



**GHOTELNENE  
K'ODTINEH DENE**

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**Northlands Land Claims**

General Delivery  
Lac Brochet, MB R0B 2E0  
Tel. (204) 337-2571  
Fax (204) 337-2714

**Sayisi Dene Land Claims Secretariat**

General Delivery  
Tadoule Lake, MB R0B 2C0  
Tel. (204) 684-2266  
Fax (204) 684-2450

June 30, 2023

***By Email***

Nunavut Impact Review Board  
P.O. Box 1360, 29 Mitik St.  
Cambridge Bay, NU X0B 0C0

Attention: Mark Ings  
Acting Executive Director

Dear Mr. Ings,

**RE: Comments on 2022 Revised Draft Rules of Procedure**

Sayisi Dene First Nation and Northlands Denesuline First Nation (collectively referred to as "Ghotelnene K'odtineh Dene") are pleased to provide this written submission regarding the 2022 Revised Draft Rules of Procedure ("Draft Rules of Procedure"). Ghotelnene K'odtineh Dene appreciated the opportunity to attend and participate in the consultation session in Iqaluit on April 28, 2023.

Ghotelnene K'odtineh Dene view the policies and procedures adopted by the Board as essential to ensuring that the rights and interests of Ghotelnene K'odtineh Dene are properly considered and respected through the processes undertaken by the Nunavut Impact Review Board (the "Board"). The Board's responsibility to ensure that Ghotelnene K'odtineh Dene's right and interests are considered was stated by the Minister of Northern Affairs in a decision letter, dated January 31, 2022:

The responsible Ministers would like to confirm that Canada acknowledges the asserted and established Section 35 rights of Ghotelnene K'odtineh Dene in Nunavut. In addition, we highlight the Board's responsibility to consider the potential impacts of projects on these rights and interests. Ghotelnene K'odtineh Dene have used and lived on and continue to use and live on the lands and waters that are part of the Qamanirjuaq caribou herd's habitat, both inside and outside of Nunavut. Further, Canada is currently negotiating a land claims agreement with Ghotelnene K'odtineh Dene to address their harvesting, land and other related rights in the southwestern portion of Nunavut and southeastern portion of the Northwest Territories. Once in effect, the Ghotelnene

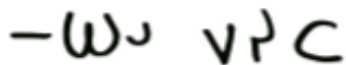
K'odtineh Dene Agreement would be a land claims agreement, within the meaning of Section 35 of the *Constitution Act, 1982*. For the purpose of this decision, the responsible Ministers have considered the Project's potential impacts on Ghotelnene K'odtineh Dene's asserted and established Section 35 rights within their traditional territory, both inside and outside of Nunavut.<sup>1</sup>

Furthermore, the Crown in right of Canada purports to rely upon the Board's assessment process, and associated proceedings, to assist in discharging the Crown's duty to consult with Ghotelnene K'odtineh Dene when a project may potentially affect Ghotelnene K'odtineh Dene rights or interests. If Ghotelnene K'odtineh Dene is not given adequate consideration in the Board's processes, including the Rules of Procedure, this may require a far more extensive Crown consultation process after the Board's final report and recommendations are issued, possibly resulting in additional variations in the final decision. This is likely to reduce the efficacy of the assessment process and is not in the interests of any party.

Please find appended to this letter Ghotelnene K'odtineh Dene's comments on the Draft Rules of Procedure.

We would like to thank the Board for the opportunity to share these comments. We look forward to continued discussion with the Board and other interested parties on the Draft Rules of Procedure and the opportunity to provide further comments.

Masi cho,



Geoff Bussidor  
Chief Negotiator  
Sayisi Dene First Nation



Benji Denechezhe  
Chief Negotiator  
Northlands Denesuline First Nation

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<sup>1</sup> Letter from Minister Daniel Vandal to Kaviq Kaluraq, Nunavut Impact Review Board, dated January 31, 2022 (NIRB Registry File Name: 220131-11MN034-Ministers Response Re NIRB Reconsideration Report-ICHE)

<b>Comment Number</b>	NDFN/SDFN-1
<b>Subject:</b>	Indigenous Knowledge
<b>Reference:</b>	Part II, 2, definition of “ <i>Indigenous Knowledge</i> ” Nunavut Agreement, Section 40.1.2
<b>Priority:</b>	High
<b>Background/ Rationale:</b>	<p>Indigenous knowledge is a concept that must be properly reflected in the Rules of Procedure. Indigenous knowledge is inextricable from Ghotelnene K’odtineh Dene’s history, culture, way of life and inherent rights. It is essential that Ghotelnene K’odtineh Dene’s Indigenous knowledge is treated appropriately in order for their Aboriginal and treaty rights to be properly understood and respected through the Board’s processes.</p> <p>The Nunavut Agreement and the <i>Nunavut Planning and Project Assessment Act</i> do not in any way preclude or limit the consideration of Indigenous knowledge by the Board. Further, Section 40.1.2 of the Nunavut Agreement provides that nothing in the Nunavut Agreement or related legislation may be interpreted to abrogate or derogate from the Aboriginal or treaty rights of other Indigenous peoples.</p> <p>In the Draft Rules of Procedure, the Board has proposed to include a definition of “Indigenous Knowledge”. The Board has addressed “Inuit Qaujimajatuqangit” in a different manner (see Part I, Inuit Qaujimajatuqangit). Without commenting on the substance of this section, the description of Inuit Qaujimajatuqangit appears to be a more appropriate reflection of the subject matter rather than attempting to draft a blanket definition, as has been done for “Indigenous Knowledge”. The Board’s express commitment to the application of Inuit Qaujimajatuqangit throughout the Board’s proceedings is commendable. A similar commitment to Indigenous Knowledge would be appropriate.</p>
<b>Recommended to Address Issues:</b>	Ghotelnene K’odtineh Dene submit the definition of Indigenous Knowledge be removed from Part II, 2 of the draft Rules of Procedure and that Part I of the Rules of Procedure include a separate section acknowledging the Board’s commitment to the application of Indigenous knowledge in a manner similar to that of Inuit Qaujimajatuqangit, including acknowledgement that Indigenous knowledge is also not a static concept. The

	acknowledgement could also include statements referring to the Board's commitment to further describe Indigenous knowledge through ongoing collaboration with Indigenous peoples as part of the process of the Board carrying out its functions.
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<b>Comment Number</b>	NDFN/SDFN-2
<b>Subject:</b>	Intervenors
<b>Reference:</b>	Part II, 2, definition of “ <i>Intervenors</i> ”
<b>Priority:</b>	Medium
<b>Background/ Rationale:</b>	<p>Ghotelnene K’odtineh Dene are Indigenous peoples with inherent rights in Nunavut. As noted in the covering letter, these rights were acknowledged by the Minister of Northern Affairs in a decision letter to the Board, dated January 31, 2022, as asserted and established Section 35 rights under the <i>Constitution Act, 1982</i>.</p> <p>Under the definition of “Intervenor”, the second sentence lists examples of persons that may be “Intervenors”. Ghotelnene K’odtineh Dene want to ensure that they are properly reflected in this list.</p>
<b>Recommended to Address Issues:</b>	<p>Ghotelnene K’odtineh Dene propose the following addition to the definition of “Intervenor”:</p> <p>“Intervenor” means any party who has been granted standing under the Nunavut Agreement to intervene or who has applied for, and been granted, Intervenor status under Rules 65-67, thereby giving them the right to participate as a formal participant in the Board’s assessment of a project proposal or other Board Proceedings. The term may refer to Regional Inuit Associations, government agencies providing technical expertise, Regulatory Authorities, Authorizing Agencies, non-governmental organizations, local HTOs and regional wildlife boards, <u>Indigenous peoples with rights under Section 35 of the Constitution Act, 1982 in the Nunavut Settlement Area that may be affected by a project proposal under assessment by the NIRB</u>, an Interested Corporation or Organization, participants residing outside of Nunavut that may be affected by the transboundary impacts of a project proposal under assessment by the NIRB and any member of the public who applies for and is granted Intervenor status.</p>

<b>Comment Number</b>	NDFN/SDFN-3
<b>Subject:</b>	Interpretation and Application of Rules in Respect of Proceedings
<b>Reference:</b>	Part V, Section 33, Interpretation and Application of Rules in Respect of Proceedings
<b>Priority:</b>	High
<b>Background/ Rationale:</b>	<p>Section 33(b) of the Draft Rules of Procedure restates Section 12.2.24(a)(ii) of the Nunavut Agreement, including that the interpretation and application of the Draft Rules of Procedure will “give due regard and weight to the tradition of Inuit oral communications and decision-making.”</p> <p>Ghotelnene K’odtineh Dene submit that the interpretation and application of the Rules of Procedure should similarly give due regard and weight to the tradition of oral communication and decision-making of other Indigenous peoples, including Ghotelnene K’odtineh Dene. Proper respect for Ghotelnene K’odtineh Dene oral communications and decision-making is critical for a fulsome understanding of their concerns and comments. The Board is not precluded from giving due regard and weight to the tradition of oral communication and decision-making of other Indigenous peoples by the Nunavut Agreement or the <i>Nunavut Planning and Project Assessment Act</i>.</p> <p>Ghotelnene K’odtineh Dene’s submission is consistent with the manner that Indigenous Knowledge is addressed in Sections 39, 43 and 44 of the Draft Rules of Procedures.</p>
<b>Recommended to Address Issues:</b>	<p>Ghotelnene K’odtineh Dene propose the following addition to Section 33:</p> <p>The interpretation and application of these Rules in respect of Proceedings will, to the extent consistent with the broad application of the principles of natural justice and procedural fairness, emphasize flexibility and informality and will:</p> <p>(a) Allow, where appropriate, the admission of evidence that would not normally be admissible under the strict rules of evidence; and</p> <p>(b) Give due regard and weight to the tradition of Inuit</p>

	<p>oral communications and decision-making; <u>and</u></p> <p>(c) <u>Give due regard and weight to the tradition of Indigenous oral communications and decision-making.</u></p>
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<b>Comment Number</b>	NDFN/SDFN-4
<b>Subject:</b>	Teleconference/Videoconference Participation
<b>Reference:</b>	Part V, Sections 73 to 77
<b>Priority:</b>	High
<b>Background/ Rationale:</b>	<p>It is Ghotelnene K'odtineh Dene's preference that, when participating in a proceeding of the Board, they are able to attend in-person. In-person meetings can increase engagement, collaboration and assist in building relationships between the various participants.</p> <p>However, in-person attendance requires significant financial resources, particularly when lawyers and expert advisors are providing necessary support and assistance. Funding support has been provided by government to assist with Ghotelnene K'odtineh Dene's participation in proceedings to date, however, this is often not adequate to permit fulsome participation.</p> <p>The requirement for in-person attendance at proceedings of the Board must be reconciled with the adequacy of support funding available to participants. A failure to reconcile these issues may result in denying participants, including Ghotelnene K'odtineh Dene, the opportunity to meaningfully participate in the Board's proceedings.</p>
<b>Recommended to Address Issues:</b>	Ghotelnene K'odtineh Dene recommend further discussions between the Board, Government and interested parties related to funding to support attendance at in-person hearings. These discussions should occur prior to the finalization of the Rules of Procedure.



<b>Comment Number</b>	NDFN/SDFN-5
<b>Subject:</b>	Project Certificate Workshops
<b>Reference:</b>	Part VI, Section 138
<b>Priority:</b>	High
<b>Background/ Rationale:</b>	<p>Section 138 indicates that “the Board may convene a Project Certificate Workshop with representatives of the Proponent, and Authorizing Agencies with authorities and jurisdictional responsibilities to issue subsequent authorizations, such as licences, certificates and permits for the project.” This section does not appear to contemplate the participation of other Parties that may have responsibilities under the Project Certificate, but do not meet the definition of “Authorizing Agencies”. An option for all Parties to participate in a Project Certificate Workshop would be consistent with the purpose of a Project Certificate Workshop, which is “to ensure the Project Certificate terms and conditions are understood by all Parties and to discuss how best to implement the terms and conditions of the Project Certificate.”</p> <p>This section was discussed at the in-person consultation session on April 28, 2023 and the Board’s representatives indicated that Responsible Parties under a project certificate would be included at Project Certificate Workshops.</p>
<b>Recommended to Address Issues:</b>	Ghotelnene K’odtineh Dene recommend that all Parties, as that term is defined in the Draft Rules of Procedure, be invited to attend the Project Certificate Workshop.

<b>Comment Number</b>	NDFN/SDFN-6
<b>Subject:</b>	Board Procedures related to the Screening of Project Proposals
<b>Reference:</b>	Part I, Power to Make Rules of Procedure
<b>Priority:</b>	Medium
<b>Background/ Rationale:</b>	The Draft Rules of Procedure do not address the screening of project proposals under Part 4 of Article 12 of the Nunavut Agreement, as these matters are now addressed through the <i>Nunavut Planning and Project Assessment Act</i> .
<b>Recommended to Address Issues:</b>	Ghotelnene K'odtineh Dene recommend the Draft Rules of Procedure clarify that the Draft Rules of Procedure do not address the screening of project proposals and that these matters are now addressed through the <i>Nunavut Planning and Project Assessment Act</i> .

<b>Comment Number</b>	NDFN/SDFN-7
<b>Subject:</b>	References to “community” or “Community”
<b>Reference:</b>	Part II, General
<b>Priority:</b>	High
<b>Background/ Rationale:</b>	The term “community” is used extensively throughout the Draft Rules of Procedure both in conjunction with a definition (Community Knowledge, Community Representatives) and independent of a definition. In some instances, this term is modified to reference “communities within and outside Nunavut” (see Section 2 “Community Representatives”, Section 88, and Section 92) and in other instances it is not modified as such. The manner in which “community” is utilized in the Draft Rules of Procedure may lead to interpretive challenges.
<b>Recommended to Address Issues:</b>	<p>To avoid interpretive challenges related to the term “community”, Ghotelnene K’odtineh Dene recommend addition of an interpretative clause in Part II that states:</p> <p><i>“Community” or “community” is used to denote communities within and outside Nunavut.</i></p>

<b>Comment Number</b>	NDFN/SDFN-8
<b>Subject:</b>	Board's Guides
<b>Reference:</b>	Part II, Section 10 Part IV, Section 30
<b>Priority:</b>	Low
<b>Background/ Rationale:</b>	The Draft Rules of Procedure utilizes the term "Board's Guides". "Board's Guides" is not defined.
<b>Recommended to Address Issues:</b>	Ghotelnene K'odtineh Dene recommend the addition of a definition of "Board's Guides" to Part II, Section 2 Definitions.

<b>Comment Number</b>	NDFN/SDFN-9
<b>Subject:</b>	Precautionary Principle
<b>Reference:</b>	Part V, Section 34
<b>Priority:</b>	High
<b>Background/ Rationale:</b>	Section 34 of the Draft Rules of Procedure does not include a statement regarding the burden of proof as it relates to the precautionary principle.
<b>Recommended to Address Issues:</b>	<p>Ghotelnene K'odtineh Dene recommend adding the following to Section 34 of the Draft Rules of Procedure:</p> <p><i>Any Party offering information and Documents in a Proceeding, whether provided in oral or written form, shall have the burden of introducing sufficient and appropriate information to support its position on the balance of probabilities. <u>When the precautionary principle applies, it is the Proponent who bears the burden of proof to show that the potential for adverse environmental impacts can be mitigated or reversed.</u></i></p>

<b>Comment Number</b>	NDFN/SDFN-10
<b>Subject:</b>	Project proposal distribution list
<b>Reference:</b>	Part V, Section 59
<b>Priority:</b>	Low
<b>Background/ Rationale:</b>	Section 59 of the Draft Rules of Procedure includes the phrase “project proposal distribution list”. This is the only instance of this phrase in the Draft Rules of Procedure. It is unclear what constitutes the project proposal distribution list.
<b>Recommended to Address Issues:</b>	<p>Ghotelnene K’odtineh Dene recommend amending Section 59 of the Draft Rules of Procedure as follows:</p> <p><i>In any event, unless otherwise directed in a Board Order, the Board shall give notice of Proceedings to <u>the Parties Proponent</u> and <del>the project proposal distribution list</del> at least:</i></p>