



Tr'ondëk Hwëch'in  
Submission to the Dawson Regional Planning Commission:  
Recommended Plan  
April 30, 2024

FINAL

## WE ARE DĚNEZHU. WE LIVE TR'ĚHUDĚ

We are DĚnezhu, the people of this land  
We are Tr'ondĕk Hwĕch'in, the people of this river  
following the ways Tsà'Wĕzhè traveled and remembering his journey  
and the living inheritance he left us – Tr'ĕhudè,  
our way of life and our law.

We are DĚnezhu, the people of this land  
salmon people and caribou people  
weather-watchers and story people.  
Ours is a constitution of stories and promises – a promise to  
listen to the land a promise to act humbly and show gratitude  
for the gifts that sustain us a promise to take care of each other.

The promises Tsà' Wĕzhè made in the long-ago times are the core of our identity  
as DĚnezhu the source of our wealth, the reason we endure  
and the root of our kinship with the land and our animal  
relatives those with fur or fins or feathers leaves or  
needles or berries or flowers two legs or four legs, more  
legs or none who taught us how to survive, but also how to  
live. These promises are happy obligations because when  
we look after our relatives, they look after us.

Tsà' Wĕzhè used his wits to make the world safe  
for us so we live Tr'ĕhudè to protect the balance  
he made still telling the stories that bind us to  
this land and keeping our promises so the  
animals keep theirs – for all the generations yet  
to be born.

That is what we mean when we say we are DĚnezhu, the people of this land  
That is what it means to be Tr'ondĕk Hwĕch'in, the people of this river

## Gratitude

Tr'ondëk Hwëch'in (TH) would like to thank the Commission for your efforts in drafting a Recommended Plan ("the Plan") that is consistent with the Objectives of Chapter 11 of our Final Agreement. Moving forward, we acknowledge and give thanks for your continued work in considering our response and drafting a Final Recommended Plan.

We would also like to take this opportunity to thank all members of the public and stakeholder groups who expressed their views as a part of this planning process. The Chapter 11 Land Use Planning process would not be possible without your sincere participation.

Finally, Tr'ondëk Hwëch'in extends a Mähsi Cho to all Tr'ondëk Hwëch'in Citizens who participated in consultations, most recently on the Recommended Plan. Your passion and diligence in expressing the values important to you form the foundation of all submissions we put forward to the Commission.

## Definitions & Acronyms

CE – Cumulative Effects

CEWG – Cumulative Effects Working Group

ISA – Integrated Stewardship Area

LMU – Land Management Unit

Non-SL – Non-Settlement Land

SMA - Special Management Area

TH - Tr'ondëk Hwëch'in

The Commission - Dawson Regional Planning Commission

The Parties – YG and TH

The Plan – the Recommended Plan

THFA - Tr'ondëk Hwëch'in Final Agreement

TH SGA - Tr'ondëk Hwëch'in Self-Government Agreement

Tr'ëhudè – TH Way of Life, Living in a good way

WSI – Wetlands of Special Importance

YFN – Yukon First Nation

YG - Yukon government/Government of Yukon

## Executive Summary

Set out below is a summary of the main issues TH wants to see addressed in the Dawson Regional Land Use Plan.

1. **Co-Management:** In the Peel case<sup>1</sup> the Supreme Court of Canada confirmed that "a clear objective" of Regional Land Use Plans is "to ensure First Nations meaningfully participate in land use management in their traditional territories", on both Settlement Land and Non-Settlement Land.
  - a. TH wants to see this principle strongly reflected throughout the Plan, in all Land Management Units. Examples:
    - i. For LMU 1, the Recommended Plan suggests that "the Parties shall jointly consider permitting new surface access and access routes". TH believes that all new access (in all LMUs) should be jointly considered and approved.
    - ii. For LMU 4, the Recommended Plan suggests that "Tr'ondëk Hwëch'in have the primary role in the management of the SMA in this culturally significant area." TH is not opposed to taking the primary role in managing this SMA, but not at the expense of giving YG the primary role in managing other SMAs. In our view all SMAs should be co-managed.
2. **Sustainable Development:** This is one of the Objectives of Chapter 11 that is strongly related to THFA rights relating to harvesting and water, and the THFA promise of preserving and protecting a way of life that is based upon an economic (as in traditional economy) and spiritual relationship with the land. Under the current YG regulatory regime, the resources that TH has traditionally relied upon, such as salmon, moose and caribou, are disappearing. TH supports mining but wants to see it happen in a more careful and orderly fashion. Current mining practises are not sustainable. TH wants to see the pace and intensity of mining in the Dawson planning region moderated. Among other things this means:
  - a. Strict requirements for Adequate Baseline Data prior to any industrial development, including mining exploration. We cannot ensure protection of land and water-based values if we don't know their location and extent.
  - b. Conservative Cumulative Effects thresholds that protect the environmental and cultural values of the land. TH supports mining that does not damage the environmental and cultural resources that we have traditionally relied upon for our physical and spiritual sustenance and Tr'ëhude. We want to see a working landscape where fish and wildlife thrive and where our cultural sites are respected and preserved, alongside measured and carefully managed mining.
  - c. Reclamation standards that ensure the productive capacity of our land is fully restored after mining, prior to adding the mined land back into the kitty for cumulative effects purposes. In some cases, this means managing mining projects sequentially, so as to allow the land to recover prior to authorizing the next mining project.
3. **Permanent Protection of Additional Lands and Waters:** These include the Yukon River Corridor, which is the life-blood of our people, in addition to other major River Corridors which are important not only to TH but also to First Nation of Na-cho Nyak Dun and Kluane First Nation.
  - a. TH proposes that the whole of the Yukon River Corridor in the Dawson Planning region become a SMA. This should be accompanied by a commitment to enter into a Yukon

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<sup>1</sup> First Nation of Nacho Nyak Dun v Yukon, 2017 SCC 58 (paras. 14, 47). The Supreme Court of Canada also emphasized that Chapter 11 sets out a collaborative process for developing a land use plan (para 48).

Corridor wide planning process for the entire length of the Yukon River Corridor in Yukon, in collaboration with all affected YFNs.

- b. The Stewart River Corridor should also be a SMA, with a similar commitment to comprehensive planning with First Nation of Na-cho Nyak Dun.
  - c. The Klondike<sup>2</sup> and White River Corridors also require protection.
  - d. LMUs 1, 3, 4, 5, 6, 7, 10, 16, 17, Ladue wetlands in LMU 19, 20 and 22 (see Appendix 1 for more details) should be designated as SMAs, with clear provisions for joint TH and YG management.
  - e. TH supports IPCA consideration for LMUs 1, 3, 4, 5 & 10.
- 4. Additional Protection for Wetlands** - Wetlands are an important value that deserve effective protection. From the TH perspective the YG Wetlands Policy lacks teeth and is, on its own, insufficient to adequately protect wetlands in TH Traditional Territory.
- 5. Commitment from YG to use all Available Tools, and where necessary, develop new Tools to Achieve Objectives of Plan** - YG has tools in its existing toolbox that can be used to achieve many of the objectives of the Dawson Regional Land Use Plan, including Special Operating Areas under the *Quartz Mining Act* and *Placer Mining Act* and Land Management Zones under the *Lands Act*. The Plan needs to highlight these tools and direct YG to use them, or to work with YFNs to develop other tools where necessary.
- 6. Protection of Salmon** - Traditionally Salmon were among the most important sources of physical and spiritual sustenance for TH. TH rights to harvest and manage fish are protected under the THFA. If not for salmon, TH wouldn't be here. The Plan needs to include more focus on salmon and include more effective measures to save them. As noted by the Commission in the section of the Plan on LMU 12 Tr'ondëk Täk'it:
- Commission members recalled stories of the Tr'ondëk (Klondike) being full of big king salmon which were a bright ruby red colour and in numbers so great that it seemed as though you could walk across the river on them.
- 7. Removal of TH Settlement Land from SMAs** - As part of the THFA, the Tr'ondëk Hwëch'in retained title to about 5 % of the Dawson Planning Region as Settlement Land. In these limited and very important areas, TH are intended to be the primary decision and law-makers. The Recommended Plan refers to SMAs as “jointly managed by both Parties”. Including Settlement Land in SMAs would therefore dilute TH management powers over those lands. Settlement Land should be protected under TH law and exclusively managed by TH.

Below is a summary table of TH's LMU proposals. In most cases, TH's LMU proposals are similar to what the Commission has recommended. TH modification details are provided in the body of this narrative and Appendix 1. In a few cases, TH proposes a direct change to LMU designations.

LMU	Recommended Plan Says	TH LMU Proposals (See Appendix 1 for proposed modifications details and Appendix 2 for map)	What TH Said in Past
1	• SMA with ISA 1	• SMA status for non-SL • ISA 1	• Support for SMA status with ISA 1
2	• ISA 2	• ISA 2	• Support for ISA 2
3	• Sub-Regional Planning Area with ISA 2	• SMA status for non-SL • ISA 1	• Recommended SMA status

<sup>2</sup> This does not include LMU 12 which is recommended for sub-regional planning.

4	• SMA with ISA 1	• SMA status for non-SL • ISA 1	• Support for SMA status with ISA 1
5	• SMA with ISA 1	• SMA status for non-SL • ISA 1	• Support for SMA status with ISA 1
6	• ISA 2	• SMA status for non-SL • ISA 2	• Recommended SMA status
7	• ISA 1	• SMA status for non-SL • ISA 1	• Recommended SMA status
8	• ISA 3	• ISA 3	• Support for ISA designation • Recommended a modified boundary
9	• ISA 4	• ISA 4	• Support for ISA destination • Recommended a modified boundary
10	• SMA with ISA 2	• SMA status for non-SL • ISA 2	• Support for SMA status with ISA 2 • Recommended a modified boundary
11	• ISA 4	• ISA 4	• Support for ISA 4 • Recommended areas for SMA status
12	• Sub-regional Planning Area	• Support for Sub-regional Planning Area	• Support for Sub-regional Planning Area
13	• Community Area	• Support for Community Area	• Support for Community Area
14	• ISA 2	• ISA 2	• Recommended areas for SMA status
15	• ISA 3	• ISA 3	• Support for ISA 3
16	• SMA	• SMA • Modified boundary	• Support for SMA status • Recommended boundary modifications
17	• ISA 2	• SMA for non-SL • ISA 2	• Recommended SMA status • Recommended boundary modifications
18	• ISA 3	• ISA 4	• Support for ISA 3
19	• ISA 1	• ISA 1 • Areas recommended for SMA	• Support for ISA 1
20	• SMA with ISA 2	• SMA • ISA 2	• Support for SMA status
21	• ISA 2	• ISA 2 • Modified boundaries	• Recommended SMA status
NEW 22	N/A	• SMA status for non-SL • ISA 1	• Recommended for SMA status

Note: This Executive Summary does not address all issues of importance to TH. It represents the main issues TH wishes to see addressed in the Plan. Other issues are addressed elsewhere in our submission.

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## The Klondike Gold Rush

The Klondike Gold Rush established the backdrop against which the Dawson Regional Land Use Plan is being developed. The Hän Indians (our ancestors) were displaced from the heart of our traditional lands. Our seasonal fish camp at Trochëk was possessed by miners and we were moved across the Klondike to what became Dawson. A few months later we were moved further downriver to Moosehide. We fed the gold seekers with our salmon, moose and caribou and performed much of the manual work for Klondike entrepreneurs but otherwise were excluded from the new hierarchy. Our people were not even allowed to stay in Dawson City overnight.

Typhoid that travelled with the newcomers devastated our community, taking over half of our population. Except for low workman's wages, we did not benefit at all from the gold rush. We attached no special value to gold and did not stake any mining claims. Meanwhile our women were courted by white men and our moose and caribou began to disappear. Our children were forced to attend residential schools where they were sexually abused and beaten if they spoke their own language. The church and government made maximum efforts to eradicate our culture and traditions.

In 1906, the *Yukon Placer Mining Act* was introduced which essentially gave placer miners predominant rights over all other land users.

## 100 Years Later

Fast forward one hundred years and the 1906 Placer Mining Act remains largely unchanged. In 1991 the historic TH village of Tr'ochëk was badly damaged by a placer miner who didn't even have a water license. In 2024 a placer miner threatens to destroy the only cross-country ski trails the people of Dawson have ready access to – within the boundaries of the City of Dawson.

On the other hand, the treaty relationship and TH's rights have considerably evolved. The Tr'ondëk Hwëch'in Final Agreement (THFA) was ratified and Tr'ondëk Hwëch'in rights under the THFA are protected under the Constitution of Canada<sup>3</sup>. Among many other things, the THFA protects TH harvesting rights, TH culture and heritage, TH rights to quality of water, and promises to

*protect a way of life that is based on an economic (as in traditional economy) and spiritual relationship between Tr'ondëk Huch'in and the land.*

Chapter 11 of the THFA - LAND USE PLANNING - promises to "recognize and promote the cultural values of Yukon Indian People" and "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."

Despite the promises made by YG and Canada in the THFA, it is easy to see that current land use policies and practices in the Dawson Planning Region do not protect TH rights or our relationship with the land

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<sup>3</sup> September 15, 1998

and waters are not sustainable. The assault upon our people and our lands that began with the gold rush is continuing. Our salmon are on the verge of extinction. The Hart River and Clear Creek Caribou herds are in danger. Our moose are increasingly hard to find.

In settling the Peel controversy in 2017, the Supreme Court of Canada<sup>4</sup> noted that Yukon First Nation Final Agreements “play a critical role in fostering reconciliation.” The Court confirmed that Chapter 11 Regional Land Use Planning is meant to ensure that Yukon First Nations “meaningfully participate in land use planning for both settlement and non-settlement lands.” The Dawson Regional Land Use Plan is our collective opportunity for reconciliation and to move beyond the status quo and bring our people to the table where land use decisions are made—as partners—in a meaningful way, so that our way of life is protected for future generations.

## Introduction

This is the Tr’ondëk Hwëch’in submission, pursuant to 11.6.4 and 11.6.5 of the TH Final Agreement, proposing modifications to the Dawson Regional Planning Commission on the Recommended Plan (“the Plan”). As noted by the Supreme Court of Canada, Chapter 11 of the Umbrella Final Agreement “establishes a process for developing regional land use plans that ensures the meaningful participation of First Nations in the management of public resources in settlement and non-settlement lands” and “ensures that Yukon First Nations can meaningfully participate in land use planning for both settlement and non-settlement lands” (emphasis added).<sup>5</sup> That understanding is reflected in the Dawson Regional Land Use Planning Process Resumption Memorandum of Understanding, in which the Parties committed to work collaboratively with an aim to achieving consensus on the Dawson Regional Land Use Plan. Accordingly, TH is making comments on the entire Plan as it applies to both Settlement Land and non-Settlement Land.

This submission highlights areas where TH supports the Commission’s Plan, as well as areas TH is proposing modifications to the Plan. Where TH remains silent on certain aspects of the Plan, TH generally supports and agrees with the Commission’s approach.

There are a series of appendices at the end of this submission, which make up an integral part of our submission.

## General Support for the Recommended Plan

In the main, TH supports the Plan as drafted. We believe the Commission has recommended a Plan that reflects many of the values of both Parties, as well as the public and stakeholders. We appreciate this is not an easy task. We applaud the Commission for drafting a Plan that reflects the objectives and responsibilities set out in Chapter 11 of our Final Agreement.

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<sup>4</sup> *First Nation of Nacho Nyak Dun v. Yukon*, 2017 SCC 58

<sup>5</sup> *First Nation of Nacho Nyak Dun v. Yukon*, 2017 SCC 58, at para. 14 and para. 46

TH supports the Vision and Goals of the Plan (Dawson Regional Planning Commission, 2022, pp. 8-11). We believe they represent a substantially higher level of care for lands and waters in the Planning Region than the status quo.

We believe it is important that the Plan Vision and Goals, including TH's worldview, translate into meaningful management directions and effective implementation. We propose ways this can be achieved in this submission.

In addition to the Plan Vision and Goals, TH also supports most of the recommendations of the Commission, including:

- the Cumulative Effects thresholds (Dawson Regional Planning Commission, 2022, p. 50), with proposed additions as described in (Appendix 1) of this submission;
- an eventual territory-wide management plan for the Yukon River Corridor (Dawson Regional Planning Commission, 2022, pp. 174–179);
- the Commission's general direction on wetland protection (Dawson Regional Planning Commission, 2022, pp.98-99) with stronger language as per our proposed modifications in Appendix 1.
- the LMU boundaries as identified in the Plan with some proposed modifications for LMU 16 and an additional LMU 22 for the Steward River Corridor (see section *Wédzey Náhuzhi (Matson Uplands: LMU 16)* and Appendix 1); and
- Most of the SMA and ISA land use designations (Dawson Regional Planning Commission, 2022, pp. 41–48), with proposed modifications described in this submission and its appendices.

Important Note: TH silence on any of the Plan's recommendations indicates general support for those recommendations.

## Proposed Modifications to the Recommended Plan

We see our proposed modifications as ways to improve upon the good work the Commission has done.

Most of our proposed modifications focus on protecting the land and augmenting protection for THFA rights, as well as ecological and cultural values. We also speak to the importance of maintaining TH authority over Settlement Land and meaningful participation in the management of Non-Settlement Land.

In this document we offer commentary on many of TH's proposed modifications. The attached spreadsheet (Appendix 1) contains modifications addressed in this narrative as well as additional modifications and details. This narrative and Appendix 1 should be read together to fully understand TH's views on the Recommended Plan. The attached map, Appendix 2, provides a visual representation of TH's proposed modifications for the Dawson Planning Region LMUs. Appendices 3-11 provide additional rationale and information and help explain how we arrived at some of our proposed modifications.

## TH Final Agreement Rights

A central principle of the Plan must be to protect TH's constitutionally protected rights. This includes rights to harvest fish and wildlife under Chapter 16, rights to quantity, quality, and rate of flow of Water under Chapter 14, and rights to protection of culture and heritage under Chapter 13. In signing the TH Final Agreement, Yukon and Canada promised to protect a way of life that is based on an economic and spiritual relationship between Tr'ondek Huch'in and the land, and the cultural distinctiveness and social well-being of Tr'ondek Huch'in (see the recitals to the TH Final Agreement). Those promises cannot be kept without intact, healthy landscapes, where citizens can continue traditional activities and act as stewards of the land in a meaningful way. The modifications proposed by TH are intended to ensure the Plan protects the lands and waters in the Dawson Planning Region, so that the promises in the Final Agreement can be kept, and TH rights are respected and remain meaningful over time.

## Traditional Land Management Practices (11.4.5.5 & 11.4.5.6 THFA)

*The most important thing  
when you take from Mother Earth,  
you put something back.*

Peggy Kormendy, 2019

11.4.5.5 and 11.4.5.6 of the THFA require the Commission to use the knowledge and traditional experience of Yukon Indian People, and take into account traditional land management practices of Yukon Indian People. It is therefore important and necessary to incorporate TH traditional land management practices and worldview into the Plan. We appreciate how the Commission has done this with the Plan Vision and we want to extend this vision throughout the Plan, including into the Cumulative Effects Framework, Access Management, Baseline Data collection and reclamation standards. Mineral development, whether for critical minerals or otherwise, needs to be managed in a way that respects our traditional practices and upholds the principles of Sustainable Development as defined in our Final Agreement.

- We ask the Commission to incorporate the following Tr'ondëk Hwëch'in cultural pillars to inform Sustainable Development in the Dawson Planning Region:

### **Reciprocity**

Our reciprocal relationship with the land and with each other is fundamental to our existence as Dënezhu. It is the lived expression of Tr'ëhudè. The purpose of reciprocity is the maintenance of relationships. Our existence depends on the principle of mutual benefit gained through an active, long-term exchange of goods, energy, thoughts, ideas, and more. It involves sharing, acknowledgement, gratitude, and humility, all of those principles that ensure our survival. The legacy of relational sustainability is an intact homeland that will continue to support our people. Reciprocity is harmony and balance realized.

## Respect

In our world, respect surrounds our thoughts and actions. Everything is done with respect. Our way of life generates a habit of keen attention to our surroundings. We are always aware and thinking about how to build and maintain respect as we move through space and time. The relational nature of our culture drives us to think about how our thoughts and actions impact others, including the land. This builds a tapestry of respect upon which our lives depend.

## Humility

We are fortunate to be a part of this land. It is our greatest teacher. The land shapes our way of being in many ways. The land is powerful. Although it cares for us, it also constantly reminds us that we are one small part of a greater life force. To think otherwise would jeopardize our survival as Dënezhu. It is humbling to know our place in this world and wise to understand that our success depends on this modesty. Thinking and acting in humble ways maintains balance within our community, our families, and ourselves.

– Dënezhu Dätr'inch'e: A Tr'ondëk Hwëch'in Declaration of Identity

## Promoting Sustainable Development (11.4.5.9 THFA)

11.4.5.9 of the THFA requires the Dawson Regional Land Use Plan to promote Sustainable Development<sup>6</sup>. This means moderating the pace and intensity of mining in the Dawson Planning Region. Current mining practices are undermining our culture and relationship with the land. Current mining practices are not sustainable.

Set out below are ways to moderate the pace and intensity of mining that we would like to see more effectively reflected in the Plan. That does not mean that the mining resources in the Planning Region cannot be accessed over time. But it does mean that the mining resources have to be accessed in a planned and managed fashion, in a way that protects important values and areas of cultural and environmental importance, and allows disturbed lands to recover before piling on new disturbance.

1) Conservative Cumulative Effects Thresholds accompanied by rigorous Reclamation Standards. In any given LMU, limits/thresholds should be placed upon the allowed amounts of linear and surface disturbance. Linear and surface disturbance should be carefully monitored. When thresholds are reached, no further disturbance should be allowed until lands in the LMU that have been disturbed are reclaimed and put back into the kitty. Standards for reclamation should be carefully defined.

TH would like to see specific reclamation standards outlined in the Plan. TH supports the standards for recovery of human-caused surface disturbances set out at page 46 of the Peel Plan, adapted to reflect the values and local ecology of the Dawson region, where vegetation grows more quickly to greater heights (see Reclamation Standards & Restoration).

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<sup>6</sup> "Sustainable Development" means beneficial socio-economic change that does not undermine the ecological and social systems upon which communities and societies are dependent. [TH Final Agreement]

When all relevant conditions for reclamation are met, the land in question returns to the kitty and additional disturbance is authorized. This ensures a sustainable pace of mining that enables the land to recover prior to new disturbance.

The Plan should also direct the Parties to ensure appropriate reclamation bonding for projects in the Region (see *Reclamation Bonding* section). Proponents must be required to post the full cost of reclamation and must be held accountable if reclamation standards are not met. Accountability for reclamation will make proponents much more cautious about causing excessive disturbance. Historic examples of Quartz mining reclamation failures include the Clinton Creek, Faro and Whitehorse Copper mines. A current example is the Minto mine. There are numerous Placer mining reclamation failures, including Tr'ochëk and much of Bonanza Creek and the Indian River.

2) Access Management Planning, along with strict requirements to curtail and reclaim access (see *Access Management* section).

3) Taking steps to protect important values, such as caribou, salmon and moose. Our salmon are on the brink of extinction. Hart River Caribou are endangered. Forty Mile and Clear Creek Caribou are at a small fraction of their historic abundance. Moose are increasingly hard to find. Protecting these animals requires a conscious effort to put limits on the pace and intensity of mining allowed in the Planning Region.

4) Protection for Areas of Cultural and Environmental Importance. These areas should be off limits for mining, or in some cases subject to more rigorous disturbance and reclamation standards. See specific proposals regarding additional conservation areas and reclamation standards below.

5) Closely tied to protecting areas of cultural and environmental importance, a requirement for Adequate Baseline Data Prior to Development is critical. If the Parties agree that important cultural and environmental areas/values should not be mined, the next obvious step is to identify precisely where those areas are – before they are disturbed. Baseline data is also essential to effectively implement reclamation standards and cumulative effects thresholds.

6) Differentiating Between Types of Mining. YG wants to promote the mining of critical minerals, but that does not mean that gold mining must also be promoted. Placer mining is particularly harmful to the environment and traditional values in terms of the amount of land affected, the creation of indiscriminate access, and destruction of wetlands. In several Land Management Units, the Plan should direct that while mining for critical minerals may be permitted, other types of mining should be prohibited to reduce impacts on environmental and traditional values.

7) Co-Management (Meaningful Participation in the Management of Public Resources). In the Tr'ondëk Hwëch'in Final Agreement, the Parties promise to protect and maintain the TH way of life and relationship with the land. This cannot occur without meaningful TH input into land management decisions. YG cannot presume to protect the TH way of life while unilaterally determining what land should be mined. TH must be meaningfully included in decision making throughout the Planning Region.

8) Interim Protection while determining next steps. In a recent decision, the Yukon Court of Appeal recognized the link between project approvals and the process of land use planning. The Court noted

“that approval of a development project in an area where land use planning is occurring may undermine the land use planning process, and the s. 35 treaty rights which that process is intended to uphold, because it will reduce the amount of undeveloped land available if and when a land use plan is negotiated and implemented”.<sup>7</sup> Interim protection is an important mechanism to ensure the Plan can be meaningfully implemented.

The Plan recommends interim withdrawals for some lands while the Parties develop management plans and determine appropriate next steps, including:

- Sub-Regional Planning,
- Caribou Overlays,
- Access Management Plans, and
- Wetlands.

In many instances the Parties need to undertake additional work to put management measures in place for certain aspects of the Plan. TH strongly believes that mining should be paused in those areas to maintain the existing state of the land and water and enable the Parties to complete that work in a neutral and uncompromised way. If mining continues while that work is in progress, important options may be compromised, undermining the integrity of the planning process and TH treaty rights.

Beyond interim withdrawals, which only apply to new claims, appropriate interim restrictions should also be imposed on use of existing claims, for example through Special Operating Areas with Special Operating Conditions.

Such interim protection supports the precautionary principle (see #10 below).

9) Willingness to Utilize all Tools in the Toolbox and to Develop New Tools. The Plan should direct YG to use all of the measures available in existing legislation to moderate the pace and intensity of mining; such as Special Operating Areas where Special Operating Conditions apply. Special Operating Conditions could prescribe things like restrictions on the types of equipment used to mine, buffers around valued features, etc. At the same time, the Plan should also anticipate that new tools may be available under future laws, including Successor Resource Legislation. The Plan should recommend the full use of existing tools, but should not be limited by existing tools where new tools are required. The Plan should require meaningful commitment by YG to use existing tools and to develop new or more effective tools to achieve a moderated pace of mining.

10) Utilizing the Precautionary Principle is imperative if the critical values of our lands and waters are going to be preserved. Until we understand the potential impacts of a proposed activity, the activity should not go ahead.

Further detail on most of the topics listed above can be found below and in Appendix 1.

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<sup>7</sup> *First Nation of Na-Cho Nyäk Dun v Yukon*, 2024 YKCA 5, para. 159.

## Cumulative Effects Framework

Taking active steps to manage the cumulative effects of development is necessary to preserve the land, THFA rights, the TH way of life and the values we all share. Cumulative effects from development can significantly damage the environment and diminish our ability to exercise our treaty rights to hunt, fish and trap. The courts have acknowledged that cumulative effects that meaningfully diminish the exercise of treaty rights constitute infringement of those treaty rights, and that regulatory regimes must incorporate a consideration of cumulative effects.<sup>8</sup> The Plan must include a strong cumulative effects framework to ensure that TH treaty rights are upheld and that industrial development in the region meets the Crown's constitutional obligations.

- TH supports the linear and surface disturbance cumulative effects thresholds as described in the Plan, with the improvements outlined Appendix 1.
- TH supports developing cumulative effects indicators for water quality, salmon, caribou, and socio-economic factors, and impacts to TH culture and subsistence harvesting.
- TH supports the continuation of collaborative work to further develop the Cumulative Effects Framework.

## Reclamation Standards & Restoration

Through a Tr'ëhudè lens, TH considers land reclaimed when all aspects of our relationship with the land are in balance and when we are "living in a good way". This includes water quality, quantity and rate of flow, which are crucial indicators of land health and whether an area has been adequately reclaimed or restored. TH views reclamation and restoration in a holistic way, including human behaviour. It is not only the land that needs to be restored. The actions that damaged the land in the first place need to be considered and brought into balance (see Appendix 3 for TH's definition of reclamation and restoration and Appendix 4 for the *TH Placer-Specific Reclamation Guidelines*).

In keeping with Tr'ëhudè, when any land use is undertaken, restoration, i.e., bringing the land and water back to their pre-disturbance natural state, is our ultimate goal. This means adequate baseline data must be collected prior to disturbance to be able to implement reclamation or restoration from a TH perspective (see *Baseline Data* section).

Full reclamation, a concept described in the Peel Plan, is necessary to allow the land to support and sustain the exercise of TH Final Agreement rights, including rights to harvest Fish and Wildlife, to quality and quantity of Water, and to continue the TH way of life. In the absence of full reclamation, the cumulative effects of development significantly diminish the meaningfulness of these rights and the ability of TH citizens to exercise them.

- A goal of the Peel Plan is to "Ensure that any lands disturbed by human activities are reclaimed or restored to their natural state" i.e., full reclamation. The same goal should be included in the Dawson Plan.

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<sup>8</sup> *Yahey v British Columbia, 2021 BCSC 1287.*

- TH believes a full reclamation concept with agreed upon reclamation standards and Cumulative Effects thresholds specific to the Dawson Region’s ecology and wildlife habitat should be included in the Plan.
- TH endorses continuing collaborative work by the Parties—perhaps through the Cumulative Effects Working Group (CEWG)—throughout implementation to assist in defining robust reclamation standards. TH supports reclamation standards that are specific, measurable, culturally appropriate and jointly decided upon. Land must be restored based on these standards before they are released back into the quantum available for development.
- In the interim, until the work of developing reclamation standards has concluded, TH supports setting out specific reclamation standards in the Plan, similar to the conditions for recovery of human-caused surface disturbances set out at page 46 of the Peel Plan and developed further in the Standard Terms and Conditions relating to reclamation for Class 1-4 Activities in the Peel Planning Region (see list below). These conditions should be adapted to the values and ecology of the Dawson Region, where the vegetation grows more vigorously. Sensitive caribou habitat, wetlands and cultural values in the Dawson Region may require more conservative reclamation goals, objectives, and standards to ensure these values are protected over time. In the Peel:
  - All forested and shrubby areas disturbed by activities must be reclaimed so that the area is covered by native species of woody vegetation (trees and shrubs) at least 1.5 metres in height, such that over time the areas are returned to their natural state.
  - All areas mostly covered with vegetation less than 1.5 metres tall disturbed by activities must be reclaimed so that the area is covered with native species roughly the same height and composition as the surrounding dominant vegetation, such that over time the areas are returned to their natural state.
  - All reasonable care must be taken in carrying out exploration activities near or adjacent to a water body to prevent sediment from entering a water body, unless otherwise permitted by law. All areas disturbed by activities must be reclaimed so that runoff and/or sediment loading levels in nearby water bodies return to pre-activity levels.
  - All areas disturbed by activities must be re-sloped and contoured so that the area approximately matches the original contours.

#### RECLAMATION BONDING

To ensure adequate reclamation, current and future mines in the Planning Region need to have closure plans backed up with realistic, adequate and accessible financial security bonds. Companies must be held accountable and be responsible for the costs associated with reclamation, remediation, and restoration. Enforcement measures should not allow proponents to skip the territory and escape scot-free if reclamation requirements are not achieved. The cost of reclamation should not be borne by the public.

- The Plan should recommend that the Parties ensure that current and future mines in the Dawson Planning Region have closure plans backed up with realistic, adequate and accessible financial security bonds.
- Proponents should be held accountable if reclamation standards are not met.

## RECLAIMING LEGACY SITES

Many mines and some major mineral exploration sites have become inactive or abandoned and are leaking contaminated water into the ground, streams and rivers. Landform disturbances have also not been rehabilitated at many historical work sites. These legacy sites should be cleaned up to reclaim and restore the land and water to its natural state.

TH would like the Commission to recommend that un-reclaimed disturbances caused by past mining and exploration, such as the Clinton Creek mine, the Horn Claims, and numerous placer-mining sites, including Tr'ochëk, be cleaned up and reclaimed. Both Canada and Yukon have responsibilities in this regard. The authorities that allowed our lands to be damaged need to atone for their behaviour. The fact that this damage occurred historically when the only value the government attached to the Dawson Planning Region was the gold underlying Klondike gravels does not excuse the damage inflicted upon our lands. Efforts need to be made to restore the productive capacity of those lands.

- The Plan should identify legacy sites (such as the Clinton Creek mine, Horn Claims, and placer mining sites, such as Tr'ochëk) that require reclamation and direct the Governments of Yukon and Canada to ensure that reclamation is undertaken as soon as possible.

## Access Management

The Yukon environment is extremely sensitive to human disturbance. Increased access not only fragments habitats, but provides entry for hunters and other development to previously inaccessible areas. Access has significant impacts on wildlife and the ecological integrity of lands and water and in turn TH's Final Agreement rights and way of life. Access must be managed, in order to safeguard these values and promote Sustainable Development.

Access and transportation have influence and impact far beyond the economy. They influence almost all Plan values and all LMUs, and modes of access are the key mechanisms through which virtually all human activities and land uses are realized.

- TH supports the Plan goal that access infrastructure to renewable and non-renewable resources be established, maintained, and remediated in a way that minimizes conflicts and cumulative effects.
- To achieve that goal and the Vision and Goals of the Plan generally, and to effectively implement Special Management Directions and Priority Objectives for specific LMUs, access must be managed effectively across the region by:
  - Representing Access as a key Plan Concept alongside Cumulative Effects.
  - Directing the Parties to jointly develop access management plans throughout the Planning Region as part of Plan Implementation, which among other things prescribe:
    - Location and construction of Barge Landings;
    - Location and construction of Roads, including 4 wheeler trails;
    - Identification of access nodes to serve multiple mining operations so as to minimize disturbance, especially for Yukon River Corridor (LMU 3);
    - Entities (people, companies) with permission to use the access;
    - Prescribed purposes for which access may be used;

- Reclamation/Restoration requirements, and related bonding;
- Restrictions on ability to use mining claims to secure access to mining properties. Mining claims should not automatically bring a right of access and access on claims needs to be managed the same as access to any other type of development.
- Including recommendations for joint planning and approval of all trunk roads/road networks throughout region.
- Recommending “Full Reclamation”<sup>9</sup> of access disturbance and securing adequate bonding to cover the full cost of reclamation:
- Including requiring proof of available and sufficient security, adjusted for inflation, for full reclamation at all times during exploration and mining.
- Recommending tools to minimize the ecological and cultural impacts from industrial access, including access for mining exploration, such as prescribed access (see above), baseline data requirements, effective CE thresholds and caribou overlays.
- Recommending no new access routes, unless jointly approved, in areas important for subsistence harvesting and with cultural and historic resources, or other areas of community use, including all LMUs TH is proposing as SMA. In all other areas, access must be carefully considered and planned, and require approval by both Parties.
- Ensuring access for mineral exploration is as low impact as possible, using air support and portable light rubber-tired excavators (important to minimize damage until economic viability of potential ore bodies has been proven).
- Including recommendations for requiring proof of probable feasibility of an operation (data proving the mineral deposit exists and that it is economically feasible to mine, including the cost of reclamation) prior to the use of heavy machinery.

TH believes mining laws should be amended to prevent the use of mining claims solely for the purpose of access. The Plan should be drafted to be forward-looking and contemplate such changes being made through new Successor Resource Legislation. As noted previously, the Plan should not be limited by existing legislation and policy.

- The Plan should direct the Parties to prevent the use of mining claims solely for the purpose of access. Until mining legislation is amended to prevent the use of mining claims solely for the purpose of access, the Plan should direct that, in areas where the Parties agree there should be no additional access routes, the Parties should use access management tools, such as Land Management Zones and Special Operating Conditions, to prevent claims being used solely for the purpose of access.

## Steps to Protect Important Values

### WĒDZEY (CARIBOU) OVERLAYS

Caribou are a good indicator for assessing and monitoring the accumulating effects of access to the land by various users. Caribou are also a good indicator for the effects of wildfire on ecosystems; caribou rely on lichen-rich older forests and subalpine shrublands that are periodically lost to wildfire. There is not

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<sup>9</sup> “Ensure that any lands disturbed by human activities are reclaimed or restored to their natural state.” Concept from Peel Plan.

enough scientific evidence from northern ecosystems with which to define or prescribe thresholds of cumulative human activity and disturbances (human and fire) below which a herd's viability is at limited risk. Consequently, the Plan's success conserving caribou will depend on LMU-specific Access Management Plans and the Caribou Stewardship Overlays. TH proposes the following improvements for caribou overlays in the Plan with more details provided in Appendix 1:

- Caribou Overlays are currently envisioned in the Recommended Plan in LMUs 7 and 21. If Caribou Overlays are going to be prominent parts of the Plan implementation, then the Plan needs to have a more detailed section explaining what they are (purpose, mechanics, institutional responsibilities and reviews, etc.), and provide direction as to how they will be realized, including their minimum requirements.
- To effectively manage for caribou, caribou overlays must be linked to critical caribou habitat and herd range, not limited to LMU boundaries.
- The relationship between Caribou Overlays and Access Management Planning must be clarified.

#### TR'OJÀ' (SALMON) — LUK CHO (CHINOOK SALMON)

*You must save the salmon. If it wasn't for salmon there would not be one Indian left in the Yukon. We would have all starved. Now it's our turn to save them.*

Louis Smith, KDFN<sup>10</sup> Elder  
Connecting the Broken Trail, 2023

*There was a big event around the arrival of the king salmon. Every year, June and July, there was always big celebrations when the first salmon were spotted coming up the Yukon River. The event would be celebrated by dancing, singing and feasting because it was bringing life back to the community.*

Gerald Isaac, 1994

*Tr'o, the first part of the Hän word Tr'on''dek and Tr'ochëk refers to the rocks or 'hammerstones' that were used to hammer stakes for fish weirs to catch salmon in the river. The namesake of the Klondike (Tr'ondëk) river demonstrates the importance of salmon to the Tr'ondëk Hwëch'in.*

Helen Dobrowolsky, 2014

Yukon River Chinook and Chum salmon have always been central pillars of our culture and well-being. Until recently, Chinook and Chum salmon were mainstays of our subsistence.

Tragically, Yukon River salmon are at an historic low. Canadian origin Yukon River Chinook salmon are on the verge of extinction and are currently being evaluated by COSEWIC as a potential Species at Risk. Yukon River chum salmon are also at an historic low. In 2023, only 15,304 Chinook salmon reached the Yukon border. This is well below the Yukon River Panel Interim Management Escapement Goal of 42,000-55,000. Only 19,046 Canadian Chum reached the Yukon border on the mainstem of the Yukon

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<sup>10</sup> Permission provided for TH use. Highlights the broad importance of salmon and the Yukon River watershed to all Yukon First Nation People.

River, which is less than 25% of the Escapement Goal. In 2024 less than 11,000 Chinook are projected to reach the border. This is catastrophic.

The causes of this decline are various. Marine interceptions of Yukon River salmon in the Pollock fishery are one factor. Hatchery production is another, which causes increased stress and competition in the ocean. Overfishing in the Alaska commercial and subsistence fisheries has certainly contributed. And arching over everything else is climate change, which is warming the waters in the ocean and the Yukon River. Warmer water inhibits growth, causes salmon to use more energy when swimming and migrating, and exacerbates deadly infestations like *Ichthyophonus*.

But another important factor in the decline of Yukon River Salmon, and particularly Chinook salmon, is destruction of spawning, rearing, and overwintering habitats caused by mining and other industrial activity. Unlike the factors listed above, this factor is entirely within Yukon's ability to remedy.

Salmon habitats tend to be thought of as ending at or near the high-water mark of streams, rivers and lakes; i.e., the riparian zone. However, the land immediately upslope from the riparian zone is also extremely important for maintaining salmon habitat, in protecting the integrity and stability of the riparian zone, preventing sediment from running into it, and providing much needed shade for rearing juveniles. A more holistic view of salmon habitat includes both the riparian zone and the land immediately upslope from the riparian zone.

Yukon River Chinook salmon spawning distribution is relatively well known. But little is known about Yukon River Chinook juvenile rearing distribution and even less about Chinook juvenile overwintering distribution. Yukon River Chinook juveniles spend a full year in fresh water prior to out-migrating to the ocean. Oftentimes they do not rear and overwinter in the same streams in which they emerge. Juvenile Chinook are most vulnerable during overwintering, when food is scarce.

To properly manage and sustain Yukon River Chinook salmon, we need to protect Chinook salmon rearing and overwintering habitat in the Dawson planning region. To do that we need better information on the location of the habitat utilized by juvenile Chinook and better mechanisms to ensure that habitat is not damaged.

There is currently confusion over who is responsible for salmon in Yukon. The federal Department of Fisheries and Oceans (DFO) has primary responsibility for salmon in the riparian zone, but the Government of Yukon (YG) has responsibility for the lands that border and encompass the riparian zone. Further, YG manages and enforces Yukon Placer Authorizations, which sometimes enable placer miners to relocate salmon bearing streams in order to mine the gold in those streams. In theory Placer Authorizations are supposed to protect salmon based upon observed salmon occurrences and the presumed suitability of the land in question for salmon habitat. However, because of the deficit of information about Chinook rearing and overwintering areas, Placer Authorizations do not adequately protect salmon habitat. Moreover, the success of restoring prime salmon habitat after relocating a Placer stream has never been adequately demonstrated.

The THFA protects TH rights to harvest Fish for subsistence, as well as our rights to participate in the management of Fish and salmon specifically. Through the TH Final Agreement, both the governments of

Canada and Yukon have pledged to protect the TH way of life, which is inextricably linked to salmon. The decline in salmon populations has had a significant adverse impact on the ability of TH Citizens to exercise Chapter 16 harvesting rights and to maintain cultural practices and the TH way of life.

Accordingly, it is TH's view that considerably more must be done to protect salmon habitat in the Dawson planning region.

The Plan recognizes the challenges that salmon are facing and makes several good observations and recommendations to support salmon recovery. TH supports those recommendation as far as they go but believes they must be expanded and strengthened. As noted above, at present, we simply do not know where Chinook overwintering habitat is located. The same is true, to a somewhat lesser extent, of Chinook rearing habitat. If we limit avoidance of disturbance to "known" habitat, we will be doing very little to protect overwintering habitat and not enough to protect rearing habitat. We need to avoid disturbance of all "potential" habitat.

- TH would like to see a requirement for adequate baseline data prior to any disturbance in streams where salmon may spawn, emerge, rear, and/or overwinter. We must avoid disturbance to all sensitive habitat — which means we must know where that habitat is.
- TH proposes to modify the Recommended Plan by removing the words "known" and "identified" when referencing salmon habitat. For example, section 5.2.1.3 Salmon: Recommended Management Practices on page 83 states:
  - "Avoid direct disturbance to known sensitive over-wintering, rearing habitats for juveniles, as well as spawning habitat for salmon." (emphasis added).
  - "Significant levels of winter in-stream water withdrawals in known sensitive overwintering and rearing fish habitat." (emphasis added)
  - "Avoid direct or indirect blocking of identified fish migration routes." (emphasis added)
- TH wants to avoid direct disturbance of all over-wintering, rearing habitats for juveniles, as well as spawning habitat for salmon (emphasis added). TH also wants to prevent direct or indirect blocking of all fish migration routes. To ensure damage to salmon habitat is not inflicted due to lack of information, TH proposes the Plan include requirements for adequate baseline data prior to any development activities.
- TH also proposes to add a recommendation in the Plan that YG, DFO and TH work together to clarify and codify responsibility for salmon and salmon habitat in the Dawson Planning Region, with the objective of protecting and restoring salmon and salmon habitat so that:
  - Sufficient numbers of Canadian origin Yukon River Salmon return to Canada to meet Yukon River Panel spawning escapement goals; and
  - A fulsome TH subsistence harvest of salmon is once more supported.
- TH proposes to add the following to the Planning Strategy Objectives for Salmon:
  - Actively support the development and implementation of Yukon River Chinook Salmon Rebuilding Plans.

## Chinook Rebuilding Plans

As of April 1, 2024, there are important national and international requirements for formal rebuilding plans for Canadian origin Yukon River Chinook salmon.

On the national front Yukon River Chinook in Canada are being listed as a 'major fish stock' under the *Fisheries Act*. Because our Chinook are in serious decline and are not coming close to meeting spawning escapement requirements, Canada is legally required to develop a rebuilding plan for Yukon River Chinook

When habitat loss or degradation has been identified as a contributing factor to the stock's decline, the *Fisheries Act*<sup>11</sup> requires that the rebuilding plan must take into account whether there are habitat restoration measures in place.

Habitat loss and degradation due to resource development have been identified as a factor contributing to the decline of Yukon River Chinook.

The Department of Fisheries and Oceans sponsored Workshops among representatives of the governments of Canada, Yukon and Yukon First Nations in November 2023 and March 2024. The Parties identified important Actions relating to Chinook habitat in Yukon, which includes of course the Dawson Planning Region.<sup>12</sup>

### *Action Development:*

- *Overwintering Habitat Data Gap*
- *First step in understanding threats to overwintering habitat is to quantify the extent of habitat.*
- *Work collaboratively to design a study for confirming the extent of juvenile Chinook salmon overwintering habitat.*
- *Explore the use of eDNA as first presence/absence indicator. Pilot trial study for 2024-25.*
- *Valuable for future protection.*
- *Need to identify habitat parameters as presence/absence may be limited during low abundance.*

Important Actions were also identified related to the current way mining and mining land use are managed in Yukon, including the need for adequate baseline data prior to development, overhaul of the Yukon Placer Authorization, protection of habitat upslope from rivers and streams, and more stringent reclamation standards.

### *Action Development:*

- *Improved Regulatory Regime*
- *Requirement for adequate baseline data prior to development.*
- *Protection of riparian habitat important to Chinook salmon*
- *Industrial development & Yukon Placer Authorization overhaul.*

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<sup>11</sup> For prescribed 'major fish stocks', subs. 6.2(5) of the Fisheries Act

<sup>12</sup> See Appendix 5: slides 17 and 20 of the attached Power Point presented to Yukon River Panel on April 8, 2024.

- *Protection of habitat upslope from rivers & streams.*
- *Industrial development and effective reclamation.*
- *More stringent reclamation standards.*

Please note that these Actions are similar to the modifications proposed by TH.

On the international front, Canada and the USA signed an Agreement on April 1, 2024, calling for a complete cessation of fishing for Canadian origin Yukon River Chinook for seven years from 2024 through 2030. This Agreement also requires the Parties to develop a rebuilding plan<sup>13</sup> for Canadian origin Chinook in accordance with section 22 of the Yukon River Salmon Agreement (Chapter 8 of the Pacific Salmon Treaty).

Section 10 of the seven-year Agreement (Appendix 6) identifies several factors to be addressed in the rebuilding plan, including "resource ... development"<sup>14</sup>. This is a mandatory consideration for the Chinook rebuilding plan and a major focus among both Canada and USA members of the Yukon River Panel.

The point of these references to Chinook rebuilding plans is to highlight the need for the Dawson Regional Land Use Plan to complement and support national and international efforts to preserve Yukon River Chinook.

- TH strongly encourages the Commission to include effective measures for restoring and preserving Chinook salmon and their habitat in the Dawson Planning Region in your Final Recommended Plan.

The Governments of Canada and the USA have formally acknowledged the urgent need to take timely action to save our salmon and our salmon habitat. This won't be easy. It will require all of us to tighten our belts and prioritize conservation over economic prosperity. But it must be done. The long-term well-being of our people is directly related to the well-being of salmon. Both our Land Use Plan and our Final Agreement will have failed if they do not save our salmon.

We are the Tr'ondëk Hwëch'in. The river people. The hammerstone people. The salmon people.

#### JEJIK (MOOSE)

*. . . they use just about everything, then they teach the young people about it . . . like even the hooves like, a hoof of the moose or caribou. What they do there they save the hoof like the caribou leg or hoof or whatever moose on their trail as they go along they hang it up, all the way down the trail in case somebody's hungry. They boil it and then they eat that . . .*

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<sup>13</sup> Section 22 of the YRSA requires the Parties to develop a rebuilding plan when "chinook salmon originating in the Yukon River in Canada fall below target levels for rebuilt stocks". The past three years have seen the lowest Chinook spawning escapements in history - at about 1/3 of the spawning escapement target.

<sup>14</sup> Resource Development must be addressed on both sides of the border. Both sides have antiquated mining regimes. The Yukon River Panel identifies placer mining in the Klondike region as one of their primary concerns when it comes to the survival of Chinook.

Next to salmon, moose was the mainstay sustenance for our ancestors and those who arrived during the Gold Rush. Moose used to roam this land with such abundance that they were often seen travelling in groups. Today, we are surprised when we see a few together and we say how abundant the moose are, even though their numbers have declined dramatically in recent decades.

Given that moose have always been there for us and have been a long-standing source of our survival, we agree to treat them with the utmost respect and not to take their lives for granted. Every year, we see people from down south come up and take moose from our family hunting spots, their bodies and racks hung in the back of trucks heading out of town.

It is our responsibility to care for our moose. We can't leave them to fend for themselves with all these hunting pressures and lack of regard for their natural habitat. We believe managing for moose, in particular by protecting important moose calving habitat, is sound management. If we can protect these areas from development, the moose population will have some buffer against over hunting and the unpredictability of future changes and development pressures.

- TH proposes the Plan include access management directions within moose Key Wildlife Areas (e.g., calving grounds and winter ranges) with the aim to reduce the number and density of roads, constrain new access, and restore access disturbances.
- TH proposes that the Ladue wetlands in LMU 19, important moose calving grounds, be designated as a SMA. These additions aim to protect moose populations from development to help sustain their population against outside pressures.

## Additional Conservation Areas

TH believes it is necessary to add more conservation areas to the Plan to protect areas of cultural and environmental importance. We believe this is necessary to achieve a balance between industrial development and our Final Agreement rights and relationship with the land. Additional conservation areas are essential to protect TH's economic and spiritual relationship with the land. Protecting important wildlife and their habitats helps ensure TH's constitutionally protected harvest rights and rights to clean water are sustained over time.

We must take additional steps, to better protect major rivers and salmon habitat, increase protection for key caribou and moose habitat, expand protections for wetlands, and further preserve culturally important areas to TH along the Dempster.

TH does not believe SMA quantum should be tied to a pre-defined percentage. We are concerned that not enough of our land and associated conservation values are being recommended for protection in the Plan. We believe SMAs need to be large enough to protect our most important traditional values. We need vast intact areas to support our way of life.

As a society, we cannot continue to allow land use decisions in the Dawson Planning region to be determined by an antiquated mineral regulatory regime, largely based on an early 19th century world-view. With increasing international pressures, outsider interests, and federal incentives to secure and

expand mineral resource development, protecting our most sensitive and sacred values becomes even more important.

For TH, conservation means preserving the wilderness character of the land and its ability to support the subsistence and cultural needs of TH Citizens, now and in the future.

Below, we highlight a few of the key areas that in our view require additional protection. For additional information about these proposals and others, please see Appendices 1 & 2.

### Chu Kon Dëk (Yukon River Corridor: LMU 3)

Tsà' Wëzhè, our most important cultural hero created the Yukon River. Today, we continue our journey with Tsà' Wëzhè by maintaining our relationship with the River. As people of the Yukon River, the River is our main artery - the life blood and heartbeat of our people.

We appreciate the Commission's recommendations for LMU 3, which acknowledge the pre-eminent value of the Yukon River to all Yukon First Nations who live along it.

- Given the cultural importance of the Yukon River to TH and other affected Yukon First Nations, TH proposes that the whole Corridor within the Planning Region be designated a Special Management Area with accompanying provisions for collective planning of the whole Corridor within Yukon among Affected YFNs and YG.
- Sub-regional planning is not our preferred option for LMU 3. After decades of waiting, we want a firm and concrete plan for this essential part of TH Traditional Territory. However, we do support the Commission's future vision for a Comprehensive Yukon River Management Plan. In our minds, this includes a Comprehensive Management Plan developed with all affected Yukon First Nations and consideration of legal Personhood for the river.
- TH proposes that a commitment to develop a comprehensive management plan for the entirety of the Yukon River with all affected YFNs be a clear recommendation in the Plan.

### Wetlands

TH wants to protect wetlands in the Planning Region. Wetlands have important cultural and environmental value to TH. They protect water quality and rate of flow (Chapter 14 THFA), are the home of traditional medicines and host a diversity of animals. Wetlands support biodiversity in the Planning Region, as well as the exercise of harvesting rights under the THFA and other cultural practices. They are prime moose habitat and accordingly prime hunting and harvesting grounds for our people. Peat wetlands are also critical for sequestering carbon and abating climate change.

TH does not believe Yukon's "A Policy for the Stewardship of Yukon's Wetlands" (hereafter referred to as Yukon's Wetland Policy, or the Policy) and Wetlands of Special Importance designation is enough to protect wetlands in the Planning Region.

- Yukon's Wetland Policy states that YG will create a new land designation for Wetlands of Special Importance (WSI). It is not clear what legal protection will be provided by that designation. The policy states that: The designation as a WSI does not require the withdrawal of the area from land disposition or a prohibition of mineral staking, exploration,

and mining. Further, developing the designation will take time. In the meantime, effective interim measures need to be in place to protect the wetland from development.

- YG has indicated that administrative reserves, among other approaches, are being considered as an interim Policy tool. However, such reserves do not preclude the ownership of sub-surface rights by a third party. As policy, they are also susceptible to political changes and provide a lower level of protection. Therefore, it is unclear how these interim tools could effectively protect wetland values until such a time that regulations are developed to implement the WSI under Yukon's Wetland Policy.
  - Yukon's Wetland Policy does not apply to existing tenure (claims) and approvals, and may still allow development within a WSI or in hydrologically connected areas that can affect a WSI.
- TH proposes that all bogs, marshes and fens within the planning region be fully protected, which means:
- additional wetland mapping and investigation, as required, and
  - permanent withdrawal from placer and quartz staking.

#### TÄDZAN DĚK (WHITE RIVER: LMU 19)

- TH proposes that the Ladue wetlands within LMU 19 be designated as SMA, which means:
- Permanent withdrawal of placer and quartz staking
  - No unplanned and unagreed access;
  - No development in undisturbed bogs, marshes and fens within existing tenure, except for existing permits; and
  - For existing permitted activities, TH proposes 50% permanent protection of undisturbed fens within the permitted area.

In addition to wetland values, the area within LMU 19 identified on the map (Appendix 2) is important calving ground habitat for moose (see *Moose* section).

#### NÄN DHÒHDÄL (UPPER INDIAN RIVER: LMU 17)

- TH proposes LMU 17 as a SMA, which means:
- Permanent withdrawal of placer and quartz staking;
  - No development in undisturbed bogs, marshes and fens within existing tenure, except for existing permits;
  - For existing permitted activities, TH proposes 50% permanent protection of undisturbed fens within the permitted area.

TH has raised concern about the destruction of wetlands from placer mining in the Indian River valley for decades. This area is of significant cultural importance to TH. Prior to intense mining, Citizens used to frequent the area for hunting and trapping. The current level of activity has displaced our people from this valley. The wetland ecosystem has been badly damaged. Much of the landscape has not been reclaimed. TH would like to see what is left of the wetlands in the Upper Indian River remain intact. This would contribute significantly to reconciliation, and to protection of TH rights relating to harvesting.

## Caribou

### WEHTR'E (ANTIMONY: LMU 7)

*We have respect for the caribou... That's law!*

Julia Morberg, 2009

Primary Hart River Caribou calving grounds are located within LMU 7 (Appendix 7). LMU 7 is also an important grazing area for Hart River Caribou.

The Hart River caribou herd is presently listed as a species of Special Concern under the federal *Species at Risk Act* (SARA). All Canadians have a shared interest in protecting species at risk and ensuring healthy ecosystems for future generations. One of three purposes of SARA is to manage species of special concern to prevent them from becoming endangered or threatened.

According to the objectives outlined in the Management Plan for the Northern Mountain Population of Woodland Caribou (*Rangifer tarandus caribou*) in Canada, YG agreed to:

- Objective 5: Identify and assess the quality, quantity and distribution of important habitats;
  - 5.1 Delineate key habitats (e.g. winter range, calving grounds, post-calving summer range, rutting range, insect avoidance areas, travel/movement corridors, mineral licks, predator avoidance sites or other locally important sites);
- Objective 6: Manage and conserve important habitats to support healthy caribou herds;
- Objective 7: Promote conservation of the NMP of woodland caribou through environmental and cumulative effects assessments;
- Recovery measures: 7.1 Provide input into land and resource use planning forums (e.g. Environmental Assessment/Land Use Planning), including cumulative effects, to maintain caribou populations.

One of the tools in the Management Plan for the Northern Mountain Population of Woodland Caribou is to Collaborate and contribute to Land and Resource Use Planning and Environmental Assessment/Land Use permitting processes to maintain caribou habitat requirements.

- TH proposes that LMU 7 be designated a SMA with recommended boundaries. TH does not support a reduction in the size/shape of LMU 7.
  - If this is not achievable, then TH supports the Commission's recommendation of ISA 1 with interim withdrawal from any new industrial land use dispositions and surface access in place until the Access Management plan is completed or until such a time that both Parties agree to rescind the withdrawal, in addition to robust caribou overlays (see Caribou Overlays section above and in Appendix 1).

## WĒDZEY NÄHUZHI (MATSON UPLANDS: LMU 16)

*We used to have a lot of caribou up on the summit, each family or friends get together and go back there every summer. It used to be a whole pile of caribou going through there and they'd get as much as they could and now you can't do that and there is hardly no caribou.*

Angela Harper (Malcolm), 1999

*We have abused both the herd and the land. The land is waiting for an apology. Until then, the herd will not be productive and give itself to people.*

Alex Van Bibber, 1995

Given the importance of the Forty Mile Caribou to TH and other First Nations and the international efforts being made to recover the herd's population and its former herd ranges:

- TH proposes additional conservation area for the Forty Mile Caribou by expanding LMU 16/SMA to more closely align with the Forty Mile Caribou range. See geographic details in map (Appendix 2).

## Additional Conservation Measures

### Baseline Data

Collecting adequate baseline data to inform what values may be impacted by development activities and how we can reclaim the land in a respectful way is true to living in a good way. When we live Tr'ëhudè we sustain what is most valuable to us.

TH wants to see a clear requirement for adequate baseline data prior to any development activities (including exploration) to better understand potential adverse effects of a project on TH values.<sup>15</sup> In addition, comprehensive baseline data is critical to meet and enforce reclamation and restoration standards.

"Adequate baseline data" is information that describes the current conditions of the valued component, the range and variability of conditions, and evaluates potential project effects. Baseline data is typically considered adequate if it:

- Characterizes aquatic, terrestrial, atmospheric, cultural, and heritage and historic resources that may be adversely affected;
- Relies on scientifically defensible and repeatable methodologies that will be used throughout all project phases to evaluate project effects;
- Determines potential pathways of effects, impact mechanisms and relevant indicators;
- Identifies terrain and environmental hazards (potential effects of the environment on the project);

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<sup>15</sup> For TH, exploration is part of development. Wherever the terms "development" or "development activities" are referenced in this document, exploration is included.

- Allows the prediction of the significance of a project’s impacts and the effectiveness of proposed mitigation activities throughout all project phases;
- Supports the design of water quality (including groundwater, where required) and environmental effects monitoring programs, that will allow for the evaluation of the actual impact on the receiving environment during and after the development of a project by comparing to baseline conditions; and
- Supports the establishment of site-specific, safe, and ecologically relevant thresholds to inform adaptive management of the project and at the Landscape Management Unit (LMU) scale.

TH believes that adequate baseline data collection and analysis is a pre-requisite for:

- Managing development at a sustainable pace.
- Maintaining the wilderness character of much of the planning region.
- Maintaining ecological and cultural integrity by ensuring terrestrial and aquatic habitats remain in a suitable condition to sustain healthy native fish populations and wildlife and communities within their natural ranges.
- Maintaining the quantity, quality, and rate of flow of water within its natural range.
- Ensuring that any lands disturbed by human activities are reclaimed or restored to their natural state.
- Recognizing, conserving, and promoting the heritage and cultural resources and values, and traditional land use practices, of affected First Nations and the Yukon.

➤ Therefore, TH proposes that the Plan direct that prior to undertaking any development activities, including exploration activities:

- Adequate baseline data on wildlife and terrestrial habitats must be collected;
- Adequate baseline data on fish, water bird, aquatic habitat and water quality must be collected;
- Adequate baseline data on heritage and historic resources must be collected;
- Spawning, Rearing and Overwintering locations of salmon and other important fish species must be documented, based on empirical observation, traditional knowledge, and inferred habitat suitability;
- Adequate baseline data regarding water quality, quantity and rate of flow must be collected;
- Surveys of wetlands, including relevant indicators of wetland health, must be conducted; and
- Existing surface disturbances must be documented.

### Differentiating Between Types of Mining—Critical Minerals

TH supports carefully controlled mining of critical minerals in a manner that meets the THFA definition of “Sustainable Development.” Sustainable Development means beneficial socio-economic change that does not undermine the ecological and social systems upon which communities and societies are dependent. One of the objectives of THFA Chapter 11 (Land Use Planning) is 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” (THFA 11.1.1.6). In developing a regional land use plan, a Regional Planning Commission must “promote Sustainable Development” (THFA 11.4.5.9).

TH supports movement away from a fossil-fuel reliant society and towards green technologies. However, we need to ensure that the way we get there does not unduly and disproportionately impact the environment of this region and those who reside here. Our home is not a hinterland to be exploited for the benefit of outside people and interests at our expense, which is the way mining has taken place in the Planning region for the past 130 years.

We recognize the need to minimize the use of internal combustion engines and move to battery power sources for motor vehicles and many other tools. As a means of combatting climate change, TH supports the Canadian Critical Minerals Strategy (2022). Among other things, the federal strategy:

1. Strives to achieve reconciliation with First Nations.
2. References UNDRIP, which includes the principle of Free, Prior and Informed Consent.

However, TH does not support YG’s approach to critical minerals, which does not support reconciliation or UNDRIP. YG seems to be utilizing critical minerals as a convenient rationale to justify mining for non-critical minerals in areas that are already overmined or have sensitive values that must be protected, such as the Hart River caribou herd calving grounds in recommended LMU 7. TH does not believe that support for mining critical minerals needs to include support for mining non-critical minerals such as gold.

- TH wants to see language in the Plan that supports mining for critical minerals as part of an integrated and comprehensive strategy to address climate change and protect TH rights. The strategy must address reconciliation and UNDRIP – as the federal Critical Mineral Strategy does. In addition, the strategy must address paced mineral development, in accordance with agreed upon cumulative effects thresholds, that does not adversely affect TH Final Agreement rights and cultural and subsistence needs, including salmon and caribou.
- TH wants to see language in the Plan recommending that the mining regime in the Dawson Planning Region differentiate between critical and non-critical minerals in certain LMUs.
  - We propose that exploration and mining for critical minerals be allowed in some LMUs (for example, LMU 8 – Brewery Creek), while not allowing for the exploration and mining for non-critical minerals, such as gold. We believe YG has existing tools to do this.

## Climate Change

Although the Plan acknowledges the importance of addressing climate change, it is not represented in a way that reflects the urgency of climate change and its effects on the Planning Region and its inhabitants. The Plan needs to further recognize the effects of climate change, including the severity of effects in the north and the disproportionate impact on Indigenous Peoples and our way of life.

- TH proposes the Plan have stronger and more comprehensive provisions to address climate change.

Please see Appendix 8 for additional commentary on climate change.

## Settlement Land

In consideration of the rights and obligations set out in the THFA, TH ceded, released and surrendered aboriginal rights to more than 96% of TH Traditional Territory, retaining exclusive management authority and many Self-Government powers only on TH Settlement Land. TH Settlement Land comprised about 4% of TH Traditional Territory as it was configured at the Effective Date. Only 60 % of TH Settlement Land is Category A – where TH owns and has management authority over both the surface and sub-surface. This means that TH retained management authority over the sub-surface of only 2.5 % of its Traditional Territory, and less than that when grandfathered mining claims are considered.

- TH Settlement Land makes up about 6 % of the Dawson Planning region as it is configured, of which 3.6 % is Category A.

## Special Management Areas and Settlement Land

The Commission has recommended that about 68% of TH Settlement Land within the Dawson Planning Region be included within designated Special Management Areas (SMAs). Under the Recommended Plan, SMAs are to be conserved and jointly managed by both Parties.

TH agrees with the goal of conservation for Settlement Land identified in the Plan as SMAs but does not consent to the inclusion of TH Settlement Land in SMAs. That would dilute TH management authority over that Settlement Land.

Special Management Areas are established as per Chapter 10 of the THFA:

- 10.3.5 provides that no SMA can be established to include TH Settlement Land without TH consent.
- 10.4.0 provides that a SMA cannot adversely affect TH treaty rights or interests without negotiation to address TH rights and TH's role in the management of the SMA itself (10.4.2).
- 10.5.2 provides that "Government (Canada or Yukon) shall prepare, or have prepared, a management plan for each Special Management Area established pursuant to a Yukon First Nation Final Agreement after the Effective Date of that Yukon First Nation Final Agreement."
- 10.5.3 provides that "Government shall review each management plan at least once every 10 years."

Unless otherwise agreed, 10.5.2 and 10.5.3 give Government the preeminent role in developing and reviewing management plans for SMAs that are established after Effective Dates—including SMAs that include Settlement Land.

The THFA provides for TH to have Self-Government powers on Settlement Land, as set out in 13.3 of the TH SGA – including power over the "use, management, administration, control and protection of

Settlement Land”. Including TH Settlement Land in SMAs would diminish TH management authority over those TH Settlement Lands.

Settlement Land should be designated under TH laws, such as the TH *Land and Resources Act*.

Given the surrender that TH made with respect to management authority and self-government powers on Non-Settlement Land, and the importance of parcels that became Settlement Land, TH is not prepared to share its management authority over the small fraction of Traditional Territory that TH retained as Settlement Land.

- To avoid confusion, the term “SMA” should not be applied to TH Settlement Land.
- Management Direction should be inserted in the Final Recommended Plan that specifies that SMAs on Non-Settlement Land should be co-managed by TH and YG, whereas TH Settlement Land should be designated under TH laws and managed exclusively by TH in a way that complements adjacent SMAs.

## Integrated Stewardship Areas and Settlement Land

TH Settlement Land is owned by TH. TH Settlement Land was selected by TH for specific purposes, including traditional uses, cabins, fish camps, homesites, agriculture, and economic development, including mining, etc.

Negotiations over TH Settlement Land were fierce. Many tears were shed over the 96% of the Traditional Territory that did not become Settlement Land.

Citizens and the TH Government expect to be able to use Settlement Land for the purpose for which it was selected, or as decided otherwise by TH.

Within ISAs, TH agrees to use Settlement Land in a way that is consistent with the LMU designations and related Cumulative Effects thresholds specified in the Plan (if TH/YG consensus can be achieved on those elements of the Plan), provided that mining and other industrial uses leave reasonable space in those thresholds for TH use.

- Cumulative Effects and Settlement Land within ISAs. TH wants assurance that for Settlement Land (SL) within ISAs, a portion of the development allotment is reserved for TH use on SL.
  - This could be done by reserving a fraction of the allowed development threshold within each LMU for TH SL, equal to the proportion of SL in the LMU.
    - Ex: if 25% of an LMU is TH SL, only 75% of the allowed development threshold can occur on non-SL. 25% should be reserved for TH SL, regardless of how much development may be occurring on non-SL.

The rationale for this approach is simple: If the quantum of allowed development pursuant to a CE threshold in a LMU is entirely consumed by mining on Non-Settlement Land, TH Citizens would have to wait for the mining reclamation to conclude before developing Settlement Land within that LMU.

TH wants to see both Settlement Land and Non-Settlement Land in the Dawson planning region managed in a coordinated and complementary manner, while providing Citizens peaceful use and enjoyment of Settlement Land and respecting TH rights "to develop and administer land management programs related to its Settlement Land."<sup>16</sup>

## Implementation

### Co-Management

The Plan needs to go further towards TH/YG co-management and joint decision making. The Plan does not include strong enough language regarding the role that TH will play in future decision making associated with plan implementation. As noted by the Supreme Court of Canada, "under the Yukon treaties, the Yukon First Nations surrendered their Aboriginal rights in almost 484,000 square kilometres, roughly the size of Spain, in exchange for defined treaty rights in respect of land tenure and a quantum of settlement land (41,595 square kilometres), access to Crown lands, fish and wildlife harvesting, heritage resources, financial compensation, and participation in the management of public resources"<sup>17</sup>(emphasis added). The Supreme Court of Canada has further stated that it is a clear objective of Chapter 11 to ensure First Nations meaningfully participate in land use management in their traditional territories and to foster a positive, mutually respectful, and long-term relationship between the parties to the Final Agreements.<sup>18</sup> TH sees joint management in the implementation of Chapter 11 land use plans as essential to uphold these central promises of the TH Final Agreement.

- The Plan should be modified to clarify and strengthen TH's role in the governance and management of the Planning Region through the following changes:
  - Include the following language regarding Future Special Management Areas:
    - *For the purposes of Section 10.5 of the Umbrella Final Agreement, **Management of Future Special Management Areas**, this means that the Government of Yukon "otherwise agrees" such that:*
      1. *The Parties to the Plan will have joint management authority for all of the Special Management Areas in the [Dawson Region];*
      2. *The Parties shall jointly prepare, or have prepared a management plan for each Special Management Area;*
      3. *The Parties shall jointly make best efforts to complete the management plans within five years of the establishment of the Special Management Areas; and*
      4. *The Parties shall jointly review each management plan at least once every 10 years.*
  - **Access Management** for Industrial Activities on Non-Settlement Land, including mining exploration, should be agreed to by both Parties throughout the Planning Region.

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<sup>16</sup> THFA 5.5.1.2.

<sup>17</sup> Beckman v. Little Salmon/Carmacks First Nation, 2010 SCC 53, at para. 9

<sup>18</sup> First Nation of Nacho Nyak Dun v. Yukon, 2017 SCC 58, at para. 47

- **Select a single term** (e.g., “co-management” or “joint”) to use consistently throughout the Plan, define the term in the Plan’s glossary, and remove any other term used inconsistently throughout the Plan.
- There needs to be consistent language throughout the Plan stating that TH and YG must jointly implement the Plan and must mutually agree to any changes to the Plan in the future, including the further development of the cumulative effects framework, and for scheduled reviews.
- There must be certainty in the Plan that co-management applies to the Parties to the Plan and, where agreed by the Parties, Affected First Nations. YG may be required to consult with other First Nations, such as White River First Nation, according to the Crown’s constitutional obligations; however, other First Nations should not be included in co-management.

## Interim Measures

The Plan needs to clarify what happens to the land and water between the time the Plan is approved and fully implemented. The Plan recommends several activities that must be undertaken to inform how certain LMUs will be managed. Examples include the development of Access Management Plans, Sub-Regional Plans, designation of Wetlands Stewardship Areas and development of Stewardship Plans, application of timing windows for caribou as determined by the Parties, development of monitoring and mitigation plans, consideration of guidance provided in wildlife management plans, etc. Until those activities can be completed, the Plan should recommend effective interim measures to maintain the current state of the land and water.

In some places the Plan contains direction regarding these matters, such as in LMU 21, which calls for “interim withdrawal of all lands from quartz staking until Plan review or such a time as both Parties agree to remove withdrawal.” In other places the direction is not clear. TH does not want the lands in question to be vulnerable to staking, exploration and other forms of industrial development during the time needed for the Parties to take the steps recommended by the Plan. For example, assuming the Plan is approved as is:

- What happens in LMU 17 prior to the development of an Indian River Stewardship Plan or reclamation guidance and standards for placer miners?
- What happens in various Wetlands prior to designation as Wetlands of Special Importance and development of applicable regulations?
- TH proposes the Plan direct that until activities recommended by the Plan to protect the land are developed and implemented, interim measures, such as mineral withdrawals, must be put in place to maintain the current state of the land. TH agrees with the Commission that interim mineral withdrawal is a good interim measure to give the Parties time to do what needs to be done to put the tools in place to implement the Plan. Further to which:
  - TH must have certainty on when and how interim withdrawals can be lifted. This includes the areas of the region that the Plan directs be withdrawn on an interim basis: the Yukon River Corridor (LMU 3), Antimony (LMU 7), the Klondike Valley (LMU 12), the Upper Indian River Wetlands (LMU 17), and along the Dempster. The Plan does not provide adequate

- guidance about how and when these withdrawals will be lifted, TH's role in lifting withdrawals, or what level of protection will be provided at the time withdrawals are lifted.
- TH proposes that language be added to the effect that any decision to lift a withdrawal must be made jointly by TH and YG. Further, language should be added to allow for additional withdrawals, as needed.

## Tools to Realize Plan Vision/Objectives

In order to achieve the Plan Vision and Objectives, and to effectively implement the Plan, existing and possibly new tools must be used to manage land use. YG has existing tools they can utilize and can create new tools where existing tools may not exist. In drafting the Final Recommended Plan, Commissioners should be open to including language that encourages, or where appropriate requires, YG to use existing tools or develop new tools, whether that be under current or future legislation and policies.

### Existing Tools

Without commitment to utilize the full range of tools available under existing legislation or policy to implement the Plan, it will be operationally impossible to achieve the Plan Vision and Objectives for the Planning Region as a whole or the Priority Objectives set out for specific LMUs, particularly for LMUs 3, 7 and 8 – and perhaps for other areas such as LMU 1 and wetlands.

TH believes there are existing tools that should be used to implement the Plan, including:

1. **Special Operating Areas** prescribed under s. 116 (c.02) of the *Placer Mining Act* and s. 149 (c.02) of the *Quartz Mining Act* and conditions for operations within those areas that will protect the environmental, socio-economic, cultural and historical values of the area. We understand that YG has not yet prescribed any areas using these sections of the Mining Acts, but the intent of these provisions was that, as stated during the 33<sup>rd</sup> Legislative Assembly, 'they would be part of the implementation tools when those land use plans are put into effect'.
2. **Land Management Zones** under the *Territorial Lands (Yukon) Act*, which can be used where necessary "for the protection of the ecological balance or physical characteristics of any area" and where YG can make regulations respecting the protection, control and use of the surface of land and the issue of permits. YG has used these powers to implement existing land use plans e.g. by designating off-road vehicle management areas in the Peel under the *Off-road Vehicle Management Area Regulation*.
3. **Development Areas** under the *Area Development Act*, which can be used where it is considered necessary in the public interest to regulate orderly development. The Dempster Highway Development Area Regulation made under these provisions includes restrictions on development and use of vehicles.

### New Tools

TH Final Agreement 11.7.3 provides that nothing in a Regional Land Use Plan requires YG to amend or create legislation to implement a land use plan. Yet equally, 11.7.3 does not prevent YG from amending or creating legislation where there is a good reason and will to do so. We note that the approved North

Yukon and Peel Regional Land Use Plans both required YG to manage resources and industrial development in a manner that went beyond existing policies, regulations, and legislation. Examples include requirements for adequate baseline data prior to any development activities, the designation of the West Hart River LMU 4 Off-road Vehicle Management Area under the *Off-road Vehicle Management Area Regulation* and de-listing the Wind River Trail as an access route under the *Highways Act*.

The important thing to note here is that the status quo is not a limiting factor when it comes to Land Use Plans. The Parties are free to evolve their thinking and expand their horizons when it comes to Chapter 11 Regional Land Use Plans and their implementation.

### Successor Resource Legislation

The governments of Yukon and Yukon First Nations are presently working to develop new Yukon Resource Legislation, including a new *Yukon Placer Mining Act* and new *Yukon Quartz Mining Act*, in order to bring Yukon mining laws into compliance with Yukon First Nation Final Agreements and modern sensibilities.

It makes absolutely no sense to limit the Plan, a modern Regional Land Use Plan developed under the TH Final Agreement, and its implementation, to a land management regime that is based on archaic mining laws that have changed little since 1906, particularly when we know those laws are being replaced. In 2012, the Yukon Court of Appeal found that Yukon's mineral claim regime breached the Crown's duty to consult pursuant to section 35 of the Constitution because it allowed recording of a claim and exploratory work without consultation with affected First Nations.<sup>19</sup> A recent case in the BC Supreme Court found that BC's similar "open entry" regime is inconsistent with the Crown's duty to consult.<sup>20</sup> This illustrates some of the fundamental shortcomings of the existing mining regime in the Yukon. Other issues include the failure of the existing legislation to recognize and protect TH treaty Final Agreement rights, TH's way of life based on an economic (as in traditional economy) and spiritual relationship with the land, and to recognise and promote the cultural values of Yukon Indian People.

We urge the Commission to continue to develop a Plan that conforms to modern values and meets the Objectives of Chapter 11, without being limited by existing mining legislation. We cannot allow outdated Yukon mining laws, which are in the process of being changed, to dictate the shape and substance of the Dawson Regional Land Use Plan or its implementation.

Based on the rationale provided in the above sections about tools, TH proposes the following modifications:

- Add language that encourages the Parties to commit to using existing and new tools as necessary to ensure the Recommended Plan's Vision and Objectives are upheld, and that the Plan is fully implemented.
- Provide clearer direction regarding Plan implementation e.g. what activities are permitted in different LMUs, particularly between different classes of ISAs (see section on Integrated

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<sup>19</sup> Ross River Dena Council v. Government of Yukon, 2012 YKCA 14.

<sup>20</sup> Gitxaala v British Columbia (Chief Gold Commissioner), 2023 BCSC 1680 (under appeal).

Stewardship Areas above). This will help the Parties determine what tools will be required to implement the Plan.

## UNDRIP

TH supports the Commission's reference to UNDRIP in section 1.8 of the Plan. UNDRIP complements consultation requirements under our Final Agreement and the common law, by requiring the Crown to consult and cooperate in good faith in order to obtain TH's free, prior, and informed consent prior to the approval of any project affecting TH lands, territories and other resources, and before adopting and implementing legislative or administrative measures that may affect TH.

## Integrated Stewardship Areas

ISAs are each assigned a land designation (ISA 1-4) to indicate the relative level of conservation or development focus (Table 3-1, Dawson Regional Planning Commission 2022, pp. 46). These land designations are differentiated by the development category and cumulative disturbance and linear feature indicator thresholds. Cumulative effects indicators are tracked, monitored, and compared to their designation's threshold to determine conformity with each LMU.

- ISAs should be differentiated not just by management intent and cumulative disturbance and linear feature indicator thresholds, but also by the types of activities that may be permitted. TH believes this will provide additional direction for the implementation of the Plan and clarity as to what tools will need to be used to implement the Plan. Certain activities may be inconsistent with the values and priorities for an ISA, even if they do not exceed the cumulative disturbance and linear feature indicator thresholds.
  - For example, in ISA1 where the Recommended Plan identifies very high ecological or heritage/cultural value within a sensitive biophysical setting, and a priority to maintain ecological integrity and cultural resources, TH would like to see a requirement for a permanent withdrawal from staking, to prevent further mining, as this type of activity is inconsistent with ecological and cultural integrity of the land. Access to mining claims outside the ISA could be allowed subject to restrictions that require effective planning and management (e.g. prescribing locations for roads), as could other, lower impact, activities such as outfitting and tourism within the relevant cumulative effects thresholds.
  - Alternatively, additional overlays could be used to prescribe restrictions on activities in specific ISAs, for example to prevent staking but allow access, or to allow mining for critical minerals but not more generally.

These Plan requirements to restrict some activities in certain ISAs would then need to be implemented by the Parties through appropriate new and existing tools (see sections on existing and new tools above).

## Sub-Regional Planning

TH generally supports the Commission's recommendations for sub-regional planning, though as noted it is not our first choice for the Yukon River Corridor (LMU 3).

- How sub-regional planning occurs must be clear. The Recommended Plan identifies three areas for sub-regional planning: the Dempster Corridor, the Klondike Valley, and the Yukon River Corridor. The Plan must be clear with respect to how sub-regional planning will proceed, with a timeline, dedicated funding, and key deliverables identified.

Please note that THFA 11.8.0 assigns sub-regional planning to the Parties. 11.8.4 speaks to the joint development of sub-regional plans: “If Government and a Yukon First Nation agree to develop a sub-regional or district land use plan jointly, the plan shall be developed in accordance with the provisions of this chapter”.

- TH wants to be a Party to any sub-regional plan that is developed for Non-Settlement Land and proposes that the Plan recommend that the Parties agree to jointly develop any sub-regional land use plans required by the Plan.

### Ongoing Development of the Cumulative Effects Framework

- Given the importance of the ongoing development of the CE Framework, which includes jointly developing reclamation standards, TH proposes the Plan recommend that the Parties continue this collaborative work as part of implementation.

### Ongoing Role of the Commission

- TH proposes that the Commission continue to exist, supported by funding from Canada and YG as required, to do the following:
  - Make conformity determinations and representations to YESAB as per 12.17.1, 12.17.2, and 12.17.3 of the THFA;
  - Monitor the implementation of the Approved Plan in order to monitor compliance with the Plan and assess the need for amendment of the Plan;
  - Participate in Sub-regional planning as invited by the Parties;
  - Prepare a 5-year Status Report;
  - Participate in 10-year Plan Review; and
  - Implement and facilitate the Land Stewardship Trust.

### Scenario Report

As part of Intergovernmental Consultation, the Parties conducted a Scenarios Engagement in February of 2023, with participation of Placer miners, Quartz miners, YESAB and YLUPC. The intent of this engagement was to test the Recommended Plan against current regulatory standards and practices from the perspective of the placer and quartz mining industries. The engagement demonstrated that current regulatory structures, information systems and practices will have to evolve to implement the Plan. This will likely require a phased approach to implementation, as contemplated in the Recommended Plan. The engagement helped identify steps that the Parties will need to take to support effective implementation of the Plan.

## Conclusion

We thank the Commission again for all of your hard work in developing a Recommended Plan that meets the objectives of Chapter 11. Your Plan provides an excellent foundation upon which to build. In the main, we support your Plan, but we do think it can be improved upon in places. We hope our submission clearly describes how we believe the Plan should be modified to better protect important values and THFA rights in the Dawson Planning Region.

Knowing we still have a lot to learn and some distance to go, we are reminded of the wise words of our late Elder Percy Henry

*We're not even animals yet.*

We understand Percy to have meant that animals continue to remember how they're supposed to act and live in harmony with the land. It is us humans who have forgotten. A humbling reminder that a big part of this land use planning process is remembering and re-learning.

We ask for the strength of our ancestors to be with all of us as we continue along the sometimes challenging, yet inherently rewarding path towards a Final Recommended and Approved Dawson Regional Land Use Plan.

May their wisdom guide us to tell a new story about our homeland. A story of success that we can share with our children and their children of tomorrow. One where we come together, in challenging circumstances, to create a Plan that reflects the voices and vision of this unique region and its animals, including us.

Mähsi Cho!

## Appendices

- 1) TH Proposed Modifications (spreadsheet)
- 2) Map of TH Proposed LMU modifications
- 3) TH working definition of reclamation and restoration
- 4) TH Placer-Specific Reclamation Guidelines
- 5) Chinook Rebuilding Plan PowerPoint presented to Yukon River Panel
- 6) Canada/USA Agreement of April 1, 2024 regarding Canadian-origin Yukon River Chinook Salmon
- 7) Hart River caribou calving ground map
- 8) TH Climate Change review of Plan
- 9) TH Speaking Notes from December 12 meeting of the principals (Hähke & TH Council and YG Premier & Ministers)
- 10) February 26 letter from Hähke Taylor to YG Ministers

We are also attaching the December 2022 TH Citizen Consultation Report because we believe it highlights the overwhelming sentiment from our Citizens for protecting our traditional lands and waters. We have tried to reflect that sentiment in our submission.

- 11) TH Citizen Consultation Report