

**W**enland is a vast subarctic island. The European state of Albian claimed Wenland as a territorial possession during Albian's period of expansion in the 1600s.

Historically, the Wen people were nomadic, and their traditional lands stretch across Europe from as far back as pre-Roman times. In the late 19th century during a surge in intolerant nationalism across Europe, the Wen were forcibly resettled to Wenland. They settled the southern part of the island, but as Albian immigrants began to travel to Wenland's south coast and settle there, the Wen people were steadily pushed north into the permafrost region, known as the Wend.

In 1934, the Albian government issued a proclamation declaring the Wend as a Wen homeland. They funded the development of Wen self-government, but Parliament never ratified the proclamation. The modern Albian government doesn't recognize the proclamation as legal, perhaps spurred by Albian citizens, most of whom fiercely oppose the idea of a Wen homeland. No one has actively interfered with the Wen's occupancy and use of the Wend, so most Wen people withhold comment and avoid the issue.

In the 1970s, oil companies began offshore extractive operations without consulting with the Wen. Many Albian workers migrated northward and today the largest towns in the Wend are half Albian and half Wen. These towns have integrated economies and workplaces, but social segregation and ethnic tensions are ongoing. A few smaller Wen-only villages are scattered throughout the Wend.

There are three distinct Wen social and lineal groups: Wenna, Wenebe, and Wennec. Collectively, they're called Camps, which alludes to the encampments they built when they first arrived in the Wend in the late 1800s. The Wenna and Wenebe Camps are now based in larger towns, while Wennec consists mostly of small villages that are more self-contained. The three Camps generally cooperate but have sometimes developed rivalries. The Wen Camps speak different dialects of Wennish, although they all speak Albian, too. The Wennec villages are the least proficient in Albian, whereas the Wenna and Wenebe are fluent.

One thing all Wen have in common is defining themselves by their survival in — and connection to — the Wend. They recite how countless peoples came to the Wend through the millennia, but only the Wen listened to the land and learned to live with it in harmony. The Wen hold deep knowledge of the landscape and are committed to protecting it.

Likewise, they're committed to protecting their culture, including their language, traditional dress and ceremonies. A summer celebration draws Wen from all three Camps to sacred sites across the Wend for a month of festivals, cultural immersion and inter-Camp consultation.

The Wen maintain their own institutions of self-government, but they are citizens of Albian and subject to the jurisdiction of the Wenland territorial government.



## **T**NC has several offices in mainland Albian and in Albian cities in Wenland.

We have managed and participated in several Albian conservation initiatives since the late 1980s. Our only project in the Wend to date was a coastal conservation easement funded by a private donor in 1997.

The donor allocated funding to pay a Wenebe community to steward the land and provide annual reports. The extent of consultation on the project is unknown. The agreement was purportedly signed by a Wen leader that today, no one has heard of. We have no evidence of reports or documentation of any discussions and the funding ran out in the early 2000s.

Soon after, the rapid growth of a nearby town, now populated by more Albian oil workers and their families than Wenebe, led to the construction of an Albian commuter suburb not far from the easement.

### Lets Say

### Thoughts and Guidance

1

**Wenland's TNC team would like to increase conservation activities in the Wend, and has lots of ideas, starting with using the old easement as an inroad. The team knows that it needs to consult the Wenebe and is excited to hear their views. Are there any other considerations?**

*The TNC team can initiate research and early discussions with the Wenebe and should engage in discussion with all three Camps, following guidance in the Learning and Early Discussions Module. However, if the Wen have not actively sought our involvement, TNC needs to exercise special care to make sure the IPLC perspective and right of self-determination are at the center of the process.*

*TNC should acknowledge that as a large U.S.-based conservation organization, we are an outsider (see How to Use This Guide and When It Applies section of the Introduction to this*

*Guide). TNC's identity and privilege could lead to displacing prerogatives that belong to the Wen, since TNC doesn't have deep roots in the Wend or close connections with the Wen people. Before coming in and proposing to help, a more gradual development of these relationships, not in pursuit of any specific initiative, may be more welcome and yield better results.*

2

**As regards the old easement, it seems clear that no FPIC was conducted at the time. Does TNC need to conduct an FPIC process now?**

*FPIC is an evolving standard. It is not necessarily wrong that prior interactions did not adhere to a standard that didn't yet exist. At the same time, TNC's Principles and Safeguards such as Respect for Self-Determination and Overarching Good Faith are forward-looking and not satisfied by technical defenses of past events. If the easement negatively impacts the Wen's right to self-determination, or if there is lingering resentment about the lack of consultation, an FPIC process may be needed.*

3

**A local Albian conservation group, Albian Trust, has contacted TNC to sponsor the Trust's proposal for new government funding to steward the land and expand the easement. Is an FPIC process with the Wen required before TNC can agree?**

*In this case, the legacy project is being updated and reworked. Contemporary standards apply, so yes, an FPIC process is needed.*

4

**Albian Trust's proposal describes the easement as being located on untitled government territory. When TNC says FPIC is needed, the Trust responds that the Wen have no territory and are not indigenous since they came to Wenland at the same time as the Albian. The Trust further notes that the Albian government has decreed that the Wen have no collective or other special land rights and that TNC must respect national law. How should TNC react?**

*It is not for TNC to determine the indigenous status of the Wen people. And while TNC cannot violate national law, we can maintain our own commitments, which include actively supporting indigenous self-determination. The Wen have a profound, ancestral relationship to the landscape despite their relatively recent arrival, and they have maintained their culture and language despite significant integration with Albian society. Most critically, the Wen consider themselves indigenous. Thus, there are plenty of reasons for TNC to condition our own involvement on rigorous compliance with the Principles and Safeguards in this Guide.*

5

Same as above, except that instead of arguing against FPIC, Albian Trust gladly agrees to any process that TNC or the Wen feel is necessary. However, it notes that a residential suburb of Albian oil workers is closest in proximity to the easement. *Should the suburb be included in Wen dialogue and FPIC? Does it have the same right to grant or withhold consent as the Wen?*

*Absent more facts, an Albian residential suburb (built recently and for occupational purposes) would not appear to satisfy even the broad standard of profound connection to landscape that TNC uses. Thus, the residents of that suburb would not have the same right to grant or withhold consent as the Wen. That said, the principle of Inclusion would weigh in favor of including the suburb residents and other stakeholders as much as possible, in consultation with the Wen as indigenous rights holders.*

6

Same as above, but instead of a suburb of oil workers, the closest community is a commune of young Albian back-to-the-land families who focus on sustainable agriculture and living by traditional Albian religious values. They believe the Albian people were guided to Wenland by God, and they consider protecting the land to be a sacred trust. They also view the easement as critical to protecting their fresh water supply and right to a healthy environment.

*The prior analysis stands, but it need not be exclusionary. To the extent the Albian community is motivated by a genuine connection to the land and sees its rights as intertwined with the land, its inclusion as a stakeholder can reflect its relationship to the land, even if it doesn't exercise indigenous rights.*





## TNC in Wenland (SCENARIO 2)

### 1B. Wenland Case Study

**U**nlike Scenario 1, TNC has a large office in a southern Wenland city and a small office in a northern Wen town, where there are three ethnic Wen on staff. TNC has helped Wennec communities near its northern office fund and manage numerous conservation and community development projects over the years. We have not worked much with the other two Wen Camps.

#### Lets Say

#### Thoughts and Guidance

1

As in Scenario 1, the TNC team is considering program activities regarding an old easement project for which no FPIC process was conducted. The idea of initiating activities around the easement has come up informally several times in conversations with Wen contacts, and everyone seems in favor. *In this Scenario, is a broader FPIC process still necessary?*

*TNC may not need to immediately address the lack of FPIC in every legacy project; however, modifying, expanding, or revisiting a project may trigger that need. Because FPIC is such a powerful relationship-building tool, TNC should not shy away from exploring it. It's not clear whether the Wennec Camp would be able to authorize further development of the project without involvement from the other Camps or broader Wen authority. An open FPIC process would answer this question and help TNC build trust and relationship with the Wenna and Wenebe Camps as well.*

2

**The Wennec Camp wants TNC's help in developing a herd management program for the Wendbok, a culturally significant reindeer. In the past, Wendboks were a staple of the Wen diet, but overpopulation has become an issue in some regions where fewer Wen youth are taking up hunting.**

*The fact that the proposed action would affect a migratory herd means a management plan is more likely to affect the other Wen Camps as well. And an additional inquiry and consultation are warranted to ensure that all Wen people are being considered in the decision-making.*

3

**Following on the above, when TNC asks to begin a broad consultation process about the Wendbok, Wennec leaders firmly object, saying that there are political considerations TNC wouldn't understand. They also say that a core tenet of Wen self-government is that individual communities control local land- and resource-use decisions — and this authority extends to migratory herds.**

*This scenario introduces tension related to the principle of Respect for Self-Determination, which urges TNC to respect the Wennec's own understanding of their authority within broader Wen society. Without any clear evidence that this understanding is problematic, TNC should probably defer to the Wennec's process. At the same time, TNC should let the Wennec know they will be checking in with the Wenna and Wenebe authorities, since TNC owes a duty of Respect for Self-Determination to the Wen people as a whole. TNC should be prepared for difficult cases where respecting a decision from one community could undermine self-determination of another or the community at large.*

4

**The Wennec move forward with their herd management program. TNC wildlife specialists who look at their initial plan are dismayed, saying it doesn't take into account data about the whole ecosystem. The Wen individuals on staff at TNC tell their colleagues that the whole thing is probably just an attempt by local big shots to get around Wenland hunting permit restrictions that the Wen have long objected to. *Can TNC take a stand against the program or at least its hasty implementation?***

*TNC does not have the agency to decide what's best for the Wen. Instead, staff should defer to the Wen's authority to exercise their self-determination. The fact that the Wennec Camp's plan does not immediately meet the ideals or expectations of TNC is no reason to depart from Respect for Self-Determination, though it may lead to discussion with the Camp and an offer of assistance.*

*In any relationship with an IPLC, there is much that TNC likely doesn't see; here, the Wennec Camp's plan may rest on indigenous knowledge about the herd and the ecosystem that is not stated in the plan documents. The fact that TNC has Wen staff members doesn't negate the fact that TNC is an outsider organization. However, TNC's commitments to Informed Decision-Making, Meaningful Consultation, and Inclusion could lead*

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*TNC to advocate for more discussion of the herd management plan, as long as it does so with respect for the Camp's ultimate right to decide for itself.*

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# The Permafrost Crisis

## 1C. Wenland Case Study

**In July 2019, a groundbreaking study on data gathered from a global network of permafrost test sites confirmed what climate experts had long feared: permafrost throughout the subarctic is thawing and beginning to release massive amounts of stored methane and CO<sub>2</sub> into the atmosphere. A rapid meltdown could double the amount of CO<sub>2</sub> in the atmosphere, and unstable thawed permafrost could trigger massive erosion and threaten infrastructure such as roads, bridges and buildings across the subarctic. In August 2019, TNC received a large private grant to explore permafrost preservation and mitigation strategies.**

A few months later, FrostLock, a permafrost technology company, approaches TNC with an idea. FrostLock has developed and patented the use of hydrofracking technology and proprietary liquid gas mixtures to stabilize permafrost at a massive scale. In press releases, FrostLock touts its venture capital funding, its recruitment of the world's leading permafrost geologists, and the minimal environmental impacts of its technology — which they claim could not only save the planet but generate tens of thousands of jobs. FrostLock proposes using the Wend to test its technology and pledges to compensate for the minimal environmental impact by funding a Conservation Management Area that would encompass most of the undeveloped Wend. FrostLock agrees to an FPIC process, which they will fund, but they want to approach the Wen arm-in-arm with TNC because TNC is trusted by the Wen.

### Lets Say

### Thoughts and Guidance

1

***Before TNC is contacted by Frostlock, we want to talk to the Wen about deploying the permafrost conservation grant funding we received from the private donor. Can TNC initiate discussions even though the Wen have not raised the issue?***

*Yes. TNC can pursue our own conservation agenda as long as we follow the Principles and Safeguards. The caution recommended by this Guide should not be read as discouraging TNC from offering our services. Often TNC's ability to secure funding for conservation work is a key contribution we bring to an IPLC relationship. Initiating the discussions*

*ensure that any efforts are consistent with the Wen's exercise of self-determination. The important fact is that, consistent with the principle of Prior Engagement and Collaborative Relationships, TNC is not bringing a fully developed plan to the Wen for approval but is initiating a discussion.*

2

**Regarding the FrostLock proposal, can or should TNC negotiate certain terms of cooperation, such as the extent of the Conservation Management Area, before agreeing to approach the Wen?**

*A transparent, multi-stage process may be appropriate, starting with informing the Wen of FrostLock's proposal and seeking guidance on how to proceed.*

*The principle of Prior Engagement counsels against negotiating with FrostLock before discussion with the Wen. The reason is that having a discussion with FrostLock carries a risk of making decisions about the initiative before incorporating IPLC perspectives. TNC should be clear in discussions with the Wen that we have not yet vetted the initiative with FrostLock, much less endorsed the proposal.*

3

**Should TNC simply tell the Wen about FrostLock's proposal and hand over negotiation to Wen leadership? What if the TNC team is concerned about the Wen's practical ability to negotiate equitably with FrostLock?**

*TNC should be careful. Even handing over a proposal might be taken as an endorsement. And while TNC should scrutinize the basis for our concern over the Wen's negotiating abilities, there will be circumstances where such concern is warranted. This project could have major impacts on the Wen and their land; as such, their right to self-determination is activated at its highest level, along with the underlying principle of FPIC. TNC cannot usurp the Wen's role or undermine their self-determination, but respect for the Wen's rights might require a more engaged approach.*

4

**Initial dialogue with Wen leaders shows that they don't like the idea and just want to be left alone. Should TNC proceed with further consultation? What if TNC adamantly believes that FrostLock's technology is the only hope to guard against catastrophic CO2 and methane emissions that could destroy all prior climate efforts?**

*Some degree of advocacy is appropriate, and it may be tempting to rely on the Informed Decision-Making principle to justify pushing the Wen into further consultation to educate them about the initiative's importance. But neither the principle of Free Choice nor the Wen's right to self-determination are served by forcing them to engage*

## Lets Say

## Thoughts and Guidance

*in unwanted processes. The balance will depend on the circumstances. TNC staff must be prepared to set aside even our strongest organizational commitments in order to respect the Principles and Safeguards, especially Indigenous Self-Determination.*

5

**Same as the above, but TNC is aware of several committed Wen climate activists who are trying to convince the Wen Councils to see things differently. Does this change the analysis?**

*Conflicting intra-community views might justify some effort to support processes that ensure all views are heard. But this must be done through IPLC institutions and processes. If Wen institutions have not clearly spoken, there may be more room to work alongside community members who share TNC's own views. To preserve Overarching Good Faith, TNC must be careful to avoid sowing conflict in a community or Camp by supporting one group over another (see [Wen Self-Government hypothetical scenario](#)).*

6

**Alternative to the above, the Wennec leadership that TNC approaches for Initial Dialogue about FrostLock's proposal is quickly and strongly interested and begins discussions about future meetings and consultation. Shortly thereafter, leadership from the Wenebe Camp sends a fiery letter to TNC saying that it has authority to speak for the Wen regarding any consultation process. What does TNC do now?**

*After receiving the Wenebe letter, TNC should slow down our work on the substance of the proposal and revisit the question of how we are engaging with the Wen. Once an Engagement Plan is in place, we can resume work on the proposal.*

*Situations like this are why the Guide recommends establishing an Engagement Plan as early as possible. The choice of who to talk with is often freighted with implications that outsiders don't understand. TNC should have conducted enough research to know to start dialogue with all three Camps simultaneously.*



## Wen Self-Government

### 1D. Wenland Case Study

**M**ost Wen live and work alongside the Albian population in Wenland society under the Wenland territorial government and the Albian national government, but Wen self-government persists to an extent. The three Wen Camps occupy areas that partially overlap, and they each maintain a quasi-executive Camp Council.

The Councils, which are majority male but have some female representation, typically focus on efforts to preserve and promote Wen culture. There are also quasi-judicial Elder Councils composed of only men, who advise the Camp Councils and help resolve disputes. The authority of all these Councils has almost never been tested in Albian courts, which exercise civil and criminal jurisdiction over the Wen population.

#### Lets Say

#### Thoughts and Guidance

1

Following up on point 6 in the “Permafrost Crisis” scenario, TNC is now working with all three Wen Councils to agree on an Engagement Plan. The Wenebe and Wennec Councils vehemently disagree on the amount of consultation needed. Both Councils acknowledge that neither is superior and that decisions affecting the Wen can only be made by consensus. Three months go by and the disagreement persists. FrostLock is considering abandoning its Wenland project, which neither Council wants. *Can TNC adjust its involvement to pressure the Councils to agree on an approach?*

*The simple but profound truth is, TNC’s work with IPLC institutions must persevere even when things are hard or frustrating. True collaborative relationships and respect for self-determination aren’t contingent on things going as planned. TNC teams have to live with IPLC governance procedures we may find frustrating or counterproductive, but we need to work according to the rules and expectations of the system. Whether TNC can increase advocacy and try to pressure the Councils for legitimate purposes will depend on Wen rules and expectations—but this must be pursued in the spirit of Free Choice and zero tolerance for coercion.*

2

**In response to the disagreement, FrostLock suggests that TNC should work with FrostLock on a Plan B to conduct an FPIC process exclusively with the Albian government, noting that the Wen Councils are “just advisory anyway.” Can TNC entertain this suggestion?**

*No. Regardless of what authority the Wen Councils presently exercise under Albian law, indigenous self-determination and self-government are larger, global commitments that TNC respects and upholds. TNC should embrace any opportunity to support indigenous self-determination, even if there is an arguable basis not to.*

3

**While working with the Wen Councils, TNC is approached by a Wen splinter group, Wenza, that has a longstanding list of grievances about the Councils. Wenza claims that its voice will not be heard in the Council-led consultation process being planned. Does TNC have an obligation to hear Wenza out? What if the Councils tell TNC not to pay attention to Wenza? If TNC does listen to them and believes that Wenza has a legitimate distinct viewpoint that will not otherwise be included in the consultation process, does TNC have an obligation to take steps to include them?**

*TNC must adhere to the rules and expectations of established IPLC institutions, and we don't get to decide how IPLC institutions should work. At the same time, we must uphold the Principles and Safeguards. Depending on the circumstances, the principles of Equity and Inclusion and Informed Decision-Making might justify encouraging the Councils to include Wenza, or proposing a process for its views to be heard. Any such action should be pursued in service of self-determination, as embodied in the Wen's established institutions and processes.*

4

**Same as the above, except Wenza is a group of Wen women who have spent years fighting for more recognition and influence in the face of what they see as discriminatory practices enacted by the male-dominated Councils.**

*This is a difficult but not unusual scenario. The principles of Equity and Inclusion call for some effort at intervention. Given the existence of gender equity issues and the impact that the massive FrostLock initiative could have on Wen self-government and culture, gender should be considered a key issue. A collaborative analysis should be conducted using TNC's Guidance for Integrating Gender Equity in Conservation. TNC's participation lies within a continuum of attention to gender equity — from gender-blind, which often perpetuates entrenched discriminatory practices, to gender-balanced, -sensitive, -responsive and -transformative approaches. TNC does not have the power to dictate an approach to the Wen Councils, but staff should monitor gender equity and determine whether the Equity principle is being observed before proceeding with any initiative.*

5

**Same as the above, except that (a) the Councils don't exclude women from informational sessions, only from having a final vote; (b) TNC becomes aware of claims that most Wen women oppose Wenza's agenda; and (c) TNC hears from both men and women that Wen women have a strong voice in decision-making via family-based customs and cultural privileges.**

*This scenario is merely designed to illustrate how nuanced and difficult these situations can be. Cultural practices are not necessarily discriminatory just because they don't map neatly onto the anti-discrimination norm as certain societies understand it. On the other hand, words like "nuance" and even the concept of cultural relativism is sometimes used to sustain problematic privilege models. This further underscores the importance of applying the principles of Equity and Inclusion in a culturally responsive approach.*





## Consultation Coalition

### 2A. Wenland Case Study

**F**rostLock has now put together a coalition of civil society organizations, Wenland government agencies and Wen Councils to participate in a series of consultations on the possibility of deploying its technology across the Wenland permafrost. FrostLock will use its start-up investor funding to pay for the consultation, which will also address issues related to the administration of the Conservation Management Area that FrostLock is funding.

The Wenland government is strongly interested in the employment and investment connected to the deployment of the technology. FrostLock has committed to rigorous environmental monitoring of its test sites but acknowledges that the technology deploys aggressive underground fracking techniques using the injection of proprietary chemical mixtures to accomplish the fracturing and stabilization.

#### Lets Say

1

**As the consultation process starts up, a split emerges between the Wen Councils, who want a thorough process no matter how long it takes, and FrostLock and the government agencies, who are more focused on efficiency and economic development. Should TNC “take sides” with the Wen Councils and push for a more thorough process?**

#### Thoughts and Guidance

*Coalition work at its best is about looking for areas of overlap and building on mutual agreement. TNC should strive to cooperate broadly in service of its mission. But there will also be times when “taking sides” is appropriate and the Principles and Safeguards together reflect TNC’s strong institutional commitment to careful processes designed to protect indigenous self-determination. TNC should also be aware of social power imbalances and that legacies of colonialism may have left IPLCs in a disempowered position that requires affirmative mitigation. The scenario reflects the kind of situation were TNC should consider using its leverage to assist the Councils in seeking more process.*

2

**As the consultation continues, TNC's concerns grow. For example, FrostLock insists that the environmental issues are "too technical" for public consultation, which should just focus on social impacts. Despite initial misgivings, the Wen Councils hold a series of internal deliberations and ultimately decide they feel comfortable with the process moving forward in the way FrostLock suggests. *Should TNC continue to push for a more robust process?***

*As noted, TNC has a strong commitment to process, but that commitment is designed to serve the principle of Indigenous Self-Determination. Where the Councils have made a considered decision like this, even one TNC disagrees with, TNC's commitments to Meaningful Consultation and Informed Decision-Making may carry less weight.*

3

**As the process continues, the TNC team becomes convinced that the project is a very bad idea because of: (a) severe environmental risks which are not being fully addressed in the consultation; and (b) social risks to the Wen, such as the influence on the culture and lifestyle of small Wen towns from an influx of non-Wen project workers. *Can TNC vocally oppose the project even if the Wen Councils remain supportive of it?***

*TNC's views and positions are secondary and supportive as regards the IPLC perspective, which is rooted in the IPLC's right to self-determination even if the IPLC's view is in conflict with the well-meaning notions of outsiders. TNC may still offer its views and positions in a constructive spirit to the IPLC, however, the extent to which TNC can advocate for its views without running afoul of the principles of Free Choice and Self-Determination will depend in part on the nature of the issue. In this scenario, TNC would seem to have a stronger case to vocalize opposition given its views are based on its experience with environmental issues rather than paternalistic views of what is best for Wen culture and lifestyle. In either case, TNC should be careful to ensure that any perceptions of its power or position don't confer more authority on its views than would be appropriate.*

4

**Alternatively, the TNC team becomes convinced that the FrostLock technology is the only avenue to address this enormous climate threat and protect the health of the planet. The Wen Councils, however, are focused on the lack of specific employment guarantees for their communities. *Can TNC vocally support the project even when the Wen are unconvinced?***

*TNC is entitled to its own views but must be accountable to the rules and expectations of the IPLC institutions and cultures with whom it is working, and must always act in service to Indigenous Self-Determination, Collaborative Relationships and Overarching Good Faith. This could mean exercising a degree of restraint even though TNC feels passionately. But where a collaborative relationship is well-grounded and the IPLC partner is secure from coercive pressure, TNC might legitimately have more "room" to advocate strongly without infringing on other principles.*

5

**By the time the consultation process reaches the topic of the Conservation Management Area, the Councils say they trust TNC, the communities are losing interest in the process, and TNC should just “take care” of the details regarding the conservation plan, which is within TNC’s expertise anyway. Of course, the communities will vote at the end and thus have a voice that way, regardless of what TNC recommends. Can TNC “take over” this part of the consultation process?**

*Probably no. While TNC perhaps can play a larger role given its expertise and the Councils’ request, FPIC must be grounded in the IPLC’s fully informed decision-making and experience of consultation. A “shortcut” process could lack legitimacy in the future, especially concerning something as impactful as a massive Conservation Management Area on indigenous territory.*



## 2B. Wenland Case Study

# Consent & the Right to Withhold Consent

**C**oncerns linger about FrostLock and its technology, but the Wen Councils say they will give consent.

They state that they recognize that the gravity of the situation—for the permafrost and for the planet—requires action even if outcomes are uncertain. “We must act. We will deal with problems as they come up,” says one Wen leader.

### Lets Say

### Thoughts and Guidance

1

**Leaders of the Wen Councils indicate that they can provide the Wen’s consent to the project without a popular vote. Should TNC push for a different process?**

*Absent some very clear problem, TNC should defer to the Wen Councils about the scope of their authority to speak for the Wen. Nonetheless, TNC may want to review the extent of community involvement in the consultation process. Approval of this initiative is a major decision, and the Wen have a complex and partially divided social structure. Have the principles of Inclusion and Informed Decision-Making been considered for all three Camps? Has the safeguard of the Right to Withhold Consent been protected? If concerns remain, a request for more process or broader indications of community support may be helpful.*

## Lets Say

## Thoughts and Guidance

2

Same as above, but Council leadership candidly admits they don't want to submit this directly to the Wen people who will be fearful of the project. "This is a moment for leadership," they say. *Now should TNC push for a different process?*

*This scenario sharpens the dilemma, but the same analysis applies. The Wen's self-determination as expressed through their established institutions must be respected. The decision on which matters should get a popular vote versus the determination of representatives is a constitutional decision made in different ways by all societies. To impose an outsider's view of what is necessary would run counter to self-determination. That said, TNC might legitimately use any leverage we have within the process to advocate in the direction of more consultation and informed decision-making, while still maintaining respect for self-determination.*

3

The Wen Councils say no formal document or memorial is needed to express consent. TNC legal and certain donors, however, insist on having some sort of documentation before they feel comfortable moving ahead with the initiative. *Should TNC insist on some sort of documentation of consent?*

*TNC must continuously respect self-determination. But we can also condition our ability to further engage, make commitments, or deliver third-party commitments, like funding, on our own internal needs, including documentation. However, if limiting TNC's involvement would threaten the overall project, this insistence could have coercive impact, which must be taken into consideration. TNC's influence must be exercised in collaboration with the Wen to find a form of memorialization that is mutually satisfactory (see the Documentation Module).*

4

FrostLock also wants to memorialize the consent and provides the Councils with an authorization agreement drafted by its lawyers. FrostLock insists that the document is the product of extensive review by FrostLock's legal department and that it cannot be modified—and that the company cannot move forward until it is signed. *Should TNC support FrostLock's insistence that the Wen Councils sign this document?*

*Illustrating the concerns described in #3, FrostLock's position may be coercive, non-collaborative and insufficiently respectful of self-determination. TNC should work with FrostLock to find a more collaborative approach.*

5

**Alternatively to the above, as the consultation concludes, the Wen Councils have not made any assurances about supporting the project but want to deliberate with their constituent communities. However, the Albian government announces its support, and FrostLock calls an end to the consultation, saying it has fulfilled the legal requirements and that no further process is needed because the Wen have no veto right under Albian law. FrostLock also says that the Wen have not formally withheld consent, they just have not made a decision. Can TNC stay involved in the project?**

*TNC must either use our leverage to resist moving ahead without full FPIC from the Wen or withdraw if FPIC isn't reached. Even if TNC cannot change the facts of the situation, we must adhere to the guiding principles of FPIC, including respect for the Right to Withhold Consent. The fact that the Wen did not formally deny consent doesn't matter. The Right to Withhold Consent is an essential safeguard, but FPIC is a broader and more affirmative concept which is not satisfied by a purported lack of clear opposition.*

6

**Alternatively to the above, the Wenna and Wennec Councils provide consent while the Wenebe Council vigorously opposes. Because the Wen have always operated according to consensus, there are no traditions or rules stating that the majority prevails.**

*This situation is best interpreted as revealing gaps and failures of the Informed Decision-Making and Meaningful Consultation safeguards. Why do the Councils disagree? TNC should take inspiration from the Wen consensus-driven model and continue the consultation and conflict resolution procedures until consensus is reached.*





## Conflict Resolution



### 3A. Wenland Case Study

**T**he Wen have given consent for the permafrost stabilization initiative. They are also attracted to the annual conservation funding FrostLock has committed to provide, although FrostLock hasn't given a concrete figure — just a range.

Detailed planning discussions proceed among TNC, FrostLock, the Wen and the Alban government.

#### Lets Say

#### Thoughts and Guidance

1

**When TNC raises the idea of a Conflict Resolution Plan before moving into implementation of the project, Wen leaders say they're exhausted and they don't feel a Conflict Resolution Plan is necessary. Should TNC move ahead without a Conflict Resolution Plan?**

*This shows the importance of addressing Conflict Resolution early. A complex consultation process can easily generate frustration and conflict. Having a Conflict Resolution Plan could have helped ease some frustrations. Well-structured conflict resolution should be addressed in consultation and be part of informed decision-making. But respecting human rights is a continuous process, so it's not too late to turn to the development of a plan. TNC should advocate for more consultation on conflict resolution, with the goal of arriving at a mutually agreed-on plan. If the teams need extra time to do this, that's acceptable since it honors self-determination.*

2

**The Wen Councils are negotiating a Conflict Resolution Plan with FrostLock but insist that they don't need one involving TNC because of the high level of trust and collaboration they have with TNC. Should TNC agree?**

*A plan should not be seen as indicating a lack of trust. It's a method of building and maintaining trust, and clear expectations about resolving conflicts may be necessary to preserve that trust, and serve the larger principle of Accountability. So while it's a nice compliment, TNC should encourage having a Conflict Resolution Plan.*

3

**The parties have prepared a detailed Conflict Resolution Plan, but FrostLock says it should be exclusive—that is, by agreeing to the plan, the Wen communities waive their right to bring any complaints or grievances to any other institution or court. Should TNC raise a concern?**

*Yes. TNC should resist this proposal. Our objective, supported by the principles of Accountability, Equity and Inclusion, is to strengthen and expand rights, not weaken them. Given the nature of the project, the scope and severity of impacts ahead cannot be known. A Conflict Resolution Plan provides an initial level of consensus on how to deal with conflict in a healthy way. It is not a mechanism to limit liability or foreclose remedies. International practice strongly disfavors attaching waivers to remedy options.*

4

**Same as above, except FrostLock is only insisting that parties must exhaust the procedures stated in the Conflict Resolution Plan before accessing other options. Should TNC raise a concern?**

*Exhaustion requirements are disfavored, too, but not disallowed. A key consideration here is Free Choice. Does the Wen community fully understand the exhaustion requirement and why it might be useful, e.g., predictability, efficiency, the creation of a full record? If the Wen are being asked to agree to this just because FrostLock wants it, the principle of Free Choice may need to be revisited.*

5

**The Wen say that any disputes that can't be resolved in mediation must be submitted to the Wen Elder Councils for final, binding resolution. FrostLock's lawyers won't let the company expose itself to unknown or unfamiliar liability and they say they cannot proceed. What position should TNC take?**

*TNC should keep in mind the commitment to support IPLC self-determination. But exercising self-determination may not be entirely free of consequence. FrostLock may have a legitimate need to understand the consequences of an unfamiliar legal or quasi-legal process, and the Wen may not want to terminate the initiative. TNC should explore ways of working with FrostLock to understand the actual implications of Elder Council jurisdiction, and work with the Wen to find out how essential Elder Council jurisdiction is to Wen self-determination. A tailored Conflict Resolution Plan that submits some*

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categories of disputes to the Elder Councils but exempts others might be a possibility.

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6

**Same as the above, but a women's group from one Wen community objects, saying that since the Elder Councils are exclusively male, the mechanism will be used to disadvantage women.**

*Ideally a Gender Analysis was conducted during consultation using TNC's Guidance for Integrating Gender Equity in Conservation. That analysis would be useful at this stage for insights into gender equity. It may reflect some consensus within the Wen about the nature of gender equity and how to address it. TNC should not impose any values on the process by condemning or withdrawing from the situation. Instead, TNC should strive to understand and take a culturally responsive approach, returning to the principles that guided the Learning and Early Discussions process. Still, all the Principles and Safeguards are relevant to all parts of TNC's work, and there may be times when TNC will need to opt out of a process that entrenches or perpetuates inequity or exclusion.*

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## Implementation



### 4A. Wenland Case Study

**The permafrost stabilization initiative is moving forward. FrostLock will implement 25 permafrost stabilization test sites in the far north. The initiative includes funding for Environmental Monitoring Committees to monitor water quality and other potential adverse impacts in towns near the test sites, which are almost exclusively Wen. In consultation with the Wen, an unpopulated 800,000-acre area has been designated a Conservation Management Area. TNC will oversee it for the first five years, then transfer management to a new, initiative-funded Wen organization at the end of that period, or when the new organization is ready.**

A Gender Analysis was conducted during consultation. Everyone — Wen women's groups and the Wen Councils alike — agreed that women were traditionally disempowered in Wen society, especially around collective decision-making.

The FrostLock initiative requires extensive engagement from Wen communities, and the Gender Analysis recommended that implementation should at least be gender-responsive, which contributes to the advancement of gender equality, and in some respects, gender-transformative, which challenges the distribution of resources and allocation of duties between men and women. (For more information on the Gender Integration Continuum see TNC's Guidance for Integrating Gender Equity in Conservation.)

Wen women advocated for the Environmental Monitoring Committee membership to be separated from the Wen Councils. They described being denied agency in public affairs, including situations where they were allowed to participate but faced coordinated opposition from men through bloc voting on the Wen Councils. Other attempts to assert power have been responded to with recrimination and retaliation by men.

The Wen Councils agreed to a protocol where TNC will supervise the Environmental Monitoring Committees by providing technical assistance and selecting members from slates of nominees assembled by the communities. The Wen women's group, Wenza, insists that a mandate for balanced gender representation be included, but the Wen Councils reject the proposal.

## Lets Say

## Thoughts and Guidance

1

**A handful of test sites are planned within the Conservation Management Area. FrostLock drafts a reporting protocol under which TNC will monitor the test sites, and the results will be shared only with FrostLock. It claims these particular sites do not impact the Wen and need not involve them. Can TNC agree?**

*No. The Wen claim is that the entire Wend is their ancestral indigenous territory. Even without taking a firm position on that claim, TNC should not act inconsistently with it. For TNC to agree to treat the land as entirely outside of the Wen's concern would not support their self-determination.*

2

**Membership on the local Environmental Monitoring Committees becomes a flashpoint. The Councils are uncomfortable with having given up the power to control the Committees' budgets, especially hiring and procurement. They start trying to assert influence over the Committees using traditional Camp lines of authority. The Councils also ask TNC to share the slates of nominees before making a selection, even though this wasn't part of the protocol. The Councils say they are better positioned to select the most qualified members, given their knowledge of the communities. Should TNC comply with the Councils' request?**

*Many principles need balancing in this situation. TNC must try to balance them in collaboration with the Wen, while also taking responsibility for our own actions and standards. Respect for Self-Determination as expressed by the Wen Councils is important, but the process that has been created, with the Councils' approval, has independent requirements of Equity and Inclusion. TNC owes a duty of Overarching Good Faith to the entire Wen community. Sharing the slates of nominees with the Councils might make sense if it is not prohibited by the protocol and would allow TNC to gain the benefit of the Councils' knowledge and insight. But TNC shouldn't deviate from the protocol. If an irreconcilable conflict persists, TNC should propose reevaluation of the process under a transparent and thorough new FPIC process.*

3

**As TNC reviews the nominees, the male nominees seem more qualified based on more extensive prior community leadership experience and more familiarity with the land and wildlife, much of it derived from experience hunting, an exclusively male practice. Can TNC favor female nominees despite this experience gap?**

*Yes. Equity and Inclusion are core principles of TNC's work, and the selection process for the Environmental Monitoring Committees can be seen in the context of the agreement by the Wen Councils and other stakeholders that gender equity was a problem and that the initiative should be gender-responsive or gender-transformative where possible.*

*Notably, both prior leadership experience and experience derived from hunting are grounded in gender in Wen society. Reliance on these factors would entrench gender privileges in a new structure, the Environmental Monitoring Committees, perpetuating and arguably worsening the gender equity concerns. Open communication and transparency around female nominees is an opportunity to build trust and mutual learning for TNC and the Wen.*



4

**Women from several communities tell TNC staff that they won't nominate themselves for Committee membership unless the Committees are majority women, because they believe the men will vote in bloc and that their participation in the Committees won't be worth it. Can TNC agree to make the Environmental Monitoring Committees majority women to encourage women nominees to step forward?**

*This scenario is difficult. The Wen Councils agreed that gender equity was a problem and that the initiative should be gender responsive or transformative, but they also rejected the idea of fixed gender quotas. If TNC agrees to quotas now, that conflicts with our commitment to respect IPLC authority. However, the male-only Councils were the ones who voted to reject the gender representation proposal.*

*TNC should try to avoid a win/lose zero-sum approach and seek more inclusive solutions with the Councils, like creating safeguards to encourage women's participation or re-raising the gender representation issue with more focus on the underlying goals.*

5

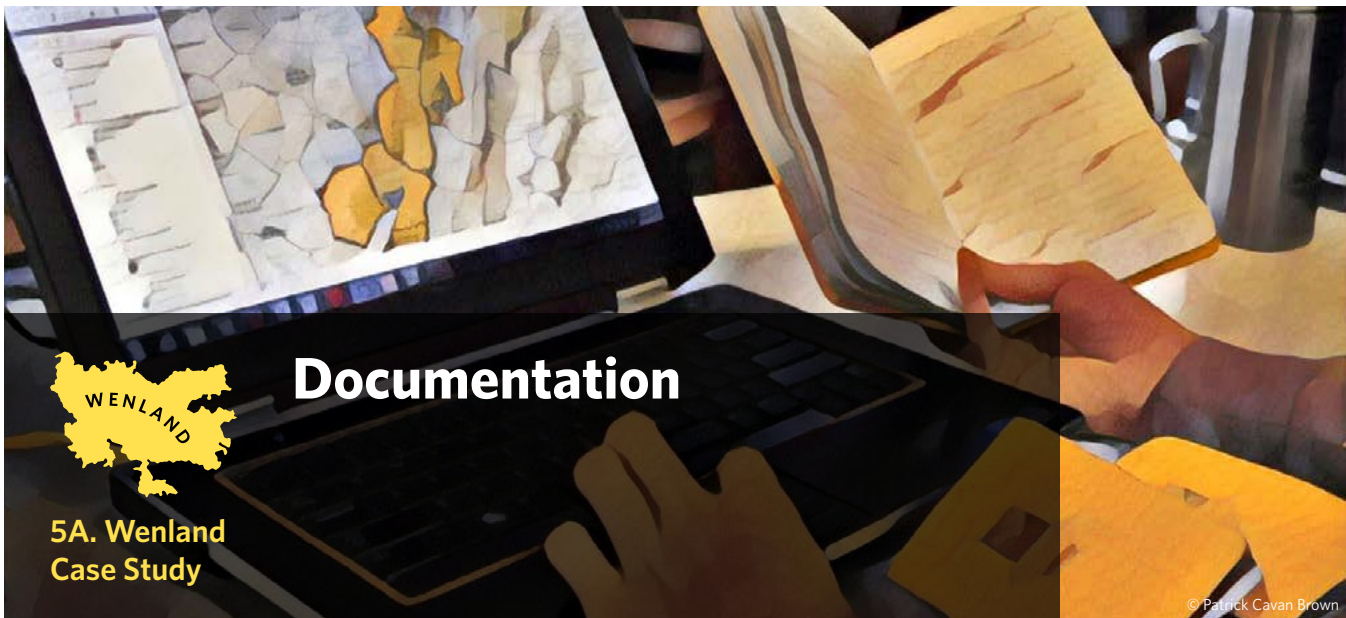
**The Environmental Monitoring Committees are there, in part, to assess complaints about environmental impacts, such as water quality problems, and convey them to FrostLock and TNC. FrostLock sets up a telephone hotline to enhance monitoring. A year in, TNC hears that FrostLock is sending representatives out to investigate hotline callers' complaints directly, and in some cases taking measures like installing water filters and paying compensation if the caller signs a non-disclosure agreement. What should TNC do, if anything?**

*TNC needs to intervene. Though not directly responsible for FrostLock's actions, TNC is linked to the initiative as a whole.*

*We should use our leverage to mitigate any implementation issues that run contrary to the Principles and Safeguards. Non-disclosure agreements in this context are suspect from a human rights perspective because they can perpetuate abuse, and requiring IPLCs to sign non-disclosure agreements in exchange for benefits runs contrary to principles of Accountability and Transparency.*

*But even if FrostLock removed that requirement, their direct engagement with hotline callers goes around the authority of the Environmental Monitoring Committees. Direct engagement could also impact the quality of data collection and monitoring and result in hiding or misrepresenting a bigger problem. To support IPLC self-determination, TNC should support the Committees in challenging FrostLock's direct engagement with hotline callers and propose more equitable alternatives. Return to the Conflict Resolution Module for more information.*





**A**s the permafrost stabilization initiative gets up and running, the TNC team conducts a documentation review per the Guide, assessing what the team has been collecting throughout the process. The documentation file contains:

- A research file including copy-and-pasted news stories, some downloaded academic articles, emails with attached documents sent by some local university Native Studies professors and staff notes.
- Introductory emails among TNC staff, a Wen community contact and two Wen Camp Council members, and notes from a coffee meeting with Council members.
- Emails with a broader group of Wen Council members, arranging a time for TNC to appear before the Council. TNC's initial email conveying the staff member's understanding of how to engage the community and asking for comment on the proposed methods of engagement. A number of replies ("sounds good!") indicate approval.
- A Consultation file, including: an outline of topics to cover, annotated over time with meeting dates, issues covered and rough notes on conclusions that were reached; flash drives with video of sessions; copies of official minutes, resolutions and correspondence with the Camp Councils; copies of some reports and correspondence with outside parties; copies of posters and promotional materials regarding consultation sessions; copies of maps and handouts used at consultation sessions; drafts and an executed copy of the Initiative Agreement clearly indicating Wen consent; news articles regarding the consultation.
- A three-page Conflict Resolution Plan and a cover email from TNC to a group of Council members, saying, "This is the final version of the plan that we discussed during the consultation session on July 21; let us know if you have any comments or revisions, and please share widely within your respective communities."
- Correspondence related to the Environmental Monitoring Committees' membership issues.

1

**This is a new project team, and they are eager to know whether their documentation file is adequate. Where could it be stronger?**

*The team's file might be improved, but it's adequate and reflects diligent efforts to document a relatively well-established relationship with the Wen. For many projects where the IPLC has less administrative or technical capacity, the file may be considerably thinner and rely primarily on TNC notes and memos documenting oral processes and agreements.*

*A few areas where the file could be stronger:*

- *The Engagement Plan could have been more formally set out and agreed to, but this can be hard at the beginning of a relationship.*
- *The Conflict Resolution Plan should have been more clearly agreed to. The TNC team should have pushed to confirm that it had been read, understood, agreed to, and, ideally, was being promoted within the communities.*
- *While the Consultation file seems robust, an annotated outline might not be sufficient to capture such a detailed and complex process.*

2

**rostLock has been keeping its own file on the project and the consultation. At the signing ceremony, FrostLock proudly delivers to the Councils a neatly prepared series of 34 binders with reports, minutes and transcripts, saying they are an invaluable historical resource. Then FrostLock asks the Wen leaders sign a statement acknowledging the volumes as the "official record of the proceedings." Should TNC have any concerns?**

*Yes. First, the principles of Informed Decision-Making and Overarching Good Faith weigh against seeking IPLC signatures or other approval of documents or materials that the IPLC is not familiar with in-depth and in detail. Asking the Wen to approve a document they haven't reviewed is like asking them to sign a contract in a foreign language. Second, if there is going to be an official record of the proceedings, the Wen should have involvement in, or ownership over, the process of creating it.*

3

**FrostLock told its investors that technical evaluations agree on the likelihood of success of its stabilization technology. The technical evaluations, disclosed during the consultation, do not contradict this, but only barely: Evaluators put the likelihood of success at 51 percent. FrostLock doesn't want evaluations to be included in the public record because they contain proprietary information. When the issue of the likelihood of success came up during consultation, the Wen said they would still support the initiative even if there was only a small chance of success. Can TNC go along with FrostLock's request to limit the record?**

*FrostLock's request may not be ideal, but it doesn't seem deeply problematic. Transparency is an important part of Accountability, and reasonable protection of proprietary information is not inconsistent with that. FrostLock does not appear to be misleading investors, and their relationship with their investors is not a responsibility of TNC or the Wen. The Wen apparently have the information on likelihood-of-success that they need to make their decision.*

4

**Same as above, but the information FrostLock wants excluded from the record is about the proprietary chemicals being used in drilling and stabilization. Several of the chemicals are new and still undergoing testing. Is this a legitimate exclusion request?**

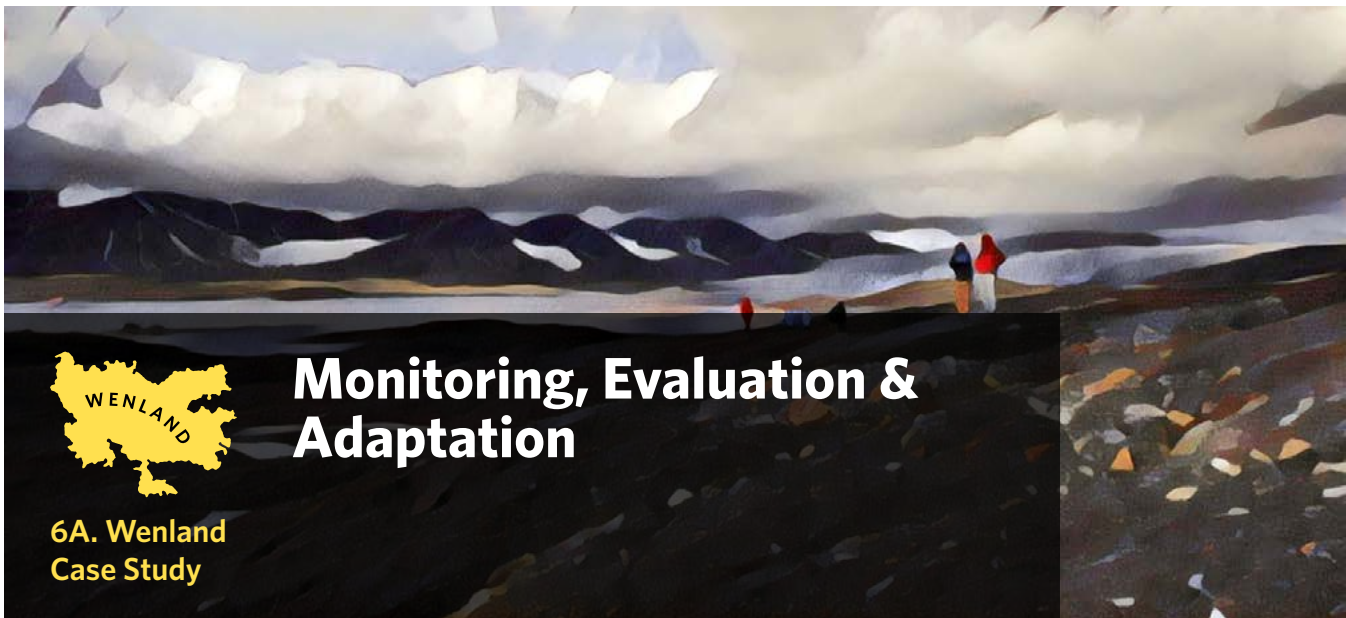
*This exclusion might be seen as undermining the effectiveness of the public record.*

*Public policy battles are ongoing around the world over the public's right to know the contents of chemicals used for fracking. One purpose of a public record would be to allow the Wen and other stakeholders to revisit decision-making in light of new information — as might arise from ongoing testing. TNC and the Wen should try to find solutions that protect legitimate proprietary information but also accommodate the purpose of documentation. Perhaps an exception is warranted to reveal the chemicals to a select group of researchers only.*

5

**The Councils tell TNC they don't have the capacity to do anything with the record, like share it with the communities. They just plan to keep it on file at the Council head office. So it goes?**

*TNC doesn't live in a world of unlimited resources either, but the team might budget ways to make the record accessible, like an archival website, uploading key documents and session videos, or writing a one-pager that summarizes the process. If the consultation process was historic and involved collecting Wen stories, setting expectations, and hearing commitments from FrostLock and TNC, there could be many reasons that rights holders and stakeholders would want to revisit the process. Having everything readily available also serves the practice of continuous learning.*



## Monitoring, Evaluation & Adaptation

### 6A. Wenland Case Study

**The permafrost stabilization initiative has been operational for three years, and the initial data on stabilization is promising. Some complaints about construction noise have come through, but there's no evidence of environmental issues.**

The following developments have occurred:

- TNC has heard from people in different Wen Camps that they are disappointed. They don't point to concrete impacts, but they say the number of Albians in the north has increased, and the Wend feels less like home. They tell TNC they would do it differently if they could.
- Women's participation in the Environmental Monitoring Committees has dropped. Pressure from the Councils and other men in the community made the experience of participation unpleasant for women, according to some. TNC has even heard of retaliatory harassment and gender-based violence, but no formal complaints have been made.
- Climate crisis tourism, wherein adventuring tourists seek out hot zones in the planetary fight for survival, has emerged as a trend. Stabilization technology sites are primary destinations, and visitation surges during the Wen summer celebrations. The Wen have long fought to restrict public access to the Wend during their celebrations, but the Albian government has refused to do anything and calls it a separate issue. FrostLock is likewise unwilling to act.

#### Lets Say

#### Thoughts and Guidance

1

**Given all the investment by FrostLock, Wen elders are wondering if it is appropriate to withdraw their grant of consent for the permafrost stabilization initiative, or whether it is now too late. Is there nothing they can do about their dissatisfaction now?**

*On the one hand, Respect for Self-Determination does not mean that the Wen cannot be held to their commitments. But it may be unfair to hold the Wen too strictly to consequences they couldn't have predicted, especially when the impact on self-determination is profound.*

*In response, TNC could decline to support revoking consent but still support the Wen's right to revoke consent and bear the consequences, if they say it's essential to their self-determination. Situations like this reflect a gap in the consultation process and the community education necessary for Informed Decision-Making. Perhaps the question of consent can be set aside in order to solve the underlying problems leading to dissatisfaction. The sentiment of "we would do it differently" might refer to specific aspects of implementation that can be addressed, or changes some community members want but don't feel empowered to ask for. TNC should consider a new round of consultation to identify problems, and work with FrostLock to honor a strong FPIC process, which includes continual iteration, particularly when new information or changes arise.*

2

**TNC's monitoring protocol notes the growing gender disparity on the Environmental Management Committees but adds that the only tool at TNC's disposal, nominating authority, hasn't succeeded. And while TNC has heard concerning stories about repercussions of the gender-equity focus for Committee membership in the Camps, no data confirms this. Furthermore, intra-community disputes are beyond the scope of TNC's authority to monitor, much less interfere with. Is this an appropriate assessment?**

*No. More investigation is needed. The allegations reflect human rights impacts of the Environmental Management Committees and thus, the permafrost stabilization initiative. This requires a response just as environmental impacts would.*

*Wen women have sought outside assistance in the past, and the Wen community as a whole has agreed that gender disparity is an issue, which the all-male Councils even agreed to address during implementation. Still, given that rumors of harassment, discrimination and gender-based violence persist, TNC should make an extra effort to gain information, including through consulting TNC's Guidance for Integrating Gender Equity in Conservation, and should seek out partners with expertise. The critical foundation and duty of all safeguards is to do no harm.*

3

**If the Albanian government has been lobbied on the hot zone tourism issue and won't budge, is the situation out of TNC's hands?**

*NC should not wash our hands of responsibility for this situation. The hot zone tourism is a direct consequence of the permafrost stabilization initiative (see UNDRIP, Article 12, which protects the right of privacy to religious and cultural sites).*

*But this impact was impossible to anticipate. Even though neither FrostLock nor TNC has the power to prohibit tourism, both should use leverage and resources to mitigate the problem. Informational programs could be created to educate tourists about respecting the Wen's privacy, or a hot zone exhibit or museum could be built far away from the celebration sites.*

4

**The Wen organization designated to take over management of the Conservation Management Area from TNC has stalled. No one has been hired, no plans are in place—and the organization may not be ready by the five-year mark. A TNC staffer suggests that the team not be in any hurry to push the organization along, as it will allow TNC to extend our management of conservation activities, such as the Wendbok reindeer herds. Is this acceptable, since TNC has no concrete obligation to do anything to support the Wen organization's development?**

*TNC might not be obligated under the Initiative Agreement to help the Wen organization form, but Overarching Good Faith and Respect for Self-Determination may require more from us. Assuming responsibility for the Conservation Management Area may be integral to the Wen's conclusion that the permafrost stabilization initiative was consistent with their self-determination.*

*For TNC to look the other way, while enforcing the provisions it favors, could lead to Wen mistrust of TNC and disillusionment with the overall initiative. TNC's concern for the Wendbok herds is legitimate, but that can be pursued in more transparent and collaborative ways.*