Box 1500
Yellowknife, NT X1A 2R3

January 27, 2006

Ms. Heidi Wiebe, Executive Director
Deh Cho Land Use Planning Committee
General Delivery,
Fort Providence, NT
X0E 0L0

Dear Ms. Wiebe:

Re: DIAND Review of the Revised Draft Dehcho Land Use Plan

DIAND would like to recognize the hard work and dedication of the Dehcho Land Use Planning Committee ("Committee") in preparing the Revised Draft Dehcho Land Use Plan ("Plan"). We are pleased to submit our comments on the Plan as part of the constructive exchange that is required to bring it to successful implementation.

As you know, these represent the third round of comments from DIAND on the Plan. After the Committee submitted the Plan to the Department on November 8th, 2005, it was reviewed by an internal Working Group struck by the Department. The same process was followed in March 2005 when the Department submitted comments on the First Working Draft Plan and presented at the Committee's Regional Forum on the Hay River Reserve, March 29th to the 31st, 2005, and then again in September when DIAND's comments were submitted on the First Draft Plan.

The November 2005 Plan represents a major re-working of the June 2005 Draft Plan and a number of critical legal concerns have arisen with respect to fundamental areas of Plan implementation. In addition, we continue to have concerns about the size and extent of the Conservation Zones (CZs) and the Special Management Zones (SMZs), and the management of cumulative effects.

<u>Implementation</u>

The Department is concerned with what it sees to be inappropriate fettering of the decision making responsibilities of DIAND and other federal agencies through the proposed "Conformity Requirements" (CRs), which require, for example, the mandatory use of traditional knowledge policies and protocols, traditional land use and occupancy constraints and consultation obligations.

The Dehcho Land Use Plan is the first ever in the NWT to be developed prior to a final agreement. The Department's preliminary legal review of the CRs indicates that a large

number of them would require amendments to existing legislation. While DIAND fully supports this ground-breaking interim land use planning approach, the interim nature of the Plan necessarily imposes some limitations. Most notable is that DIAND intends to implement the Plan once a Deh Cho Process final agreement (FA) has been achieved and ratified by the parties to the Deh Cho Process. In the interim, the Department has no mandate to amend legislation to implement the Plan, prior to concluding a Deh Cho Process.

As a consequence, the Department cannot support the Plan in its current form but is fully prepared to work with the Committee to resolve the outstanding issues, including looking for ways to create a Plan that can be implemented within existing legislation, prior to a FA. Once a FA is in place, the Plan - an interim measure, as per the *Deh Cho First Nations' Interim Measures Agreement* - would be amended accordingly, along with necessary legislative changes, to give legal effect to both the FA and the Plan.

DIAND's interest in providing this input is first and foremost to ensure that the scope and application of the Plan is workable in the current legislative and regulatory context, and to have other issues addressed. As the Committee is aware, the establishment of a Plan as a Deh Cho Process interim measure is not intended to prejudice the outcome of on-going Deh Cho Process negotiations. Rather, it is results of the Deh Cho Process that will continue to inform and shape the Plan over time until the parties achieve a FA.

In order to further examine and resolve these outstanding legal concerns, DIAND proposes that the Committee obtain their own legal review and that our respective legal advisors meet after the Regional Forum to discuss these pressing issues in a spirit of cooperation and understanding. The Department recognizes that this may require additional resources and will endeavour to identify the necessary funds to assist the Committee with this priority effort.

Aside from implementation, other key issues requiring renewed attention by the Committee also include the size and extent of the Conservation Zones (CZs) and the Special Management Zones (SMZs), and the management of cumulative effects. Although the Department has raised both of these issues in its previous reviews, it is not readily apparent that the Committee has addressed these concerns satisfactorily.

Conservation Zones and Special Management Zones

As previously stated, DIAND recommends that the CZs and SMZs be reduced in size to better conform with the Interim Land Withdrawals (ILW). To assist the Committee in this exercise, DIAND has provided a list of considerations, including areas where non-renewable resource potential is significant.

Cumulative Effects

DIAND recognizes and supports the ground-breaking work that the DCLUP Committee has done in the area of cumulative effects management in the Plan. However, the proposed methodology is new and untested. DIAND recommends taking an incremental approach to implementing the methodology in order to assess it and

determine how it can be integrated into the current regulatory framework. Specific concerns relate to the science and research used by the Committee in defining the thresholds as expressed in the Plan, the complexity of the calculations that Regulatory Authorities would be making, and the uncertainty of how they would be applied. A clearer, simpler and more transparent process, understandable and acceptable to government, Regulatory Authorities and industry, is required.

The Department recommends the Committee make the cumulative effects framework element of the Plan a Recommendation rather than a CR. This would enable the various parties to test the framework and adapt it as need be, rather than be bound by an inflexible and potentially unworkable system.

DIAND recognizes that the comments it is providing may require the Committee to continue work on the Plan beyond the anticipated March 31 timeline for completion of the Plan, and that additional resources may be required. We are prepared to continue to work with the Committee on these issues, recognizing too that the new federal government will influence future directions.

With this extra effort by all concerned, I am confident that the Committee will be successful in producing a Final Draft Plan which DIAND may recommend to its new Minister.

DIAND officials look forward to participating in the upcoming Regional Forum on the Hay River Reserve on February 7th, 8th and 9th, 2006 to present these comments in person. In the meantime, should you have any questions, please contact me.

Sincerely,

Bob Overvold
Regional Director General
Northwest Territories

att.

cc Bob McLeod, Secretary to Cabinet, Executive, Government of the Northwest Territories

REVISED DRAFT DEHCHO LAND USE PLAN - COMMENTS FROM THE DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT
January 27th, 2006

EXECUTIVE SUMMARY

The Dehcho Land Use Planning Committee [the Committee] submitted the **Revised** Draft Land Use Plan [the Plan] to the Department of Indian Affairs and Northern Development [DIAND] on November 8th, 2005. The DIAND Working Group, with representation from the NWT Region and from Headquarters [Ottawa] has undertaken this comprehensive review of the Plan, building on the work of the previous two iterations - twenty pages of comments on the First **Working** Draft Plan submitted to the Committee on March 23rd, 2005, and twenty-five pages of comments on the **First** Draft Plan submitted to the Committee on September 13th, 2005.

The purpose of this document is to provide the Committee with a comprehensive report resulting from DIAND's review, analysis and internal discussions related to the Plan. These comments reflect the concerns the Department has with the Plan and are intended to assist the Committee in developing and submitting the **Final** [Proposed] Land Use Plan for approval and "favourable consideration" (Article 13, Settlement Agreement). This review document is divided into four parts and an Appendix.

1. Background, Purpose and Objectives
2. Scope of this Review;
3. Key Issues and Suggestions, and
4. Specific Comments and Recommendations, and Editorial Suggestions.

Appendix: Comments on Background Report

Although the November 2005 document represents a major re-working of the June 2005 Draft Plan, a number of pivotal legal questions have become evident with the Revised Plan. These cover such fundamental areas as Plan Implementation, the Role of the Committee, and the Deh Cho Process. Included in these areas are: the Fettering of Discretion regarding the Conformity Requirements (CRs) ; the Mandatory Use of Traditional Knowledge Policies and Protocols; Traditional Land Use and Occupancy; and the Requirements for Consultation.

Other Key Issues requiring renewed attention by the Committee include the Size and Extent of the Conservation Zones (CZs) & Special Management Zones (SMZs) , and the Protected Area Strategy Zone (ensuring the viability of economic development within a balanced approach to conservation and development); and the Management of Cumulative Effects.

The Department's comments are comprehensive and detailed. They are being provided to the Committee in a continued spirit of cooperation, building on the work done to date, and in order to positively affect the Committee's final iteration required for successfully completing the Plan.

DIAND's interest in providing this input is first and foremost to ensure that the scope and application of the Plan is workable in the current legislative and regulatory context. As the Committee is aware, the Plan cannot prejudice the outcome of on-going Deh Cho Process negotiations. Rather, it is the outcomes of the Deh Cho Process negotiations that will continue to shape the Plan over time.

At this stage, the Plan is building a foundation that will serve the goals of the overall Deh Cho Process. It is therefore incumbent upon all Parties involved to do everything they can to ensure the Plan can be successfully implemented. At this interim stage, the priority is to put in place the structures and develop the relationships that will be critical to the long-term success of the Plan as it evolves. This is in keeping with the step-by-step approach the Parties to the Deh Cho Process have always espoused.

1. BACKGROUND, PURPOSE AND OBJECTIVES

The Dehcho Land Use Planning Committee [the Committee] submitted the **Revised** Draft Land Use Plan [the Plan] to the Department of Indian Affairs and Northern Development [DIAND] on November 8th, 2005. The DIAND Working Group, with representation from the NWT Region and from Headquarters [Ottawa] has undertaken this comprehensive review of the Plan, building on the work of the previous two iterations - twenty pages of comments on the First **Working** Draft Plan submitted to the Committee on March 23rd, 2005, and twenty-five pages of comments on the **First** Draft Plan submitted to the Committee on September 13th, 2005.

The purpose of this document is to provide the Committee with a comprehensive report resulting from DIAND's review, analysis and internal discussions related to the Plan. These comments reflect the concerns the Department has with the Plan and are intended to assist the Committee in developing and submitting the **Final** [Proposed] Land Use Plan for approval and "favourable consideration" (Article 13, Settlement Agreement). This review document is divided into four parts and an Appendix.

2. SCOPE OF THIS REVIEW

The Plan was reviewed according to DIAND's three primary objectives as described in the policy document: **Land Use Plan Review/Approval Process**. The three primary objectives of the process include:

- To review draft and proposed land use plans for completeness and accuracy regarding the Deh Cho First Nations Framework Agreement, Interim Measures Agreement, the Interim Resource Development Agreement, the recent Settlement Agreement, specifically regarding DIAND's responsibilities as described in these documents, and in existing federal legislation.

- To review draft and proposed land use plans in terms of DIAND's positions on priority issues, programs, projects, and proposals, ensuring that relevant policies and legislative initiatives are adequately addressed and referenced [eg Sustainable Development, Protected Areas Strategy, Smart Regulation, CEAM, CIMP and environmental assessment].

- To review draft and proposed land use plans in terms of professional regional land use planning principles and practices, ensuring that the documents are comprehensive, integrated, balanced, and community-based. There should be internal consistency between all land use policies and related strategies, ie between all land use categories.

3. KEY ISSUES AND RECOMMENDATIONS

Although the November 2005 document represents a major re-working of the June 2005 Draft Plan, a number of pivotal legal questions have become evident with the Revised Plan. These cover such fundamental areas as Plan Implementation, the Role of the Committee and the Deh Cho Process. Included in these areas are: the Fettering of Discretion regarding the Conformity Requirements; the Mandatory Use of Traditional Knowledge Policies and Protocols; Traditional Land Use and Occupancy; and the Requirements for Consultation.

Other Key Issues requiring renewed attention by the Committee include the Size and Extent of the Conservation Zones & Special Management Zones, and the Protected Area Strategy Zone (ensuring the viability of economic development within a balanced approach to conservation and development); and the Management of Cumulative Effects.

These Key Issues need to be addressed to the satisfaction of the Department in order for the Plan to be "favourably considered".

3.1 Plan Implementation, the Role of the Committee, and the Deh Cho Process

The Dehcho Land Use Plan is the first Plan in the NWT ever to be developed with a view to implementation prior to a Final Agreement. DIAND fully supports this ground-breaking approach. However, the interim nature of the Plan necessarily imposes some limitations. As the Committee does not have a mandate to amend the existing legislative and regulatory framework (this can only be done through a Deh Cho Agreement), some aspects of the Plan as it is currently presented simply cannot be implemented at this stage.

DIAND has completed an "initial" legal review of the Plan, more specifically on the Conformity Requirements, but not on the Actions or the Recommendations. This legal review has been undertaken only at this time because of the large number and scope of the 27 CRs in the Plan, compared to only 5 CRs in the previous version of the Plan. The results of this "initial" legal review of the CRs are addressed in the sub-sections below.

However, additional legal review and coordination is required by Canada to ensure that other Regulatory Authorities, such as relevant federal departments and the MVLWB, can implement the Plan within the extent of their legislative authorities.

Plan Implementation
Section 3.2 Plan Implementation - page 44, third complete paragraph

The last sentence of this paragraph reads as follows: "No new legislation is required to implement the plan immediately - only policy direction from the responsible Ministers to their departments and agencies, directing them to conduct their operations in conformity with the Approved Land Use Plan, and minor changes to existing processes as explained below." In other words, the Committee is stating that the Plan can be implemented without any legislative changes.

DIAND believes that this statement needs to be tested by, at the least, having each regulatory authority confirm that the tools listed for implementation (land withdrawal, policy direction to

MVLWB, the *Canada Mining Regulations, etc*) can achieve what the Committee hopes to do. The regulatory authorities will therefore need to seek such appropriate legal advice and also advise the Committee to perform a similar assessment.

In this regard, DIAND is of the legal opinion that a number of the Conformity Requirements (CRs) as currently worded in the Plan cannot be implemented under existing legislation - see sub-sections below.

<u>Unlawful Sub-delegation or Fettering of Discretion re Conformity Requirements [CRs]</u>
CR #3 on Traditional Land Use & Occupancy and Consultation - page 16
CR #11 on Managing Access - page 21
CR #13 on Commercial Fishing - page 23
CR #16 on Hydroelectric Development - page 23
CR #17 on Mine Closure and Reclamation Plans - page 25
CR #21 on Forest Management Activities - page 27
CR #23 on New Fishing lodges - page 28

When Parliament delegates discretionary power to a regulatory authority it is the regulatory authority which must exercise the power. If a board is authorized to issue a permit, the board must decide whether to issue or not to issue a permit; the board cannot give a veto to a third party.

The numerous requirements in these CRs for the support of a Deh Cho First Nation before a regulatory authority can make certain decisions seem to provide a veto and would result in an unlawful failure of the regulatory authority to exercise its discretion.

Legislation could provide a Deh Cho First Nation with such a veto but as yet there is none. As well, there is no federal intention at this time to amend existing legislation to allow for the implementation of Deh Cho First Nation vetos as contained in these CRs.

RECOMMENDATION: The Committee should consider re-working these CRs so that the draft terms requiring Deh Cho First Nation support are modified to require the Regulatory Authority to consider whether an affected Deh Cho First Nation supports the activity or not, and more specifically, the reasons why, to the extent that the discretion of the regulatory authority allows for such a consideration under existing law.

<u>Mandatory Use of Traditional Knowledge Policies and Protocols</u>
CR #2 on Traditional Knowledge Policies and Protocols - page 14

This CR would require the use of any existing Traditional Knowledge Protocols prepared by a Deh Cho First Nation. The definition of traditional knowledge in the plan is taken from a Deh Cho First Nation traditional knowledge protocol: "The collective intellectual property of Dehcho First Nations' members Stories, Customs, Experiences, Knowledge, Practices, Beliefs and Spiritual Teaching passed on by their parents from their ancestors.".

This definition focusses on the legal concept "property" whereas in contrast the definition used in a recent federal statute (*Yukon Environmental and Socio-Economic Assessment Act*) focusses on the content of the knowledge: "the accumulated body of knowledge, observations and understandings about the environment, and about the relationship of living beings with one another and the environment, that is rooted in the

traditional way of life of first nations."

The form and content of a traditional knowledge protocol will presumably be left to the individual first nation so it is impossible to know what will be required of an applicant. If a first nation traditional knowledge protocol requires an applicant to enter into an agreement with the first nation, this requirement would appear to give the first nation an indirect veto.

If an express agreement between the applicant and the first nation is not required, requiring an applicant to use a traditional knowledge protocol may exceed the scope of the discretionary authority provided to a regulatory decision maker. A regulatory decision maker must consider all relevant matters and no irrelevant matters.

Considering whether the applicant follows a traditional knowledge protocol may be an irrelevant matter. For example, when issuing a land use permit, it would appear that a requirement to follow the traditional knowledge protocol of a first nation may exceed the authority to establish terms and conditions under section 26 of the MVLU Regulations. That section allows a number of specific conditions to be imposed in a permit and "any other matters not inconsistent with these Regulations, for the protection of the *biological or physical characteristics of the lands*."[1] (emphasis added) . It is unclear whether the traditional knowledge protocols protect the biological or physical characteristics of the land or not.

RECOMMENDATION: The Committee should delete the requirement that a first nation will only support an application if it is satisfied respecting the protection of traditional knowledge. Alternatively, if a Regulatory Authority has a discretion broad enough to allow for consideration of protection of traditional knowledge, the Committee should set out in the Plan the requirements an applicant might have to follow to protect traditional knowledge.

RECOMMENDATION: The definition of traditional knowledge in the Plan assumes traditional knowledge falls in the legal category of "intellectual property", with uncertain legal and policy implications. The Committee should therefore amend the definition by replacing "intellectual property" with "accumulated body of knowledge".

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[1]The background Report to the draft plan incorrectly cites s. 69 of the MVRMA as the authority to set any conditions on the permits or licences required for the protection of the environment (p.24). Section 69 reads:

69. Before issuing a permit for a use of land, a board shall, with respect to conditions of the permit for the protection of the environment, consult...

All section 69 does is set out a pre-condition to issuing a permit. The authority to establish conditions for land use permits is s. 26 of the MVLU Regulation set out above.

<u>Traditional Land Use and Occupancy</u>
Executive Summary - page iii, 4th paragraph
Section 1.2 Scope and Application of the Dehcho Land Use Plan - sub-section 5, page 3
CR #11 on Access - page 21
CR #12 on the Pipeline & the Special Infrastructure Corridor (Zone 30) - page 22

Concerning the two references to the statement: "Nothing in this Land Use Plan will impact or reduce in any way, the treaty and aboriginal rights and activities of the Dehcho Dene Descendants. Traditional Land Use, Occupancy and Harvesting will continue in all areas at all times.", it appears that the Committee is placing traditional land use and occupancy "a priori" to the Plan. DIAND is of the opinion that it is misleading to say that the Plan will not impact or reduce traditional land use, as many authorized activities will necessarily curtail traditional land use. It therefore seems incorrect to say that the Plan, when implemented, cannot restrict the exercise of section 35 rights.

For example, CR #11 on Access (page 21) and CR #12 (page 22) on the Pipeline & the Special Infrastructure Corridor (Zone 30) each impose an obligation on an applicant for a regulatory authorization to ensure that traditional use and occupancy is not disturbed. It would appear that these CRs could have application to the Mackenzie Gas Project and to impose an obligation on the proponent to ensure that traditional land use and occupancy is not disturbed. It would follow that if traditional land use and occupancy can not be unaffected, the proposed activity cannot be authorized.

The Plan defines "traditional land use and occupancy" as: "Traditional Land Use refers to activities involving the harvest of traditional resources like hunting, trapping, fishing, gathering of medicinal plants and berry picking, and travelling to engage in these kinds of activities. The mapping of traditional land use records the locations where these activities occur. Occupancy refers to the area which a particular group regards *as its own* by virtue of continuing use, habitation, naming, knowledge, and control. The mapping of occupancy records stories and legends about places, ecological knowledge of places, indigenous place names, and habitation sites like cabins and burial grounds." (emphasis added).

This definition seems to equate occupancy with Aboriginal title. It may be that a favourable consideration of the Plan by the Minister will be assumed to be an acknowledgement of existing Aboriginal title.

RECOMMENDATION: The Committee should consider the following options as a way of addressing the Department's concern:

(1) State explicitly that the Plan does not regulate traditional land use and occupancy but that activities authorized in conformity with the Plan might restrict traditional land use and occupancy;
(2) Delete references to "occupancy";
(3) Include a disclaimer clause to the effect that favourable consideration of the Plan by the Minister is not an acknowledgement that the Deh Cho First Nations have any Aboriginal rights, including title, flowing from any traditional land use (or occupancy) referred to in the Plan; and
(4) Delete the requirements in CR #11 and CR #12 (and any others missed) that require that traditional land use and occupancy not be affected.

The Requirements for Consultation
CR #3 on Traditional Land Use & Occupancy and Consultation - page 16
CR #4 on Consultation - page 16

The requirements for consultation in these CRs ignore the common law requirement that the strength of the claim to section 35 rights needs to be assessed, which are the foundation of the requirement to consult. CR #4 requires that all applications for new land and water uses demonstrate full and meaningful consultation without any reference to the strength of a claimed section 35 right. These requirements for consultation do not make reference to the common law requirement that the strength of asserted traditional use or occupancy needs to be assessed in order to determine the content of a duty to a consult. The Plan only refers to the degree of impact on an asserted right of whatever it is that is being authorized. It is therefore not a correct description of the common law requirement to consult and imposes a higher duty to consult.

RECOMMENDATION: The Committee should consider the following options as a way of addressing this concern:

(1) Delete reference that all consultation must be "full";
(2) Include in the explanation of consultation that the strength of the claim to an asserted section 35 right, which results from the actual traditional land use, will be part of the determination of the scope and content of consultation.
(3) Because not all obligations to consult with Aboriginal peoples are fiduciary in nature, DIAND recommends the Committee delete that term.

The Continuing Role of the Dehcho Land Use Planning Committee
CR #11 on Managing Access - page 21
CR #25 on Managing Cumulative Effects - page 30
Section 3.2.3 Conformity Determinations - pages 49 & 50

CR #25 proposes a continuing role for the Dehcho Land Use Planning Committee in determining whether applications for regulatory authorizations conform with the Plan, as contemplated by the Interim Measures Agreement. The Plan proposes that Deh Cho First Nations would be able to require that the Committee make a determination of conformity. For example, the Committee would determine whether meaningful consultation has occurred (e.g., CR #11) and whether "new access" required for MGP purposes affects traditional land use and occupancy.

The Plan infers that the Committee is a planning board when it references s. 47 (1) of the MVRMA (on page 49). This section provides certain powers to a planning board, but the DLUPC is not a planning board within the meaning of that Act.

RECOMMENDATION: According to Appendix II, section 24 of IMA states: "Following consideration and plan approval, the Planning Committee will monitor land use in the Deh Cho territory for conformity to the Plan." Regarding this monitoring role in the Plan, the Committee needs to ensure that board-like powers are not inferred on the Committee.

The Deh Cho Process
CR #16 on Hydroelectric Development - page 23
CR #22 on New Big Game Outfitters' Licneces - page 28
[also CRs #3, 4 & 5/CRs #11, 12 & 13/CR #17/CR # 19/CR # 21/CR #23]

The Plan in some ways appears to provide the Deh Cho First Nations with more than they would obtain under a section 35 agreement. The Plan is consistent with the view the Deh Cho First Nations have expressed at the Deh Cho Process negotiation table whereby the Deh Cho First Nations (through the public Dehcho Resource Management Authority pursuant to Article 6 of the Settlement Agreement) would have administration and control ("ownership") of public lands and regulatory powers on effectively all lands within the asserted Deh Cho First Nations traditional territory.

The requirement to comply with first nation Traditional Knowledge Policies and Protocols, the various requirements to obtain the support of affected Deh Cho First Nations for activities on Crown land and waters, and the particular requirements to ensure that traditional land use and occupancy is not affected, all appear to exceed what could be expected to be provided to the Deh Cho First Nations in a section 35 agreement resulting from the Deh Cho Process.

For example, CR #16 prohibits certain hydro developments and imposes a blanket requirement that "rivers and tributaries in the Dehcho region will remain substantially unaffected in quality, quantity and flow", something that would only be considered in section 35 agreement in respect of settlement land. CR #22 prohibits the issuance of any new big-game outfitter licenses in the area covered by the Plan.

RECOMMENDATION: Conformity Requirements #3, #4, #5, #11, #12, #13, #16, #17, #19, #21, #22, and #23 should be changed to Recommendations or removed.

3.2 The Size and Extent of Conservation Zones (CZs) & Special Management Zones(SMZs), and the Protected Area Strategy Zone

DIAND supports the concepts of the Conservation Zones, the Special Management Zones and the Protected Area Strategy Zone in the Plan, but wants to ensure they are workable and effective in achieving their stated goals. As always, DIAND feels strongly that a balance between conservation and development must be struck to ensure quality of life and a sustainable economy for all residents of the Deh Cho territory.

The Department supports the addition of the Protected Areas Strategy zone, and the recognition that the final boundaries and management for Edehzhie will be completed through the NWT Protected Areas Strategy process. The Plan, and not only the Background Report, should make it clear that if the boundaries are changed through the PAS process, the Plan will reflect those changes.

The Department also supports the Committee's similar recognition that the Greater Nahanni Ecosystem (CZ 6) final boundaries will be determined through the Nahanni National Park expansion process. The Plan should make it clearer that CZ 6 will be revised to reflect the outcome of the National Park Expansion Process.

The Nahanni Park Expansion and Protected Areas Strategy processes will conduct non-renewable resource potential studies, to identify high potential areas that may be excluded from the withdrawals, and DIAND supports the Committee's stated intention to abide by the results of those processes.

RECOMMENDATION: As part of the Implementation of the Plan, the Committee should agree to a process by which the balance of withdrawn lands in the Dehcho will be studied for non-renewable resource potential.

The identification of lands around the community of Wrigley, negotiated under Section 8 of the Settlement Agreement, to be added to the Dehcho Process Interim Land Withdrawals, provides an opportunity for the Committee to update the boundaries of Pehdzeh Ki Deh (CZ 1) to more closely reflect the results of those negotiations.

The Deh Cho Interim Land Withdrawals were an innovative measure undertaken as part of the Deh Cho Process. From the outset, the Interim Land Withdrawals were characterized by the Parties (including the Deh Cho First Nations) as a "coarse level land use plan" that would form part of a continuum of interim steps. While the Department does not advocate that the work of the Committee should be restricted by the Interim Land Withdrawals, it is nonetheless important to keep the Withdrawals as a guide for the size and extent of Conservation and Special Management Zones.

With this in mind, in the last set of comments submitted to the Committee in September, 2005, DIAND strongly stated that the CZs and SMZs needed to be reduced in total area to be sufficiently balanced. Instead, the total area of the two zones increased from the previous iteration of the Plan, including the changed designation of Edehzhie. As the Parties to the Deh Cho Interim Measures Agreement are aware, the initial land withdrawals were to be a rough cut of the identification of areas that would be provided some protection under the Land Use Plan. As a measure of ensuring protection while the Land Use Planning Committee was undertaking its work, Canada agreed that these lands would be withdrawn and that after further analysis and consultation, might not require this level of protection in the Plan.

Thus it was Canada's view that the total area and location of CZs and SMZs under a land use plan would be broadly consistent with the existing land withdrawals, negotiated and agreed to through the Land Withdrawal process of the IMA. It is therefore once again strongly recommended that the size and extent of the CZs and SMZs be reduced so that they are more comparable with the extent of the original land withdrawals in 2003 (not including the roughly 12,626 km2 related to the Nahanni National Park Reserve). It is recognized that the Edehzhie PAS Zone and the Greater Nahanni Ecosystem (CZ 6) will be managed under processes outside of the Plan and will not be designated as CZs or SMZs over the long term life of the Plan.

The Committee has previously indicated that DIAND should specifically identify areas that should be kept as General Use Zones. One important factor in this analysis would be the mineral potential of an area. Any jurisdiction relies heavily on the reports that industry submits as assessment work to build it's geological database and increase the geological knowledge of any given area. Without this information, knowing the non-renewable resource potential of an area can rarely be determined. In the Dehcho territory, there is insufficient existing data to accurately determine the level of mineral potential a particular area has. This fact alone makes it difficult for DIAND to provide more specific recommendations in this regard.

However, the Committee could use a number of factors in order to reduce the size of the CZs and SMZs, including the following considerations:

1) the location of the existing land withdrawals;
2) the recently negotiated land withdrawals under Article 8 of the out-of-court Settlement Agreement relating to Pehdzeh Ki Deh (CZ1);
3) the recent submissions by Acho Dene Koe;
4) the significant variation in CZs and SMZs around communities; and
5) the areas industry has expressed an interest in for exploration and possible development.

Further, it is believed that the Committee is best placed to identify where specific reductions in the CZs and SMZs can be made, given the consultations and data analysis it has undertaken to date.

RECOMMENDATION: Using the list of considerations identified above, reduce the size of the CZs and the SMZs to near the size of the interim land withdrawals.

3.3 Managing Cumulative Effects

DIAND recognizes and supports the ground-breaking work that the DCLUP Committee has done in the area of Cumulative Effects. The proposed methodology is, however, new and untested. DIAND recommends taking an incremental approach to implementing the methodology in order to assess it and determine how it can be integrated into the current regulatory framework.

It would be useful to add an explicit statement about cumulative effects thresholds in Chapter 1 of the Plan (e.g. under Section 1.2. Scope and Application of the Dehcho Land Use Plan, sub-section 4. Land Uses, page 2), since the thresholds could have as great an impact on allowable activities as zoning.

DIAND's previous position was that the Plan should identify some general tests only [a framework around cumulative effects thresholds], but leave room for some flexibility on the part of the Boards. At the meeting with the Committee on October 3rd, DIAND suggested that it might accept the threshold numbers included in the Plan if they are there as guidelines for the Regulatory Authorities, allowing discretion as needed for specific circumstances. The Regulatory Authorities would be obligated to fully consider the guidelines, but with some flexibility, and the Committee could play an ongoing role in better defining the thresholds. Such "checks and balances" are necessary because all conditions and circumstances in the future cannot be anticipated. The Department still holds to this view.

It is important to recognize that the Committee's innovative work in this area is appreciated by the Department, but it is untested, and the Department wants to get it right as much as possible. DIAND's current concerns with the Plan in this regard focus on the science and research used by the Committee in defining the thresholds, the complexity of the calculations that Regulatory Authorities and others would be making, and the uncertainty of how they would be applied, including possible adverse affects on the regulatory process used for the review of proponents' proposals. The Department believes that the Regulatory Authorities and industry require a clearer, simpler and more transparent process than the version in the Plan, one which they can readily understand, accept and therefore employ.

RECOMMENDATION: The Committee should retain the cumulative effects framework in the Plan, but with the Conformity Requirement being changed to a Recommendation, whereby the Committee would give advice to the Regulatory Authorities, rather than having it binding on them. This would allow for a phased-in approach, with testing, monitoring and reporting built-in, so as to fit completely within existing regulatory processes and time-frames.

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4. SPECIFIC COMMENTS, RECOMMENDATIONS AND EDITORIAL SUGGESTIONS

This section provides specific comments and recommendations, and editorial suggestions organized by reference to the Section and page number in the Plan. Specific comments are coupled with recommendations, where appropriate, for consideration by the Committee.

Acronyms (page xi): RRSPs should be RRSP; SEDEX should be "Sedimentary Exhalative Sulphide Deposit".

Definitions

Page xii: Although a definition of Dehcho First Nations is provided here, there is no definition of Deh Cho. The use of this term throughout the Plan is unclear as to whether it refers to the First Nations, people resident in the "Deh Cho territory" or the "territory" itself. Therefore, it is uncertain as to who some of the recommendations in the Plan apply to.

RECOMMENDATION: Provide a definition of Deh Cho/Dehcho and be more clear which is being referred to.

Page xii: Definition of "Developers": This statement indicates that, a person applying for a Crown Lease would not be a Developer, because a Crown Lease is not a licence, permit or authorization. In the context of the MVRMA, a licence is a water licence, a permit is a land use permit and an authorization is a Fisheries authorization. As a result, someone applying for a land lease would not be considered a "Developer".

RECOMMENDATION: Perhaps remove "Developer" and substitute "Applicants" to read: "Applicants: Any person engaged in an activity requiring an authorization from a federal or territorial government department, agency or institution." If this recommendation were accepted by the Committee, all references in the Plan to "Developer" would have to be changed to"Applicant".

Page xiv: Definition of "Mining": This definition is very loose and includes exploration as well as development and extraction. This is not a normal usage of the term mining, and its use in this document could cause all exploration activity, even low impact prospecting, to be treated as high impact land use pursuant to CR #25 on pages 25 & 26, so a separate term for "Mineral Exploration" should be added. Also, the current definition of "Mining" does not include bedded industrial minerals (e.g. barite) or rock, i.e., building stone or dimension stone.

Page xv: The definition and application of the "Precautionary Principle" in Canada needs to be reconsidered. Canada has published a document entitled "A framework for the application of precaution in science based decision-making about risk" - (www.pco-bcp.gc.ca/docs/Publications/precaution/precaution_e.pdf).
This document provides guidance in areas of federal regulatory activity on when to apply precautionary measures, and their nature.

RECOMMENDATION: Reference should be made to the framework in the definition of precaution as providing guidance for the application of the precautionary principle in Canada by federal government and agencies. This may be more informative than partial quotation of the Rio Declaration.

Page xv: Definition of "Regulatory Authorities": This definition speaks of government with the authority to issue a licence, permit or authorization and lists DIAND. However, DIAND does not issue a licence as defined in the MVRMA as this context implies. When DIAND is authorizing the use of land, e.g. quarry permit, then DIAND is a Regulatory Authority for the purposes of the Plan. When DIAND is giving an interest in land, e.g. lease, it is not acting as a Regulatory Authority and should therefore not be considered one under the Plan for that purpose.

RECOMMENDATION**:** Perhaps remove the specific and substitute "Applicant" and change to read: "Regulatory Authorities: Any government department or agency or institution responsible for issuing authorizations within the Dehcho. These include .....the Department of Indian Affairs and Northern Development (DIAND),.....".

Section 1.2 Scope and Application of the Dehcho Land Use Plan (page 2)

RECOMMENDATION: Under statement 4. Land Uses, it would be useful to add an explicit statement about cumulative effects thresholds, since the thresholds could have as great an impact on allowable activities as zoning.

Under statement 5. Traditional Land Use and Occupancy, there may be some limits placed on traditional land use, occupancy and harvesting by legislation as noted in the Key Issues comments above. The Committee should not give the impression in the wording that the Plan provides authority for traditional land use, occupancy and harvesting activities through legislation.

RECOMMENDATION: Remove the sentence that states: "Traditional Land Use, Occupancy and Harvesting will continue in all areas at all times." and add to the sentence that states "The Land Use Plan cannot and will not restrict treaty and aboriginal rights and activities as protected by law **nor be construed to permit them where they are regulated by law**."

Section 2.1.1 (page 6)
RECOMMENDATION: In the second sentence here, the reference to the people being steward should include government and regulatory agencies, otherwise it could give the impression that the government and regulatory agencies do not play a stewardship role**.**

Section 2.2 Land Use Zones (page 7)

RECOMMENDATION: In the very first sentence of this section, regarding the reference to "consultation with communities and Planning Partners", reference should be made to others consulted throughout the land use planning process.

RECOMMENDATION: Concerning the list of seven overarching principles (bullets) , add an eight: "Regard the interests of all Canadians." to fully reflect the mandate of the Committee pursuant to the IMA.

RECOMMENDATION: In the second sentence under the **Protected Area Strategy Zone** bullet, change "is" to "will be" and replace "the Park" with "an applicable", so the latter part of the sentence reads as: ".....which will be managed under the legislation and authority of the sponsoring agency and an applicable Management Plan."

RECOMMENDATION: Also with regard to this PAS Zone, it is not clear what impact there would be on the Plan if the boundary of the PAS land withdrawal were adjusted, so it should be explained that the Plan will take this into consideration.

Section 2.2 Land Use Zones (pages 7 to 11)

CR # 1(page 8): RECOMMENDATION: Can it be assumed that the MVLWB is the designated Regulatory Authority here? It should be spelled out rather than having to look in Section 3.2.3 for confirmation. Also, Plan Exceptions are permitted as outlined in Section 3.4, so this should probably be mentioned here as well.

Section 2.3.1 Dene Culture (page 13)

RECOMMENDATION: Concerning R #1, the requirement to act in conformity with Dene Laws, Values and Principles, the wording should be changed to state that businesses will take them into consideration.

Use and Recognition of Traditional and Cultural Knowledge - CR #2 (page 14)

Regarding the statement that "***all applications*** for new land and water permits, licences and authorizations" are to be required by "Regulatory Authorities" to document both traditional knowledge and scientific information, this will likely entail considerable cost and may be prohibitive to the small operator. Questions: (1) will the documentation generated be available to future operators or will they be required to endlessly re-do traditional knowledge studies; (2)what happens when "traditional knowledge Policies and Protocols" do not exist; and (3) what constitutes an "appropriate" level of data collection and who decides what is "appropriate"?

Section 2.3.2 Traditional Land Use and Occupancy (pages 15 to 18)
Protection of Significant Traditional Land Use and Occupancy Sites (page 16)

In CR #3, in the last sentence there is a reference to "DFN lands", which gives the impression that the lands are recognized as being DFN lands.

RECOMMENDATION: Replace this term with a reference to the Deh Cho territory and leave the ownership issue neutral.
Consultation (page 16)

It is questionable whether this "full and meaningful consultation" can begin before an application is received.

RECOMMENDATION: DIAND suggests that this be changed to read: "It is preferable that consultation begin prior to the application." However, in any case, the Applicant will be advised that consultation must begin as soon as being notified as to receipt of the application, and the need to continue consulting throughout the life of the proposed development.

In CR #4, the wording suggests continuing consultation throughout the life of a project.

RECOMMENDATION: Add the qualifier that "consultation should be timely and at intervals appropriate to the scale and nature of the project."

Use of Guides and Monitors (page 17)

RECOMMENDATION: In the first sentence, reference is made to "traditional lands", which gives the impression that the lands are recognised as being DFN lands. Use instead "in their traditional territory".

In A #3 of this section, reference is made to DFN outlining contract terms and list of community members which gives the impression that the contract terms and list of people must be used, but there is no legal authority to do this.
RECOMMENDATION: Clarify the language so that the DFN will recommend the contract terms and list of community residents.

Section 2.3.3 Sustainable Development (pages 18 to 36)

Existing Rights, Dispositions, Authorizations and Activities (page 18)

In the fourth bullet of CR #6, the word "seizes" should be "ceases".

In the fifth bullet of CR #6 it is unclear what is meant by "altering" an existing non-conforming use. Section 27 (1) of the Canada Mining Regulations states that "the holder of a recorded claim has the exclusive right to prospect for minerals and to develop any mine on the land within the boundaries of the claim". This intent also appears to be reflected in the preamble to the bullets in CR #6 in that

existing rights, dispositions, authorizations and activities will be allowed to continue as non-conforming uses. If mining within a pre-existing right is allowed, then all activities, both present and future, which support this land use must be allowed, subject to the existing environmental assessment and regulatory framework, until the right lapses. Only if another non-conforming use is applied for through a permit, etc. would that use be subject to the full extent of the Plan.

RECOMMENDATION: DIAND recommend that bullet 5 state "If an application is made for a permit, license or authorization for a land use other than the allowed non-conforming use, then the application is considered a new activity and is subject to the full extent of the Plan".

RECOMMENDATION: All references to the Cantung Mine should be updated to reflect the Mine's reopening in the fall of 2005, including at the top of page 119 of the Background Report.

Successor rights need to be explicitly recognized as 'existing' since Oil and Gas legislation provides for a successor licence - Significant Discovery Licence - of indefinite tenure should a discovery be made on an exploration licence. Furthermore, an exploration licence confers the right to obtain a Production Licence required for development and production of oil and gas. Wording needs to be added to ensure that a Significant Discovery Licence or Production Licence which succeeds an Exploration Licence is considered an 'existing' right.

RECOMMENDATION: Add bullet: "Should an existing oil and gas licence be replaced in whole or in part by a successor right (Significant Discovery or Production Licence), the successor right shall be regarded as an 'existing right'".

Non-Exclusive Geophysical Surveys (page 19)

Regarding CR #8 in this sub-section, DIAND supports the introduction of this CR which allows non-exclusive geophysical surveys ('seismic on speculation') in all areas except those identified in section 43 of the IMA, and shown on Map 2 (page 20). DIAND notes that Conservation Zones 1, 3, 7, 18, and Special Management Zones 20, 23, 29, among other zones, are now open for non-exclusive geophysical surveys, where previously these were prohibited.

RECOMMENDATION: For greater clarity, it would be useful to have a listing of all the zones where oil and gas is not a permitted use, but that are open for non-exclusive geophysical surveys. Perhaps such a list could be built into Table 1. Zone Descriptions on page 11. In addition, listing non-exclusive geophysical surveys as a permitted use (or non-conforming use) in the individual zone descriptions in the Background Report would also be helpful. The Department encourages the Committee to clearly communicate with industry on where non-exclusive geophysical surveys are allowed. Allowing this exploration could provide valuable information for zoning decisions in future versions of the Plan. DIAND also notes that although non-exclusive geophysical surveys are allowed in the Edehzhie PAS Zone, the area's candidate protected area status may affect licence issuance.

RECOMMENDATION: Regarding A #5 immediately following CR # 8 on page 19, the word "directed " should be changed to "encouraged".

Also with regard to A #5, DFN and Canada are directed to renegotiate these areas to harmonize these with the Plan's Land Use Zones within one year. "Non-exclusive survey" means a geophysical operation that is conducted to acquire data for the purpose of sale, in whole or in part, to the public (Canada Oil and Gas Geophysical Regulations) and in s. 43 of the Interim Measures Agreement. The provision for non-exclusive geophysical operations derives from s.43 in the Interim Measures Agreement. The clause serves to exclude non-exclusive seismic from certain areas withdrawn under the IMA. It was noted that non-exclusive surveys (predominantly seismic) are activities which do not require a disposition of lands and hence would not be restricted by a land withdrawal. This provision was negotiated at the time in view of the large area and geography of withdrawals to allow the possibility for regional seismic information to be gathered which would allow assessment by industry, government and stakeholders of the petroleum potential for revisions to a future land use plan. This argument still applies: exclusion of seismic data acquisition in the land use zonation would prevent acquisition of scientific knowledge of the sub-surface to inform future land use decisions over a very large part of the Dehcho, given the extent and geography of the CZs.

RECOMMENDATION: These non-exclusive seismic activities should be permitted as non-conforming uses within those areas of the CZs which overlie the interim land withdrawals where this activity was not excluded under s.43 of the IMA.

Minor Infrastructure (page 19)

RECOMMENDATION: It would be useful to also state in this sub-section that seismic lines of 1.5 metres or less in width are below the threshold for requiring a land use permit, and are therefore not affected by the Plan, and can take place throughout the Dehcho region unless otherwise prohibited (e.g. Nahanni National Park Reserve).

Access (page 21)

In the fourth bullet of CR #11, second sub-bullet, concerning the reference to not disturbing "traditional land use and occupancy activities in the area", this goes beyond existing legislation and provides too difficult a test for development to proceed.

RECOMMENDATION: Amend this requirement to state that the regulators must take into account the disturbance to traditional activities when making their decisions.

Mackenzie Valley Pipeline (page 22)

Concerning the possible need for a wider corridor, the existing corridor may not provide sufficient flexibility to avoid sensitive areas or because some areas are not feasible for geotechnical reasons. RECOMMENDATION: Use a wider zone of 2-5 km as developed by the proponent.

Regulators may decide that the pipeline routing be adjusted for ecological or technical reasons, including the siting of ancillary activities and related infrastructure. The Plan should provide for such deviations.

RECOMMENDATION: The Plan should allow for deviations in pipeline right-of-way where

approved by the NEB.

Water Monitoring / Management (page 23)

In CR # 14, "CCME" should be spelled out.

In CR #16, the last sentence which has been added to the paragraph "rivers and tributaries in the Dehcho region will remain substantially unaffected in quality, quantity and flow" is more of a goal than a conformity requirement because water quantity and flow is related not only to human activities but to overall climate change as well, making the conformity checks on this requirement difficult.

RECOMMENDATION: Remove this sentence.

Air Monitoring / Management (page 24)

In the third paragraph, concerning the application of conditions relating to air quality, it should be noted in the Plan that the NEB has a "general" mandate to address air quality under COGOA.

Mine Reclamation Planning and Security (pages 24 & 25)

In the first paragraph on page 24, the third sentence states that Government policy requires Developers to submit a security deposit for mine reclamation but that it does not cover all aspects of mining. This is because the NWT Mine Site Reclamation Policy clearly excludes prospecting, exploration and advanced exploration stages of the development of a mineral property. Thus only mine-related activities that take place on mine sites should be subject to this conformity requirement.

RECOMMENDATION: It should be stated that prospecting and exploration activities conducted under a Prospectors Licence issued under the Canada Mining Regulations and for which no other permits are required, are not considered "mining activities" for the purpose of this conformity requirement.

In CR #17 on page 25, in the second sentence reads "For minor or short-term activities for which separate C & R Plans are not currently required, reclamation plans will be clearly described in the project application and security amounts will be determined based on those activities." This requirement needs to be clarified because there are some situations where security is not required under existing regulations.

Also regarding CR #17 on page 25, the current MVLWB procedure for approval of mine development consists of permitting and then the submission of C&R plans and the determination of suitable security deposits. Requiring C&R plans before the development is even permitted is a

rather backwards way of doing it. This also raises the questions of amendments to permits i.e. will the C&R plan have to be redone before permits can be amended?
Additionally, the term "mining" as used in this CR #17 is defined in the front of the Plan as being "Any work or undertakings related to *exploration for* or development of a mineral resource…". This implies that any grassroots exploration projects would be subject to submitting a C&R plan, regardless of the size of the proposed development, prior to permitting, when provision for site cleanup has already been specified within the conditions of the land use permit itself (see *Section #7 of the MVLWB Land Use Permit Application*). There are also the implications that this definition has for the concept of below-threshold activity, i.e. there is none; see Recommendation above.

The way this CR #17 is worded (and according to Figure 1 on page 51 of the Plan) it would appear that any project large enough to require a Land Use Permit or Water License would need approval from the Committee before any permitting would be allowed. Making C & R plans a conformity requirement for permit issuance gives the Committee a *de facto* regulatory function, which is not within the scope of this process (see page 4 of this document under "Unlawful Sub-delegation or Fettering of Discretion re Conformity Requirements" and page 7 under "The Deh Cho Process")". Also ignored in this section are the federal Mine Site Reclamation Guidelines which are currently going through revisions and should be out this year.

A Closure and Reclamation Plan would only apply to an advanced project, carried out on mineral leases, which involves underground or open pit development. The highest level impact in most mineral exploration is drilling, carried out on mineral claims, which normally leaves very small patches of drilling mud. The impact of drilling is normally monitored via land use permits.

RECOMMENDATION: Because the definition of "mining" as it stands now would inhibit even prospecting, it should be defined separately from "mineral exploration". What precisely constitutes a "permit license or authorization" should also be defined at the front of the document.

Reclamation Planning (page 25)

Third bullet: It appears that the FNs have a veto on acceptance of the "mining legacy" portions of a reclamation project. Lands has a problem with this as the ball will be solely in the court of industry if the "mining legacy" is not accepted by the FNs. The FNs will essentially force the proponent to exhaust all resources to prevent something that is accepted and understood as part of "mining".

Seventh bullet: Assigning enforceable deadlines to reclamation can cause hardship on industry. Mine planning/operations planning is dynamic and constantly changing based on local and international markets and industrial factors which are largely out of the control of the proponent.

Reclamation Security (page 26)

The sixth sub-bullet listed under the first bullet relates to full cost of security for unpredicted catastrophes. It is impossible to provide the full cost of something you cannot predict.

RECOMMENDATION: Suggest "unpredicted catastrophes" be changed to "worst case scenarios".

The fourth bullet deals with the form of security which is already specified in existing legislation.

RECOMMENDATION: Suggest bullet read "Security will be in a form specified through section 17 (1) of the *Northwest Territories Waters Act* and section 12 (3) of the Northwest Territories Waters Regulations (not reachable by the Developer's creditors under bankruptcy)".

The fifth and sixth bullets address how the security deposit is to be used and made available. However, based on the current Departmental policies, security is a guarantee that, if a developer does not complete closure and reclamation, adequate funds are available to do the job. It should not be drawn upon to do the work. The amount of security should, however, be adjusted periodically to take into account additional liabilities or progressive reclamation.

RECOMMENDATION: Suggest these two bullets read:

- "The security deposit must be secured and held as a guarantee of closure and reclamation work on the proposed mining activity".
- "Security should be held in trust by the Developer as a guarantee that accepted closure and reclamation activities pursuant to an accepted Final Reclamation Plan are performed whereupon it will be refunded as per section 17 (5) of the *Northwest Territories Waters Act*".

The seventh bullet is fine for new developments. However, in the case of historic mining operations still operating (e.g. Cantung Mine) which, under the "old rules" were not required to post full security, but are now building up additional security as operations continue, the NWT Mine Site Reclamation Policy recognizes transitional rules to do this. Forcing such mines to post immediate 100 % security will only guarantee bankruptcy and the outstanding liabilities falling to the Crown. Even though the Cantung Mine would be exempt from the Plan, a further note of explanation as to why this requirement would not apply to them could be made in the preamble.

RECOMMENDATION: It is suggested that the following wording be added: "For existing mines exempt from the Plan and in operation prior to existing regulatory mechanisms on mine closure, reclamation and security, and where existing financial security is not 100% of the closure and reclamation obligations, security should be increased in increments to 100% over the length of the mine. Only when an operator of such an existing mine can demonstrate that it is incapable of doing so without causing bankruptcy, would other options relating to form, amount or schedule for provision of financial security be considered".

Tourism (page 28)

R #19 references to what should be negotiated in the Deh Cho Process which goes outside the scope of the Plan.

RECOMMENDATION: Remove this reference or just state that the issue should be addressed, without identifying the outcome.

In CR #23, DIAND believes that this is a fettering of discretion as there is no legal authority to do this. The Plan should say what can be done, not by whom.

RECOMMENDATION: Amend this CR or delete it.

Digital Pre- and Post-operation Mapping (page 29)

As part of CR #24, the Developer is to provide digital mapping of their proposed development at the time the application is submitted and within 30 days following completion of the activity, to allow monitoring of the actual development footprint. The requirement to provide this information after the completion of the activity makes it extremely difficult to conduct a conformity determination in the way anticipated by the Plan.

The MVLWB does not now **require** proponents to submit digital maps of their proposed development; it only **requests** GIS data for **major projects** (see *Guide to Completing Land Use Permit Applications to the MVLWB, pg 5, section #16*). To successfully complete a land use permit application, it is only necessary to file a site plan (to scale) and a map (usually 1:50,000) showing the location of the development (see *Guide to Completing Land Use Permit Applications to the MVLWB, pg 3*). Requests for digital data from all proponents may be beyond the means of small operators.

RECOMMENDATION: Remove the requirement for the Developer to provide digital mapping within 30 days following the completion of the activity from the Conformity Requirement. It can be made either an Action or Recommendation that the appropriate Regulatory Authority would have to add this requirement to the appropriate permit, licence or authorization.

Oil and gas regulation includes the submission of pre- and post reporting to the National Energy Board. The time frame of 30 days for submission post operations is short to allow for compilation, surveying, remote sensing information, approval of information by the regulator, submission, etc. Different types of activity (e.g. seismic) make this requirement more difficult to fulfill and may require longer time periods.

RECOMMENDATION: Change to a recommendation which states that regulators require the inclusion of this information within program reporting and within the time-frames set for the specific activity. The appropriate regulator could ensure transmission to the Committee of the spatial information requested upon their approval of reports.

Cumulative Effects Management (pages 30 to 32)

CR #25 on page 30 specifies that indicators used for cumulative assessment will be calculated by the Committee and that based on this analysis, Regulatory Authorities will or will not approve applications for permits if it exceeds the thresholds. Since there will be many parties involved and given that there might be gaps in available information, will environmental agreements be necessary to ensure (a) filling these information gaps and (b) possible overlap in roles and responsibilities? There is also concerns about the possible delays in the determining process given the fact that an assessment of several indicators part of the cumulative assessment framework have to be done. What are some of the alternatives that can be applied by the Committee if there are delays in the project review process?
RECOMMENDATION: The Plan should state what weight each of these thresholds has.

Question re CR #25: Because DIAND is not a Regulatory Authority in some situations covered by the Plan, Lands cannot approve new applications for land use. So, is DIAND required to verify cumulative effects and whether they cross a threshold, bearing in mind that some activities could be approved without a land use permit, e.g. a 10m X 10m trappers cabin?

Who is to be tasked with overall coordination and monitoring of the cumulative effects as defined in the Plan? Perhaps there should be a single window approach to providing input and monitoring of the cumulative effects. If done on an agency-by-agency approach, it will likely not provide the desired results, so perhaps the Committee or a single Board should be doing this.

Although significant efforts have been made to simplify cumulative effects management in the Plan, the assessment of cumulative effects remains a complex and difficult calculation. It is possible that the current proposal will result in reduced efficiency of the regulatory process from imposed restrictions, which may be untested in conserving wildlife, but effective in deterring development. This could also result in a lack of understanding or transparency of how thresholds and levels of disturbance were determined. Any deficiencies in process could lead to perceptions of arbitrariness in protecting legitimate rights and in ensuring that principles of natural justice are upheld.

RECOMMENDATION: Accepting the experimental nature of the proposal, clarify and simplify the application process, optimize and integrate feed back, and ensure a fair appeal and review process for conformity determination. A suggestion is to create a standing joint industry/Committee staff Working Group to allow for industry presentations on the cumulative impact of proposals, provided existing regulatory timeframes are not increased. This Working Group could act in an advisory capacity to the Committee within the conformity determination process on generic issues and which could impact conformity determinations for specific applications.

The complexity of the cumulative effects calculations with the multiple indicators needs to be examined. For example, does corridor/road density co-vary with minimum patch size and core area? Even if the there is only an approximate relationship, one indicator could act as a surrogate for both. Furthermore, the application of different buffer widths (to allow differentiation between seismic lines, temporary and all season roads, etc.) would be possible on the basis of an area calculation, but not on the basis of a linear calculation.

RECOMMENDATION: Select and/or amalgamate indicators.

The exclusion of the Conservation Zones from all cumulative effects assessment changes and biases the nature of the calculations and determinations. The large areas under Conservation Zones obviously set aside a large proportion of habitat for many VECs. Why does this factor not appear in any cumulative effects metric?

RECOMMENDATION: Develop a habitat availability metric which includes the Conservation Zones.

The baseline data for cumulative effects is primarily based on the interpretation of remote sensing information of linear features. DIAND recognizes that (1) many of these linear features are old, (2) the on-the-ground examination of older features may not show any significant impact on important ecological factors, (3) remote sensing can show linear features which are extremely ancient and

which can be demonstrated to be invisible to biota. Selection of a baseline for disturbance based on this analysis is therefore somewhat arbitrary. DIAND would argue that there is no basis for using a precautionary approach in the absence of scientific information, since there is no matter of serious or irreversible harm in setting this baseline.

RECOMMENDATION: An action item should be developed which requires that the baseline disturbance per zone be defined by a multi-stakeholder committee, including on-the-ground ecological impacts in addition to the remote sensing data.

Table 2. Cumulative Effects Indicators and Thresholds (page 31)

Regarding the Corridor or Road Density indicator, the basis of 1.8 km/km^2 for species such as Woodland Caribou may be scientifically untested at this point in time. The basic footprint of a 3D seismic program may cause the threshold to be exceeded. This was confirmed by the NEB geophysicist regarding the average parameters of the 3D seismic program. 3D seismic is a key tool for the oil and gas industry to effectively and efficiently explore for and develop resources. DIAND is therefore concerned with the application of this indicator that could effectively prevent 3D seismic work from taking place.

RECOMMENDATION: Remove this requirement from the Plan.

The stream crossing density figure of <0.5 crossings/km seems low, given that the impacts of vehicle crossings can likely be mitigated. There is uncertainty about whether the threshold applies to all streams or just fish bearing streams. If there is no physical disturbance to the bed and banks of the vehicle crossing, is that crossing included in the calculation? How will the data be assessed and collected? If a stream folds back on itself and a road must cross it twice in a square kilometer, it appears the limit would be exceeded. This may prevent simple projects from occurring in areas where there are lots of watercourse crossings, like in the Cameron Hills area, where the ground water table is high and multiple watercourse crossings are required.

RECOMMENDATION: There should be more scientific information provided to explain the threshold and to show that it is appropriate.

Habitat Availability (page 32)

The statement "Habitat availability is calculated as the percent of land disturbed..." raises some questions. For example, what about a situation where there has been reclamation and there is ecological value in the disturbed land. Are such areas included in the calculation?

RECOMMENDATION: Explain how this form of reclamation can be incorporated in Habitat Availability (note- this is really an item for the regulator and not the Committee).

Minimum Patch Size and Core Area (page 32)

With regards to the assessment of Minimum Patch Size and Core Area, the statement "Regulatory authorities will determine conformity..." raises some concerns since more than one agency will do the conformity determination to track cumulative effects digitally. On item 4 about lakes being excluded from the Core Area calculations, what about natural run-off and excessive sedimentation from erosion?

RECOMMENDATION: Change to a single Regulatory Authority (such as MVLWB) with sole responsibility for conducting the conformity determination.

Significant Features and Seasonal Restrictions (page 34)

CR #26 states "Regulatory Authorities will require all Developers to avoid physical disturbance of Significant Habitat Features and Significant Environmental Features as defined in the Plan...." Although there is a definition of "significant environmental features" on page xv, there is no listing of them in the Plan. There is also no definition of "physical disturbance". Developers are told in CR #26 that they must consult with Dehcho First Nations and Regulatory Authorities to find where these features are. Developers support land use planning because it provides certainty as to where they can develop and where they can not. With CR #26, in General Use and Special Management Zones, they can go there but would still have to seek approval of what cliffs, ravines etc. they could "physically disturb". This could cause some uncertainty, something land use planning is supposed to eliminate.

The Committee states in revision that similar terms were approved in the Gwich'in and Lancaster Sound Plans. The approved Gwich'in Plan does provide for 250m setback only for waterfowl and raptor nesting areas, only during the nesting season, only for areas of known or discovered nesting sites and only in Special Management Zones or Conservation Zones. The use of the term "***suspected*** Significant Habitat Features" is nebulous and leaves this requirement open to broad interpretation.

RECOMMENDATION: If these features are known, they should be identified in the Plan. If the threshold of disturbance is such that it might not be captured in the existing regulatory process, they should be part of the Conservation Zone category. Otherwise, the Plan will present a false impression of what areas can be developed.

Economic Development Strategy (page 35-36)

Regarding the comment in the last sentence of the second paragraph that "the DehCho will benefit far less than if Dehcho companies are the ones actually doing the development.", this statement ignores the capacity of Dehcho companies to undertake business, how private companies are determined to be Dehcho companies, and who within the Dehcho may benefit. Clearly Dehcho companies are not in a position to make major investments in exploration and development: without this investment there would be no benefits. DIAND believes the assertion is unwarranted and not demonstrated by the economic modelling.

RECOMMENDATION: Remove this statement.

Section 2.3.4 Community Issues (pages 37 to 39)

Health and Social Issues (pages 37 & 38)

RECOMMENDATION re R # 27 top of page 38: With reference to government providing increased funding, this goes outside the scope of the Plan and should therefore be deleted.

No mention is made in this section of the uncertainties involved in economic modelling. In this regard all models make assumptions, differ in degrees of complexity and accordingly give different

results. It is stated that the model allows for comparison of costs and benefits of opening up different lands. This was true at an earlier stage of the planning process but in this document it is used to generate specific outputs for the Plan. These are presented as absolute values of activity, revenue etc. DIAND is not in a position to endorse these absolute outputs of the model as reasonable or plausible. This leads to uncertainty with regard to conclusions as to the impact of the Plan.

RECOMMENDATION: Include a statement qualifying the uncertainty of the economic outputs.

Section 3.2 Plan Implementation (pages 42 & 43)

The first sentence in the first paragraph on page 43 reads as follows: "As such, the Committee has a shared role in monitoring conformity with those government departments, agencies and institutions that authorize, approve, monitor and enforce land uses...". This statement ignores the role of DFN, local FNs and the communities who also have implementation responsibilities under the Plan. Also, the Plan might have an impact on the operational workplan and budget of the MVLWB.

RECOMMENDATIONS: Include the implementation roles of the DFN, the local FNs, and the municipalities if applicable; and the regulators such as the Land and Water Board should be consulted as to what effects the Plan might have on their operations.

Regarding the "Regulatory Authorities" listed in the first full paragraph on page 43 and the Table 4 of Implementation vehicles on pages 45 & 46, and defined on page xv, perhaps it would avoid confusion throughout the Plan to specify the name of the particular Board or agency rather than using a somewhat confusing generic term.

RECOMMENDATION: Delete the definition of the term "Regulatory Authority" on page xv and replace the term throughout the Plan with the name of the specific regulatory agency or agencies(i.e. specify MVEIRB, MVLWB, DFO etc., as well as including the Table (4) of agencies at the front of the Plan.

RECOMMENDATION: Also, the reference to the Dehcho Resource Management Authority (DCRMA) in the last sentence of this first paragraph on page 43 should be deleted as it could prejudice the Deh Cho Process concerning the powers and authorities of the DCRMA which have yet to be negotiated.

Regarding the reference to the "Protected Area Management Committees" as Regulatory Authorities towards the end of the first paragraph on page 43, for clarity, no Protected Area Management Committees have been established under the Protected Areas Strategy process in the Dehcho region (the existing Naha Dehe Consensus Team for Nahanni National Park Reserve is a joint body under the Dehcho First Nations and Parks Canada). The Protected Areas Strategy does have a Working Group for Edehzhie (and Trout Lake?), but this body is not a regulatory authority, as its mandate is restricted to completing work under Steps 5 and 6 of the Protected Areas Strategy. If Edehzhie is established as a permanent protected area, a management committee may be created under the legislative authority of the sponsoring agency, in this case Environment Canada. This will also have to be updated in the definition of Regulatory Authorities on page xv.

Regarding the reference to "Terms" in the second paragraph on page 43, "Terms" are defined on page 12 as Conformity Requirements, Actions and Recommendations. However it further states on

page 12 that recommendations are not requirements.

RECOMMENDATION: In this paragraph, "Terms" should be replaced with "Conformity Requirements and Actions".

Section 3.2.1 Implementation Vehicles (pages 44 to 46)

Table 4. Implementation Vehicles for Zoning and Key Terms (page 45)

Regarding the third Term "Consultation", the statement that Federal Government departments' and agencies' consultation go beyond the definitions in the IMA and the *MVRMA* represents an opinion that may or may not be accurate.

RECOMMENDATION: Delete this reference which is not relevant.

Section 3.2.2 Revised Land Withdrawals (pages 46 to 49)

RECOMMENDATION: In the second and third paragraphs of this Section, there are references to Pehdzeh Ki Deh and Edehxhie, but a reference to the mineral and energy resource assessment (MERA) work in the Greater Nahanni Ecosystem needs to be included as well.

Section 3.2.3 Conformity Determinations (page 49)

RECOMMENDATION: In the third paragraph of this sub-section, a small 'r' recommendation is made by the Committee that Regulatory Authorities develop standard criteria and processes for determining conformity, to facilitate implementation of the Plan. An implementation workshop with the Committee and Regulatory Authorities may be useful to all parties to help achieve this recommendation.

Section 3.2.4 Inspections and Enforcement - Figure 1 (page 51)

RECOMMENDATIONS: After the "Is the application complete?" box, add a new box saying "MVLWB determines whether a preliminary screening is required". The "no" arrow should point to the purple box in the lower right hand corner of the diagram, whose text begins "MVLWB incorporates Conformity Requirements…The "yes" arrow should point to the purple box starting "MVLWB conducts a Preliminary Screening…".

Comment: This step is different from the grandfathering step described in the first purple box in the diagram. For example, if a developer is requesting a "renewal" of a water licence for a project that has already been screened or gone to environmental assessment, the MVLWB may rule that a preliminary screening is not required.

RECOMMENDATION: In the purple box in the mid-left hand side of the diagram, whose text begins "The MVLWB issues permit with Conformity Requirements and recommended measures," add "and/or licence" after "permit." (Note that the MVRMA and the NWT Waters Act use the spelling "licence", not "license.")

Question: Regarding the yellow coloured box in the lower, centre part of Figure 1, specifically the term “concurrent conformity checks”, what happens if these result in different conflicting results?

Figure 2 (page 52)

This Figure needs to be revised to include the possibility of the application being referred to environmental assessment. Developments can be referred to EA when the MVLWB is not involved. For example, the proposed WesternGeco River Seismic program required permits only from the National Energy Board. The NEB and DFO referred the application to environmental assessment by the MVEIRB.

To address this comment on Figure 2, the Committee may wish to generalize Figure 1 to include preliminary screeners other than the MVLWB. It should be reiterated that when DIAND authorizes the use of land, e.g. quarry permit, then DIAND is a Regulatory Authority for the purposes of the Plan. When DIAND is giving an interest in land, e.g. lease, it is not acting as a Regulatory Authority and should therefore not be considered one under the Plan for that purpose.

Section 3.2.4 Inspections and Enforcement (page 50)

DIAND Lands is of the opinion that DIAND inspectors would not inspect and monitor Developers to ensure they comply with the Plan as firstly, the Plan is not a legally enforceable document and secondly, they would only inspect for compliance to the regulatory approval, being the land use permit or water licence.

Section 3.4 Plan Exceptions (page 53)

In the list of five considerations (bullets) which the Committee will use in making its decision, there is no reference to the “interests of all Canadians”.

RECOMMENDATION: Given that the IMA states that the Plan should also have “regard to the interests of all Canadians”, a sixth bullet should be added to the other five for use by the Committee in making Plan Exception decisions.

APPENDIX - COMMENTS ON BACKGROUND REPORT

Headquarters:

On **Page 95, Table 8** indicates a total of 433 oil and gas wells (62 Production; 371 Exploration). It does not appear that this number of wells can be drilled without exceeding thresholds for disturbance. The effect of cumulative effects regulation is not therefore taken into account in the economic modelling presented in support of the Plan.

Certain areas such as near Cameron Hills and east of Fort Liard appear close to or exceeding thresholds. This would imply that further exploration drilling and seismic may be curtailed and that projections of the economic model are unlikely to be realized.

RECOMMENDATION: The Committee has the tools to model this level of development and determine the disturbance levels likely relative to the thresholds. This information would give a clearer idea of whether the activity levels used to forecast revenues are actually possible when the Plan is implemented.

Economic Assessment: Page 182, Section 6.7

In order to understand the economic implications of implementing the Plan on all stakeholders (including DCFNs, Industry sectors, government etc.), it is important to anticipate the effects of the Plan with regard to cumulative effects thresholds and activity levels indicated by the Economic Development Model in the Background Report. This would improve confidence that a regime was being implemented which would be workable, fair and transparent and favour sustainable development, and that the economic outputs projected by the model are plausible. The Committee is best placed to run such modelling exercises.

Roll up of economic contributions from all industrial sectors reduces transparency and comprehension. (Economic Development Assessment (p 193).

RECOMMENDATION: For each column in Figure 23 break down contribution by industrial sector so effects can be better evaluated, or provide summary of contribution to revenue and GDP by sector.

Plausibility of projections for revenue as illustrated by Figure 21, *Impact on Revenue—scenarios over 20 years*. (Economic Development Assessment (p 193).

Figure 2 indicates approximately $2.3 billion in revenue accruing to federal and territorial government over 20 years from all sectors. (Draft Plan Scenario). Within this total is the contribution from the development of 10.8 billion m^3 of natural gas (381 bcf). Is this revenue projection plausible given what is known about the performance of gas fields in the southern NWT and from projections by other models?

Two reality checks are suggested:

a) Paramount Laird field (an example of a pool in the Beaver River Play) produced 3,683,593

x 10^3 m^3 to end 2004 (130 billion cubic feet - bcf). Over the same period royalty returns to the Crown from all Northwest Territories oil and gas production totaled $104, 892, 437.00. Royalties generated by the Laird field are confidential but clearly cannot exceed this amount which includes contributions for other oil and gas fields). By scaling this amount up to equate to 381 bcf, royalties equate to $307 million.

b) Mackenzie Gas Project. The EIS for the MGP calculates the total revenue to government over 20 years of 8.64 billion (calculated from table 3-94, p 3 -109 of volume 6). This revenue is from a sales gas volume for three fields of 5.8 trillion cubic feet. Scaling the 381 bcf by the ratio of revenue to gas reserve for the MGP gives a revenue from the Dehcho of $567 million.

These examples are cited to suggest that the projections for revenue made by the Ellis economic model may significantly overestimate the revenue potential of the oil and gas sector in the Dehcho, especially since the pool size distribution suggests a much smaller mean pool size than either of the two examples above. Since the conclusions with regard to the economic effects of the proposed land use plan depend on this model, it may be appropriate to review the input and assumptions of the model with regard to oil and gas development.

RECOMMENDATION: Review the input and assumptions of the model with regard to oil and gas development taking into account the factors mentioned here.

"Industry and Government assisted the Committee in establishing realistic scenarios for the development of each sector over the next 20 years." (Economic Development Assessment Model. p94/87. The Department is not in a position to endorse the results of the model with respect to activity levels, GDP and revenues. Outputs may significantly overestimate revenue projections. The Department notes that both CAPP and Anadarko have questioned economic viability of projects under the draft plan.

RECOMMENDATION: Insert qualification that : "INAC is not in a position to endorse the output of the Ellis model and the implications the model outputs have for projections of revenue from future oil and gas production in the Dehcho."

Oil and Gas assumptions on activity north of 61 30 are outlined in the Background Report (Page 95). Modelling assumptions assume no drilling north of 61°30' in a 20 year outlook. While the approach is sound for incremental development moving north from 60 degrees, it ignores the influence of the MGP in stimulating exploration, particularly in the northern Dehcho. This could lead to the conclusion that there would be no industry interest in northern Dehcho.

RECOMMENDATION: Comment could be inserted that some exploration activity leading to exploratory drilling is plausible in areas adjoining the MGP corridor in northern Dehcho.

Zoning.

An area of high oil and gas potential straddles the boundary of SMZs 26 and 21 east of Fort Liard as described in Page 146 and 139 respectively. Several existing petroleum rights with high potential for additional discoveries lie in this area. Differing cumulative effects constraints in the two adjoining zones may unduly restrict economic and efficient development of gas resources in this area.

In this trend, future development activities on existing licences are likely to point to extensions of fields which go beyond boundaries of existing licences. Additional gas pools are also likely to be discovered in this trend. Economics of development may dictate that grouping of pools within a single holistic development proposal as critical to development. Taken together these form a natural zone for development of natural gas in the near future.

RECOMMENDATION: Build flexibility into the Plan to create special zones for petroleum development where exploration and development trends have been established and where there is potential for development with a short time frame. Recognize these areas as non-conforming areas as if they were existing dispositions.

Special Management Zone 21 (Page 139) is a very large and attenuated zone with high development potential at both east and west ends. It is hard to rationalize how development at the east end should constrain development at the west end.

RECOMMENDATION: Split this zone into two. (Perhaps east and west of the MGP corridor.)

Comments on the Background Report from Steve Goff, NWT Geoscience Centre:

1. Section 2.3.11 "Mining", page 48, first paragraph should read - "Cantung, a tungsten mine, recently closed (December 2003) but reopened in October 2005"; and "Prairie Creek, a proposed lead-zinc-silver mine.." .
2. Section 2.3.11 "Mining", page 48, first paragraph says - Pine Point may re-open. More properly it should say that exploration is being done on un-mined deposits that lie west of Pine Point, discovered by Westmin back in the 1980s.
3. Section 2.3.11 "Mining", page 48, first paragraph says - "…Northwest Territories and Nunavut have been dominated by the diamond industry…" This has been for only about 15 years. Gold has been historically more important.
4. Section 2.3.11 "Mining", page 48, third paragraph reads – ".. the Dehcho potential for diamonds was rated as uncertain. Although significant diamond indicators have been found in the Dehcho over the last 30 years no diamonds or kimberlites have been discovered". If anything, these statements overemphasise the amount of exploration work done. While it is probably true that some large companies may have done unofficial prospecting over the last few decades, none of this work is in the public domain. Publically recorded exploration work for diamonds in the Dehcho area began in 2002 with work by Patrician Diamonds Inc. in Blackwater Lake. Furthermore, the type of exploration, based on sampling sediments from active river basins, is a new technique in the NWT, and differs from the till-sediment sampling extensively used in shield areas. (An extensive programme of river-sediment sampling is being pursued by Diamondex Resources Ltd., in the ISR, Gwitchin & Sahtu areas of the lower De Cho river basin). Given both the newness of the exploration technique and the limited exploration, the diamond potential of the Dehcho area is essentially unknown.
5. Section 6.3.3 "Mining", page 162, first paragraph reads – "To date there has been little exploration in the Dehcho on which to base concrete conclusions…". I would strongly emphasise this point. The document refers to the mineral potential study of Lariviere 2003 (ref:113); and it is important to point out that this is only an educated guess based primarily

on publically available information on geology and mineral showings. Much of the geological mapping in the Dehcho dates from the 1970s and was compiled at 1:250,000 and 1:500,000 scale (i.e. scales showing limited detail), and has limited age-dating or biostratigraphical information, particularly in the eastern Dehcho. Similarly, the Dehcho area has seen limited mineral exploration. Since 1980, very limited exploration has taken place above the prospecting level; the notable exceptions to this being fairly consistent, localized drilling in the Cantung and Prairie Creek areas, (as well as in the Pine Point area in the early 1980s). Only more exploration, or field based resource assessments would give information on which a reasonable resource assessment could be made.

6. Section 6.3.3 "Mining", page 162, third paragraph reads – "The Nahanni expansion process is undertaking detailed mineral and resource assessments (MERA) to better identify the resource potential of the Greater Nahanni Ecosystem". The importance of this study should be emphasized given that the Greater Nahanni Ecosystem covers about 50% of the area of moderate to very high mineral potential within the Dehcho area (see Map 17, p.49). Land selection decisions within this area could, therefore, have a crucial effect on future mineral development options in the Dehcho area.

Comments on the Background Report from Len Gal, NWT Geoscience Centre:

1. Chapter 1 tab, Page 2, section 1.2, 2nd paragraph: "are predominantly non-aboriginal", maybe change to non-aboriginal populations, or communities?
2. Chapter 1 tab, Page 2, section 1.2, 3rd paragraph: "by the main highway system"; maybe change to the NWT highway system, since they are numbered NWT highways.
3. Chapter 1 tab, Page 3, Map 1: This comment goes for many of the maps; the Community symbol as shown on the legend box does not show up on many of the maps, probably because it is hidden under the community boundary shapes. Move symbol to top, or take off the legend.
4. Chapter 2 tab, Page 9, section 2.1.4, Dene Principles: Number 3, "as the one's who came from…"; should this be "as the ones who came …".
5. Chapter 2 tab, Page 20, Figure 4: the last column in the graph should be titled "Northwest Territories".
6. Chapter 2 tab, Page 23, Section 2.3.1, 3rd paragraph: "Permafrost remains…" Most of Dehcho is in Discontinuous Permafrost zone (as mentioned later in text).
7. Chapter 2 tab, Page 24, Map 5. Does Muskwa Plateau (in legend) even show up on the map?
8. Chapter 2 tab, Page 27, Section 2.3.3, 2nd paragraph. "This data predicts a …over the next 30 years". Not strictly true, as there is a gap between first periods to 2030 and 2nd period, starting 2041. It should say "over the second 30 year period studied" or like that.
9. Chapter 2 tab, Page 37, 2nd paragraph: " whooping crane (Grus Americana)' should be grus Americana. Similarly in last paragraph on page, Martes Americana should be Martes Americana. And Table 7 on this Page, should not there be "Fish" listed under VEC grouping heading?
10. Chapter 2 tab, Page 46, Section 2.3.10, 3rd paragraph: Final sentence should be changed to read "This focused on 20 stratigraphic intervals of similar geology called hydrocarbon

plays and ranked these according to whether they were confirmed or hypothetical plays. The number of plays in a given area was then tallied." This is closer to explaining what was actually done.

11. Chapter 2 tab, Page 46, final paragraph: "The rankings for gas are provided below". Should be "The rankings for gas volume estimates…". Also after the"Moderate:" rank, there is an apostrophe following the word grid that is mis-placed.

Further to this ranking scheme (which is DCLUPC's, as I have mentioned previously that Drummond does not provide this breakdown in his report, and it certainly does not agree with Gal and Jones (2003)): You have "Low potential" where it has been estimated by probabilistic methods that there is <50 million cubic metres of recoverable gas in a quarter grid area. By using the 50 million cubic metre cutoff as Low, I think you are assigning low potential to large areas of ground that in my estimation have high potential based on geology, rather than statistical distributions (This is my opinion, (as illustrated in Gal and Jones (2003), and updated in Gal and Udell (2005)), and can be considered or disregarded as the committee sees fit).

However, consider this: An average house uses about 200,000 cubic ft a year for heating. 50 million cubic metres of natural gas (1770 million cubic ft) is enough for all the homes in Yellowknife for almost 2 years (see http://www.mackenziegasproject.com/theProject/overview/aboutNaturalGas/aboutNaturalGas.html). What if you could find a pool of this size, close to Trout Lake or Kakisa? Conversely, by mega-project standards, the 50 million cubic metre volume is small: The 3 anchor fields of MGP would produce this volume in 2.5 days! Even the Ikhil field would produce this in 2-4 years. But smallish discoveries nearest to Trout Lake (Trainor Lake at 182 million cubic metres and South Island River at 150 million cubic metres demonstrate the kinds of pools that might be produced.

The report also states in several places that the plan will be reviewed regularly, zone boundaries could change, etc., as community priorities may change. But the report also quotes industry reps who say the high potential areas are only recognized as such through exploration. But you can't explore if there are not sufficient lands available. A dilemma, to be sure.

12. Chapter 2 tab, Page 48, Section 2.3.11, first paragraph: "…Northwest Territories and Nunavut have been dominated by the diamond industry…" This is only in the recent past (15 years). The territories have a long and rich heritage of mining for many commodities. Also in the paragraph it says Pine Point may re-open (more properly these are un-mined deposits that lie west of Pine Point, discovered by Westmin back in the 1980s).

13. Chapter 2 tab, Page 48, Section 2.3.11, 2nd paragraph: Suggested wording as follows: "An initial comparison of geological conditions against known mineral deposit types allowed them to focus the research on 9 types…".

14. Chapter 2 tab, Page 48, Section 2.3.11, 5th paragraph: CS Lord Northern Geoscience Centre is now called Northwest Territories Geoscience Office, and should be referred to as such in any current or recent studies, as are discussed in this paragraph.

15. Chapter 3 tab, Page 56, Section 3.3.2, first paragraph: "This species…has been shown to be very sensitive to industrial development". A reference would be good here.

16. Chapter 3 tab, Page 56, Section 3.3.4, first paragraph: "form the existing legislative base under which oil and gas is conducted.." Oil and Gas Exploration and Development better?

17. Chapter 3 tab, Page 74, Section 3.8.1, first paragraph: capitalize "Secretariat".

18. Chapter 3 tab, Page 56, Section 3.3.2, 2nd paragraph: "The PAS can result in a range of protection…and community members". Better add "the legislated powers of the sponsoring agency". Also in this paragraph it says "…before submitting the final proposal for approval." Approval by whom/what body?

19. Chapter 4 tab, Page 85, last paragraph: "Special infrastructure Corridor"- capitalize "Infrastructure". Also in this paragraph it says "The Mackenzie Valley Pipeline is encouraged…". Should be "Proponents of the Mackenzie Valley Pipeline are encouraged.."

20. Chapter 4 tab, Page 87, Section 4.7, first paragraph: "NEW LAND USES, SUCH AS Oil and gas." Oil and Gas is not a land use, but I guess this is ok for simplicity (like in the plain language document maybe).

21. Chapter 4 tab, Page 87, last paragraph: "the irreversible nature of change". Sounds overly dramatic, and could certainly be argued.

22. Chapter 4 tab, Page 95, Section 4.9.1, first paragraph: "Ken Drummonds report.." should be "Ken Drummond's report.". Also on this page in Table 8, the assumptions seem strange somehow. The model has 224 exploration wells in Trout Lake (where so much of he prospective ground is alienated). Also 31 production wells (which you could argue represents a success rate of 12%), and a well cost of only 3 million dollars?. Compare to Liard area, where there is more open ground, only exploration 32 wells? And they cost 15 million (despite better access and infrastructure?)- Why the variance? Maybe all the Trout Lake wells are being accessed from south of the border?- But still, seems disparate somehow.

23. Chapter 5 tab, page 104-105. Its good to have this table included, but the data could be as easily be presented in a way that shows the possible lost opportunity in some conservation zones. For example, take the general use zones (zone 31)- it has a pretty big figure (7,648) for Adjusted Volume of Total remaining Recoverable Gas >50 million cubic metres per quarter grid (5^{th} column in table, and what the DCLUPC is portraying as the higher potential areas). But divide it by the area of the zone (3^{rd} column) and the figure is 0.157 (million cubic metres per square km, I think, are the units). Compare 0.157 to the same calculation for Zone 9 (4.06), Zone 8 (3.29), Zone 12 (1.06), and Zone 5 (0.861). Amongst SMZs, Zone 26 comes in at 5.76. While we cant predict where the pools will occur within a given gridded area, this is still pretty telling.

24. Chapter 5 tab, Page 106, Section 5.2, resource potential: "oil and gas potential is…low or no potential in the north". I dispute this. The Mackenzie Plain area in the northern part of Dehcho has good potential (Gal and Udell, 2005). Again, this is an interpretation that apparently conflicts with DCLUPC data. In the zone-by-zone reviews, under resource potential, oil and gas potential is given as high, low, moderate, etc. These are listed on page 46 as criteria, but on what basis? The designations are in strong variance with Gal and Jones (2003)- the study done for DCLUPC- and not from Gal and Udell (2005), the updated study done for the NWT PAS. Both of these studies were based on geological criteria. Drummond's (2004) report does not assign potential as high, medium, etc. If DCLUPC is using Drummond's volume estimate classifications, then that is how they

should be portrayed in the zone-by-zone reviews. In fact that is how it is portrayed on map 16, so the zone-by-zone reviews should be consistent.

There are a bunch of cases like this, I'll only point out ones I feel area glaringly wrong (again, my interpretation).

Zone 3- Plan says low oil and gas potential, I feel high in the southern half

Zone 14- Plan says low to moderate, I say very high

Zone 19 – Plan says low, I say high

25. Chapter 5 tab, Page 108, resource potential: For clarity, the Edehzhie Working Group does not work on or produce non-renewable resource assessments. That is done by Northwest Territories Geoscience Office. (As per NWT PAS NRA guidelines). Also in this section "The Drummond report indicates low potential"- should be DCLUPC infers low potential from the Drummond report – see previous comments.

26. Chapter 5 tab, Page 110, Section 5.4: "PAS Candidate Sites" – I believe the correct terms are Candidate Protected Areas, and Areas of Interest.

27. Chapter 5 tab, Page 111, Zone 1; 3rd paragraph: "will be designated through the appropriate legislation..."- should amend to "legislation of its sponsor..".

28. Chapter 5 tab, Page 130, Zone 16, resource potential. "which is the northern extent of the pine point lead zinc deposits.." I think it rather more proper to say " the northern extent of a belt of Pine Point style lead-zinc deposits".

29. Chapter 5 tab, Page 131, Zone 17, Zone descriptions..:"the area is defined by Whooping Crane data on the left hand side.." should substitute west side for left hand?

30. Chapter 5 tab, Page 140, Zone 22, Zone descriptions: "The community recognized the oil and gas potential of the area and felt this would be an appropriate location..". Unfortunately you can't always decide where you want gas pools to occur. The very prospective Slave Point edge (every bit as prospective as the Jean Marie play mentioned on pg. 138, if not more so- e.g. Ladyfern - cuts across the SE half of this zone. The NW side of it is far less prospective.

31. Chapter 5 tab, Page 141, Zone 23, resource potential. "oil and gas shows low potential" – this wording is awkward.

32. Chapter 6 tab, Page 156, 4th bullet near bottom of page: "seizes" should be "ceases".

33. Chapter 6 tab, Page 165, Section 6.3.4, first paragraph. "However, the economic cost and exploration risk has to be factored in". I raised concerns about this sentence on the last draft (or two), and was left unsatisfied. I still don't understand its meaning. Does not the exploration risk in mining have to be considered, the risk in setting up a tourism operation, forestry, etc? Why is there no mention of "economic cost" or "risk" with the other activities?. What does "economic cost" mean?

34. Chapter 6 tab, Page 185, third paragraph. This paragraph is really hard to follow. Rewrite?

35. Chapter 6 tab, Page 188, first paragraph: "Although the report indicates additional reserves of oil and gas in non-permitted zones, they are generally at low volumes and are

unlikely to be developed in the near future". Firstly, reserves should probably not be used, these are probabilistic distribution estimates and "reserves" are generally used for proven quantities; Secondly, they are obviously unlikely to be developed because they are in non-permitted zones, so this part of the sentence should be deleted. Also says "81% of …gas remains to be discovered". Should change it to "an estimated 81%...".

36. Chapter 6 tab, Page 188, second paragraph; "additional reserves within the IMA boundary". The various resource assessments are considering not only mineral reserves (again a term that should only be used for a proven occurrence), but geological potential and favourability for the occurrence of mineralization, mineral deposits, etc. Reserve estimates are probably only available for CanTung and Prairie Creek, but there is much more mineral potential in the area, perhaps mineral deposits awaiting discovery.