

# North Slave Métis Alliance Presentation

EA1112-001

Debogorski Exploration

Public Hearing

Yellowknife, Northwest Territories

October 2011





# **ASSERTION**

The North Slave Métis Alliance  
is the democratically elected  
representative of the indigenous  
Métis whose territory encompasses  
the area known as the  
North Slave Region,  
and is mandated to assert, protect,  
and implement the Aboriginal Rights  
of the North Slave Métis People.

# DISCLAIMER

- The NSMA makes best efforts to participate in environmental assessments despite chronic and severe undercapacity.
- Capacity issues interfered with NSMA's ability to review the application information, to engage with the proponent, and to develop and present our communities views.
- Consultation has not been adequate.



# BACKGROUND INFORMATION

1. Métis use and occupation of the subject area pre-dates the discovery and effective control of the area by Europeans.
2. Métis distinct from both D`ene' and Europeans prior to and ever since effective European control.
3. Protection of Métis values, resources, and rights must recognize distinct identity and aboriginal rights.



# Details

1. Philip Turnor surveyed existing Canadian settlements in 1791
2. Laurent Leroux hired local men, primarily Métis, to build (Old) Fort Providence circa 1790.
3. Jacques and Francois (I) Beaulieu, two brothers, came north with the Compagnie des Sioux, which only existed for a few years, 1727–1760ish



# More details

1. Francois Beaulieu (II) was born at Salt River in 1771
2. Francious Beaulieu II proudly proclaimed himself a Métis.
3. Distinctiveness between Métis and D`ene' – holiday celebrations, music, trade, habitations, diet, hunting success, treatment of women, language... Etc etc...
4. Distinctiveness between Métis and white – Petitot, banlay,



# EVIDENCE

Historic and genealogical evidence was provided regarding:

- ∞ Métis interests in the area,
- ∞ the strength of NSMA's claims of Aboriginal Rights,
- ∞ Métis Treaty Rights established by Peace and Friendship Treaty 11, including the verbal promises made by Treaty Commissioner Conroy in 1921.
- ∞ Potentially significant impacts expected as a result of proposed project.



Similar impacts to other  
projects in area



# IDENTIFIED IMPACTS & MITIGATION

- Heritage Resources.
  - Mitigation Measures #1 and # 2 and # 5.
- Public Concern.
  - Mitigation Measures # 2 and # 4 and # 6.
- Disputed Property Rights.
  - Mitigation Measures # 3 and # 4 and # 6.
- Traditional Culture.
  - Mitigation Measures #4 and # 6.



# ACCEPTABILITY OF MITIGATION

- #1 – Identify drill sites using non-intrusive techniques, then scout out archaeological, burial and cultural sites with qualified archaeologist acceptable to PWNHC following consultation with YKDFN, an Aboriginal Elder, and a translator.
- Ministers rejected non-standard terms “non-intrusive”, “scout out”.
- NSMA rejects unjustified discrimination and assumption of non-intrusiveness.



# DISCRIMINATION

Métis heritage resources and D`ene' heritage resources are not the same, but equal, just as male and female are not the same, but equal.

Métis and a D`ene' elders are both needed to accompany and supervise any archaeologist, and both Métis and D`ene' should be Consulted prior to the acceptance of any archaeologist.

The YKDFN is neither qualified nor authorized to speak on behalf of the NSMA, nor to identify and locate (scout-out) Métis heritage and culturally significant sites.



# **NON-INTRUSIVENESS**

The NSMA does not accept the assumption that activities that do not require a land use permit are non-intrusive – meaning non-damaging to heritage and/or cultural resources.

The words “non-intrusive” should be changed to “remotely sensed” to make it clear that no physical access should occur before a heritage resource inventory and assessment is completed.



# ACCEPTABILITY OF MITIGATION

# 2 – 100 m from any known or suspected archaeological, burial, or sacred site.

- Ministers found this measure acceptable.

- NSMA rejects the arbitrary distance.

- The distance needed for protection needs to be determined on a case by case basis. In the case where a sacred site is a landscape or an ecosystem the protective distance may need to be greater, and may depend on topography and viewscape.

Aesthetic qualities of a site can be damaged from quite a distance. Only the NSMA is authorized to determine the protection required for our sacred sites.



# # 3 – Local Plan of Action and Policy Direction to MVLWB to Implement.

- ∞ Rejected by Ministers.
  - ∞ does not recognise Canada's authority for land use planning.
  - ∞ appears to fetter discretion of MVLWB.
- ∞ Supported by NSMA.
  - ∞ Canada does not in fact have legitimate authority to make unilateral land use decisions in this area due to pre-existing Aboriginal Rights and Titles and Treaty Rights that must be accommodated after Crown Consultation.
  - ∞ The Minister (of DAANDC) does have legitimate authority under the to provide policy direction to land and water boards.



# CONSTITUTION ACT OF CANADA, 1982

## PART II – RIGHTS OF THE ABORIGINAL PEOPLES OF CANADA

### Recognition of existing aboriginal and treaty rights

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

Definition of "aboriginal peoples of Canada"

35. (2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

### Land claims agreements

35. (3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired. Aboriginal and treaty rights are guaranteed equally to both sexes

35. (4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.



# The Inalienable Right of Self Determination

*The United Nations General Assembly Resolution 1514 (XV) of December 14, 1960 has formed the cornerstone of what may be called the new UN law of self determination. The Declaration of the Granting of Independence to Colonial Countries and Peoples states that "(all) peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development."*



# UNITED NATIONS DECLARATION ON RIGHTS OF INDIGENOUS PEOPLES

General Assembly Resolution 61/295 on 13 September 2007

Canada (finally) signed this Declaration, November 12, 2010

## *Article 18*

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

## *Article 19*

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.



# UNITED NATIONS DECLARATION ON RIGHTS OF INDIGENOUS PEOPLES

Continued.....

## *Article 26*

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.



# **UNITED NATIONS DECLARATION ON RIGHTS OF INDIGENOUS PEOPLES ... CONTINUED.....**

## *Article 32*

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.



# **UNITED NATIONS DECLARATION ON RIGHTS OF INDIGENOUS PEOPLES ... CONTINUED.....**

## *Article 38*

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

## *Article 39*

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.



# MACKENZIE VALLEY RESOURCE MANAGEMENT ACT

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## Policy Directions

Minister's policy directions to board

**83.** (1) The federal Minister may, after consultation with a board, give written policy directions binding on the board with respect to the exercise of any of its functions under this Part. The federal Minister shall also consult the Tlicho Government before giving such written policy directions to the Wekeezhii Land and Water Board. [22.3.10, 22.3.15]



# **ACCEPTABILITY OF MITIGATION**

**# 4 – Monitoring program to track cumulative changes on culture and well-being of YKDFN.**

**Ministers believe this should be part of land claims and self government negotiations.**

**NSMA objects to unjustified discrimination, but supports the recommendation for a monitoring program.**



– NSMA has no negotiations process (yet) and therefore the Board can not rely on such a process to mitigate NSMA impacts.

– YKDFN cultural and wellbeing impacts may be quite different, and it is absurd and insulting to think one cultural group should look out for the interests of another.

– MVRMA clearly contemplates monitoring programs, studies and investigations, and places responsibility for monitoring cumulative impacts and Consulting on that monitoring on the Minister.



# THE MINISTER SHALL MONITOR CUMULATIVE IMPACTS, IN CONSULTATION WITH THE FIRST NATIONS.

## PART 6 ENVIRONMENTAL MONITORING AND AUDIT

### Definitions

**145.** The definitions in this section apply in this Part.

"impact on the environment" « répercussions environnementales »

"impact on the environment" has the same meaning as in Part 5.

"responsible authority" « autorité compétente »

"responsible authority" means the person or body designated by the regulations as the responsible authority or, in the absence of a designation, the federal Minister.

### Cumulative environmental impact

**146.** The responsible authority shall, subject to the regulations, analyze data collected by it, scientific data, traditional knowledge and other pertinent information for the purpose of monitoring the cumulative impact on the environment of concurrent and sequential uses of land and water and deposits of waste in the Mackenzie Valley.

### Consultation with first nations and Tlicho Government

**147.** (1) A responsible authority that is a minister of the Crown in right of Canada shall carry out the functions referred to in section 146 in consultation with the first nations and the Tlicho Government.



# MVRMA

Board may order a hearing, or further studies or investigations be made, and the time period for issuing the permit does not start till studies or investigations are complete.

22. (1) The Board shall, within 10 days after receipt of an application for a Type A permit,

(a) where the application was not made in accordance with these Regulations, return the application to the applicant and advise the applicant in writing of the reasons for its return; or

(b) notify the applicant in writing of the date of receipt of the application and that the Board will take one of the measures referred to in subsection (2) within 42 days after its receipt.

(2) Subject to subsection (3), where the Board does not return an application under paragraph (1)(a), it shall, within 42 days after receipt of the application,

(a) issue a Type A permit, subject to any conditions included pursuant to subsection 26(1);

(b) order, pursuant to subsection 24(1) of the Act, that a hearing be held or further studies or investigations be made respecting the lands proposed to be used in the land-use operation and notify the applicant in writing of the reasons therefor;

(c) refer the application to the Mackenzie Valley Environmental Impact Review Board for an environmental assessment pursuant to subsection 125(1) of the Act and notify the applicant in writing of the reasons therefor; or

(d) where a requirement set out in section 61 or 62 of the Act has not been met, refuse to issue a permit and notify the applicant in writing of its refusal and of the reasons therefor.

(3) Where the Board makes an order under paragraph (2)(b) or a reference under paragraph (2)(c), the time provided in subsection (2) for the Board to issue a permit or to refuse to issue a permit does not begin until

(a) in respect of an order under paragraph (2)(b), the completion of the hearing, further studies or investigation; and

(b) in respect of a reference under paragraph (2)(c), the completion of the environmental impact assessment and review process under Part V of the Act.



26. (1) The Board may include in a permit conditions respecting

- (a) the location and area of lands that may be used in the land-use operation;
- (b) the times at which any portion of a land-use operation may be carried on;
- (c) the type and size of equipment that may be used in the land-use operation;
- (d) methods and techniques to be employed by the permittee in carrying out the land-use operation;
- (e) the type, location, capacity and operation of all facilities to be used by the permittee in the land-use operation;
- (f) methods to be used to control or prevent ponding of water, flooding, erosion, slides and the subsidence of land;
- (g) the use, storage, handling and ultimate disposal of any chemical or toxic material to be used in the land-use operation;
- (h) protection of wildlife habitat and fish habitat;
- (i) the storage, handling and disposal of refuse or sewage;
- (j) protection of historical and archaeological sites and burial grounds;
- (k) protection of objects and places of recreational, scenic or ecological value;
- (l) the posting of security in accordance with section 32;
- (m) the establishment of petroleum fuel storage facilities;
- (n) methods and techniques for debris and brush disposal;
- (o) restoration of the lands;
- (p) the display of permits and permit numbers; and
- (q) any other matters not inconsistent with these Regulations, for the protection of the biological or physical characteristics of the lands.

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Permits may include conditions respecting protection of historical and archaeological sites and burial grounds, places of recreational, scenic or ecological value, and any other matters not inconsistent with protection of the lands.



# **ACCEPTABILITY OF MITIGATION**

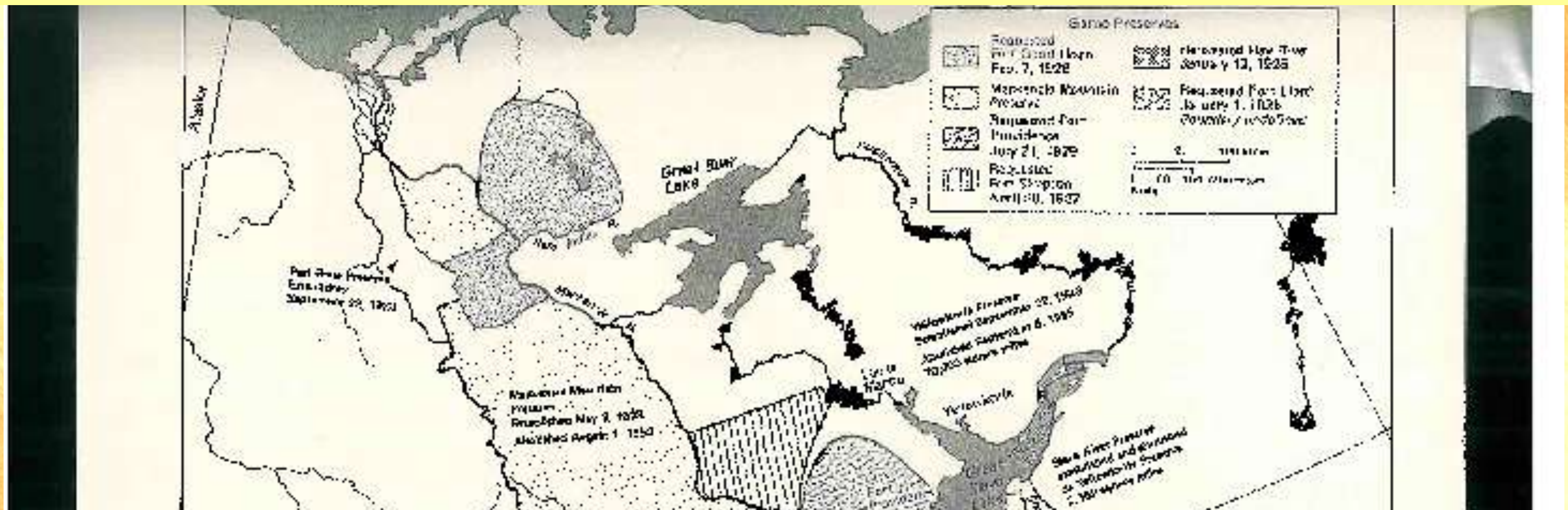
# 5 – Thorough heritage resource assessment with meaningful involvement of YKDFN and other land users.

Ministers think project scale does not warrant measure.

NSMA supports measure, with one caveat. NSMA is not to be considered as “another land user”. The NSMA is a First Nation, as defined under the MVRMA. Minister is already required to monitor cumulative impacts, including heritage resource impacts, not only for this project but many in the past, current, and future.

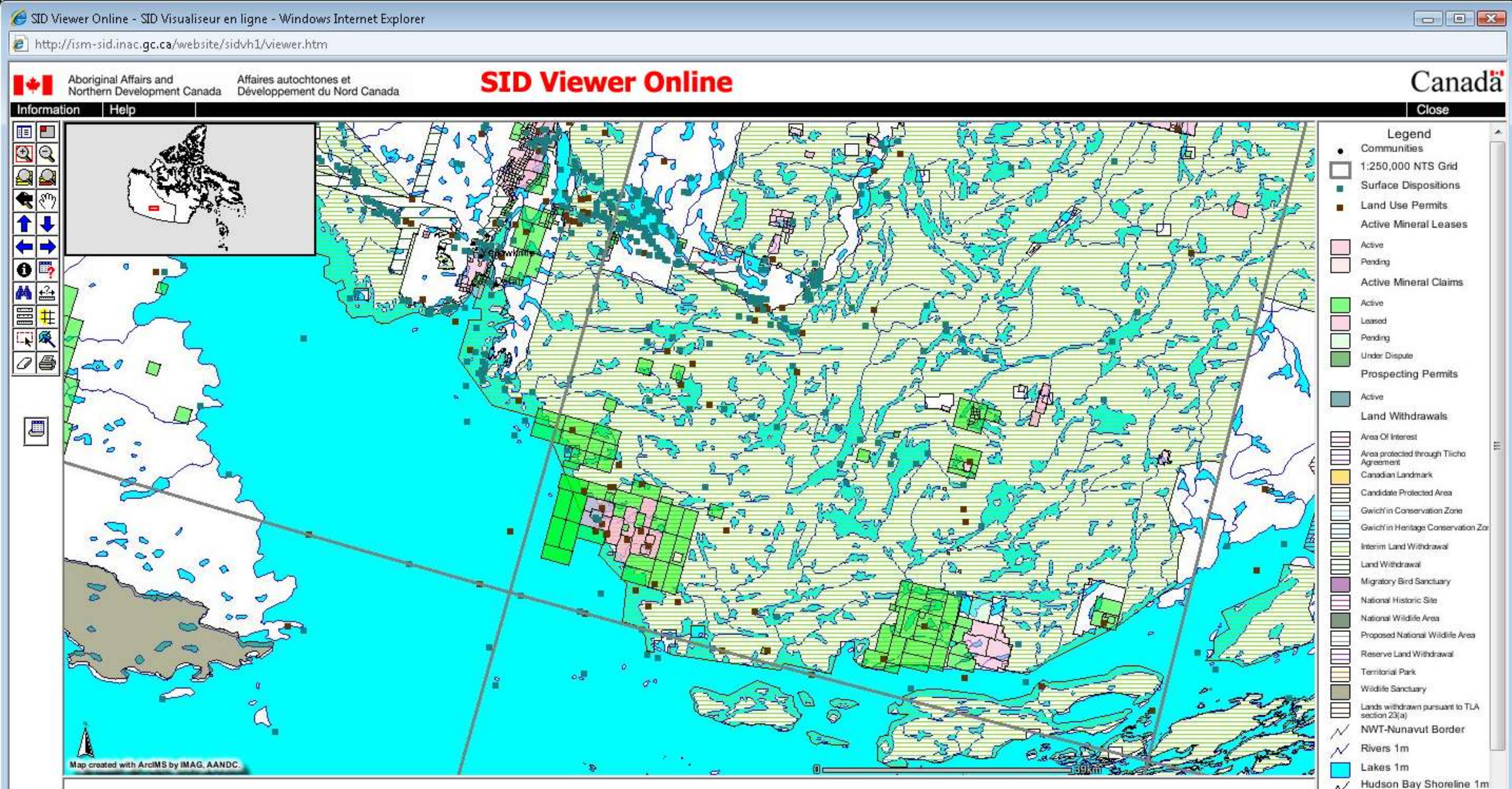


The Yellowknife Game preserve, which existed from 1922 to 1955 was intended to protect the area from non aboriginal competition and retain its character as “hunting grounds” for the native Peoples. It was established in response to Aboriginal complaints of unacceptable impacts on wildlife and harvesting.



Impacts on traditional harvesting and lifestyle continue unabated to this day, and are continually increasing. Impacts have long ago passed the threshold of significance, and are now critical. One might consider Métis living off the land to be an “endangered species” which should receive at least as much consideration as other threatened species.





In the vicinity of Yellowknife, very few areas remain available for the settlement of North Slave Métis land claims, or for Métis to practice their traditional lifestyle undisturbed. Inability to shoot interferes with hunting and bush safety, thus the “footprint” of a development must include a 1 km buffer around claim blocks as well as all access routes.

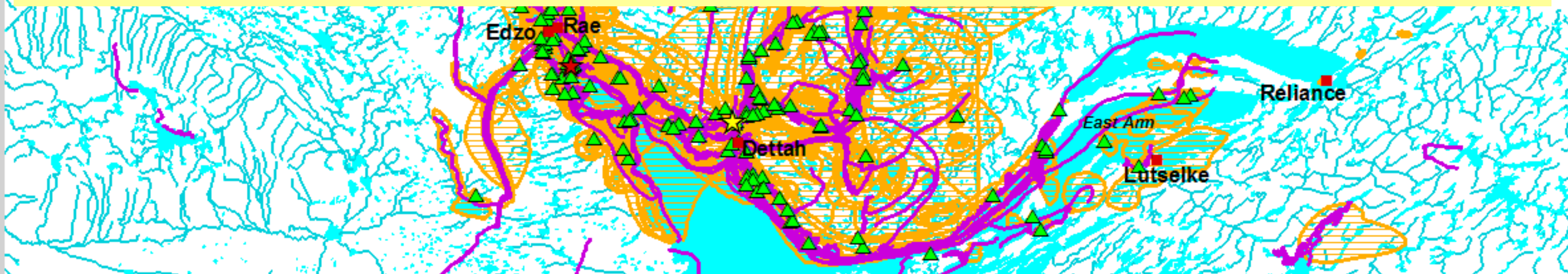


# More details on importance of area specifically

- How activities interfere,
- How government rules (land use permits, archaeological research) fail to protect Métis values...



Despite more than 50 years of unregulated competition and interference by non-aboriginals, (contrary to Treaty 11 promises), North Slave Métis do continue to use and occupy their traditional territory.



However, much more research is needed to adequately document Métis values, including heritage values, traditional use and occupancy.





# Aboriginal Rights are Human Rights

- NSMA is entitled to equality and no discrimination in protection of its members aboriginal rights.



# **ACCEPTABILITY OF MITIGATION**

**# 6 – Access by helicopter or snowmachine only, on frozen water selected by YKDFN.**

**Ministers do not permit camps on ice or within 30 m of shore.**

**NSMA does not accept that KDFN, alone, should select camp sites. NSMA must be involved.**

**Administrative procedures (camps on ice or near shore) should not carry more weight than the traditional knowledge of the Aboriginal Title holders of the land. Helicopter access also causes impacts, and should also be sited by the YKDFN–NSMA traditional knowledge team.**



To be completed, and approved  
prior to presentation...

## Questions?

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