and organizations felt that the Region does not do a good job in providing information about regional activities, nor does the Region communicate well on specific engagement and consultation activities.
- Individual communities consistently stated that they do not receive timely or regular information from the department.

Question 3: Do you have reasonable opportunity to engage with DIAND-NWT Region?

- Phase 1 told us that that opportunity to engage with DIAND-NWT Region is associated directly with the issue of capacity.
- The lack of capacity, especially at the community level, is a critical issue and barrier to participation in DIAND related engagements and consultations. Capacity is considered in terms of human (skills), financial, institutional (equipment and infrastructure) and technical-professional expertise.
- Although the Regional Engagement Initiative is not related to engagement and consultation

associated with the Mackenzie Gas Project, we heard that communities are finding it difficult to address pipeline demands alongside managing their everyday affairs.

- One group felt that when they had the opportunity to comment on issues, those comments were taken seriously.

Question 4: Are your concerns considered fairly in the decision-making process relative to the interests of other parties?

- Responses to this question were generally relative to the interests of each participant group. Band managers, for example, felt that DIAND does not consult with them on changes to financial arrangements.
- A number of Aboriginal governments and organizations felt that DIAND does not do a good job of considering their interests in the decision making process – that the Region, for example, gives more attention to municipal governments than band governments.
- On the other hand, the GNWT felt that DIAND-NWT Region gives more consideration and creates greater partnership arrangements with Band governments than it does to municipal governments.
- These tensions will require careful analysis and consideration as they are indicative of the dynamic issues and change in governance and political development in the NWT.

Question 5: Have you participated in engagements with DIAND that were satisfactory in meeting your interests and objectives? Which ones were they? What were the reasons for this success?

- A number of engagements were cited and discussed during Phase 1. For various reasons, some examples of successful engagement and consultation practices include:

Port Radium-Deline Uranium Project
Dehcho Land Use Planning Commission
Annual Band Managers Meeting
Protected Areas Strategy

- These examples incorporate some of the key aspects to good engagement and consultation in the NWT, between DIAND and its partners:

Partnership and teamwork
Incorporating Aboriginal governments
Use of Traditional Knowledge
Addressing community concerns
Providing adequate resources for participation
Incorporating 'ground level management'
Working with youth to develop tomorrow's skill base

- These examples can provide us with a template for improving our engagement guidelines and consultation practices.

Question 6: Can you suggest ways DIAND could better manage its practices (current guidelines, protocols, or rules)?

- Participants identified a number of ideas for DIAND to consider on improving current practices. [Ideas for improving on DIAND-NWT Region business practices are included in this document under the section, ***Proposed Improvements to DIAND's Engagements and Consultation Practices in the NWT.***]

Question 7: Do you feel there are inconsistencies with the current processes for consultation that are carried out to meet Crown obligations when Aboriginal or treaty rights arise during environmental assessments, project approvals and land use management? Do you have suggestions on how they may be improved?

- There were two general responses to this question.

First, a number of Aboriginal governments and/or organizations stated their concerns that they do not have the resources to effectively participate and represent their unique concerns in the environmental assessment process, nor do they feel that the public consultation process is the proper forum for addressing their unique issues. Within this context was the view that a better process should be identified for addressing s35 rights that come up in resource development applications.

A second associated response came from the NWT Board Forum, who would like certainty and clarity on the roles and responsibilities around their “duty to consult”.

Question 8: Would the implementation of some or all of the Draft principles for Engagement and Consultation-NWT Region (listed as Attachment One) support your engagements? If so, how could we implement them?

- Generally, Aboriginal governments/organizations and the NWT Board Forum suggested that DIAND-NWT Region consider developing guidelines or protocols for consultation when Aboriginal and/or treaty rights are an issue, especially during resource development activities. Such guidelines would include and embody principles relevant to Aboriginal consultation.