

Executive Summary (Denesuline – Roman Orthography)

Beghā Hodi Yati Nedúwe

Ghotelnene K'odtineh Dene Commission ts'én Mahsi héni 2021 Draft Nunavut Land Use Plan denenalé beghā yati holé bél ha. T'altthe dóné hots'i Ghotelnene K'odtineh Dene n̄h hoyághe dechen gghaié n̄t'i k'ézí benéné k'anehta Nunavut k'eyághe ú, Manitoba ú, Yada T̄'ule Tth̄j̄z̄j̄ h́el Saskatchewan k'eyághe. Taltthe dóné hots'i Ghotelnene K'odtineh Dene bech'anié Nunavut k'eyághe ts'én h̄li. Section 35 hot'á bet'á bek'anota 1982 Constitution Act yé déht'ís t'ah ts'én hots'i diri n̄h k'e naghjé ní?á.

1993 Ghotelnene K'odtineh Dene bek'anota ha Dene Ghā Nayati kóe ts'én hédel n̄ Section 35 t'á Yada T̄'ule Tth̄j̄z̄j̄ ts'én bek'anota ha “Samuel/Thorassie Litigation” h̄lye n̄. 1999 hots'i Ghotelnene K'odtineh Dene chu K'odhere Nedhé n̄h bazí elk'eretai holé n̄ Nunavut chu Yada T̄'ule Tth̄j̄z̄j̄ ts'én Samuel/Thorassie litigation beghā yati senút'á ha.

Ghotelnene K'odtineh Dene ben̄j̄ k'ézí n̄h Order in Council P.C. 2019- 576 (“2019 OIC”) k'e harelyú hōghā n̄h bet'á hot'i bek'e bedárét'á dódí 2021 Draft Nunavut Land Use Plan gháré. Diri Samuel/Thorassie litigation bazí senútai beyatié ts'én daren̄j̄.

Ghotelnene K'odtineh Dene n̄dhen ú diri belaiyé tth'i diri Commission yél ?a h̄lā n̄j̄ dé eyi senayile hajá dé 2021 Draft Nunavut Land Use Plan k'e:

1. Horen̄jle k'ot'e kúlú Samuel/Thorassie litigation ts'énj̄ ha dé, 2019 OIC eyi āla elt'á k'ez̄j̄ bek'anota déza. Naihí n̄h 2019 OIC Kivalliq-Manitoba linear infrastructure corridor k'e déht'ízi k'e t'á losí dene yet'árát'i ha dúwé sn̄j̄ ?ak'áni t̄'ulé h́et'i ha sí n̄h bazí yati det'ali, eyi n̄h k̄ot'u hut'á. (Núret'ís Náke n̄f̄?j̄h). Ghotelnene K'odtineh Dene ādu diri Commission eyi n̄h k̄at'u bek'anota sáná dádi ni.
2. Eyi t'a hogháré Commission n̄h hobóne holé dádi 2019 OIC k'ez̄j̄ yūltáh hot'e kúlú eyi erit'ís yan̄j̄z̄j̄ 2013 ekú h̄lj̄ gháré hayef̄?j̄h, 2019 hhaiye hots'i nayenel̄?j̄h t'át'i tthá hots'i kúlú. Eyi hot'á n̄h horjchíle kúlú hodi t'a n̄h sas delgai be?ā h̄la hat'í Conditional Use Area k'ézí hultai, ēlek'edab̄q̄la halyá sn̄j̄ neyanit̄j̄ 2019 OIC n̄h āla ēlét bet'áhot'i n̄h Mixed Use sn̄j̄hn̄j̄ h́el (núret'ís elághe k'e). Ghotelnene K'odtineh Dene ?adi ú eyi bets'én boredí n̄j̄ Commission erit'ís 2019 OIC ts'i t'áhot'j̄ bets'i erit'ís gháré dádi.

3. Ghotelnene K'odtineh Dene ?adi ú K'odere Nedhé hél yat'i hit'ali Samuel/Thorassie litigation bazí hot'á Ełét Ełtaḥ (Mixed Use) bet'á hot'i k'ezí húltai nḥ halyá ?á déza eyi nḥ Commission hogḥa yati nḥnḥai Limited chu Conditional use hedj.
4. Ghotelnene K'odtineh Dene ?adu t'at'u nḥ t'áhot'i begḥa yati boredí ni sí, eyi t'a k'e etthén nakaredaí sí hotiyé hoghedí déza t'u k'e diri Kivalliq-Manitoba k'anj t'ulé hút'í chu t'sats'áni benj t'ulé húlí ha sí k'eyághe 2021 Draft Nunavut Land Use Plan k'e déht'ís hołé. Eyi hél tth'i Ghotelnene K'odtineh Dene ?adu kuzjli hé?a halye ha hogḥa nánedé dádi, t'uk'e etthén dzekaredai t'uk'e hal?as ts'én sí bech'azí kóldher déza.
5. Kú diri Ghotelnene K'odtineh Dene yorj't'ís ni sí benéné k'e (nuret'ís taghe k'e) eyi nḥ besets'udí nuhets'íekwi naídé njlé ni sí erit'ís hénaggh ni, eyi chu ełét'e négha. Eyi hél tth'i boreni benaredí ha t'a gḥa yati, t'a nḥ hobazí asíe hots'i dánidhen sí chu nḥ hogḥa bedagháre asíe hołé ha chu bazí. Ghotelnene K'odtineh dene erit'ís hénaggh hok'ézj "Ghotelnene K'odtineh Dene Area" bek'enayati t'u hú begḥa núłtth'er dé Samuel/Thorassie litigation begḥalada hájá dé eyi hél nḥ t'a t'u bet'á hot'i ha ni Ghotelnene K'odtineh Dene bet'á bekanota ha eyi Erit'ís Nethé gháre beyé déht'ís t'a nađe yati hólj.
6. Tsąba K'odheré Ghotelnene K'odtineh Dene t'sén yati de?al t'a bet'á bets'i Section 35 bek'anota betá beha horená núłtth'i náhodher ch'á. Ghotelnene K'odtineh Dene erit'ís hénaggh Commission t'sén dene hél t'a t'u yati de?al ha Section 35 ḥotóni bazí, Ghotelnene K'odtineh Dene bét ha, eyi chu Tsąba K'odheré chu Commission t'a?u ełá eghálana hotiyé dene yenerení ḥale ha. Ghotelnene K'odtineh Dene alú ertit'ís hénaggh ḥalá t'a begḥa yait'i ni sí tth'i nḥ bek'e eghálada hólj sí bét hha.

Executive Summary

Ghotelnene K'odtineh Dene thank the Commission for the opportunity to participate in this public hearing on the 2021 Draft Nunavut Land Use Plan. Ghotelnene K'odtineh Dene have a deep-rooted connection to the lands throughout their traditional territory, which includes portions of Nunavut, Manitoba, the Northwest Territories and Saskatchewan. This deep-rooted connection is the basis for Ghotelnene K'odtineh Dene's inherent rights in what is now Nunavut. These are rights under Section 35 of the *Constitution Act, 1982* and are derived and based upon several millennia of use and occupancy of this area.

In 1993, Ghotelnene K'odtineh Dene initiated a legal action to have their Section 35 rights recognized North of the 60th parallel ("Samuel/Thorassie litigation"). Since 1999, Ghotelnene K'odtineh Dene and the Crown have been negotiating a land claim agreement in Nunavut and the Northwest Territories in order to resolve the *Samuel/Thorassie* litigation.

Ghotelnene K'odtineh Dene are pleased to see that the vast majority of lands subject to Order in Council P.C. 2019-576 ("2019 OIC") have been designated as Mixed Use in the 2021 Draft Nunavut Land Use Plan. This will facilitate resolution of the *Samuel/Thorassie* litigation.

Ghotelnene K'odtineh Dene recommend that the Commission consider the following additional revisions to the 2021 Draft Nunavut Land Use Plan:

- 1) To facilitate the resolution of the *Samuel/Thorassie* litigation, all lands subject to the 2019 OIC should be designated as Mixed Use. There are some lands subject to the 2019 OIC within the Kivalliq-Manitoba linear infrastructure corridor that have been designated as Limited Use (see Map 2). Ghotelnene K'odtineh Dene submit that the Commission exclude these lands from a Limited Use designation.
- 2) The data the Commission used to depict the boundaries of the 2019 OIC appears to be data from Order in Council P.C. 2013-625 rather than the 2019

OIC. As a result, there are some extremely small areas where the Conditional Use designation for Polar Bear Denning Areas overlaps with the lands subject to the 2019 OIC, which are designated as Mixed Use (see Map 1). Ghotelnene K'odtineh Dene submit that the Commission use the data from the 2019 OIC.

- 3) Ghotelnene K'odtineh Dene submit that the Commission include provisions that clarify where the final boundaries negotiated between Canada and Ghotelnene K'odtineh Dene as part of the resolution of the *Samuel/Thorassie* litigation overlap with any Limited Use or Conditional Use areas, the boundaries of the Limited Use or Conditional Use areas will be adjusted so that all of the lands subject to the resolution of the *Samuel/Thorassie* litigation are designated as Mixed Use.
- 4) Ghotelnene K'odtineh Dene submit that the land use plan address important caribou-related interests within portions of the Kivalliq-Manitoba linear infrastructure corridor identified in the 2021 Draft Nunavut Land Use Plan. In addition, Ghotelnene K'odtineh Dene submit that further consideration should also be given to alternative routes that avoid key caribou interests, such as calving areas and post-calving areas.
- 5) Ghotelnene K'odtineh Dene submit that the plan should identify the "Ghotelnene K'odtineh Dene Area" (see Map 3) as a Valued Socio-Economic Component and describe the scope and extent of Ghotelnene K'odtineh Dene's asserted rights and interests in this area in a manner similar to the description in this submission. This will provide additional clarity for proponents and regulatory agencies. Ghotelnene K'odtineh Dene also submit that the plan should allow for the "Ghotelnene K'odtineh Dene Area" to be revised upon resolution of the *Samuel/Thorassie* litigation to incorporate Ghotelnene K'odtineh Dene rights and interests into the land use planning and implementation processes on the basis of the rights set out in the final agreement.
- 6) The Crown is required to consult with Ghotelnene K'odtineh Dene on any decision that may adversely affect Ghotelnene K'odtineh Dene's Section 35 rights. Ghotelnene K'odtineh Dene submit that the Commission engage in

discussions with the Crown and Section 35 rightsholders, including Ghotelnene K'odtineh Dene, to clarify how the Crown's duty to consult will, or will not, be merged with all aspects of the Commission's processes. Ghotelnene K'odtineh Dene further submit that the outcome of these discussions should be included in the land use plan.

Table of Contents

Executive Summary (Denesuline - Syllabics)	2
Executive Summary (Denesuline – Roman Orthography)	4
Executive Summary (Inuktitut)	6
Executive Summary	9
1.0 Introduction	13
2.0 Specific Comments	15
Polar Bear Denning Areas 2.3-1 (Map A – Site # 106): 2019 OIC Overlap	15
Terrestrial Linear Infrastructure 5.3.1-1 (Map A – Site # 93): 2019 OIC Overlap.....	15
Terrestrial Linear Infrastructure 5.3.1-1 (Map A – Site # 93): Caribou Concerns.....	16
Dënesųliné Areas 4.2.2-1 (Map B2.5): Nature and Extent	17
Dënesųliné Areas 4.2.2: Additional Comments and Recommendations	21
Crown Consultation with Ghotelnene K’odtineh Dene.....	22
3.0 Summary of Recommendations	24

1.0 Introduction

Ghotelnene K'odtineh Dene thank the Nunavut Planning Commission (the "Commission") for the opportunity to participate in the public hearing on the 2021 DNLUP. Ghotelnene K'odtineh Dene acknowledge and thank the Commission for the materials, presentations and responses to comments and questions provided by their staff and service providers throughout the public hearing process. Ghotelnene K'odtineh Dene also acknowledge and appreciate the contributions from the other parties and individuals that have participated in the land use planning process.

Since time immemorial, Sayisi Dene First Nation and Northlands Denesuline First Nation (collectively referred to as "Ghotelnene K'odtineh Dene") have, and continue to, use and live on the lands and waters that roughly align with the range of the Beverly/Qamanirjuaq caribou herd. This Ghotelnene K'odtineh Dene traditional territory includes portions of what is now Nunavut, Manitoba, the Northwest Territories and Saskatchewan. Ghotelnene K'odtineh Dene have a deep-rooted connection to the lands throughout their traditional territory, which is the basis for Ghotelnene K'odtineh Dene's inherent rights in what is now Nunavut. These are rights under Section 35 of the *Constitution Act, 1982* and are derived and based upon several millennia of use and occupancy of this area.

Ghotelnene K'odtineh Dene have been advocating for proper recognition of their Section 35 rights in what is now Nunavut since the late 1970s. In 1993, Ghotelnene K'odtineh Dene initiated an action in the Federal Court to have their Section 35 rights recognized North of the 60th parallel ("*Samuel/Thorassie* litigation").¹ Since 1999, Ghotelnene K'odtineh Dene and the Crown have been negotiating a land claim agreement to resolve the *Samuel/Thorassie* litigation.

Ghotelnene K'odtineh Dene have been working with the Commission since at least 2009 to ensure a future land use plan facilitates Ghotelnene K'odtineh Dene's ongoing land claims negotiations and meets the objectives of Ghotelnene K'odtineh Dene and the Commission. Ghotelnene K'odtineh Dene were pleased to see that the vast majority of lands subject to the Cabinet approved Order in Council P.C. 2019-576

¹ *Samuel/Thorassie et al. v. The Queen*, Federal Court File No. T-703-93.

have been designated as Mixed Use. This will facilitate resolution of the *Samuel/Thorassie* litigation.

This submission includes Ghotelnene K'odtineh Dene's comments and recommendations on the following matters:

- Polar Bear Denning Areas 2.3-1 (Map A – Site # 106);
- Terrestrial Linear Infrastructure 5.3.1-1 (Map A – Site # 93);
- Dënesųłiné Areas 4.2.2 (Map B2.5); and
- Crown Consultation with respect to the development, approval and implementation of the Nunavut land use plan.

2.0 Specific Comments

Polar Bear Denning Areas 2.3-1 (Map A – Site # 106): 2019 OIC Overlap

Comments

The data the Commission used to depict the boundaries of the Cabinet approved Order in Council P.C. 2019-576 (“2019 OIC”) appears to be data from Order in Council P.C. 2013-625 rather than the 2019 OIC. As a result, there are some extremely small areas where this Conditional Use area overlaps with the lands subject to the 2019 OIC, which are designated as Mixed Use in the 2021 DNLUP (see Map 1). Also, as the final boundaries for these lands are still under negotiation, it is unknown whether there will be overlap between the final boundaries and the Conditional Use area boundaries.

Recommendation

Ghotelnene K'odtineh Dene submit that the Commission use the data from the 2019 OIC to depict the boundaries of the lands subject to the 2019 OIC. Ghotelnene K'odtineh Dene also submit that the Commission include provisions that clarify where the final boundaries negotiated between Canada and Ghotelnene K'odtineh Dene as part of the resolution of the *Samuel/Thorassie* litigation overlap with any Conditional Use or Limited Use area, the boundaries of the Conditional or Limited Use area will be adjusted so that all of the lands subject to the resolution of the *Samuel/Thorassie* litigation are designated as Mixed Use.

Terrestrial Linear Infrastructure 5.3.1-1 (Map A – Site # 93): 2019 OIC Overlap

Comments

The 2021 DNLUP provides for a Limited Use designation for the Kivalliq-Manitoba linear infrastructure corridor. As requested by Ghotelnene K'odtineh Dene in order to facilitate the ongoing out-of-court settlement discussions related to the

Samuel/Thorassie litigation, the 2021 DNLUP provides for the Mixed Use designation for the lands subject to the 2019 OIC. However, portions of the lands subject to the 2019 OIC overlap with areas identified in the Kivalliq-Manitoba linear infrastructure corridor (see Map 2). Where there are overlapping designations, the 2021 DNLUP provides that the Limited Use designation would take priority over the Mixed Use designation. If this occurs, it will not facilitate, and will further complicate, conclusion of the ongoing out-of-court *Samuel/Thorassie* litigation settlement discussions. It should be noted that the Mixed Use designation does not prohibit development of linear infrastructure.

Recommendation

Ghotelnene K'odtineh Dene submit that the Commission exclude the lands subject to the 2019 OIC, or any of the lands subject to the resolution of the *Samuel/Thorassie* litigation, from a Limited Use designation, including those lands in the current Kivalliq-Manitoba linear infrastructure corridor.

Terrestrial Linear Infrastructure 5.3.1-1 (Map A – Site # 93): Caribou Concerns

Comment

Caribou are central to the culture and existence of Ghotelnene K'odtineh Dene. Ghotelnene K'odtineh Dene continue to use and live on lands they share with the Beverly/Qamanirjuaq caribou herd, and to share the caribou herd with Inuit and other Indigenous Peoples, as they have for thousands of years. The size of the Beverly/Qamanirjuaq herd has been decreasing for more than two decades. Any development that has potential to affect Beverly/Qamanirjuaq caribou or their habitat is concerning to Ghotelnene K'odtineh Dene. Ghotelnene K'odtineh Dene are concerned that developments on Beverly/Qamanirjuaq caribou calving areas, post-calving areas, key access corridors and freshwater crossings could reduce the ability of the herd to recover and may limit the ability of Ghotelnene K'odtineh Dene members to maintain their culture and way of life, and adversely affect their Section 35 rights to harvest caribou.

The 2021 DNLUP provisions regarding the Kivalliq-Manitoba linear infrastructure corridor are a significant modification from the 2016 draft land use plan. The 2021 DNLUP applies a Limited Use designation to calving areas (2.2.1-1, Map A #25), post-calving areas (2.2.2-1, Map A #26), key access corridors (2.2.3-1, Map A #24) and caribou freshwater crossings (2.2.4-1, Map #27). The Limited Use designation prohibits linear infrastructure development. The Kivalliq-Manitoba linear infrastructure corridor also is identified as a Limited Use area (5.3.1-1, Map A #136), although it permits linear infrastructure development in critical areas of caribou habitat.

One effect of having a Limited Use designation that permits linear infrastructure development in critical areas of caribou habitat is that, should a project proposal for linear infrastructure within the corridor be submitted to the Commission, the 2021 DNLUP would not identify or highlight any issues related to caribou that must be addressed or given consideration by a proponent or regulatory authority.

Recommendation

If the Commission maintains the Kivalliq-Manitoba linear infrastructure corridor in the land use plan, the Commission must ensure that the land use plan addresses the important caribou-related interests within portions of the corridor that include areas of sensitive caribou habitat. Further consideration should also be given to alternative routes that avoid key caribou interests, such as calving areas (2.2.1-1, Map A #25) and post-calving areas (2.2.2-1, Map A #26)

Dënesuḷiné Areas 4.2.2-1 (Map B2.5): Nature and Extent

Comment

The comments which follow address only the perspective of Ghotelnene K'odtineh Dene. The purpose of the comments is to advise the Commission of the basis upon which a geographic area which reflects the rights and interests of Ghotelnene K'odtineh Dene should be identified and how it should be described in the 2021

DNLUP. The term “Dënesuᑭᑎᑎᑦ Areas” as used in the 2021 DNLUP reflects the aggregated interests of Ghotelnene K'odtineh Dene and the Athabasca Denesuline, that being the Ghotelnene K'odtineh Dene area of asserted title claim under the *Samuel/Thorassie* litigation and the Athabasca Denesuline area of asserted title claim under the *Benoanie* litigation.

Generally, Ghotelnene K'odtineh Dene view the identification of the Dënesuᑭᑎᑎᑦ Areas as a Valued Socio-Economic Component as a positive feature in the 2021 DNLUP. The recognition of the rights and interests of Ghotelnene K'odtineh Dene as a Valued Socio-Economic Component at the first point of entry into the integrated regulatory system in the Nunavut Settlement Area is essential to effective land use planning and to the effective and efficient operation of the integrated regulatory regimes in Nunavut. The 2021 DNLUP attempts to achieve this by identifying the Dënesuᑭᑎᑎᑦ Areas in Map B2.5 as a Valued Socio-Economic Component. The importance of the Dënesuᑭᑎᑎᑦ Areas being identified as a Valued Socio-Economic Component is that proponents are required to identify anticipated impacts to the Dënesuᑭᑎᑎᑦ Areas in project proposals submitted to the Commission and required to report annually to the Commission on actual impacts to the Dënesuᑭᑎᑎᑦ Areas.

The identification of the Dënesuᑭᑎᑎᑦ Areas as a Valued Socio-Economic Component will raise awareness among project proponents of Dënesuᑭᑎᑎᑦ rights and interests generally and contribute to a greater inclusion of Dënesuᑭᑎᑎᑦ in project planning and development. However, the aggregation of the two Dënesuᑭᑎᑎᑦ areas of asserted title claim does not provide proponents or the Commission with sufficient information on which Dënesuᑭᑎᑎᑦ group they should be engaging with, and does not include sufficient information to describe the full nature and extent of Ghotelnene K'odtineh Dene's asserted rights and interests.

Section 6.1.2 of the 2021 DNLUP proposes to encourage Institutions of Public Government and other regulatory authorities to consider Dënesuᑭᑎᑎᑦ Areas when reviewing projects pursuant to their own jurisdictional mandates. This recommendation may contribute to a better working relationship between Ghotelnene K'odtineh Dene and regulatory authorities, however, making this consideration of Dënesuᑭᑎᑎᑦ Areas optional does not appear to appropriately reflect the nature of the interests identified in

the Denesuline Areas. Also, similar to the proposed instructions to proponents, the aggregation of the two Dënesųliné areas of asserted title claim also does not provide regulatory authorities with sufficient information on which Dënesųliné group they should be engaging with, nor does it adequately describe Ghotelnene K'odtineh Dene rights and interests.

Additional information supporting the full nature and extent of the Ghotelnene K'odtineh Dene's rights and interests is presented below.

Ghotelnene K'odtineh Dene's Section 35 Rights

Ghotelnene K'odtineh Dene's inherent rights in what is now Nunavut extend through much of the Kivalliq region. These are rights under Section 35 of the *Constitution Act, 1982* and are derived and based upon several millennia of use and occupancy of this area. Ghotelnene K'odtineh Dene and their ancestors have lived in and used this area for at least the last 2,600 years. Archeological and historical records, Ghotelnene K'odtineh Dene oral history, and contemporary land-use and occupancy studies validate the substance and geographic scope of Ghotelnene K'odtineh Dene's asserted rights in what is now Nunavut. This area as it relates to Nunavut, referred to hereinafter as the "Ghotelnene K'odtineh Dene Area", is set out in Map 3.²

Ghotelnene K'odtineh Dene's asserted rights in Nunavut include, but are not limited to:

- title in traditional lands;
- the right to decision-making in their traditional territory and waters;
- the right to self-determination, including self-government;
- the right to practice their own culture and customs, including Denesuline language;
- right to ownership and management of their heritage resources; and
- the right to use, develop and control resources and activities in their traditional territory.

² Note that this area is not intended to depict the geographic area under discussion pursuant to Ghotelnene K'odtineh Dene's ongoing land claim negotiations.

Samuel/Thorassie Litigation

In 1993, Ghotelnene K'odtineh Dene initiated the *Samuel/Thorassie* litigation in the Federal Court to have their Section 35 rights recognized North of the 60th parallel. Since 1999, Ghotelnene K'odtineh Dene and the Crown have been negotiating a land claim agreement to resolve the *Samuel/Thorassie* litigation.

In these submissions, Ghotelnene K'odtineh Dene is restricted by confidentiality obligations from disclosing information or details about the ongoing land claims negotiations. Until the negotiations are concluded, Ghotelnene K'odtineh Dene's asserted rights as described above are the basis upon which the Commission should incorporate Ghotelnene K'odtineh Dene's rights and interests into the land use planning and implementation processes.

Recommendation

Ghotelnene K'odtineh Dene submit that the Commission include a "Ghotelnene K'odtineh Dene Area" as set out in Map 3 as a Valued Socio-Economic Component. The text of Section 4.2.2 in the 2021 DNLUP should be revised to describe Ghotelnene K'odtineh Dene's rights and interests in a manner similar to the description included in the comments above.

Ghotelnene K'odtineh Dene submit that the Commission require, rather than encourage, Institutions of Public Government and other regulatory authorities to consider the Ghotelnene K'odtineh Dene Area as a Valued Socio-Economic Component when reviewing projects pursuant to their own jurisdictional powers. The consideration of Valued Socio-Economic Components that are based on Ghotelnene K'odtineh Dene's asserted rights and interests cannot be at the discretion of the regulatory authorities. Anything less than a requirement to consider the Ghotelnene K'odtineh Dene Area would be inconsistent with the legal principles underlying the relationship between the Crown and Indigenous Peoples with Section 35 rights.

Ghotelnene K'odtineh Dene submit that the Commission include provisions in the Nunavut land use plan that allow for the Plan to be revised upon the resolution of the

Samuel/Thorassie litigation. At that time, the land use plan should incorporate Ghotelnene K'odtineh Dene rights and interests into the land use planning and implementation processes on the basis of the rights set out in the final agreement, rather than the rights and interests described in this submission.

Dënesuᑭᑎé Areas 4.2.2: Additional Comments and Recommendations

Comment

In Section 4.2.2, Ghotelnene K'odtineh Dene noted a few minor issues requiring clarification.

1. In or about 2013, Sayisi Dene First Nation and Northlands Denesuline First Nation began to identify themselves by the name “Ghotelnene K'odtineh Dene”, meaning the “barren lands people” and stopped using the term “Manitoba Dënesuᑭᑎé”.
2. The lands subject to the 2019 OIC are not surveyed.

Recommendation

Ghotelnene K'odtineh Dene propose the following revisions to Section 4.2.2 to address the items identified above:

1. Replace references to “Manitoba Dënesuᑭᑎé” with “Ghotelnene K'odtineh Dene”.
2. Redraft the fifth paragraph to correct the reference to surveys:

Areas withdrawn by Order in Council from development are interim boundaries. The final boundaries will be set through negotiations between the Canada and the Dënesuᑭᑎé Nations and will be surveyed.

Crown Consultation with Ghotelnene K'odtineh Dene

Comment

The Crown is required to consult with Ghotelnene K'odtineh Dene on any decision that may adversely affect Ghotelnene K'odtineh Dene's Section 35 rights. Land use planning decisions, including plan preparation, approval and implementation, all have the potential to adversely affect Ghotelnene K'odtineh Dene's Section 35 rights in Nunavut. It is Ghotelnene K'odtineh Dene's understanding that the Crown in right of Canada purports to rely, in part, on the Commissions' public hearing process to discharge certain elements of its duty to consult with Aboriginal peoples, including Ghotelnene K'odtineh Dene, regarding the 2021 DNLUP. It is assumed, although unclear, that the Crown may also purport to rely, in part, on the Commission's processes for the approval and implementation of the Plan.

Clarity on how the Crown's duty to consult merges with, not just this process, but all of the Commission's processes (plan development, approval and implementation), is necessary if consultation is going to be meaningful and the Commission's processes are to be efficient and effective. This clarity will assist in determining how the Commission considers Ghotelnene K'odtineh Dene's comments and recommendations on the 2021 DNLUP. Without this clarity, it is uncertain as to whether the Commission should view Ghotelnene K'odtineh Dene's recommendations through the lens of accommodations proposed by a section 35 rights holder during a Crown consultation process or some other lens.

In Ghotelnene K'odtineh Dene's view, there must be a clear understanding, for Ghotelnene K'odtineh Dene and for the Commission, of how the duty to consult will be discharged once a draft Nunavut land use plan is submitted for approval. This clarity should include a description of how the Crown will address its outstanding commitments, including the implementation of the United Nations Declaration on the Rights of Indigenous Peoples generally and specifically the principle of free, prior and informed consent. Deep consultation at this stage is critical, as once a land use plan is approved, there would appear to be little or no opportunity for Ghotelnene K'odtineh Dene to be consulted or accommodated at the conformity determination stage on a

proposed use that conforms to the Plan, but may adversely affect Ghotelnene K'odtineh Dene's rights.

At the implementation stage, the 2021 DNLUP does not provide guidance as to when Indigenous groups with Section 35 rights may be consulted. This includes actions such as variances, Ministerial exemptions and plan amendments.

The comments above are not intended to be a comprehensive assessment of the need for clarity on how the Crown's duty to consult merges with the Commission's processes, authorities and responsibilities. However, they are sufficient to set out the nature of the need for, and importance of, having this lack of clarity addressed.

Recommendation

Ghotelnene K'odtineh Dene understand that the questions and concerns raised above are not the sole responsibility of the Commission to answer and address. Recently (September 27 and October 7, 2021), Ghotelnene K'odtineh Dene had preliminary discussions with Canada regarding some of the issues raised in the comments above. In Ghotelnene K'odtineh Dene's view, the clarity required calls for much more involved discussions between the Crown, the Commission and Section 35 rightsholders. Incorporating the outcome of those discussions into the Nunavut land use plan will provide for transparency, efficiency and effectiveness in both land use planning and discharging the Crown's duty to consult, and in turn will advance reconciliation.

Ghotelnene K'odtineh Dene submit that the Commission, the Crown and Section 35 rightsholders engage in discussions to clarify how the Crown's duty to consult will, or will not, be merged with all aspects of the Commission's processes (plan development, approval and implementation), authorities and responsibilities. Ghotelnene K'odtineh Dene also submit that the Commission include the outcome of these discussions in the Nunavut land use plan.

3.0 Summary of Recommendations

General

1. Where the final boundaries negotiated between Canada and Ghotelnene K'odtineh Dene as part of the resolution of the *Samuel/Thorassie* litigation overlap with any Conditional Use or Limited Use area, the boundaries of the Conditional or Limited Use area should be adjusted so that all of the lands subject to the resolution of the *Samuel/Thorassie* litigation are designated as Mixed Use.

Polar Bear Denning Areas 2.3-1 (Map A – Site # 106)

1. The lands subject to the 2019 OIC should be excluded from the Conditional Use designation for the Polar Bear Denning Areas.

Terrestrial Linear Infrastructure 5.3.1-1 (Map A – Site # 93)

1. The lands subject to the 2019 OIC should be excluded from the Limited Use designation for the Kivalliq-Manitoba linear infrastructure corridor.
2. The land use plan must address the important caribou-related interests within portions of the Kivalliq-Manitoba linear infrastructure corridor that include areas of sensitive caribou habitat.
3. Further consideration should be given to alternative routes for the Kivalliq-Manitoba linear infrastructure corridor that avoid key caribou interests, such as calving areas and post-calving areas.

Dënesuᑭiné Areas 4.2.2-1 (Map B2.5)

1. The “Ghotelnene K'odtineh Dene Area” should be included in the land use plan as a Valued Socio-Economic Component and the text of Section 4.2.2 should be

revised to describe the nature and extent of Ghotelnene K'odtineh Dene's asserted rights and interests.

2. Institutions of Public Government and other regulatory authorities should be required to consider the Ghotelnene K'odtineh Dene Area as a Valued Socio-Economic Component when reviewing project pursuant to their own jurisdictional powers.
3. Upon the resolution of the *Samuel/Thorassie* litigation, the land use plan should incorporate Ghotelnene K'odtineh Dene rights and interests on the basis of the rights set out in the final agreement, rather than on the rights and interests described in this submission.
4. The text of Section 4.2.2 should be revised to replace references to "Manitoba Dënesųliné" with "Ghotelnene K'odtineh Dene" and to clarify that the lands subject to the 2019 OIC have not yet been surveyed.

Crown Consultation with Ghotelnene K'odtineh Dene

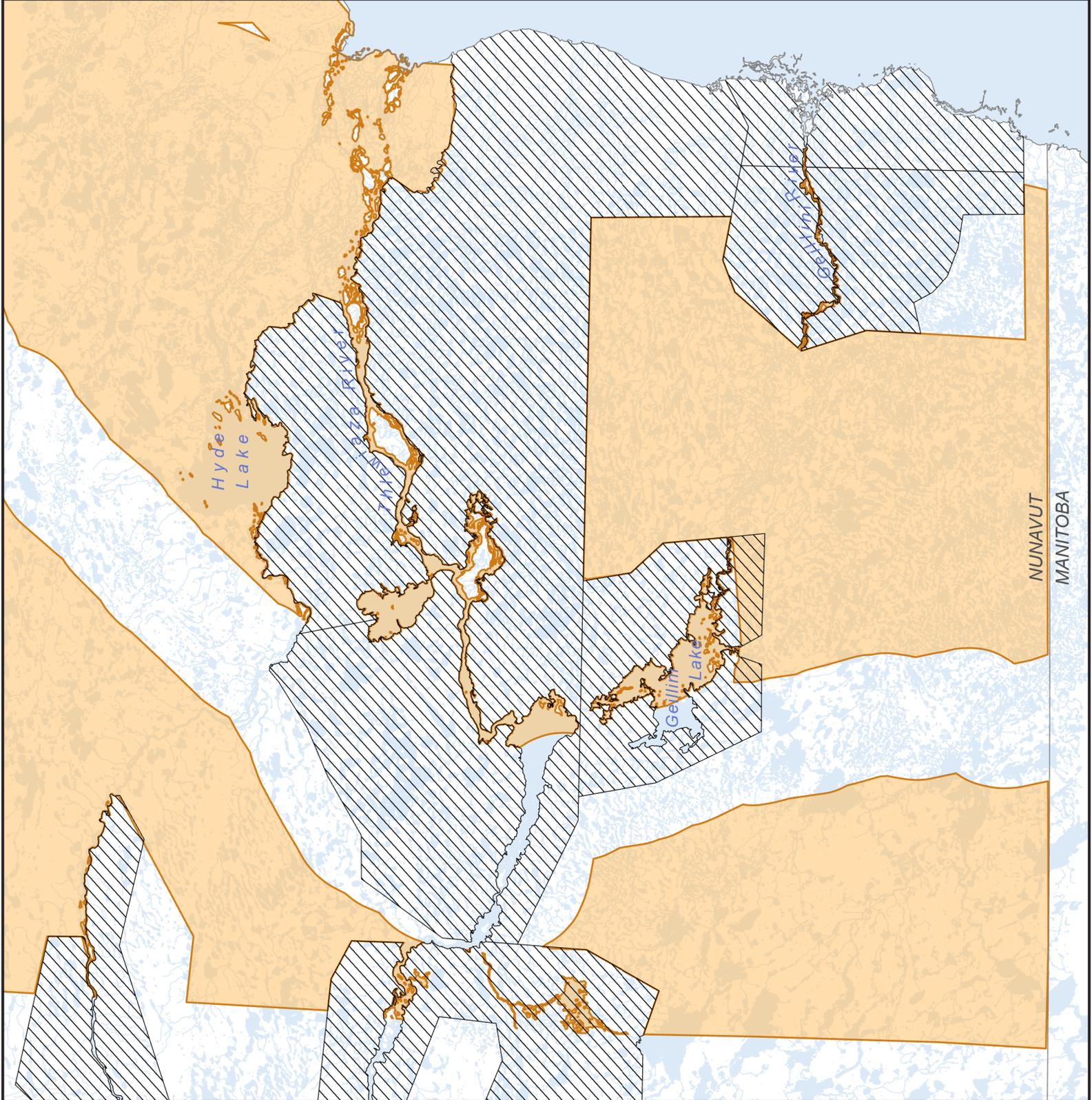
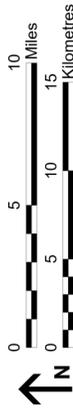
1. The Commission, the Crown and Section 35 rightsholders should engage in discussions to clarify how the Crown's duty to consult will, or will not, be merged with all aspects of the Commission's processes. The outcome of these discussions should be incorporated into the land use plan.

**Ghotelinene K'odtjineh Dene
Submission to the Nunavut
Planning Commission 2021
Draft Nunavut Land Use Plan**

Map 1

-  2019 OIC Boundaries
-  Conditional Use -
Polar Bear Denning
Areas (2.3-1)

Projection: NAD83 UTM Zone 14N (Rotation: -3.0)
Topographic data: CanVec 50K
Map Produced: 2021-10-08

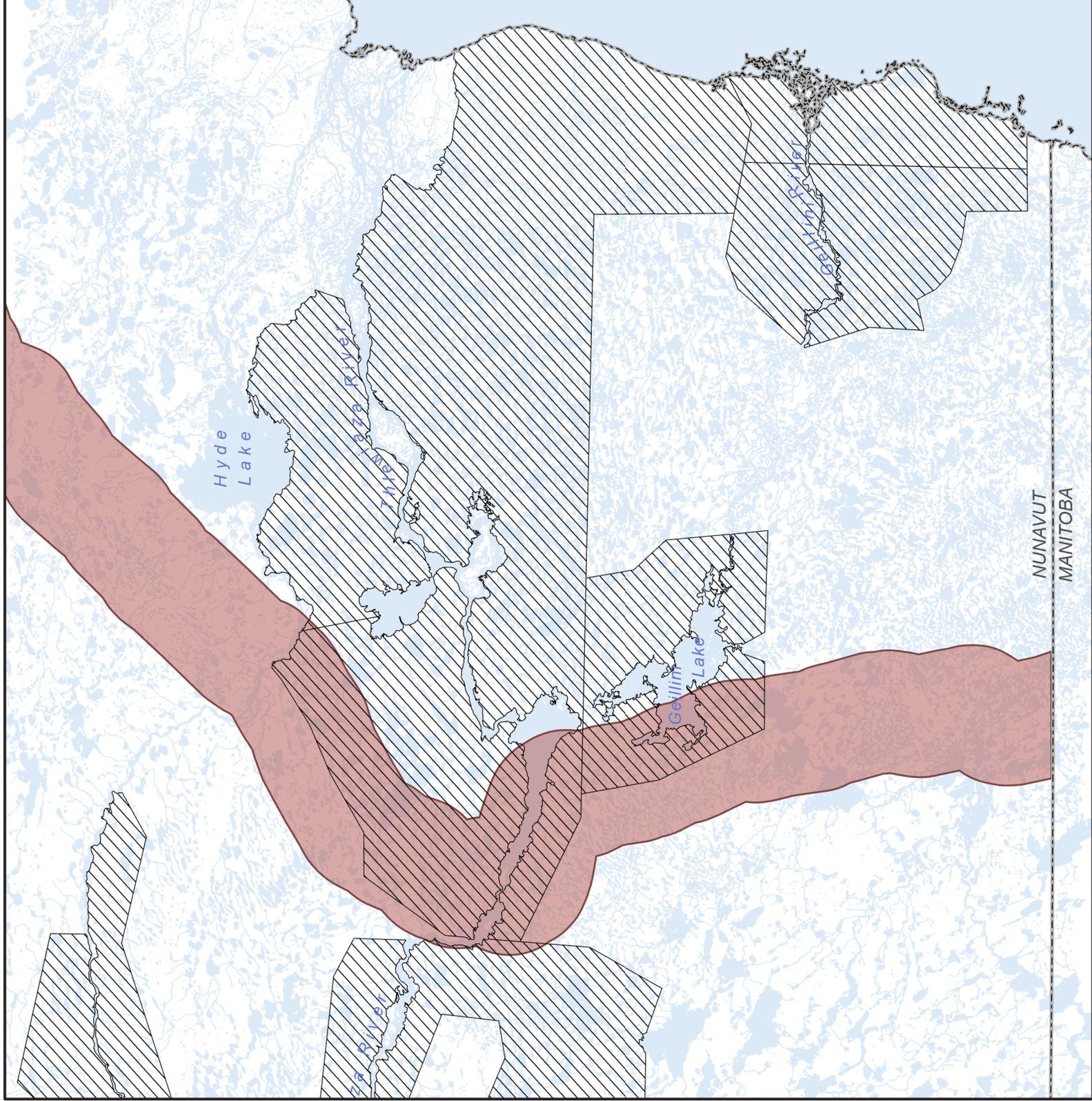
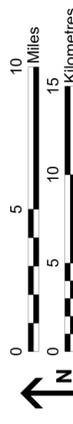


**Ghotelinene K'odjineh Dene
Submission to the Nunavut
Planning Commission 2021
Draft Nunavut Land Use Plan**

Map 2

-  2019 OIC Boundaries
-  Limited Use - Kivalliq
Manitoba Linear
Infrastructure
(5.3.1-1-1)

Projection: NAD83 UTM Zone 14N (Rotation: -3.0)
Topographic data: CanVec 50K
Map Produced: 2021-10-08



NUNAVUT
MANITOBA

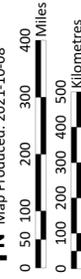


Ghotlneene K'odtjeh Dene Submission to the Nunavut Planning Commission 2021 Draft Nunavut Land Use Plan

Map 3

 The Ghotlneene K'odtjeh Dene Area

This map is without prejudice. The boundaries are approximate and subject to further review and refinement.



Projection: Lambert Conformal Conic
Std Parallels 49 & 77 Modified Polyconic
Topographic data: Atlas of Canada
Map Produced: 2021-10-08