

**First Nation of Na-Cho Nyäk Dun**

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December 1, 2021

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**RE: Review of Draft Dawson Regional Land Use Plan**

The First Nation of Na-Cho Nyäk Dun (“FNNND”) congratulates the Dawson Regional Planning Commission (the “Commission”) for releasing the Draft Dawson Regional Plan (the “Draft Plan”). This is an important milestone towards fulfilling the promises of land use planning in Chapter 11 of the Final Agreements for the Dawson Region.

FNNND has reviewed the Draft Plan and has provided comments in the enclosed submission. Please note that the submission is not exhaustive, and FNNND may provide additional submissions as we continue to review the Draft Plan and the subsequent Recommended Plan. FNNND expects that our comments will be given serious consideration by the Commission, and that they will be integrated into the Recommended Plan.

FNNND looks forward to continued participation and engagement in the Commission’s work. We kindly request that you continue to keep us updated with respect to any developments in the process of revising and finalizing the Plan.

Sincerely,

A handwritten signature in black ink that reads 'Josée L. Tremblay'.

Josée Lemieux-Tremblay  
Manager, Lands and Resources  
(Nän-yë Yétsiyóhoyän)  
First Nation of Na-Cho Nyäk Dun

Encl.        Written Submission of the First Nation of Na-Cho Nyäk Dun on the Draft Dawson Regional Plan

cc: Chief Simon Mervyn, First Nation of Na-Cho Nyäk Dun  
Dalton McFarlane, Executive Director, First Nation of Na-Cho Nyäk Dun  
Ron Cruikshank, Director, Yukon Land Use Planning Council  
The Honourable John Streicker, Minister of Energy, Mines and Resources  
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**WRITTEN SUBMISSION**

**OF THE FIRST NATION OF NA-CHO NYÄK DUN**

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**To:** Dawson Regional Planning Commission

**From:** First Nation of Na-Cho Nyäk Dun

**Date:** December 1, 2021

**Re:** **Draft Dawson Regional Plan**

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## 1. INTRODUCTION

The First Nation of Na-Cho Nyäk Dun (“FNNND”) thanks the Dawson Regional Planning Commission (the “Commission”) for their hard work towards the release of the Draft Dawson Regional Plan (the “Draft Plan”).<sup>1</sup> As you are aware, part of FNNND’s Traditional Territory falls within the Dawson Region subject to the Draft Plan (the “Dawson Region” or the “Dawson Planning Region”). These lands have sustained us since time immemorial and are integral to the life and culture of FNNND Citizens. FNNND is therefore pleased that the Commission has reached this important milestone towards fulfilling the promise of land use planning in Chapter 11 of the *Tr’ondëk Hwëch’in Final Agreement* (the “TH Final Agreement”) for this important region.<sup>2</sup>

FNNND has reviewed the Draft Plan, and thanks the Commission for this opportunity to provide comments. FNNND’s comments in this submission raise some key issues of importance to FNNND, but it is not, however, an exhaustive submission. FNNND may provide further submissions as we continue our review of the Draft Plan. Furthermore, FNNND has not been able to engage with our citizens on the Draft Plan due to capacity constraints and the challenges created by the ongoing COVID-19 pandemic. As such, we may request that the Commission support and provide an opportunity for in-depth engagement with our community on the Draft Plan. This will enable FNNND to provide more fulsome comments on the Draft Plan, as necessary.

Nevertheless, FNNND expects that our comments and concerns in this written submission will be addressed in the next iterations of the Plan, including the Draft Recommended Plan and the Recommended Plan.

## 2. ALIGNMENT WITH FNNND’S ABORIGINAL AND TREATY RIGHTS

### A. FNNND is the decision-maker and co-manager of our Traditional Territory

FNNND signed the *First Nation of Nacho Nyak Dun Final Agreement* (the “FNNND Final Agreement”) and Tr’ondëk Hwëch’in (“TH”) signed the TH Final Agreement (together, the “Final Agreements”) with the Government of Canada and the Government of Yukon (“YG”) in 1993 and 1998 respectively.<sup>3</sup> The Final Agreements are modern treaties, constitutionally protected under section 35 of the *Constitution Act, 1982*.<sup>4</sup> Like all modern treaties, the objective of the Final Agreements is to advance reconciliation and establish a new “healthy and mutually beneficial

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<sup>1</sup> *Dawson Regional Planning Commission Draft Plan* (June 2021) [Draft Plan].

<sup>2</sup> *Tr’ondëk Hwëch’in Final Agreement* (16 July 1998) [TH Final Agreement].

<sup>3</sup> *First Nation of Nacho Nyak Dun Final Agreement* (29 May 1993), [FNNND Final Agreement]; TH Final Agreement, *supra* note 2.

<sup>4</sup> *Beckman v Little Salmon/Carmacks First Nation*, 2010 SCC 53, [2010] 3 SCR 103 at para 2.

relationship” between Indigenous and non-Indigenous peoples.<sup>5</sup> The establishment of a positive, long-term relationship is in everyone’s best interests.<sup>6</sup>

As the Commission was established pursuant to Chapter 11 of the TH Final Agreement, it is critical that the Recommended Plan reflect and incorporate the objectives and the spirit and intent of the Final Agreements. One of the principal objectives of the Final Agreements is to ensure that First Nations Citizens are true decision makers and co-managers of our lands. The Final Agreements promised a shift from the flawed and inequitable models of the past, where Indigenous people were treated at best as mere stakeholders and at worst, and all too often, as obstacles to be moved out of the way so that industrial development could proceed unencumbered. The flawed approach of the past often sacrificed the culture, well-being, and way of life of Indigenous people for the benefit of industrial developers.

While the promise of co-governance is woven throughout the Final Agreements, it is perhaps most apparent in Chapter 11 Land Use Planning.<sup>7</sup> In *First Nation of Nacho Nyak Dun v Yukon*, the Supreme Court of Canada confirmed that the “clear objective of Chapter 11 [is] to ensure First Nations meaningfully participate in land use management in their traditional territories” so as “to foster a positive, mutually respectful, and long-term relationship between the parties to the Final Agreements.”<sup>8</sup>

This is consistent with the principles under the *United Nations Declaration on the Rights of Indigenous Peoples* (“UNDRIP”), which has now been adopted in Canada. UNDRIP confirms FNNND’s rights to, among others, “the conservation and protection of the environment and the productive capacity of [our] lands or territories and resources,” as well as to “determine and develop priorities and strategies for the development or use of [our] lands or territories and other resources.”<sup>9</sup>

As such, given that FNNND is an “Affected First Nation,” our comments and perspectives must be given significant weight in the Commission’s work. FNNND recommends that the Commission expressly state that a goal of the Recommended Plan is to ensure that FNNND citizens are able to meaningfully participate in the management of FNNND’s Traditional Territory within the Dawson Region.

FNNND would like to participate in the Senior Liaison Committee, and may also seek to participate in the Technical Working Group going forward.<sup>10</sup> Furthermore, FNNND asks that the Commission continue to engage directly with FNNND in the development of all future planning

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<sup>5</sup> *Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, 2005 SCC 69, [2005] 3 SCR 388 at para 1 [*Mikisew Cree*]; *Tzeachten First Nation v Canada (Attorney General)*, 2008 FC 928 at para 25.

<sup>6</sup> *Beckman v Little Salmon/Carmacks First Nation*, 2010 SCC 53, [2010] 3 SCR 103 at para 10.

<sup>7</sup> See: TH Final Agreement, *supra* note 2, s 11.5.1; FNNND Final Agreement, *supra* note 3, s 11.5.1.

<sup>8</sup> *First Nation of Nacho Nyak Dun v Yukon*, 2017 SCC 58, [2017] 2 SCR 675 at para 47.

<sup>9</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNGAOR, 61st Sess, Suppl no 49, UN Doc A/RES/61/295 (2 October 2007), Articles 29(1) & 32(1) [UNDRIP].

<sup>10</sup> See: Dawson Regional Planning Commission, “Terms of Reference” (2018, Updated 2019).

products for the Dawson Region, which importantly include the Recommended Plan and the Final Recommended Plan.

**B. The central goal of the Plan must be to respect and protect FNNND’s rights and interests**

FNNND’s relationship to our lands and waters is a central element of our identity as an Indigenous people. We exist in a reciprocal relationship with the land—it nourishes and sustains us, and, in turn, we are obliged to look after it for our grandchildren and great-grandchildren. It is our connection to the land and desire to preserve it for our future generations that gives our people purpose and hope for the future.

The significance of our connection to our lands and waters and the need to protect this connection is a central pillar of the FNNND Final Agreement. It is expressly acknowledged in the Preamble, which states: “the parties wish to recognize and protect a way of life that is based on an economic and spiritual relationship between Na-Cho Nyäk Dun and the land.”<sup>11</sup> It is further recognised under UNDRIP, which provides that:

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.<sup>12</sup>

This goal of protecting our lands and our connection to them is interwoven throughout the Final Agreement, and informs the objectives of Chapter 11 Land Use Planning in the Final Agreements, which include:

to recognize and promote the cultural values of Yukon Indian People;

to utilize the knowledge and experience of Yukon Indian People in order to achieve effective land use planning; [...] and

to ensure that social, cultural, economic and environmental policies are applied to the management, protection and use of land, water and resources in an integrated and coordinated manner so as to ensure Sustainable Development.<sup>13</sup>

The Final Agreements define “Sustainable Development” as “beneficial socio-economic change that does not undermine the ecological and social systems upon which communities and societies are dependent.”<sup>14</sup>

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<sup>11</sup> FNNND Final Agreement, *supra* note 3, Preamble.

<sup>12</sup> UNDRIP, *supra* note 9, Article 25.

<sup>13</sup> FNNND Final Agreement, *supra* note 3, s 11.1.0; TH Final Agreement, *supra* note 2, s 11.1.0.

<sup>14</sup> FNNND Final Agreement, *supra* note 3, Chapter 1; TH Final Agreement, *supra* note 2, Chapter 1.

The Recommended Plan must therefore protect and promote FNNND’s culture, well-being, and way of life—today and for our future generations. To do so, the Recommended Plan must protect our lands, which are crucial for FNNND to maintain cultural connections and ways of life and to exercise our constitutionally protected Aboriginal and treaty rights. Such rights include, among others, the protection of our waters, our right to harvest fish and wildlife, and the protection and respect of our heritage resources and culture.<sup>15</sup>

Our ability to practice these rights—and the ability of future generations to practice these rights—depends on a healthy and diverse landscape. As such, the protection of FNNND’s rights through the proper protection of FNNND’s Traditional Territory within the Dawson Region must be a central goal of the Commission. FNNND recommends that the Commission explicitly include the protection of FNNND’s rights and Traditional Territory as a goal of the Recommended Plan, and to ensure that this goal is adequately reflected throughout the Plan.

### **C. Our knowledge must be considered and incorporated into the Plan**

Chapter 11 of the Final Agreements explicitly requires that the Commission respect and incorporate our knowledge and experience into the Plan. In developing the Plan, section 11.4.5 of the Final Agreements requires that the Commission “shall”:

use the knowledge and traditional experience of Yukon Indian People [...];

take into account oral forms of communication and traditional land management practices of Yukon Indian People [...].<sup>16</sup>

Understanding and incorporating our knowledge and experience living on these lands since time immemorial is therefore a constitutional imperative under the Final Agreements. It is critical to ensuring that the Plan meets the objectives and requirements of Chapter 11 and protects the ability of our citizens to continue to meaningfully exercise our rights.

In addition to being constitutionally required, utilising our knowledge and experience is necessary and critical to achieving an effective Plan that ensures “Sustainable Development.” This is expressly acknowledged in the Final Agreement, as an objective of Chapter 11 Land Use Planning is “to utilize the knowledge and experience of Yukon Indian People in order to achieve effective land use planning.”<sup>17</sup> The value and importance of incorporating Indigenous knowledge into decision-making and land management is also recognised in UNDRIP, which states:

Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment.<sup>18</sup>

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<sup>15</sup> See: FNNND Final Agreement, *supra* note 3, Chapters 13-16.

<sup>16</sup> FNNND Final Agreement, *supra* note 3, s 11.4.5.5; TH Final Agreement, *supra* note 2, s 11.4.5.5.

<sup>17</sup> FNNND Final Agreement, *supra* note 3, s 11.1.1.4; TH Final Agreement, *supra* note 2, s 11.1.1.4.

<sup>18</sup> UNDRIP, *supra* note 9, Preamble.

As such, the Commission must respect and fully incorporate our knowledge and experiences into the Plan in a meaningful way. In order to meaningfully consider our knowledge, the Commission cannot simply “extract” meaning from the knowledge we provided and then later describe how the information impacted decisions after they have been made. Our knowledge arises from diverse and living value systems and are *sui generis*, and can only be properly applied from within our unique knowledge systems and with an understanding of the underpinning Indigenous laws.

What this means in practice is that the meaning of our knowledge can only be appropriately applied by the FNNND Elders and Citizens who collectively hold and own the knowledge and who are able to express it within the context of our traditions and laws from which the knowledge was generated. Only the direct, informed engagement of FNNND’s knowledge holders in the Commission’s work can meaningfully fulfill the requirements of Chapter 11 to consider and use our knowledge.

As such, in addition to consideration of knowledge provided in this written submission, FNNND may ask the Commission to host a traditional knowledge focused workshop in partnership with FNNND to gain insight and views directly from our Elders and Citizens. Such a workshop will provide the Commission with a better understanding of FNNND’s perspectives on land management from a traditional knowledge perspective, as constitutionally required by Chapter 11. FNNND further recommends that the Commission utilise any knowledge it gains from the workshop in a meaningful way in the Plan by including FNNND as full participants in decisions that employ our knowledge.

In using and incorporating our knowledge in the Plan through this submission and the requested traditional knowledge workshop, FNNND requires our jurisdiction and authority over our knowledge to be fully respected. Any consideration of our knowledge must be consistent with the First Nations principles of OCAP®<sup>19</sup>—that we have the right to own, control, access, and possess our own information and knowledge. FNNND has exclusive jurisdiction and authority over our knowledge—indeed, Chapter 13 of the Final Agreement confirms and guarantees FNNND’s ownership, control, and decision-making authority over the use, preservation, and management of our own traditional knowledge.<sup>20</sup>

Flowing from our inherent right to self-government and the *Nacho Nyak Dun Self-Government Agreement*,<sup>21</sup> FNNND has enacted policies and laws with respect to the use and protection of our traditional knowledge. This includes, among others, the *Na-Cho Nyäk Dun Heritage Act*, which affirms FNNND’s inherent right of stewardship over our heritage and culture, including our knowledge, and sets out specific requirements for the management and maintenance of our knowledge. Any consideration and use of our knowledge must fully abide by FNNND’s laws and policies, in a way that respects our self-government authority. FNNND emphasises that we are the owners of our traditional knowledge. We choose when, whether, and how to share our knowledge. Absolute deference must be given to our decisions concerning our knowledge.

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<sup>19</sup> OCAP® is a registered trademark of the First Nations Information Governance Centre (FNIGC). See: <https://fnigc.ca/ocap-training/>.

<sup>20</sup> *Final Agreement, supra*, Chapter 13.

<sup>21</sup> *Nacho Nyak Dun Self-Government Agreement* (29 May 1993).

### 3. CLIMATE CHANGE

Climate change is well recognized as a critical, existential, global issue. In combination with environmental degradation, as apparent in the loss of biodiversity world-wide, the climate crisis poses immense challenges to us all, but especially in the North. The disproportionate impacts of climate change on Northern areas, including the Dawson Regional Land Use Planning area, has led to the Vuntut Gwitchin Government declaring a Climate Change State of Emergency,<sup>22</sup> which has been followed up by both the Yukon Government<sup>23</sup> and Yukon First Nations.<sup>24</sup>

In the face of this emergency, FNNND believes that the Draft Plan currently does not address climate change proactively. We need to take action collectively to address the climate crisis. The Commission must participate in this process through its work on the Plan to both build resiliency and curb greenhouse gas emissions to acceptable targets. The Draft Plan advocates primarily a responsive approach, which is the essence of adaptive management. The Draft Plan does not set any goals, targets, or triggers for action in such an adaptive strategy. Such goals or thresholds are required for adaptive strategies to be effective.

Climate change has affected First Nations' rights in central Yukon for decades and current trends and predictions indicate this will accelerate. Such effects range from altered fish, wildlife, and medicinal plant habitats, to changing growth patterns and ripening times of subsistence plants and medicines. We experience altered snow and ice conditions that make safe winter travel extremely difficult if not impossible. Now we are seeing effects appearing in water quality, particularly through increased sediment contributions to streams and rivers from thawing permafrost.

The Draft Plan currently includes few concrete measures, objectives or recommendations related to climate change outside of loosely discouraging impacts on permafrost from roads and development projects and applying appropriate mitigations to reduce risk of spreading invasive species. Prevention of such effects is already part of the regulatory process for development of public and private roads and other projects, regardless of climate change. If the Plan anticipates that climate change will enhance these effects and that regulation should therefore become more vigilant, then it must recommend enhanced inspection and mitigation of such effects. Reliance on "adaptive management," as currently framed in the Draft Plan, without clear delineation as to the methods, metrics, timelines and implementation of such adaptive management offers no certainty to public agencies or to the public in the process for tackling climate change and its effects. These offer, perhaps, the greatest level of uncertainty for any land-based activity in the region.

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<sup>22</sup> Julien Gignac, "Vuntut Gwitchin First Nation officially declares climate emergency" Yukon News (May 22, 2019), online at: <<https://www.yukon-news.com/news/vuntut-gwitchin-first-nation-officially-declares-climate-emergency/>>.

<sup>23</sup> "Yukon MLAs unanimous in declaring climate emergency" CBC News (October 10, 2019), online at: <<https://www.cbc.ca/news/canada/north/yukon-government-climate-emergency-1.5317293>>.

<sup>24</sup> "Yukon First Nations declare climate emergency" CBC News (February 19, 2020), online at: <<https://www.cbc.ca/news/canada/north/yukon-first-nations-climate-change-1.5468701>>.

The Draft Plan provides a number of recommendations for research on wildlife and land use, permafrost, and energy production, which suggests that the Commission considers present knowledge insufficient to make a full suite of recommendations on how climate change is to be managed within the Plan. At the same time, the Draft Plan anticipates significant changes to existing biophysical conditions in the planning region. FNNND recognizes that these are the two conditions required for application of the Precautionary Principle, as described in the Draft Plan. The Supreme Court of Canada has called the precautionary principle “an emerging principle of international law,” and explained it as follows:

This emerging international law principle recognizes that since there are inherent limits in being able to determine and predict environmental impacts with scientific certainty, environmental policies must anticipate and prevent environmental degradation.<sup>25</sup>

What this requires is that climate-change driven decisions should be applied to wetland management in particular, and to development projects that involve disturbance of permafrost. The latter is particularly relevant in much of Land Management Unit (“LMU”) 12: East – Nächo dëk—an area of importance that overlaps with FNNND’s Traditional Territory.

LMU 12 has the lowest level of recommended protection from land use activities and development, being designated an Integrated Stewardship Area (“ISA”) IV. Along with other LMUs on the west side of Yukon River, LMU 12 formed part of Beringia, the terrain that has remained unglaciated or was unglaciated for hundreds of thousands of years. The time available for landscape development and sedimentation in this LMU has led to the accumulations of organic-rich sediments—mostly silt—and the development of ground ice that are known as the Klondike “mucks.”<sup>26</sup> The muck deposits are primarily a thick layer of recent peat (i.e., from the last 10,000 years) overlying organic-rich silt deposited in glacial times. These deposits must, in general, be thawed and removed in order to mine the underlying gold-bearing gravels. The Commission must recognize that significant release of CO<sub>2</sub> and methane will necessarily accompany further development of valley-bottom deposits in LMU 12, as also in the units west of Yukon River.

The Commission has an obligation to take serious and proactive action on a regional level which will result in significant progress towards Yukon’s climate goals. In fulfilling this obligation, the Commission has a unique opportunity in contributing to real and concrete action. To that end, we have some general recommendations for the Commission both in this section and in the relevant sections that follow, especially the sections related to cumulative effects, wetlands and water.

FNNND strongly urges the Commission to consider some key aspects of the climate crisis and its effects in the planning region which must be accounted for in order to make constructive progress and effective recommendations to the Parties. First, FNNND urges the Commission to truly recognize the role played by natural habitats and systems in the planning region with respect to climate change. By this, we are referring to the absolute amounts of carbon currently stored within natural systems (especially peat wetlands, permafrost soils, and the “muck” deposits). As climate

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<sup>25</sup> *Castonguay Blasting Ltd. v Ontario (Environment)*, 2013 SCC 52 at para 20; *114957 Canada Ltée (Spraytech, Société d’assorage) v Hudson (Town)*, 2001 SCC 40 at paras 30-32.

<sup>26</sup> Fraser, T.A., and Burn, C.R. 1997. On the nature and origin of “muck” deposits, Klondike area, Yukon Territory. *Canadian Journal of Earth Sciences*, **34**: 1333-1344.

change continues to shift average temperatures, permafrost melt, resulting altered hydrology, and biochemical processes and conditions will mean continually changing habitat types and boundaries. Of particular importance is the amount of carbon released by natural systems (e.g. disrupted peatlands and “mucks”) thereby escalating climate change.

Current discussions about emissions reductions focus solely on human generated (and especially industrial) emissions. The North is becoming a net carbon emitter simply due to permafrost melt.<sup>27</sup> We are working against a shifting target with a pre-contact/pre-industrial baseline understood within First Nation collective knowledge but undocumented/unrecognized within empirical data or western scientific understanding. As such, with consideration of population increase in the Territory and the advent of any new industrial activity such as major mine development, all emissions will contribute to enhancing climate change.<sup>28</sup>

As it stands, the most recent science, summarized in Burn et al (2021), verifies that “the climate change we have already experienced is, in practical terms, irreversible.”<sup>29</sup> This stems from the stark reality that about 1000 years of natural CO<sub>2</sub> absorption would be required to bring current atmospheric carbon to a new equilibrium, after which several thousand years would be required for the oceans to absorb excess CO<sub>2</sub> and return the atmosphere to pre-industrial concentrations.<sup>30</sup> Of particular importance in the information summarized by the Canadian Federation of Earth Sciences is the consideration of how important natural processes are in climate change effects and contributions. This includes water vapour cycles, ice melt, and near-surface permafrost thawing. This latter issue is perhaps the most pertinent to the Commission and its work with respect to wetlands and the “mucks.” It must be understood that “worldwide, the quantity of carbon in the top 3 m of permafrost terrain, some 1000 billion tonnes (Tarnocai et al. 2009), is about 100 times greater than annual industrial emissions (EPA 2021), so the release of even a small fraction of the permafrost carbon will counteract governments’ efforts to limit emissions.”<sup>31</sup>

In their submission to the Commission, Ducks Unlimited Canada (“DUC”) produced an analysis of carbon storage based on their wetlands inventory for the planning area. Their analysis estimated minimum 31,895 kilotonnes of CO<sub>2</sub> equivalents and maximum 128,864 kilotonnes of CO<sub>2</sub> equivalents to be stored within fens in the Dawson Planning region. This analysis further showed the potential impact of allowing development disruption to 25% of fens in LMU 12 as is currently proposed by the Draft Plan. DUC’s calculation showed that this level of disturbance within LMU 12 alone would be equivalent to an entire year of the Yukon Territory’s carbon emissions using the lowest estimate.

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<sup>27</sup> Natali, S.M., et al. 2019. Large loss of CO<sub>2</sub> in winter observed across the northern permafrost region. *Nature Climate Change*, **9**: 852-857.

<sup>28</sup> Burn et al. 2021. “The Canadian Federation of Earth Sciences Scientific Statement on Climate Change-Its Impacts in Canada, and the Critical Role of Earth Scientists in Mitigation and Adaptation.” *Geoscience Canada*, **48**: 59-72. DOI: 10.12789/geocanj.2021.48.173

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid*; Natali, S.M., et al. 2021. Permafrost carbon feedbacks threaten global climate goals. *Proceedings of the National Academy of Sciences*, v. **118**, e2100163118, <https://doi.org/10.1073/pnas.2100163118>

Climate change is perhaps best considered the “mother of all cumulative effects.” Contributions have been global and building for decades/centuries, yet the effects tend to disproportionately impact certain areas such as the Dawson Planning Region. While net local and territorial emissions in comparison to national and global emission may be very small, this is the case for any single or localized emitter when viewed relative to the whole and is the very definition of “tragedy of the commons.” Action must be taken at the local and regional level.

FNNND therefore makes the following recommendations to the Commission regarding climate change:

- Make a recommendation for all commercial and industrial activity on the land (including mining and agricultural sectors) to reach net zero emissions from their operations. This net zero calculation must not be made only in relation to direct emissions from equipment and active processes, but include impacts on land and removal or addition of carbon storage potential (e.g., clearing/stripping, permafrost disruption, and wetland degradation).
- Establish thresholds and create monitoring metrics based on full consideration of climate change impacts, including the role of natural systems in both climate change abatement and contribution.
- Give explicit recognition that the North is becoming a net carbon emitter and any action, including goals within the *Our Clean Future* strategy,<sup>32</sup> must be considered and measured against a shifting reality. This necessitates the need for all targets and goals to be measured with appropriate metrics at appropriate intervals.
- Recommend strategic climate and water monitoring regimes be developed or re-developed to track and monitor climate change effects in the long-term within the Dawson Region.
- Any proposed adaptive management measures related to climate change must have timelines and identified goals/targets so as not to defer action further.
- Include a specific recommendation for the implementation of Strategic Priority No. 5 of the *Yukon Mineral Development Strategy and Recommendations* (the “YMDS Strategy and Recommendations”).<sup>33</sup>

#### **4. PROTECTION OF IMPORTANT AREAS**

##### **A. All Special Management Areas must require maximum conservation and protection pursuant to Chapter 10 of the Final Agreements**

Although FNNND is pleased to see that the Commission has worked to identify areas of high conservation value within the Dawson Region, the differentiation between the two Special Management Area “(SMA)” designations is unacceptable. Most significantly, the SMA I designation requires the Land Management Unit (“LMU”) to become legally designated as a protected area with management plans, pursuant to Chapter 10 of the Final Agreements. On the

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<sup>32</sup> Yukon Government, “Our Clean Future: A Yukon strategy for climate change, energy and a green economy” (2020).

<sup>33</sup> Yukon Mineral Development Strategy Independent Panel, “Yukon Mineral Development Strategy and Recommendations” (15 April 2021).

other hand, LMUs designated as SMA II are not intended to be legally designated as protected areas and do not require management plans, contrary to Chapter 10 of the Final Agreements. This is inappropriate.

As the Commission knows, the Final Agreements expressly include a process for establishing and managing SMAs in Chapter 10.<sup>34</sup> After the many years of negotiations to secure a land use planning process for the Dawson Region through the constitutionally protected regime under Chapter 11 of the TH Final Agreement, and after many more years of the Parties' hard work in preparing the Draft Plan, it is inappropriate for the Commission to depart from the constitutionally protected regime for creating and managing SMAs in Chapter 10 of the Final Agreements.

Furthermore, the discrepancy between the SMA I and SMA II designations creates uncertainty as to the future protection of these important areas. We are disappointed to see that only two LMUs—totalling a modest 3.8% of the Dawson Region—have been designated as SMA I and will receive adequate protection through a Chapter 10 designation.

While the SMA I designation requires maximum conservation with no new industrial land use or surface access allowed, the SMA II designation is an insufficient conservation mechanism and is more akin to the ISA designation rather than being a protected area. Indeed, the Draft Plan allows SMA II areas to be disturbed and establishes disturbance thresholds that “align with ISA I or ISA II, depending on the LMU.”<sup>35</sup> This is counterintuitive to the very purpose of the SMA designation and the goal of protecting high ecological and cultural values.

All areas that have been designated as SMA—both SMA I and SMA II—are deeply important areas of high cultural and ecological value and must be given adequate protection as SMAs under Chapter 10 of the Final Agreements. The ability of our citizens to continue to meaningfully exercise our rights depends on the integrity of these lands—and this will not be possible with only 3.8% of the lands being adequately protected. It is critical that both the SMA I and SMA II LMUs are given the maximum conservation focus possible—consistent with what has been promised and agreed to in Chapter 10 of the Final Agreements as well as the designations and recommendations in the Peel Watershed Regional Land Use Plan (the “Peel Plan”).

The Commission must therefore return to what is contemplated in Chapter 10 of the Final Agreements and provide the highest level of protection to all SMAs in the Recommended Plan. The Commission must require that all SMAs—both SMA I and SMA II—become legally designated as protected areas with management plans, pursuant to Chapter 10 of the Final Agreement, and for all lands in these areas to be permanently withdrawn from any new industrial land use dispositions and surface access. The distinction between SMA I and SMA II must be removed, and both designations be simply “Special Management Areas” with the requirements provided for SMA I under the current Draft Plan, consistent with Chapter 10 of the Final Agreements.

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<sup>34</sup> FNNND Final Agreement, *supra* note 3, Chapter 10; TH Final Agreement, *supra* note 2, Chapter 10.

<sup>35</sup> Draft Plan, *supra* note 1 at 44.

## **B. Additional areas for protection**

In addition to the recommendations above regarding a single and appropriately robust SMA designation for all SMAs, there are particular areas which FNNND believes require more conservation attention within the Plan. These include holistic and serious consideration of water and waterways, caribou and caribou habitat, wetlands, and salmon.

### **i) Water (*Tu*)**

Water often forms the center of planning discussions and is often the topic of most interest and most concern to FNNND Citizens and Elders in relation to lands and resources issues. The health of one tributary, however small, is inseparable from the health of the entire watershed, which has been described as an interconnected family. In turn, the health of all the other tributaries of a watershed individually and as a whole are inextricably tied to the health of any single creek or stream. Waterways literally form a link between generations and form the arteries that connect waters, land, and people.

There is a Northern Tutchone story about a young boy who disrupts Łyok Cho (Chinook Salmon)<sup>36</sup> in his work as the large fish makes its way up a small creek, mile by mile, turning the creek into a river. That the salmon itself was the being who possessed the power to actually shape the rivers in Northern Tutchone culture is extremely significant in understanding not only the vital importance of salmon to local First Nations, but also in understanding that water quality, quantity and rate of flow, as envisioned under Chapter 14, is the creation and the lifeway of the salmon who rely on these principles. The annual pulse of salmon up the Tagé Cho (Stewart River)<sup>37</sup> and into its tributaries has been likened to blood cells making their way through arteries and providing a great body with the energy to keep thriving. Every salmon-bearing tributary of Tagé Cho is therefore an essential part of this web. The failure of one affects the others. Cumulative effects are therefore applicable here in understanding that even marginal degradation of not just one, but many salmon-bearing tributaries may have detrimental effects on the entire system—the entire family.

Tagé Cho is a vital river whose watershed encompasses a large portion of FNNND's Traditional Territory and whose health and well-being are absolutely central to the well-being and long-term sustenance of the FNNND. The current Draft Plan designates LMU 12: East Năcho dĕk as an ISA IV with the highest level of allowed development within the region and does not make any specific provisions for Tagé Cho itself. In addition, Clear Creek is a direct tributary of Tagé Cho which flows through FNNND settlement lands near its confluence, and which was a salmon creek. Cumulative effects on Clear Creek (most notably high levels and pulses of sedimentation observed on the lower stretches of the creek) in recent years has garnered significant concern from FNNND and FNNND Citizens. This is one example of how cumulative effects far upstream from settlement land has direct impacts on our lands and waters, as affirmed and protected under Chapter 5 and Chapter 14 of FNNND's Final Agreement. Comprehensive measures and consideration of water

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<sup>36</sup> Loosely translates to "Chinook salmon," but true definition incorporates broader concept of salmon being a keystone species upon which other species and indeed systems rely.

<sup>37</sup> Sourced from local Mayo Elder. Also referred to as *Nacho Nyäk gé*, or *Năcho Nyäk*.

within the planning region is necessary. FNNND recommends the following be included in the Draft Plan:

- Major waterways receive their own protective designation, in alignment with the obligations and intent of Chapter 14 of the Final Agreement. FNNND will reiterate and support TH's recommendation in this respect by recommending Tagé Cho, the Klondike River, and the Yukon River receive special management area designation specific to waterways. This should include specific management directions and recommendations related to waterways.
- The Commission should recommend that the south-east side of Tagé Cho directly opposite the southern planning region boundary also receive special interim management provisions, consistent with those in the planning region to be carried forward as regional planning commences for the bordering Northern Tutchone area. Although this part of the Tagé Cho is outside of the Dawson Region which is subject to the Draft Plan, impacts to one part of Tagé Cho will impact the entire waterway. The entire Tagé Cho must therefore be managed in an integrated way.
- The Commission should make specific recommendations regarding water to ensure their long-term protection, including, among others:
  - comprehensive water withdrawal and use reporting across all sectors and consideration of water withdrawal and use thresholds at the watershed level;
  - more robust and appropriate water quality compliance standards, associated water quality monitoring and water quality and quantity reporting as part of water licenses; and,
  - integrate long-term water and climate monitoring as part of existing monitoring efforts with specific provisions for data analysis and resulting management directions to include long-term consideration of climate change.

## ii) **Salmon (*Łyok Cho*)**

As referenced above, Łyok Cho forms a central part of FNNND's culture, heritage, economy, and lifeways. The state of Yukon-Origin Chinook salmon is measurably and worryingly low, causing FNNND to have go into conservation mode, conserving harvest and even acquiring frozen salmon shipped from other stocks to provide for cultural purposes while we makes efforts to conserve and revitalize our own salmon stocks. In many respects, it is widely understood that the health of waters and the health of the fish are one in the same. As such, we are highlighting this crucial value partially for reiteration of the importance of some of the above recommendations regarding water.

Maintenance of water quality, quantity and rates of flow, as envisioned in Chapter 14 of our Final Agreement, is directly tied to salmon habitat health and therefore population health and potential for rebound into the future. The concentrated efforts of FNNND, other First Nations, and other groups on salmon rehabilitation within the Yukon River drainage is considerable. Without adequate protective land use planning measures to ensure quality aquatic habitat is guaranteed, such efforts may be negatively and cumulatively impacted and end up being for naught.

Recommendations regarding cumulative effects indicators as they relate to the current Placer Fish Habitat Management System ("FHMS") follows below in section 5(A). It is necessary here to

highlight more thorough consideration of what this means for salmon, however. The FHMS governing placer development in the Yukon is a watershed-based system built upon Chinook salmon habitat suitability as the key metric of stream health. In principle, such a system should account for, and manage, cumulative impacts to waters and salmon habitat on a regional scale and therefore act as a functional mechanism to implement and maintain some of the Indigenous management principles described below.

Effective implementation of any adaptive management framework requires diligence in monitoring of key indicators and evaluation of action thresholds, as well as reconsideration and confirmation of the suitability of thresholds over time. The implementation of the FHMS must therefore meet these ongoing requirements if it is to function effectively for protecting fish and fish habitat and other key values. However, diligence in monitoring, evaluating, responding and adjusting as required for effective adaptive management simply has not been part of the implementation of the FHMS and the program has insufficient data to reach any conclusions about management of fish and fish habitat in many vital waterways within the Dawson Region.

As evidenced by the time-lag in reviewing the current adaptive management components of the FHMS (implemented in 2008 and reviewed in 2020), it takes years to redevelop regulatory regimes—especially complex adaptive management systems. Nevertheless, it takes very little time, sometimes only one mining season, for small tributaries to be greatly altered and for the cumulative effects of development within watersheds to have noticeable effects on fish and our harvesting rights.

Consequently, FNNND asks the Commission to recommend a timeline for the development of interim and new water quality thresholds along with more appropriate water quality monitoring and reporting requirements at the watershed level. In the Plan, this would emphasize the direct linkages between land use, development and water quality—a perspective more representative of the FNNND’s holistic view of the landscape. Such a recommendation would also support and strengthen efforts already underway by YG to determine whether the adaptive management approach of the FHMS does indeed balance the dual objectives of a sustainable Yukon placer mining industry alongside the conservation and protection of fish and fish habitat supporting fisheries.

### **iii) Caribou (*Hudzi*)**

There is significant discussion on caribou and caribou habitat in the Draft Plan and FNNND commends the work and attention given to the complex management needs surrounding this vital and highly sensitive species. Caribou forms a central cultural, spiritual and economic role in FNNND’s culture and lifeways. At one time, the Fortymile Caribou Herd had a range which extended much further into FNNND’s Traditional Territory. Caribou have largely been extirpated from some key areas of FNNND’s Traditional Territory, especially in the Mayo area where large numbers of caribou were known and harvested by First Nations in the past.

FNNND makes the following recommendations with respect to caribou:

- The Clear Creek Caribou Herd must be given a much greater degree of attention as a key value in the Plan. This is particularly applicable to LMU 7: Upper Brewery/Hamilton, LMU 8: Lower Brewery/Hamilton, LMU 9: Clear Creek, and LMU 10: Upper Klondike. Currently, LMU 9 is an ISA IV, with extremely high suggested linear density and surface disturbance thresholds. FNNND has observed the Clear Creek Caribou Herd continually shift further north in the past number of years and abandon a number of habitat areas. These previously utilized habitats are now developed with a relatively high level of access and industrial human presence which has also allowed easier recreational and hunting access into the herd's range. FNNND therefore recommends reassessing the LMU designations, boundaries, and suggested management directions for LMUs 7, 8, 9 and 10, with careful consideration and priority on maintenance and long-term sustenance of the Clear Creek Caribou Herd.
- While LMUs on the West side of the Yukon River are not within FNNND Traditional Territory, the Fortymile Caribou Herd's historic range used to stretch well into FNNND's Traditional Territory, and the long-term health of this herd is important to FNNND. As such, FNNND would like to reiterate the recommendations made within TH's submission to the Commission and suggest an SMA designation for LMU 23: Fortymile Caribou Corridor, which would include a continuity of protection for the herd's range with its health at the core of the values for this area.
- Designate LMU 7 as an SMA, with attention to protecting the Hart River Caribou Herd habitat in that LMU.

#### iv) **Wetlands** (*Nan Dātsaw*)

Wetlands and Indigenous lifeways are inextricably linked. When discussing wetlands, we are discussing an intrinsic part of our lifeways built on thousands of years of living on the land. Travel routes, camp locations, and areas of high cultural, economic, and spiritual importance are directly tied to and concentrated in productive wetland habitats and the interconnected waterways which link them. Wetland habitats are understood to be much more than areas of gathering or resource use; they are inherently tied to a land ethic and a social fabric which promotes economic, spiritual, and material sharing, equality, respect, and reciprocity.

Wetlands are also recognized by the FNNND as being an essential and dynamic part of maintaining water quality, quantity and rate of flow within our Traditional Territory. As discussed above, climate change is a major factor influencing wetland health in the Central Yukon and wetlands and wetland complexes exist dynamically in ways which respond to, and interact with, global climate processes. The link between wetlands, permafrost, and climate change in the planning region is absolutely central to their importance.

Currently, YG's *Draft policy for the stewardship of Yukon's Wetlands* (the "Draft Wetlands Policy") is nearing target completion.<sup>38</sup> While the Draft Wetlands Policy is meant to relieve some uncertainty around wetlands management in the Yukon, it is FNNND's opinion that the current draft does not provide any of the necessary mechanisms and clarity to achieve long-term sustenance and health of wetlands regionally or territorially. As such, FNNND strongly urges the

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<sup>38</sup> Yukon Government, "Draft policy for the stewardship of Yukon's wetlands" (September 28, 2021).

Commission to consider adequate steps and measures within the Plan and its recommendations to bolster wetlands management in a more holistic and effective way. FNNND makes the following considerations and recommendations with respect to wetlands:

- The Commission has made specific potential recommendations regarding wetlands infringement in the planning area (i.e., a range of 25% to 75% fen disturbance threshold and protection of bogs and marshes). However, consideration of available information, and especially information gaps, warrants a precautionary approach. The carbon estimate calculations presented to the Commission by DUC alone provide a worrying picture with respect to climate change contribution and wetland disturbance. Until defensible and accepted thresholds for wetland disturbance along with adequate reclamation and restoration practices are established, FNNND recommends no further impact to wetlands be allowed in the interim.
- Include development of wetlands thresholds with appropriate scales (watershed level may be more applicable than LMU scale in some instances). Building on the concept of stewardship indicators may aid in the establishment of such wetlands thresholds. Consideration of socio-culture values of wetlands and wetlands as spaces for cultural continuity and strength as they relate to community well-being and maintenance of First Nation rights and ways of life should be integrated in the measurement of wetlands thresholds.
- Include climate change contribution (in terms of wetlands/peatlands destruction and carbon release, sequestration and storage value, and effects of climate change on wetlands alteration or degradation) in establishing thresholds for wetlands and also in considering their value and long-term management.
- Wetlands in the LMU 9: Clear Creek must receive attention as a key value with specific management directions.
- Designate LMU 11: Flat Creek Wetlands and LMU: 19 Upper Indian River Wetlands as SMAs, with legal protection and management planning, consistent with Chapter 10 of the Final Agreements. This is necessary to adequately protect valuable wetlands in these LMUs.
- Special attention be given to permafrost protection, including concrete and binding development recommendations and thresholds.

## 5. ENSURING SUSTAINABLE DEVELOPMENT

### **Responsibility and survival:**

*“The land insures our survival. You have to look after the land, you have to look after the animals. The land is our heritage: because we use it, because it is everything, everything comes from the land. Keep your land clean, keep your animals, they are your friends. You look after them, they look after you. You look after your water, land, trees, you look after the land, you respect it. That's our spirituality.”*

**Relatedness and “what is called ‘ownership’ in the English way:”**

*“My grandma always said when we were out on the land ‘you remember, this is the animals’ home, and the home of every living thing.’ In our way, they are all an integral part of the land. Everything is an integral piece, we humans are just one part. The land is our lifeblood. The land is not our land. We belong to this land: we are born on it, we are raised up on it and we are going to die on it. This land owns us, we don’t own the land.”*

**“We are part of the land part of the water:”**

*“Heritage is our knowledge of and connection to the land. We are part of the land. When we are out there on that land, we are part of it, but we are not the be-all and end-all.*

*Every rock, plant tree and animal are part of the land and the water is part of it.*

*Everything has a spirit. Our connection to the land is a spiritual connection.”<sup>39</sup>*

“Sustainable Development,” as defined in the Final Agreements, forms a central role in the Draft Plan, which builds on this concept and the contributions by TH to the idea of “stewardship.” FNNND is supportive of the stewardship concept, including its relation to sustainable development. Nevertheless, FNNND believes there is more comprehensive work which must be done to adequately and respectfully integrate these concepts as they relate to Indigenous land management, governance, and lifeways within the Plan.

The above quotations were taken from the introduction within the *Na-Cho Nyäk Dun Heritage Act*, and help to relay some aspects of what may be termed “stewardship” from FNNND’s perspective, as well as an inherent understanding of reciprocity. FNNND commends the work completed by TH as part of the planning process and the comprehensive submissions and information contributed. At the heart of this information is considerable attention to a First Nation perspective and First Nation land management which must be central to the Plan.

In section 1.4 of the Draft Plan (Nän Käk Ndä Tr’ädäl) the following goal is articulated: “This Plan strives to reflect community values and strike a balance within the planning region between sustainable economic development and ecological conservation and socio-cultural preservation.” While popular dialogue surrounding land and resources management and planning continues to make reference to establishing a balance, FNNND urges the Commission to more clearly outline the context of such balance in a way which is more reflective of Indigenous concepts of reciprocity and indeed the central idea of “stewardship” within this plan.

The idea of “striking balance” as described in section 1.4 implies there are separate and also sometimes disparate interests and needs (i.e., sustainable economic development, ecological conservation, and socio-cultural preservation). The concepts of stewardship and reciprocity are embedded in a First Nation understanding that the lands and waters and the many diverse inhabitants of Earth’s systems are an entirely integrated and living network of which we are a small part. Any human systems, such as an economic system, is constructed and embedded within the wider web supported by the lands and waters which are the home we share with all the other plants, animals, and living things. There is no separation between economy and ecological systems; only difference in how we conduct ourselves within a broader, natural system. Any balance to be struck

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<sup>39</sup> Quotations from FNNND Citizens and Elders from *Na-Cho Nyäk Dun Heritage Act*, 2016.

must be done so with a full and broad comprehension of the many intertwining and interdependent systems. For example, economic benefit cannot be measured solely in monetary absolutes.

FNNND therefore recommends that the Commission carefully consider the wide range of information presented to it and more clearly articulate key concepts of stewardship, sustainable development and reciprocity with a broad lens. This should encapsulate all aspects of our actions within human communities, within the global community, and especially within the wider ecological community on which we collectively depend into perpetuity. Such a broad lens should include consideration of how human developments on the landscape will affect communities, not only economically, but, more importantly, socially and culturally. It will also consider how any potential costs will be incurred in the long-term by communities, governments, First Nations, and the environmental systems, which are directly and indirectly impacted. The traditional knowledge focused workshop requested earlier in this submission will assist the Commission in this work.

The Draft Plan also includes recognition and explicit support for the YMDS Strategy and Recommendations Strategic Priority No. 3 through a policy recommendation supporting its implementation. While FNNND agrees with the need for effective, efficient, and transparent environmental socioeconomic assessment and regulatory processes, this particular priority is centered around development and efficiency and does little to solidify the central concept of stewardship. More explicit integration of concrete measures (including through implementation of recommendations from the YMDS Strategy and Recommendations) is warranted.

FNNND recommends that instead of focusing on Strategic Priority No. 3 from the YMDS Strategy and Recommendations through an explicit policy recommendation, the Commission should make direct policy recommendations regarding Strategic Priorities No. 1 and No. 5. Both of these are both urgent and include more comprehensive attention to the central concept of stewardship, including, for example, recommendations to:

- “Establish a modern mineral management regime aligned with the modern treaties with Yukon First Nations, Transboundary treaties, Canada’s *Constitution Act*, court-guided agreements (e.g., *Ross River vs Yukon* 2012 YKCA 14), the principles of reconciliation enshrined in the *United Nations Declaration on the Rights of Indigenous Peoples* and the recommendations of Canada’s Truth and Reconciliation Commission;”<sup>40</sup> and,
- “Demonstrate environmental responsibility and preparedness to adopt practices to address climate change including utilization of green energy measures.”<sup>41</sup>

## A. Cumulative effects indicators

Cumulative effects are a foremost concern for FNNND with respect to management of lands, waters and resources especially as they relate to our ability to exercise our rights and the long-term sustenance of our people. For FNNND, connection to land encompasses links that have bearing on all aspects of life through all seasons, including economy and trade, material sustenance,

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<sup>40</sup> Yukon Mineral Development Strategy Independent Panel, “Yukon Mineral Development Strategy and Recommendations” (15 April 2021) at 15.

<sup>41</sup> *Ibid.*

geographic connectivity, cultural importance, spiritual significance, and inter-generational relationships. This interconnectivity means that adverse impacts to one area affect much more than that particular site—they affect entire ecosystems and social fabrics. Given development footprints are most visible at the site-specific scale, it is not surprising that larger spatial and longer temporal scales are often overlooked during cumulative effects assessment and the mitigation process.

Project-specific assessment and licensing often overlooks the consideration of cumulative effects simply by way of accepted methodologies that attempt to condense complex and interconnected values associated with lands and waters into single valued ecosystem components (“VECs”). The onus then falls on First Nations, after years of fighting to assert their rights and have them enshrined in modern treaties, to prove direct cause-effect pathways to specific VECs within a project spatial footprint that is completely incongruous with the complexity and spatial and temporal distribution of actual experienced effects. The Commission has the unique opportunity to offer the tools at a regional level to guide the development assessment and regulatory processes for individual activities on the land so cumulative effects can be accounted for and managed.

Briefly, the compounding effects already held as a legacy by the FNNND include the intergenerational impacts of residential schools, the fur trade, in-migration, road development, outfitting, placer and quartz mining and ancillary activities, hydro-electric power generation, and colonial wildlife management policies.<sup>42</sup> These factors have had compounding direct and indirect contribution to observed degradation including decreasing water quality, declining and displaced wildlife populations, depleted fisheries, and contamination or loss of access to traditional berry and medicinal plant harvesting areas.

Specifically, some cumulative impacts experienced within the Dawson Planning Area by FNNND include the following:

- Water quality degradation within the Clear Creek drainage;
- Displacement of the Clear Creek Caribou Herd from previous habitat within LMU’s 7, 8, 9 and 10;
- Severe decline in Tagé Cho salmon stocks;
- Many compounding and synergistic effects climate change is having on First Nation rights and ways of life throughout the Traditional Territory.

All of these impacts result in the loss of traditional economies, ways of life and opportunities to transmit cultural knowledge.

We note that one research recommendation on p. 84 of the Draft Plan speaks to, in the context of salmon habitat, the creation of “a comprehensive, publicly accessible aquatic habitat inventory” prior to mining and other land use activities. While FNNND supports this concept, we harbour concerns that the creation of such a “baseline” in the present day is not a true representation of the ecosystems of the Planning Region prior to the effects of development. This approach does not

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<sup>42</sup> Castillo, V. E., Schreyer, C., & Southwick, T. 2020. “ECHO: Ethnographic, cultural and historical overview of Yukon’s First Peoples.” Institute for Community Engaged Research Press.

capture the current context of cumulative effects, but rather, considers these to be accepted as the status quo.

To avoid further propagation of today's cumulative effects as the norm, FNNND has been advocating for a halt on all new developments within FNNND Traditional Territory until implementation of Chapter 11 is complete for the entirety of our Traditional Territory. As such, FNNND sees the Commission's work on the Draft Plan as a vital step in contemplating sustainable development as defined within the Final Agreements with the appropriate tools and a level of certainty to adequately deal with cumulative effects.

The Cumulative Effects section of the Draft Plan outlines some aspects of an ideal framework which FNNND supports. FNNND recognizes the extreme difficulty in approaching some of the very complex issues surrounding measuring and managing cumulative effects especially at a regional scale. As it is currently written, the draft Plan offers two measurable cumulative effects indicators along with suggested thresholds: surface disturbance and linear density. The Commission includes a recommendation to evaluate other indicators with the suggestion that water quality and stewardship indicators be prioritized.

FNNND agrees with this recommendation and specifically suggests that, given the value of water for all living things, the Commission consider water as an indicator of cumulative effects. The Draft Plan suggests that indicators show "how much impact are we having on the land?" It is our belief that nowhere is it more evident what is happening on the land than looking at what is occurring in the water flowing through the landscape. Within a water-based cumulative effects indicator, thresholds must be set relating to water quality, and quantity/withdrawal. These thresholds must be applicable across all industries.

In terms of considering water as an indicator of cumulative effects, the Commission has already recognized the difficulties documented within the Placer FHMS (Section 3.5.1.3 of the draft Plan). Unfortunately, no direct action has been offered in this respect, and the Commission seems to defer to the ongoing process under the FHMS. While FNNND is in communication with the FHMS Intergovernmental Management Group; and continues to engage on dealing with the many issues faced by establishing and maintaining a complex adaptive management system; and has made recommendations above about addressing Watershed Authorizations, the fact remains that activity continues to be permitted and carried out while cumulative impacts are experienced across FNNND's Traditional Territory. No adaptive measures are being implemented to satisfactorily rectify these issues. It takes considerable time and resources to make adjustments to such a system and then monitor for effectiveness over years.

Accordingly, while we recognise the complications, challenges, and lengthy timelines inherent in developing water as an indicator of cumulative effects, and associated thresholds, we suggest that while such overarching work is underway, the Commission consider recommending a timeline for the development of interim thresholds, including, as previously indicated, a pause on development.

To further address all cumulative effects, FNNND also urges the Commission to consider more concrete and explicit measures to bolster a cumulative effects framework and build steps towards utilizing additional indicators. These suggestions are summarized below:

- The suggested levels of surface disturbance and linear density for the ISAs appear relatively arbitrary as opposed to being based on key values such as impacts to wildlife and wildlife habitat, water quality, impacts on First Nation harvest opportunity and success, or use and enjoyment of the land and maintenance of cultural connection to land. FNNND does not have the information and analysis completed to make a recommendation as to specific threshold numbers for linear density and surface disturbance for the various LMUs. FNNND has been closely monitoring YG's efforts to document and analyze linear disturbance data in relation to moose population decline stemming from a request under section 110 of the *Yukon Environmental and Socio-Economic Act* ("YESAA") request. While results are not concluded in this work, our observations and continued grappling with cumulative effects impacting multiple subsistence species such as moose and extirpated caribou in the Mayo area lead us to caution the Commission that the thresholds for ISAs III and IV are likely too high.
- Include indicators that are reflective of First Nation social and cultural values of an area at appropriate scales. It is these values in combination with other key values associated with long-term sustainability and health of the land (e.g., water quality, moose population health, salmon population health, etc.) which cannot be undermined by levels of disturbance on the land.
- Climate change indicators must be incorporated into a cumulative effects framework as suggested above. There may be many ways of doing this, and a multi-faceted approach will likely be more robust considering the complexity of effects resulting from climate change and the various aspects and activities which contribute to climate change. Some possible considerations include:
  - Establishing regional wetlands disturbance thresholds in relation to climate change based on carbon storage and release. Such an analysis would require periodic (eg. 5-year) reviews of information and data related to emissions, climate data, and documented alterations to wetland habitats to inform any necessary changes to thresholds or necessary management measures.
  - Recommend strategic climate and water monitoring regimes be developed or re-developed to track and monitor climate change effects in the long-term within the Dawson Planning Region.
- Provide more clarity around the actual implementation of the cumulative effects framework to ensure actions are taken in a timely and stepwise manner to achieve concrete goals:
  - Clearly define the indicators to be used, including their metrics and the scale of their applicability (e.g., watershed level vs. across an entire LMU).
  - Stepwise process for establishing, measuring/monitoring, and adjusting cumulative effects indicators which includes resources, roles and responsibilities as well as approximate timelines to ensure expedient implementation.
  - Clear delineation of the process when cautionary level is reached in terms of implication and definitive actions for proponents, public government, First Nations, the Yukon Environmental and Socio-Economic Board ("YESAB"), etc.
    - FNNND recommends definitive actions to be outlined including halting authorizations of further disturbance when cautionary thresholds are reached until satisfactory knowledge of reclamation success and most up-

dated disturbance estimates suggest current indicator levels have fallen well below the cautionary level.

It is essential that concrete tools, steps and directions be undertaken to manage ongoing cumulative impacts effectively. This includes clear delineation of adaptive measures and not relying on “adaptive management” as a high-level concept which may ultimately defer decisions and actions much further down the road and possibly beyond the crossing of certain thresholds. FNNND commends the work already completed by the Commission and urges the Commission to consider the seriousness of the issue of cumulative effects management as they strengthen the framework within the Draft Plan. This will be a vital piece of how the Plan ensures the true implementation of Chapter 11 within the spirit and intent of the Final Agreements and the affected rights of First Nations citizens for generations to come.

## **6. LAND MANAGEMENT UNITS IN FNNND’S TRADITIONAL TERRITORY**

FNNND commends the level of work and effort contributed by TH citizens, community, staff and technical advisors in providing information for the planning process. FNNND would like to express its support for the alternative map provided by TH in their submission to the Commission.<sup>43</sup> The following is a summary of some of these recommendations as they pertain to LMUs within FNNND Traditional Territory or otherwise relevant to FNNND’s rights and ways of life.

### **A. LMU 7: Upper Brewery/Hamilton (SMA II)**

Change of designation from SMA II to SMA. Maintain consistency with Final Agreements (Chapter 10) and ensure long-term protection of key identified values.

### **B. LMU: 8 Lower Brewery/Hamilton (ISA III)**

FNNND refers the Commission to the TH alternative map,<sup>44</sup> which includes a boundary alteration to LMU 8. Designating the eastern portion of the current LMU 8 as an SMA aligns with the above recommendations regarding protection of caribou habitat for the Clear Creek Caribou Herd as well as special protection for the Klondike River Corridor.

### **C. LMU 9: Clear Creek (ISA IV)**

This LMU contains many traditional values to FNNND. There are multiple traditional camp and fishing locations identified within this LMU in addition to be fully identified as caribou range. This LMU also includes a moose movement corridor transecting the area. FNNND recommends changing designation from ISA IV to ISA I. Note Clear Creek Caribou Herd as a central value and

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<sup>43</sup> Tr’ondëk Hwëch’in, “Tr’ondëk Hwëch’in Review of the Dawson Regional Draft Plan” (November 1, 2021) at Appendix A: Alternative Conservation Map for Consideration.

<sup>44</sup> *Ibid.*

bolster measures of protection including disallowing access within caribou fall rut habitat instead of simply discouraging.

**D. LMU 10: Upper Klondike (SMA I)**

FNNND refers the Commission to the TH alternative map,<sup>45</sup> which includes a boundary alteration to LMU 10. Connectivity of SMA designation along the Klondike River Corridor and aligning with key caribou habitat is consistent with FNNND's recommendations above.

**E. LMU 11: Flat Creek Wetlands (ISA I)**

Change of designation from ISA I to SMA. Maintain consistency with Final Agreements (Chapter 10) and ensure long-term protection of key identified values. In particular, long-term protection of this wetland complex is an ecological and cultural priority.

**F. LMU 12: East Nācho dēk (ISA IV)**

FNNND refers the Commission to the TH alternative map,<sup>46</sup> which includes a boundary alteration to LMU 12. There is a large diversity of habitats, ranges, values and levels of development and interest dispersed throughout LMU 12 which is not accounted for within the current broad designation as the highest level of development. In particular, FNNND's traditional knowledge information indicates a significant concentration of traditional use and habitat values along the Tagé Cho corridor. These values are centered on the river itself but also involve adjacent lands, wetlands, and tributaries that can stretch over 2km from the river on either side. FNNND therefore endorses TH's recommendation of an SMA designation and specific waterway management directions developed for the Tagé Cho corridor.

**G. LMU 19: Upper Indian River Wetlands (SMA II)**

Change of designation from SMA II to SMA. Maintain consistency with Final Agreements (Chapter 10) and ensure long-term protection of key identified values, particularly the remaining undisturbed wetland complex.

**H. Future management for the Dempster and Klondike Highway Corridors**

The Draft Plan identifies Major Highway Corridors, including the Dempster and Klondike Highway Corridors, as requiring special management and recommends future planning tools. The Draft Plan recommends that subregional planning be undertaken for the Dempster Highway Corridor, in accordance with Recommendation #10 of the Peel Plan to which FNNND is a party.<sup>47</sup> For management of the Klondike Highway Corridor, the Draft Plan recommends that the Parties

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<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

<sup>47</sup> Draft Plan, *supra* note 1, at 51-52; see *Peel Watershed Regional Land Use Plan* (August 2019) at 60.

establish a Klondike Highway Corridor Advisory Committee to guide the development of a Klondike Highway Interpretative Plan.<sup>48</sup>

Both these Major Highway Corridors fall within FNNND's Traditional Territory and form the central link between communities and relations as well as the foremost access to traditional hunting, gathering and trapping and land use practices in the Western portion of FNNND Traditional Territory. Internal traditional knowledge information indicates a concentration of traditional camp, land use and habitat values identified adjacent to these two highway corridors. As such, we have a direct interest in how they are managed. FNNND therefore must participate as a party to the Dempster Highway Corridor subregional plan and the Klondike Highway Corridor Advisory Committee.

FNNND is concerned that the Draft Plan lacks any clear direction or timelines on how these future management plans will be carried out, and how these areas will be managed in the interim. FNNND recommends that the Plan provide a clear timeline and framework for triggering the future management tools to avoid any delays. FNNND further recommends that interim protections, including mineral withdrawals, are put in place until such plans have been fully developed and approved for these areas.

## 7. ENSURING LAND USE CONFORMITY WITH THE PLAN

All new land uses, including any renewals and expansions, must be in conformity with the Plan—both while the Plan is in draft form and once it is finalized and adopted. Verifying whether proposed land uses are in conformity with the Draft Plan and the finalized Plan is critical to fulfilling the very purpose of Chapter 11 Land Use Planning. The Plan establishes the appropriate land uses for the Dawson Region, which ensures sustainable development and providing clarity and predictability to all—FNNND, public government, and developers alike. It provides regulators such as the YESAB with the essential information it requires to properly assess applications before it.

Section 12.17.1 of the Final Agreements and section 44(1) of *YESAA* requires the Commission to consider whether a project under review by YESAB is in conformity with the approved Plan.<sup>49</sup> Alternatively, section 11.3.4 of the TH Final Agreement allows the Yukon Land Use Planning Council (“YLUPC”) to establish a secretariat to carry out the Commission’s functions.<sup>50</sup>

The Draft Plan, however, only provides that the process for conformity checks “should be linked” to this requirement under section 12.17.1 of the Final Agreements, and that the Yukon Land Use Planning Council (“YLUPC”) “may be tasked” with performing conformity checks.<sup>51</sup>

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<sup>48</sup> Draft Plan, *supra* note 1 at 55.

<sup>49</sup> FNNND Final Agreement, *supra* note 3, s 12.17.1; TH Final Agreement, *supra* note 2, s 12.17.1; *Yukon Environmental and Socio-Economic Act*, SC 2003, c 7, s 44(1).

<sup>50</sup> TH Final Agreement, *supra* note 2, s 11.3.4.

<sup>51</sup> Draft Plan, *supra* note 1, at 177-178.

This is inadequate and unacceptable. The Plan must be consistent with the requirements under the Final Agreements and must clearly require either that the Commission will be tasked with performing conformity checks, or that the YLPUC will establish a secretariat to carry out this function pursuant to section 11.3.4 of the TH Final Agreement. It must further require that conformity checks be completed in a timely and effective way and must be fully funded and supported by public government.

Furthermore, under section 12.17.2 of the Final Agreements and section 45(2) of *YESAA*, the Commission is responsible for making presentations to YESAB on a given project's conformity to the Draft Plan while it is in draft form.<sup>52</sup> FNNND has been deeply disappointed to learn that YG has refused to implement this promise in the Final Agreements and has refused to perform conformity checks before the Plan is finalized. The Draft Plan has likewise failed to include requirements that projects conform with the Draft Plan while in draft form.

FNNND reiterates that conformity with the Plan—even while still in draft form—is critical to ensuring sustainable development over the Dawson Region and that important areas are adequately protected. As such, FNNND recommends that the Commission include a process for the Commission to perform conformity checks with the Plan while in draft form for all land uses in the Dawson Region, and to make presentations to YESAB when requested, as required by section 12.17.2 of the Final Agreements.

## **8. PLAN IMPLEMENTATION AND REVISION**

### **A. Plan implementation**

FNNND is pleased that the Commission has provided a timeline of one year from Plan approval for the Parties, YG and TH, to jointly establish an Implementation Committee and develop an Implementation Plan.<sup>53</sup> As part of FNNND's Traditional Territory falls within the Dawson Region, implementation of the Plan has direct impacts on FNNND. FNNND therefore requests that the Parties ensure that FNNND is consulted on and kept up to date on matters of implementation as the Implementation Committee carries out its work.

### **B. Implementation of Special Management Areas**

FNNND reiterates the need for the distinction between SMA I and SMA II to be removed, and for all SMAs to be legally designated as protected areas with management plans, as required under Chapter 10 of the Final Agreements. FNNND requests that all SMAs that fall within our Traditional Territory be established and managed in consultation with and with full participation by FNNND. Similarly, FNNND requests that the management plans for such SMAs be developed, implemented, and reviewed and amended as necessary in consultation with and with full

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<sup>52</sup> FNNND Final Agreement, *supra* note 3, s 12.17.2; TH Final Agreement, *supra* note 2, s 12.17.2; *Yukon Environmental and Socio-Economic Act*, SC 2003, c 7, s 44(2).

<sup>53</sup> Draft Plan, *supra* note 1, at 175.

participation by FNNND. The co-management of SMAs within FNNND’s Traditional Territory must be explicitly required by the Plan.

### **C. Review and revision of the Plan as a “living document”**

FNNND is pleased that the Commission has acknowledged that regional land use planning is not static and may need to evolve in response to environmental, economic, and social changes.<sup>54</sup> As noted earlier in this submission, the Plan must adequately account for climate change and continue to evolve in response to the impending effects of climate change. Furthermore, the Plan must also be reviewed as the Successor Resource Legislation Working Group completes the process of updating Yukon’s mineral resource legislation.

It should be noted that revision of the Plan periodically and in light of new information is not synonymous with adaptive management. Adaptive management frameworks, including critical targets, metrics, and monitoring, must still be initiated through Plan recommendations. Periodic review of the Plan must evaluate the efficacy of adaptive management implementation in light of the most recent data and information.

Finally, FNNND recommends that any development project which provides new or significantly improved access to an area of the planning region should trigger a comprehensive and strategic review process to assess cumulative anticipated impacts and incorporate strategic review of the Plan by the Commission in relation to the proposed development.

## **9. ADEQUATE INTERIM PROTECTION**

### **A. The Plan must instate a moratorium on development until it is fully adopted and implemented**

FNNND’s position has been clear and consistent: there must be a moratorium on mineral staking and a pause on mineral development until Chapter 11 regional land use planning has been completed for our entire Traditional Territory. The part of our Traditional Territory within the Dawson Region subject to the Draft Plan is no exception. As such, FNNND calls on the Commission to require a mineral staking moratorium and pause on mineral development in the entire Dawson Region until the Plan is fully finalised and adopted.

The adoption and implementation of the Plan will take a significant amount of time. In the interim, the Dawson Region is an important area that must be protected. As we have noted in the outset of these submissions, an intact landscape is critical for our citizens to be able to continue to meaningfully exercise our rights. The cumulative effects of industrial development on our Traditional Territory have already hindered our ability to exercise our rights and live our traditional way of life. A moratorium on mineral staking and pause in development on FNNND’s Traditional Territory—including the Dawson Region—are required to ensure that FNNND can continue to exercise our rights.

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<sup>54</sup> Draft Plan, *supra* note 1, at 178-9.

The British Columbia Supreme Court recently released its decision in *Yahey v British Columbia*, in which it concluded that the Province of British Columbia infringed the treaty rights of Blueberry River First Nation by allowing the cumulative impacts of industrial development to diminish their ability to exercise their treaty rights. Significantly, the Court held that while the province worked to develop tools to manage impacts and ensure that the First Nation could continue to meaningfully exercise their rights, it should have enacted a “pause” on development activities.<sup>55</sup>

It is therefore both appropriate and necessary for the Commission to require a pause on development until the Plan is fully adopted. Allowing development to continue in advance of the Plan being fully adopted and implemented would undermine the very purpose of land use planning, as it allows the land and important ecological and cultural values—and therefore FNNND’s constitutionally protected rights—to be irreparably damaged before the land use planning process is completed. It risks infringing FNNND’s Aboriginal and treaty rights, leaving FNNND with an “empty shell” of a treaty.<sup>56</sup> The Commission must therefore instate a mineral staking moratorium and pause on mineral development in the entire Dawson Region until the Plan is fully adopted and implemented.

## 10. CONCLUSION

FNNND would like to applaud the Commission for its hard work and for releasing the Draft Plan. This is a critical milestone towards fulfilling the critical promise of land use planning in Chapter 11 of the Final Agreement.

We thank the Commission for providing this opportunity to provide our comments and feedback on the Draft Plan. FNNND expects the Commission to take our recommendations into serious consideration and to address them as it works to finalise the Plan. As an “Affected First Nation,” our comments and perspectives must be given significant weight in the Commission’s work.

This submission is not exhaustive, however, and FNNND may provide further comments and submissions as the Commission continues its work. In particular, FNNND may have further comments to provide following our involvement in the Plan’s development, as requested in this submission, and potential engagement with our community.

Thank you for your attention to this matter.



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<sup>55</sup> *Yahey v British Columbia*, 2021 BCSC 1287 at para 1805.

<sup>56</sup> *Manitoba Metis Federation Inc v Canada (Attorney General)*, 2013 SCC 14 at para 80, citing *R v Marshall*, [1999] 3 SCR 456 at para 52; See *Yahey v British Columbia*, 2021 BCSC 1287.