

Contents

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Notice To the Reader ..... 2

1: DEFINITIONS ..... 3

2: GENERAL PROVISIONS ..... 4

3: ELIGIBILITY AND ENROLLMENT ..... 7

4: RESERVES AND LAND SET ASIDE ..... 10

5: TENURE AND MANAGEMENT OF SETTLEMENT LAND ..... 11

6: ACCESS ..... 14

7: EXPROPRIATION ..... 18

8: SURFACE RIGHTS BOARD ..... 20

9: SETTLEMENT LAND AMOUNT ..... 22

10: SPECIAL MANAGEMENT AREAS ..... 24

11: LAND USE PLANNING ..... 26

12: DEVELOPMENT ASSESSMENT ..... 29

13: HERITAGE ..... 34

14: WATER MANAGEMENT ..... 38

15: BOUNDARIES AND MEASUREMENTS ..... 41

16: FISH AND WILDLIFE ..... 43

17: FOREST RESOURCES ..... 49

18: NON-RENEWABLE RESOURCES ..... 52

19: FINANCIAL COMPENSATION ..... 55

20: TAXATION ..... 57

21: TAXATION OF SETTLEMENT LAND ..... 61

22: ECONOMIC DEVELOPMENT MEASURES ..... 63

23: RESOURCE ROYALTY SHARING ..... 66

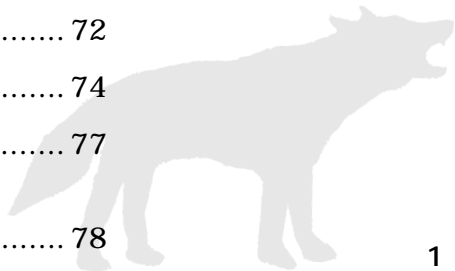
24: YUKON INDIAN SELF-GOVERNMENT ..... 68

25: TRANSBOUNDARY AGREEMENTS ..... 72

26: DISPUTE RESOLUTION PROCESS ..... 74

27: YUKON FISH AND WILDLIFE ENHANCEMENT TRUST ..... 77

28: IMPLEMENTATION AND TRAINING FOR SETTLEMENT  
IMPLEMENTATION ..... 78





## Notice To the Reader

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1. This document is intended to be a summary of main aspects of the Umbrella Final Agreement and, as such, does not attempt to present to summarize all the content of the Umbrella Final Agreement. This document should not be relied upon or substituted for the Umbrella Final Agreement itself,

or for the Yukon First Nation Final Agreements, for interpretive or legal purposes. For complete information, the reader must refer to the Umbrella Final Agreement itself.

2. Capitalized words or phrases used in this document are defined within the Umbrella Final Agreement. Definitions are defined throughout the Umbrella Final Agreement, while others are only defined for the purposes of a specific chapter. For instance, Chapter 1 - Definitions provides a definition of "Consultation" for all twenty-eight chapters of the Umbrella Final Agreement. Meanwhile, Chapter 17 - Forest Resources defines "Forest Resources Management" only for that particular chapter. For a complete understanding of the material presented in this document, the reader is asked to refer to the sections of the Umbrella Final Agreement where the definitions are set out.

3. This document refers to both Council for Yukon Indians and Council of Yukon First Nations. The Council for Yukon Indians legally changed its name to Council of Yukon First Nations in 1995. Therefore, where the context requires it, for example in reference to matters which date prior to 1995, this document refers to the central organization as the Council of Yukon Indians.



## GENERAL PROVISIONS

*This chapter provides certainty as to the relationship between Yukon First Nations and Government, sets out the process for giving effect to and amending First Nation Final Agreements, and sets out general requirements for the boards and councils established by those Agreements.*

### 1. THE UMBRELLA FINAL AGREEMENT

The Umbrella Final Agreement provides a framework for Yukon First Nations and Governments in their negotiations to conclude Yukon First Nation Final Agreements. The Umbrella Final Agreement itself is not a legally binding document.

A Yukon First Nation Final Agreement includes all the provisions of the Umbrella Final Agreement along with specific provisions that apply specifically to that individual Yukon First Nation. A Yukon First Nation Final Agreement is legally binding once it has been ratified, signed and brought into effect.

### 2. CONSTITUTIONAL PROTECTION

Once in effect, a Yukon First Nation Final Agreement is a land claims agreement under section 35 of the Constitution Act, 1982 (although at this time a Self-Government Agreement negotiated pursuant to "Chapter 24 - Yukon Indian Self-Government" is not). This ensures that Yukon First Nation Final Agreements will be constitutionally protected and form part of the highest law of Canada.

**This chapter also provides that:**

- (a) if other First Nations in Canada are granted further constitutional rights within the laws of Canada, those rights will also apply to Yukon First Nations as set out in Yukon First Nation Final Agreements;
- (b) Yukon Indian People have all the same rights, benefits and privileges of other Canadian citizens;
- (c) Yukon Indian People will continue to benefit from Government programs available to status and non-status Indians; and
- (d) the rights of Yukon Indian People under the Indian Act, R.S.C. 1985, c. I-5, will not be affected with the exception of changes under the Yukon First Nation Final Agreements regarding Reserves and Taxation. (However, a Self-Government Agreement, negotiated with and ratified by a Yukon First Nation, provides that the Indian Act ceases to apply to the Yukon First Nation, its Citizens and Settlement Land.)

### 3. RATIFICATION AND IMPLEMENTATION

"Ratification" refers to the process by which a Yukon First Nation's Final Agreement is approved by its beneficiaries. Each Yukon First Nation Final Agreement must be ratified by the affected Yukon First Nation and the Governments of Yukon and Canada.

Each Yukon First Nation Final Agreement will set out the process for approval. This process must be followed in order to give effect to a Yukon First Nation Final Agreement.

After the Umbrella Final Agreement and the Final Agreements of the Champagne and Aishihik First Nations, the First Nation of Nacho Nyak Dun, the Teslin Tlingit Council and the Vuntut Gwitchin First Nation were ratified, the Governments of Yukon and Canada passed laws to put those Final Agreements into legal operation. When subsequent Final Agreements are ratified, the Governments will pass orders-in-council in order to give effect to those Final Agreements. In most cases, orders-in-council are passed in a short period of time.

#### 4. AMENDMENTS

Generally speaking, the Umbrella Final Agreement can only be amended or changed with the consent of the Yukon First Nations, the Government of Canada, and the Government of Yukon.

Any amendment or change to a Yukon First Nation Final Agreement can only be done with the consent of the affected Yukon First Nation, the Government of Canada, and the Government of Yukon.



#### 5. CERTAINTY

"Certainty" means to clarify a matter. One of the main objectives of the Umbrella Final Agreement is to provide Yukon First Nations and Governments with certainty regarding aboriginal title and rights in the Yukon.

**The chapter provides that if aboriginal title and rights exist:**

- (a) they continue to exist in relation to all Settlement Land to the extent that they are consistent with the Yukon First Nation Final Agreement; and
- (b) they are released on Non-Settlement Land.

This means that after the effective date of the Yukon First Nation Final Agreements, Yukon First Nations cannot initiate negotiations for settlement of other issues based upon their released aboriginal title to Non-Settlement Land. However, if in the future, aboriginal rights

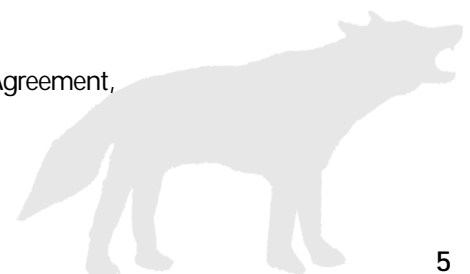
are expanded, there is a possibility that Yukon First Nations may get those "residual" aboriginal rights on Settlement Land.

In the Umbrella Final Agreement, Governments recognize certain Yukon First Nation powers and are obligated to provide them with a wide range of benefits. In exchange, Yukon First Nations will release aboriginal claims to Non-Settlement Land in the Yukon.

#### 6. APPLICATION OF LAWS

All federal, territorial and municipal laws will apply to Yukon Indian People, Yukon First Nations and Settlement Land. There is an important exception to this general rule. If there is a conflict or inconsistency between a Yukon First Nation Final Agreement and any federal, territorial or municipal law, the Yukon First Nation Final Agreement takes precedence.

In the case of a conflict between the Umbrella Final Agreement and a Yukon First Nation Final Agreement, the provisions of the Umbrella Final Agreement take precedence.



Under Canadian law, Government has a fiduciary obligation to aboriginal people in Canada. That is, Government is in a position of trust and must protect the interests of aboriginal people. Nothing in the Umbrella Final Agreement extinguishes this fiduciary obligation or other relationship between Yukon First Nations and Government.

## **7. INTERNAL OVERLAPS**

Each Yukon First Nation has provided to Government a map outlining its Traditional Territory within the Yukon. In some cases, Yukon First Nations have an overlap with another Yukon First Nation's Traditional Territory. When this occurs, all outstanding overlaps in a Yukon First Nation's Traditional Territory must be resolved before the Yukon First Nation's Final Agreement is ratified, unless the parties agree otherwise.

## **8. MANAGEMENT BOARDS**

Under the Umbrella Final Agreement and Yukon First Nation Final Agreements, several boards have been established in order to carry out certain responsibilities under those agreements. This chapter sets out general requirements which apply to those boards. It provides for the appointment of board members and rules concerning board operations and management, including that the approved expenses of these boards will be charged to Government.

## ELIGIBILITY AND ENROLLMENT

### 1. WHAT IS ELIGIBILITY?

Eligibility means that a Person has met certain requirements and therefore has the right to be registered as a beneficiary of a Yukon First Nation Final Agreement.

### 2. ELIGIBILITY REQUIREMENTS

A Person is eligible to be enrolled under one of the Yukon First Nation Final Agreements if he or she is a Canadian citizen who can meet one of the following criteria:

- (a) The Person is of at least 25% or more Indian ancestry and was Ordinarily Resident in the Yukon between January 1, 1800 and January 1, 1940.

"Ordinarily Resident" means a Person who lived or has lived the majority of his or her life in the Yukon Territory.

- (b) The Person can demonstrate that he or she is a descendant or an adopted child of a person living or deceased who is eligible according to (a) above. A direct descendant is a person who is a child, grandchild or great-grandchild (and so on) of someone.
- (c) The Person can demonstrate that his or her connection with the Yukon First Nation is such that the Person deserves to be declared eligible by the Enrollment Commission. This method of becoming eligible and accepted can only be used for up to two years after the Yukon First Nation Final Agreement is in force.

Anyone who has legal responsibility for an eligible adult who is not capable of managing his or her own affairs may apply on that person's behalf for enrollment. In addition, any adult may apply on behalf of a minor.

A Person who is eligible to be enrolled under a Yukon First Nation Final Agreement but is not a Canadian citizen can still enroll in a Yukon First Nation Final Agreement. However, enrollment does not provide the Person with benefits under the Indian Act. It also does not give the Person rights of entry into Canada or a right to Canadian citizenship.

### 3. INDIAN ACT MEMBERSHIP

Membership in a Yukon Indian Band under the Indian Act does not necessarily mean that a Person is eligible for enrollment under a Yukon First Nation Final Agreement. The Person would still have to meet the eligibility requirements listed above.

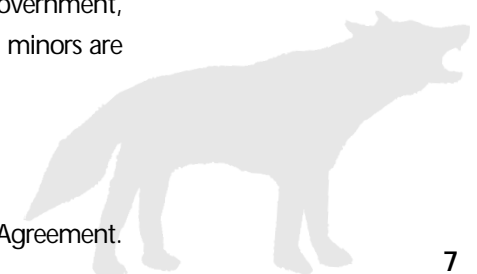
### 4. ADOPTIONS

In some cases, minors who are eligible to be enrolled under a Yukon First Nation Final Agreement have been adopted by families outside of the Yukon. In these cases, it is the responsibility of Government, Yukon First Nations and Enrollment Committees to work together to make sure that these minors are made aware of their eligibility for enrollment.

### 5. ENROLLMENT UNDER MORE THAN ONE YUKON FIRST NATION FINAL AGREEMENT

A Person who is eligible for enrollment can only be enrolled under one Yukon First Nation Final Agreement.

*This chapter determines who may benefit from the Yukon First Nation Final Agreements and how enrollment works. In general, a Person may apply to become enrolled through the Enrollment Committee of his or her Yukon First Nation, which then considers whether the person meets the criteria for enrollment. The Enrollment Commission will assist the committees and rule on any disputes.*





If a Person qualifies for enrollment under more than one Yukon First Nation Final Agreement, that Person must decide under which Final Agreement he or she wants to be enrolled. The Enrollment Commission will take into account the wishes of the Person and the affected Yukon First Nations in deciding under which Yukon First Nation Final Agreement that Person will be enrolled.

A Person cannot be enrolled under a Yukon First Nation Final Agreement and also be enrolled in another aboriginal land claim settlement in Canada.

If a Person is enrolled under both a Yukon First Nation Final Agreement and another land claims settlement in Canada, then that Person will have 60 days, upon notice from a Yukon First Nation or the Enrollment Commission, to choose under which agreement he or she would like to be enrolled.

## 6. YUKON FIRST NATION ENROLLMENT COMMITTEES

An Enrollment Committee is a group of no more than five members chosen by the Yukon First Nation to prepare a list for the Enrollment Commission of Persons who are eligible to be enrolled under and benefit from its Final Agreement.

Two or more Yukon First Nations may work together and form one Enrollment Committee in order to serve their needs.

If a Yukon First Nation is not represented on an Enrollment Committee, has not established an Enrollment Committee or if an Enrollment Committee has failed to perform its responsibilities within a reasonable time period, the Enrollment Commission can then take over those duties. In the latter case, however, the Enrollment Commission must attempt to assist the Enrollment Committee first, before it takes over the Committee's duties.

Each Enrollment Committee must prepare a budget and submit it to the Enrollment Commission for approval when requested to do so.

A Yukon First Nation's Enrollment Committee will continue for two years after the First Nation's Final Agreement comes into effect. The Enrollment Committee's responsibilities will be carried out directly by the First Nation after that.

## 7. ENROLLMENT COMMISSION

### (a) What is it?

The Enrollment Commission is an independent body established to enroll those people recommended



for enrollment by each Yukon First Nation's Enrollment Committee.

**(b) Who is it?**

The Enrollment Commission is comprised of:

- one person chosen by the Council of Yukon First Nations;
- one person chosen by the Governments of Yukon and Canada together;
- one person nominated by the other two people.

**(c) What will it do?**

The main duty of the Enrollment Commission is to prepare an official enrollment list using the information provided by the Enrollment Committees. This list will be the authorized or approved list of people who are eligible for the benefits of Yukon First Nation Final Agreements.

The Enrollment Commission also works closely with the Yukon First Nation Enrollment Committees, providing assistance when needed.

The Enrollment Commission will hear appeals where an individual has been denied enrollment by a Yukon First Nation's Enrollment Committee, or where the Commission itself feels that an applicant should not have been accepted for enrollment by the Enrollment Committee. An appeal may be sought by the Commission itself, the individual applicant, a Yukon First Nation, the Council of Yukon First Nations or by Government.

All final decisions of the Enrollment Commission are binding unless a party appeals the decision to a court within sixty days of the decision. This would be done through an application to the Supreme Court of the Yukon for judicial review. Judicial review refers to an appeal of a decision on the legal basis that the Enrollment Commission acted unfairly or wrongly exercised its authority in making the decision.

**8. YUKON FIRST NATION RESPONSIBILITIES FOR ENROLLMENT**

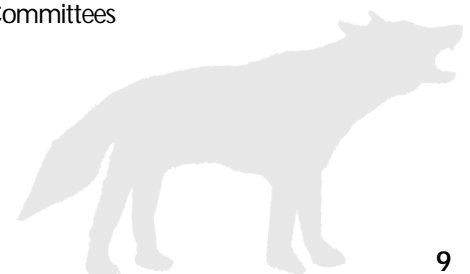
Two years after a Yukon First Nation's Final Agreement takes effect, that Yukon First Nation's Enrollment Committee will no longer be in place. All applications for enrollment will be taken over by the Yukon First Nation. The Yukon First Nation will then determine who is eligible to be enrolled under its Final Agreement in accordance with this chapter. The Enrollment Commission will perform its duties for up to two years after the last Yukon First Nation Final Agreement becomes law or until February 14, 2005, whichever comes first.

The Dispute Resolution Board will then take over the Enrollment Commission's responsibilities.

Any person may examine the official enrollment list maintained by an Enrollment Committee or Yukon First Nation during its normal business hours.

**9. FUNDING**

The Government of Canada is responsible for paying the approved expenses of the Enrollment Committees and the Enrollment Commission.



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## RESERVES AND LAND SET ASIDE

*This chapter enables Yukon First Nations to decide whether they want to keep existing Reserves as Reserves under the Indian Act or as Settlement Land. Reserves and Land Set Aside refers to the small areas of lands in the Yukon that have been set apart by Government for the use and benefit of Yukon Indian People.*

### 1. RESERVES AND LAND SET ASIDE

#### (a) Reserves

A "Reserve" is a tract of land that has been set apart for the use and benefit of Yukon Indian People pursuant to the Indian Act.

Reserves have been set aside under the Indian Act for the use and benefit of some Yukon First Nations. Those Yukon First Nations will have to decide whether their Reserves will be retained as Reserves under the Indian Act or selected as Settlement Land. If a Yukon First Nation decides to select a Reserve as Settlement land, then the Indian Act ceases to apply upon the effective date of the Yukon First Nation Final Agreement.

#### (b) Land Set Aside

"Land Set Aside" refers to lands which are not Reserves under the Indian Act but which are noted in the property records as set aside for the use and benefit of Yukon Indian People. For instance, land has been set aside for housing and other uses.

Parcels of Land Set Aside are not Settlement Land, but they may be selected by a Yukon First Nation as Settlement Land. Unselected Land Set Aside will not be kept "set aside" for the use of the Yukon First Nation after the effective date of its Final Agreement.

### 2. HOW WILL RESERVES AND LAND SET ASIDE BE DEALT WITH?

This chapter sets out the basic rules about how the existing Reserves and Land Set Aside will be dealt with in the Yukon First Nation Final Agreements.

If a Yukon First Nation chooses to include any of its existing Reserves or Land Set Aside as Settlement Land, these lands will be in addition to the amount of land it may choose as Category A, Category B or Fee Simple Settlement Land, as set out in "Chapter 9 - Settlement Land Amount".

- (a) Each Yukon First Nation must choose whether its Reserves or Land Set Aside will become Settlement Land. However, the total amount of Reserve land or Land Set Aside selected as Settlement Land by all Yukon First Nations together cannot exceed 60 square miles or 155.4 square kilometres.
- (b) Yukon First Nations have allocated the 60 square miles among themselves, as set out in "Schedule A - Allocation of Settlement Land Amount" of Chapter 9.
- (c) Reserves not selected as Settlement Land remain as Reserves under the Indian Act. The ways that the Indian Act applies or does not apply to these Reserves are set out in each Yukon First Nation's Final Agreement.

Land Set Aside which is not selected by a Yukon First Nation as part of its Settlement Land will no longer be set aside for the use and benefit of Yukon Indian People.

- (d) If a Yukon First Nation files a claim that a Reserve exists in its Traditional Territory (other than the six Reserves already recognized under the Indian Act) before the finalization of its land selections, and if Canada subsequently agrees to recognize the Reserve, then it can either be retained as a Reserve under the Indian Act or selected as Settlement Land.

## TENURE AND MANAGEMENT OF SETTLEMENT LAND

### 1. TYPES OF SETTLEMENT LAND

There are three types of Settlement Land that Yukon First Nations will own and manage.

#### (a) Category A Settlement Land

On Category A Settlement Land, a Yukon First Nation has complete ownership of the surface and sub-surface. In other words, Yukon First Nations have rights equivalent to fee simple to the surface of the lands and full fee simple title to the sub-surface.

This means that Yukon First Nations have the right to use the surface of the land and the right to use what is below the surface, such as minerals and oil and gas.

#### (b) Category B Settlement Land

On this type of land, a Yukon First Nation has complete ownership of only the surface or top of the land. In other words, Yukon First Nations have rights equivalent to fee simple to the surface only. There is no right to Mines and Minerals, but there is a Specified Substances Right, that is, the right of the Yukon First Nation to take and use certain Specified Substances without payment of royalties.

#### (c) Fee Simple Settlement Land

Fee Simple Settlement Land is Settlement Land owned under the same form of fee simple title as is commonly held by individuals who own land. Individual lots in subdivisions will normally be held in fee simple title.

Non-Settlement Land is all land other than those categories of land described above. Aboriginal title will be released on Non-Settlement Land.

Yukon First Nation Final Agreements set out certain rules regarding access to these lands. Most of the provisions dealing with access to Settlement Land and Non-Settlement Land are found in "Chapter 6 - Access". Other provisions on access to Settlement Land can also be found in "Chapter 5 - Tenure and Management of Settlement Land", "Chapter 16 -Fish and Wildlife", "Chapter 17 - Forest Resources" and "Chapter 18 -Non-Renewable Resources".

### 2. ABORIGINAL TITLE

Yukon First Nations keep aboriginal title to Category A and Category B Settlement Land. Aboriginal title is released on Fee Simple Settlement Land and Non-Settlement Land when a Yukon First Nation Final Agreement comes into effect.

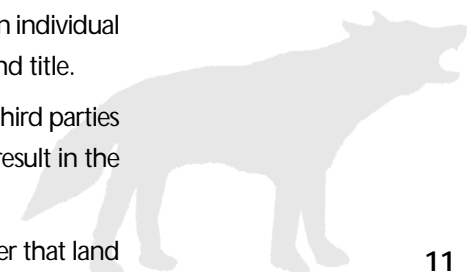
The term "equivalent to fee simple" used in relation to the surface of Category A and B Settlement Land means that the Yukon First Nation has the same rights in relation to that Settlement Land as an individual owning land in fee simple title has to his or her land, without a release of aboriginal rights and title.

However, this form of tenure will not prevent a Yukon First Nation from leasing or providing third parties with other land rights that are less than full ownership. Issuance of such an interest will not result in the loss of aboriginal title to the Settlement Land.

But if a Yukon First Nation wishes to sell a portion of its Settlement Land, it will have to register that land

*Land "tenure" refers to the ways that land may be owned and controlled. This chapter describes how Settlement Land will be owned and managed. It also describes how the different types of Settlement Land (Category A, Category B and Fee Simple) can be used by Yukon First Nations.*

Under "Chapter 2 - General Provisions", Yukon First Nations retain aboriginal title on almost all of their Settlement Land.



in fee simple title in the Land Titles Office and at that time the aboriginal title will be released. In other words, the land will then be the same as other fee simple titled land in the Yukon. Even if the Yukon First Nation is able to reacquire the parcel and include it in Settlement Land again, that portion cannot regain its aboriginal title.

### 3. MANAGEMENT OF SETTLEMENT LAND

#### (a) Yukon First Nation Management Powers

Unless a Yukon First Nation agrees otherwise in its Final Agreement, a Yukon First Nation may:

- (i) make bylaws for the use and occupation of its Settlement Land;
- (ii) develop and administer land management programs for its Settlement Land; and
- (iii) charge and collect fees for the use of its Settlement Land.

In addition, a Yukon First Nation may establish a system to record interests in its Settlement Land. This may be done through a Yukon First Nation land titles office. This is necessary in order to allow Yukon Indian People to have a degree of certainty with respect to "owning and possessing" portions of Settlement Land. Remember, if Settlement Land is registered in the Government of Yukon's Land Titles Office, its aboriginal title would be released. Such a system would also give notice to the general public as to the types of interests in Settlement Land which the First Nation had issued, and to whom.

#### (b) Administration by other Governments

Governments will continue to administer "Encumbering Rights" on Settlement Land. Encumbering Rights refer to a variety of interests such as:

- (i) licences, permits and other rights existing on a Yukon First Nation's Settlement Land prior to the effective date of its Final Agreement;
- (ii) renewals or replacements of these rights, titles or interests;
- (iii) new licences, permits or other rights in relation to Petroleum or Mines and Minerals issued after the effective date; and
- (iv) certain specified rights or reservations on Settlement Land agreed to in the Final Agreement.

Yukon First Nations may select, as Settlement Land, lands with certain Encumbering Rights. The interests of a holder of an Encumbering Right will continue to be administered by Government as if the land were still Crown Land.

However, royalties collected by Government from the production of a Mineral on Category A Settlement Land by a third party who has an Encumbering Right in the sub-surface will be paid to the affected Yukon First Nation.

In addition, on Category A, Category B and Fee Simple Settlement Land, the Yukon First Nation will receive rent from any existing surface lease of a holder of a mineral right.

If Settlement Land is subject to a timber harvesting agreement existing before the effective date of the Final Agreement, the Yukon First Nation Final Agreement may provide that stumpage fees are paid to the affected Yukon First Nation.

Before the final land selections are signed by the negotiators for a Yukon First Nation Final Agreement, Government must inform that Yukon First Nation of all the interests it administers in respect of those

lands. If it is discovered that such an interest was not disclosed before the effective date of the Final Agreement, Government then has the option to cancel the interest or to compensate the affected Yukon First Nation.

Government must Consult with the affected Yukon First Nation before renewing or replacing an existing Encumbering Right on its Settlement Land, or issuing a new Encumbering Right. In addition, Government must Consult before setting certain Royalties, rents or fees in relation to those Encumbering Rights.

#### **4. WATER**

##### **(a) Ownership of Beds of Waterbodies**

The portions of the Bed of a lake, river or other waterbody within Settlement Land are owned by the Yukon First Nation. However, when the Bed of a waterbody is not enclosed by Settlement Land, the Yukon First Nation does not have ownership over the Bed unless that is specified in its Final Agreement.

##### **(b) Waterfront Right-of-Way**

In general, there will be a Waterfront Right-of-Way measured 30 metres from the Natural Boundaries within Settlement Land of all Navigable Waters which border or are within Settlement Land.

Although the uses and width of the Waterfront Right-of-Way may be varied in a Yukon First Nation Final Agreement in order to accommodate special circumstances, the following rules generally apply:

- (i) A Person has a right of access without the consent of the affected Yukon First Nation to use a Waterfront Right-of-Way for travel and for non-commercial recreation, and to use dead firewood.

However, this right of access does not allow people who are not beneficiaries of the Yukon First Nation's Final Agreement to Harvest Wildlife at any time on Category A or Fee Simple Settlement Land, except for hunting Migratory Game Birds.

- (ii) A person has a right of access to use a Waterfront Right-of-Way for commercial recreation purposes with the agreement of the affected Yukon First Nation. If an agreement cannot be reached, the Surface Rights Board may set out the terms and conditions for access, including compensation.

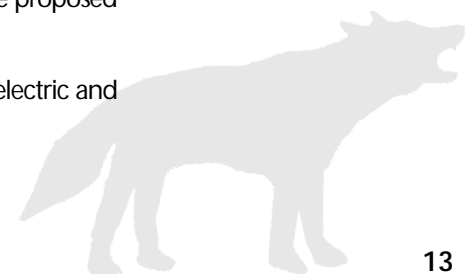
- (iii) No permanent camps or structures can be built on a Waterfront Right-of-Way, except by the affected Yukon First Nation, without the consent of Government and the affected Yukon First Nation. The Yukon First Nation has a right to establish a permanent camp or structure provided that this does not substantially interfere with public access rights on the Waterfront Right-of-Way.

For further information on Water matters, the reader should refer to "Chapter 14 - Water Management".

#### **5. HYDRO-ELECTRIC AND WATER STORAGE PROJECTS**

Before the final land selections are signed by the negotiators of a Yukon First Nation Final Agreement, Government must identify those areas proposed for future hydro-electric and water storage projects. If such an area becomes part of the Yukon First Nation's Settlement Land, a notation about the proposed future use will be made in its Final Agreement.

The reader should refer to "Chapter 7 - Expropriation" for further information about hydro-electric and water storage projects.



*This chapter sets out the rights of access of Yukon First Nations on Crown Lands and the rights of access of the public for commercial and non-commercial purposes, and of Government, on Settlement Land.*

## 1. FIRST NATION ACCESS TO CROWN LAND

### (a) Harvesting

Yukon Indian People have a right of access to enter, cross and stay on Crown Land without Government's consent for all non-commercial purposes provided that the access is of a casual nature or is for the purpose of Harvesting Fish and Wildlife.

### (b) Traditional Routes

Yukon First Nations and Yukon Indian People also have a right of access to cross and make stops on Crown Land to reach adjacent Settlement Land for commercial purposes provided that the access is of a casual nature, the route is a traditional route, and the access will not result in a significant change in the use of that route.

Yukon First Nations or Yukon Indian People, however, do not have a right of access when Crown Land is subject to an agreement for sale, surface licence or lease. There are two exceptions to this: if the lease or licence allows public access, or if the holder of the licence or lease consents to access by Yukon Indian People. As a rule, there is no access for Yukon Indian People on Crown Lands where public access is already limited or prohibited.

The rights of access exercised by Yukon Indian People are subject to the conditions that there will be:

- (a) no significant damage to the land or to improvements on the land;
- (b) no mischief committed on the land;
- (c) no significant interference with the use and enjoyment of the land by others;
- (d) no fee or charge payable to Government; or
- (e) no compensation for damage other than significant damage.

## 2. PUBLIC ACCESS TO SETTLEMENT LAND

The public has a general right of access, without the consent of the affected Yukon First Nation, to enter, cross and stay on Undeveloped Settlement Land for a reasonable period of time for all non-commercial recreational purposes.

The public also has a general right, without the consent of the affected Yukon First Nation, to enter, cross and make necessary stops on Undeveloped Settlement Land in order to reach adjacent Non-Settlement Land for commercial and non-commercial purposes, provided that the access is of a casual and insignificant nature, or the route travelled is generally recognized and used and the exercise of the right does not result in a significant alteration to the route.

In addition, any person may enter upon Settlement Land in an emergency, but if damage is caused, must report its location to the affected Yukon First Nation. The person also is liable for significant damage to the Settlement Land or improvements on it as a result of the entry.

## 3. COMMERCIAL ACCESS TO SETTLEMENT LAND

Commercial access refers to the right to enter Settlement Land for the purpose of carrying on a business.

For the purpose of carrying on a business, a person may enter, cross and make stops on Undeveloped Settlement Land to reach adjacent Non-Settlement Land without the permission of the affected Yukon First Nation, provided that the access is of a casual and insignificant nature, or the route travelled is generally recognized and used and no significant alternation of the route is required. Otherwise, the person must first obtain the affected Yukon First Nation's consent, or, if no agreement is reached, an order of the Surface Rights Board setting out terms and conditions for the access.

Any person who enters Settlement Land for the purpose of carrying on business must accept the liability for causing significant damage to Settlement Land or to improvements on it.

#### **4. PRE-EXISTING RIGHTS OF ACCESS IN RELATION TO SETTLEMENT LAND**

The holder of a licence, permit or other right of access to or across Settlement Land, which was in existence on or before the date that the land became Settlement Land, may exercise the rights granted by it as if the land had not become Settlement Land. This includes any renewal or replacement of the licence, permit or right. However, any change in the terms and conditions of the access require the affected Yukon First Nation's consent, or, if consent is not granted, an order of the Surface Rights Board setting out the terms and conditions.

#### **5. GOVERNMENT ACCESS TO SETTLEMENT LAND**

Government, its agents or contractors have a right of access to enter, cross and stay on Undeveloped Settlement Land and to use natural resources to deliver, manage and maintain Government programs and projects. They also have a right of access to make necessary changes to lands and watercourses by earthmoving equipment for routine or emergency maintenance of transportation corridors.

Persons who are authorized to provide utilities, such as electricity, telephone and municipal services, also have a right of access to enter, cross and stay on Undeveloped Settlement Land. The affected Yukon First Nation must be Consulted before the access occurs.

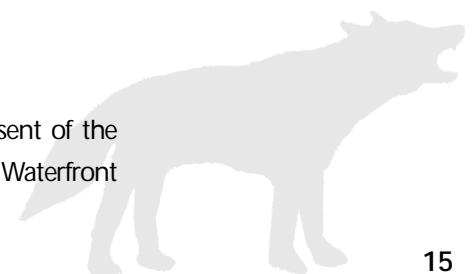
Government, its agents or contractors, or persons authorized to provide utilities may access Undeveloped Settlement Land for less than 120 consecutive days without the consent of the affected Yukon First Nation. If the access is to be for more than 120 days, the Yukon First Nation's consent must be obtained beforehand, or, if no agreement is reached, an order of the Surface Rights Board setting out terms and conditions for the access must be obtained.

#### **6. MILITARY ACCESS TO SETTLEMENT LAND**

The Department of National Defence has access to Undeveloped Settlement Land for military exercises, with the consent of the affected Yukon First Nation. Reasonable notice of military exercises will be given to the Yukon First Nation. The Department of National Defence must come to an agreement with the First Nation regarding use and protection of the land. Failing such agreement, the Surface Rights Board will decide the matter.

#### **7. CONDITIONS OF ACCESS ON SETTLEMENT LAND**

The general rights of public and commercial access to Settlement Land without the consent of the affected Yukon First Nation, described in sections 2 and 3 above, and the public access on a Waterfront Right-of-Way, are subject to the conditions that there will be:





- (a) no significant damage to the Settlement Land or to improvements on it;
- (b) no mischief committed on the Settlement Land;
- (c) no significant interference with the use and peaceful enjoyment of the Settlement Land by the affected Yukon First Nation;
- (d) no fee or charge payable to the affected Yukon First Nation; or
- (e) no compensation for damage other than for significant damage.

If a Yukon First Nation wishes to establish terms and conditions for the exercise of a right of access provided by a Yukon First Nation Final Agreement in respect of :

- (a) a Waterfront Right-of-Way;;
- (b) general public access;
- (c) trapline development;
- (d) Existing and New Mineral Rights; or
- (e) access for less than 120 days by Government, its agents or contractors, or a Person authorized to provide utilities,

the Yukon First Nation and Government must negotiate the terms and conditions.

If Government and the Yukon First Nation do not agree, the Yukon First Nation can refer the matter to the Surface Rights Board. The Surface Rights Board can only make terms and conditions on a right of access regarding seasons, times, locations, method or manner of access.

In addition, the Surface Right Board can only establish a condition affecting a right of access in order to:

- (a) protect the environment, protect Fish and Wildlife or their habitat;
- (b) reduce conflicts with traditional and cultural uses of Settlement Land; and
- (c) protect the use and enjoyment of land used for communities and residences.



## 8. FLOODING RIGHTS

When required for hydro-electric projects Settlement Land close to bodies of water may be flooded. The reader should refer to "Chapter 5 - Tenure and Management of Settlement Land" and "Chapter 7 - Expropriation" for further information.

## 9. TRAPPING ACCESS

All registered trappers on Settlement Land will be able to continue to work their traplines without interference from the Yukon First Nation. The reader should refer to "Chapter 16 - Fish and Wildlife" for further information.

## 10. OUTFITTERS

If the outfitting areas of licensed outfitters include lands that become Settlement Land, they will be allowed to continue crossing those lands to get to their outfitting areas. This allows the outfitter to set up camps for a short period of time and to graze horses, but, unless otherwise agreed, does not include the right to hunt on Settlement Land. The reader should refer to "Chapter 16 - Fish and Wildlife" for further information.

## 11. FOREST AGREEMENTS

People who have forest permits and licences on lands that become Settlement Land, will be allowed to continue using those permits and licences.

## 12. SUB-SURFACE INTERESTS

The holder of a mineral right on Settlement Land or on Non-Settlement Land prior to the effective date of the Yukon First Nation Final Agreement has a right of access for the purpose of exercising that right, without the consent of the affected Yukon First Nation, provided that the access is of a casual or insignificant nature, or the route travelled is generally recognized and used and the route is not altered significantly. He or she also has a right of access, for the purpose of exercising the mineral right, to use the parcel of Settlement Land without the consent of the First Nation, where that is provided for by law.

A person who has a New Mineral Right on Category B or Fee Simple Settlement Land has a right of access on Settlement Land without permission from a Yukon First Nation. He or she also has a right to use that parcel of Settlement Land, provided that no heavy equipment or methods more disruptive than hand labour methods are used.

The reader should refer to "Chapter 18 - Non-Renewable Resources" for further information.



## EXPROPRIATION

*This chapter describes the conditions under which Settlement Land may be expropriated, and sets out the rules to be followed if Settlement Land is expropriated for public purposes. "Expropriation" refers to the power of Governments to take lands for development purposes. When an expropriation of Settlement Land occurs, the affected Yukon First Nation will be entitled to some form of compensation.*

### 1. EXPROPRIATION PRINCIPLES

Where possible, development that requires expropriation will avoid Settlement Land.

Prior to any expropriation of Settlement Land, the expropriating authority must negotiate with the Yukon First Nation the location and extent of the affected Settlement Land. The expropriating authority refers to the Government or entity authorized by law to expropriate land.

Expropriation of Settlement Land, if it occurs, must be done in accordance with this chapter and the laws in place governing expropriation.

### 2. WHEN A YUKON FIRST NATION DOES NOT AGREE TO EXPROPRIATION

If the affected Yukon First Nation does not consent to the expropriation of its Settlement Land, public hearings will be held in respect of the location and extent of the land to be expropriated.

### 3. WHEN A YUKON FIRST NATION DOES NOT AGREE REGARDING COMPENSATION

The expropriating authority must negotiate compensation for Settlement Land being expropriated with the affected Yukon First Nation.

In the event that there is a disagreement about compensation, the Surface Rights Board is given the authority to determine the amount of compensation owed unless the expropriation is carried out under the National Energy Board Act, R.S.C. 1985, c. N-7.

The Surface Rights Board may order the following as compensation to the affected Yukon First Nation:

- (a) land owned by the expropriating authority within the Traditional Territory of the affected Yukon First Nation;
- (b) money;
- (c) other forms of compensation; or
- (d) any combination of the above.

The Surface Rights Board will consider the following factors when it has to assess value of the expropriated Settlement Land:

- (a) how much the land and any improvements on it are worth;
- (b) any loss of use, loss of opportunity or interference with the use of Settlement Land;
- (c) the effect on Fish and Wildlife Harvesting within Settlement Land;
- (d) the effect on Fish and Wildlife and their habitat within Settlement Land;
- (e) the effect on other Settlement Land;
- (f) the damage to the Settlement Land;
- (g) any nuisance, inconvenience and noise;
- (h) any cultural or special value of the land to the affected Yukon First Nation; and



(i) costs associated with the implementation of any order of the Board.

If land is provided or ordered as compensation under this chapter, it will be transferred to the affected Yukon First Nation in fee simple title and be designated as Category A or B Settlement Land, but the aboriginal title of the land awarded as compensation to the affected Yukon First Nation would remain released.

#### 4. NATIONAL ENERGY BOARD EXPROPRIATION

When an expropriation is carried out under the National Energy Board Act, the Surface Rights Board's power to award compensation will be exercised by a body authorized by the National Energy Board Act. The National Energy Board Act establishes the National Energy Board to hear and determine matters, including

compensation, related to energy projects, such as pipelines or international powerlines.

Any board, committee, panel or other body that is formed pursuant to that Act to determine compensation will include at least one person chosen by the affected Yukon First Nation.

The valuation of the land to be expropriated under the National Energy Board Act will take into account the conditions stated in section 4 above, such as damage, loss, and harm to wildlife.

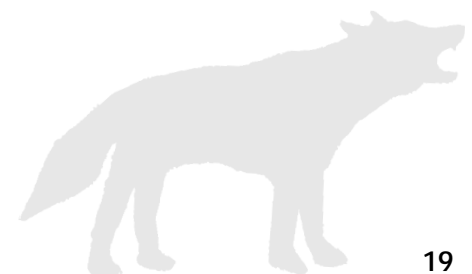
Compensation will be in the forms of money, land or a combination of them.

#### 5. EXPROPRIATION FOR HYDRO-ELECTRIC AND WATER STORAGE PROJECTS

There will be no more than ten sites identified by Government for hydro-electric or water storage projects in the Yukon. These sites will be identified in the affected Yukon First Nation's Final Agreement.

When Government uses Settlement Land, identified in a Yukon First Nation Final Agreement as one of the ten sites for hydro-electric or water storage, it will pay compensation to the affected Yukon First Nation only for improvements on the land. That compensation will not exceed 3% of the cost of the construction of the project.

When Government expropriates Settlement Land, not identified in a Yukon First Nation Final Agreement as one of the ten sites for hydro-electric or water storage, it will pay compensation to the affected Yukon First Nation for both the land and improvements on it. Again, the compensation in respect of the improvements will not exceed 3% of the cost of construction.



## SURFACE RIGHTS BOARD

*The Surface Rights Board was established by the Yukon Surface Rights Board Act, S.C. 1994, c.43. The Surface Rights Board has jurisdiction to resolve disputes over access to privately held land, including Settlement Land. It also has jurisdiction to resolve disputes over the competing rights of surface and sub-surface users of land, including Settlement Land. The Surface Rights Board will also determine compensation for the expropriation of Settlement Land. An order of the Surface Rights Board will have the same legal effect as an order of the Supreme Court of the Yukon.*



### 1. WHO WILL SIT ON THE SURFACE RIGHTS BOARD?

The Minister will appoint no more than 10 people to the Surface Rights Board. One-half of the people appointed to the Board will be nominated by the Council of Yukon First Nations, the other half by Government. The majority of the members must be residents of the Yukon.

In addition to the 10 members appointed to sit on the Board, the Board will recommend to the Minister a chairperson.

Not all members of the Surface Rights Board will hear every dispute. Ordinarily, a panel of at least three members of the Board will hear the matter. When a dispute involves Settlement Land, one of the members of the three person panel must be a person nominated by the Council of Yukon First Nations.

### 2. JURISDICTION OF THE SURFACE RIGHTS BOARD

The Surface Rights Board will hear and determine the following:

- (a) those matters referred to the Board under a Yukon First Nation Final Agreement (for instance, the amount of compensation for an expropriation under "Chapter 7 - Expropriation");
- (b) on Non-Settlement Land, a dispute between holders of surface and sub-surface rights, in accordance with the jurisdiction set out in the Yukon Surface Rights Board Act; and
- (c) such other matters as set out in the Yukon Surface Rights Board Act.

### 3. POWERS AND RESPONSIBILITIES OF THE SURFACE RIGHTS BOARD

The Surface Rights Board can make various orders which will be binding on the parties involved. For instance, the Board may:

- (a) determine terms and conditions of access to or use of land;
- (b) determine compensation for access to or use of the surface, and any resulting damage;
- (c) determine compensation for Settlement Land expropriated;
- (d) decide whether access to Settlement Land is reasonably required and whether access instead can be made across Crown land;
- (e) designate the route of access to be used on Settlement Land that is least harmful to the interests of the affected Yukon First Nation while being reasonably suitable to the party desiring access;
- (f) grant interim orders in relation to such matters, pending the completion of its deliberations;
- (g) award costs; and
- (h) make rules and procedures to guide negotiations before a matter is referred to the Board.

In determining compensation for access to, use of or expropriation of Settlement Land, the Surface Rights Board may consider the following:

- (a) how much the land and any improvements on it are worth;
- (b) any loss of use, loss of opportunity or interference with the use of Settlement Land;
- (c) the effect on Fish and Wildlife Harvesting within Settlement Land;
- (d) the effect on Fish and Wildlife and their habitat within Settlement Land;
- (e) the effect on other Settlement Land;
- (f) the damage to the Settlement Land;
- (g) any nuisance, inconvenience and noise;
- (h) any cultural or special value of the land to the affected First Nation; and
- (i) costs associated with the implementation of any order of the Board.

#### **4. CONFLICTS WITH YUKON DEVELOPMENT ASSESSMENT BOARD DECISIONS**

If an order of the Surface Rights Board conflicts with a decision made by the Yukon Development Assessment Board, the decision of the Yukon Development Assessment Board will prevail. Orders of the Surface Rights Board must be consistent with the decision made by the Yukon Development Assessment Board.

#### **5. OTHER CHAPTERS**

The reader should refer to the following for further information about the Surface Rights Board:

- "Chapter 5 - Tenure and Management of Settlement Land";
- "Chapter 6 - Access"; and
- "Chapter 7 - Expropriation".

The reader may also refer to the Yukon Surface Rights Board Act, S.C. 1994, c.43, for more information.



## SETTLEMENT LAND AMOUNT

*This chapter sets out the total amount of land that is retained as Settlement Land by the Yukon First Nations. This is called the Settlement Land amount. In addition, this chapter sets out the amount of Settlement Land allocated to each Yukon First Nation.*



### 1. SETTLEMENT LAND AMOUNT

The total Settlement Land amount for all Yukon First Nations has been set at 16,060 square miles (41,595.21 square kilometres).

The total amount of Category A Settlement Land cannot be more than 10,000 square miles (25,899.88 square kilometres). Yukon First Nations will own both the surface and the sub-surface resources on Category A Settlement Land.

The remaining 6,060 square miles (15,695.33 square kilometres) will be Category B or Fee Simple Settlement Land. On these lands, Yukon First Nations will own the surface but not the sub-surface resources.

### 2. ALLOCATION OF SETTLEMENT LAND AMOUNT

The amount of Settlement Land allocated to the Yukon First Nation is set out in "Schedule A - Allocation of

Settlement Land Amount" in this chapter. For instance, the Carcross/Tagish First Nation has been allocated 400 square miles of Category A Settlement Land and 200 square miles of Category B or Fee Simple Settlement Land, for a total of 600 square miles.

Each Yukon First Nation Final Agreement identifies and describes land selected as Settlement Land by that Yukon First Nation in an Appendix A to that Final Agreement, entitled "Settlement Land Descriptions".

### 3. LAND SELECTION RESTRICTIONS

Privately owned land, land subject to an agreement for sale, or land subject to a lease containing an option to purchase is not available for selection as Settlement Land, unless the Person holding the interest in the land agrees.

In addition, a Yukon First Nation cannot select the following lands unless it is otherwise agreed in a Yukon First Nation Final Agreement:

- (a) land under a lease;
- (b) land occupied or transferred to any agency of Government, including a municipal government;
- (c) land reserved by the Department of Indian Affairs and Northern Development in favour of a Yukon First Nation or Yukon Indian Person; (d) highways and highway corridors; and
- (e) any land within 30 metres of the Yukon borders with B.C., N.W.T. and Alaska.

### 4. BALANCED SELECTION

This chapter provides for a balanced selection of land by the Yukon First Nation. This means that the Yukon First Nation must select land which has various resource values. The land selected must be

representative of the nature of the land, the geography and the resource potential within the Traditional Territory of each Yukon First Nation.

Land selections must also allow for reasonable expansion by Yukon First Nations and other Yukon communities.

In addition, land selections on both sides of a major highway or waterway will be avoided unless there are special circumstances.

Settlement Land can only be selected by a Yukon First Nation within its own Traditional Territory unless otherwise agreed on a case by case basis.

## 5. LAND SELECTION OPPORTUNITIES

A Yukon First Nation is able to select various types of lands within its Traditional Territory. In order to make a balanced selection of lands, a Yukon First Nation may select lands to address needs for the following:

- (a) hunting, fishing and trapping areas;
- (b) habitat and protected areas;
- (c) gathering areas;
- (d) historical, archaeological or spiritual areas;
- (e) areas of residency or use;
- (f) access to waterbodies;
- (g) farming, forestry and other areas of economic development potential; and
- (h) wilderness areas.

## 6. CROWN AND SETTLEMENT LAND EXCHANGE

After a Yukon First Nation Final Agreement is in effect, the Yukon First Nation and Government may agree to exchange Crown Land for Settlement Land or vice versa. However, the aboriginal title of the Crown Land would remain released and would not be regained through the First Nation acquiring the Crown land as Settlement Land.



## SPECIAL MANAGEMENT AREAS

*This chapter provides ways to recognize and maintain important features of the Yukon's natural and cultural environment for the benefit of Yukon residents while respecting the rights of Yukon First Nations.*

### 1. SPECIAL MANAGEMENT AREAS

A "Special Management Area" refers to an area identified and established within a Traditional Territory according to this chapter and may include:

- (a) national wildlife areas;
- (b) national or territorial parks and reserves, and national historic sites;
- (c) special wildlife or fish management areas;
- (d) migratory bird sanctuaries or a game sanctuary;
- (e) heritage sites designated pursuant to legislation;
- (f) watershed protection areas; and
- (g) other areas agreed upon by First Nations and Government.

### 2. ESTABLISHMENT OF SPECIAL MANAGEMENT AREAS

Special Management Areas may be established in three ways:

- (a) an existing site may be identified in a Yukon First Nation Final Agreement as a Special Management Area;
- (b) new areas may be established in a Yukon First Nation Final Agreement; and
- (c) new areas may be established as Special Management Areas in accordance with this chapter and laws of general application after the effective date of the Yukon First Nation Final Agreement.

A Special Management Area may not include Settlement Land without the consent of the affected Yukon First Nation.

When Government proposes a Special Management Area after the effective date of the Yukon First Nation Final Agreement, Government will refer the proposal to the affected Renewable Resources Council for its review. If the proposal is to:

- (a) establish a historic territorial park;
- (b) establish a national historic site administered by the Canadian Parks Service; or
- (c) designate a Heritage Site as a Designated Heritage Site,

Government will refer the proposal to the Heritage Resources Board for its review.

### 3. RIGHTS AND INTERESTS OF YUKON FIRST NATIONS

If a Special Management Area is proposed that may adversely affect a Yukon First Nation, Government and the affected First Nation must negotiate an agreement that will:

- (a) establish any rights and benefits of the affected Yukon First Nation in the establishment, use, planning, management and administration of the Special Management Area; and
- (b) reduce any negative effects on the affected Yukon First Nation.

The agreements must address the rights of Yukon Indian People for Harvesting Fish and Wildlife within the Special Management Area. In addition, among other issues, the agreements may address the following:





(a) rights Yukon Indian People have for Harvesting Fish and Wildlife within the Special Management Area;

(b) economic and employment opportunities and benefits for the affected Yukon First Nation; and

(c) whether, and on what terms, Settlement Land may be included in the Special Management Area.

If the affected Yukon First Nation and Government cannot reach agreement, they may refer the issue to mediation under "Chapter 26 - Dispute Resolution". However, if mediation does not result in an agreement between the parties, Government may establish the Special Management Area.

Nevertheless, in such a case, the access by a Yukon Indian Person to a Special Management Area for Harvesting Fish and Wildlife may only be limited in accordance with "Chapter 16 - Fish and Wildlife". Therefore, the Harvesting rights of a Yukon Indian Person

may only be limited because of Conservation, public health, or public safety.

#### **4. MANAGEMENT OF SPECIAL MANAGEMENT AREAS ESTABLISHED IN YUKON FIRST NATION FINAL AGREEMENTS**

The Yukon First Nation Final Agreements completed to date provide for management plans to be developed for the Special Management Areas established under those Agreements. Each of those management plans will be developed jointly by the affected Yukon First Nation and Government. The Special Management Areas will be managed in accordance with the approved management plans.

#### **5. MANAGEMENT OF FUTURE SPECIAL MANAGEMENT AREAS**

Unless Government otherwise agrees, it will be the management authority for future Special Management Areas on Non-Settlement Land. Government will prepare a management plan for each Special Management Area that is established after a Yukon First Nation Final Agreement takes effect.

Except as provided in this chapter or in a Yukon First Nation Final Agreement, all national parks will be planned, established and managed in accordance with the National Parks Act, R.S.C. 1985, c. N-14.

#### **6. OTHER CHAPTERS**

Special Management Areas must be consistent with land use plans approved in accordance with "Chapter 11 - Land Use Planning".

Special Management Areas are also subject to the provisions of "Chapter 12 - Development Assessment".



## LAND USE PLANNING

*This chapter has as an objective the development of a common land use planning process outside community boundaries. Regional land use plans will make recommendations to the affected Yukon First Nations and Government on how to use land, water and resources.*

### 1. WHAT IS LAND USE PLANNING?

Land use planning refers to the development of a plan to decide how land in certain areas will be used. Land use planning is important in the Yukon in order to avoid land use conflicts between Settlement Land and Non-Settlement Land.

The regional land use planning process will apply to both Settlement Land and Non-Settlement Land throughout the Yukon. However, the land use planning process will not apply to :

- (a) national park reserves or national historic sites created prior to Settlement Legislation;
- (b) national parks, national historic parks or national historic sites, once established;
- (c) subdivision planning or local area planning outside of a Community Boundary; or
- (d) land within a Community Boundary.

This means that there will be a single land use planning process outside Community Boundaries, subdivisions, local planning areas and national parks. A Community Boundary means the boundary of municipality or hamlet designated under the Municipal Act, R.S.Y. 1986, c. 119, or for a community where there is no such designation, the boundary as set out in the applicable Yukon First Nation Final Agreement.

### 2. LAND USE PLANNING COUNCIL

The Yukon Land Use Planning Council is be made up of three persons, one nominated by the Council of Yukon First Nations and two nominated by Government.

The Yukon Land Use Planning Council will make recommendations to Government and each affected Yukon First Nation on the following matters:

- (a) land use planning, including policies, goals and priorities;
- (b) identification of planning regions and priorities for regional land use plans;
- (c) the general terms of reference for each Regional Land Use Planning Commission;
- (d) the boundary for each planning region; and
- (e) such other matters as Government and the affected Yukon First Nation agree.

### 3. REGIONAL LAND USE PLANNING COMMISSIONS

One or more Yukon First Nations and Government may agree to establish a Regional Land Use Planning Commission to develop a regional land use plan.

A Regional Land Use Planning Commission will be comprised of the following:

- (a) one third representation by nominees of Yukon First Nations;
- (b) one third representation by nominees of Government; and
- (c) one third representation based on the proportion of Yukon Indian People in relation to the total population in the planning region.

The majority of nominees of Yukon First Nations and Government will be Yukon residents with a long term familiarity with the region.



Each Regional Land Use Planning Commission will prepare and recommend to the affected Yukon First Nation and Government, a regional land use plan.

#### 4. DEVELOPMENT OF A REGIONAL LAND USE PLAN

In developing a regional land use plan, a Regional Land Use Planning Commission will:

- (a) make sure that there is public participation;
- (b) recommend measures to minimize land use conflicts throughout the planning region;
- (c) use the knowledge and traditional experience of Yukon Indian People and other residents in the planning region;
- (d) consider oral forms of communication and traditional land management practices of Yukon Indian People;
- (e) promote the well-being of Yukon Indian People, other residents of the planning region, the communities and the Yukon as a whole;
- (f) consider that management of land, water and resources, including Fish and Wildlife and their habitats, is to be integrated; and
- (g) promote Sustainable Development.

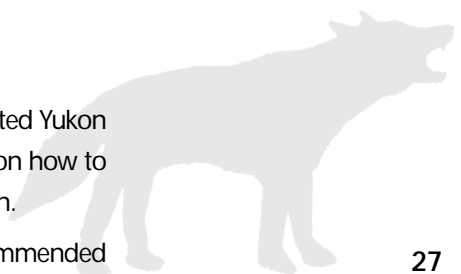
In addition, a Regional Land Use Planning Commission may:

- (a) provide terms of reference and detailed instructions needed for identifying and researching regional land use planning issues and for preparing the draft and final land use plan documents;
- (b) hire technical experts; and
- (c) monitor the implementation of the approved regional land use plan.

#### 5. APPROVAL PROCESS FOR LAND USE PLANS

A Regional Land Use Planning Commission will forward its regional land use plan to the affected Yukon First Nation(s) and Government. The regional land use plans will include recommendations on how to use the land, water and other renewable and non-renewable resources in the planning region.

Each affected Yukon First Nation will decide whether to approve, reject or change the recommended



regional land use plan as it applies to its Settlement Land. Likewise, Government will decide these matters in relation to Non-Settlement Land. In the process of making these decisions, the affected Yukon First Nation(s) and Government will Consult with each other.

## 6. SUB-REGIONAL AND DISTRICT LAND USE PLANS

A Yukon First Nation and Government may agree to develop a sub-regional or district land use plan jointly. In addition, a Yukon First Nation may develop a sub-regional or district land use plan for its Settlement Land.

If there is an approved regional land use plan, any sub-regional and district land use plan must conform to it. If it does not conform, the approved regional land use plan will prevail over the sub-regional or district land use plan.

## 7. FUNDING

After Consultation with the affected Yukon First Nations, each Regional Land Use Planning Commission will prepare a budget and submit it to the Yukon Land Use Planning Council. The Yukon Land Use Planning Council will then review all budgets submitted by Regional Land Use Planning Commissions and, after Consultation with the Commissions, will propose a budget to Government.

Government will review the submitted budget and pay those expenses which it approves.

If Government initiates the development of a sub-regional or district land use plan, Government will also pay those expenses which it approves.

## DEVELOPMENT ASSESSMENT

### 1. OBJECTIVES OF DAP

This chapter provides that DAP will:

- (a) recognize and enhance, to the extent practicable, the livelihood and relationship of Yukon Indian People to the wilderness environment;
- (b) guarantee participation and use of the knowledge and experience of Yukon Indian People;
- (c) protect and promote the well-being of Yukon Indian People and their communities, and of other Yukon residents;
- (d) protect and maintain the environment to ensure that it can be used by future generations;
- (e) protect and maintain heritage areas and resources;
- (f) provide for thorough reviews of the environmental and socio-economic effects of Projects;
- (g) avoid duplication with other review processes and provide certainty to all affected parties with respect to the DAP requirements; and
- (h) consider the impact of a Project on the environment, communities and people, including any measures to reduce the impact.

### 2. APPLICATION OF DAP

DAP will apply to both Settlement Land and Non-Settlement Land.

It will apply to proposed Projects such as mining, logging, hydro-electricity, and road construction to determine whether or not a proposed activity or Project will cause damage to the land, air, water, people, or wildlife.

It will also apply to: - significant changes to existing Projects in the Yukon; and - Projects located outside the Yukon which may significantly affect the Yukon.

### 3. TYPES OF ASSESSMENTS

Assessments will consider how to reduce the significant negative impacts of a Project on the environment, communities and people. The accumulated impacts of other Projects may also be considered.

The Umbrella Final Agreement provides for three ways in which the assessment bodies may review a Project:

- (a) screening;
- (b) review by an assessment body; and
- (c) public review.

The DAP legislation is expected to set out the differences between these types of review, in detail.

### 4. ASSESSMENT BODIES

DAP will be comprised of three assessment bodies:

- (a) Designated Office;

*This chapter sets out the basic principles and assessment bodies involved in a new development assessment process (known as "DAP") for the Yukon. The assessment bodies will review proposed projects in the Yukon and make recommendations to Yukon First Nations and Government. The Council of Yukon First Nations and Government must develop guidelines for legislation to establish DAP. That legislation must be introduced to Parliament no later than February 14, 1997, and must reflect the principles of this chapter.*



- (b) the Yukon Development Assessment Board ("YDAB"); and
- (c) YDAB panel or joint body.

## 5. FUNCTIONS OF ASSESSMENT BODIES

### (a) Designated Office

This could refer to a community or regional office of Government or a Yukon First Nation, or another office established in the DAP legislation.

A Designated Office will be responsible for the following functions:

- to screen Projects;
- to establish the information that the person responsible for the Project must provide;
- to ensure that Yukon First Nations and interested parties are able to participate;
- to make written recommendations to the affected Yukon First Nation or Government whether a Project should be able to proceed; and
- to maintain a public registry.

In addition, a Designated Office may screen and review specific Projects or refer a Project to YDAB. It may also recommend to an affected Yukon First Nation or Government that the effects of a Project be monitored.

### (b) Yukon Development Assessment Board (YDAB)

The YDAB will be comprised of an Executive Committee and a number of members.

The Executive Committee will consist of three persons, one nominee of the Council of Yukon First Nations, one nominee of Government, and a Chairperson.

Half of the remaining members will be nominated by the Council of Yukon First Nations. The total number of members will be specified in the DAP legislation.

The YDAB has the following functions:

- to ensure that screenings and reviews of Projects are carried out;
- to ensure that written recommendations concerning a Project's significant negative effects are made to a Decision Body;
- to review a temporary shut down, abandonment, decommissioning or significant change to a Project, if requested by Government, or with the consent of Government, if requested by a Yukon First Nation; and
- to inform the Designated Offices and other review bodies and agencies of its activities.

In addition, the YDAB may also:

- make written recommendations to a Decision Body that the effects of a Project be monitored;
- review a Plan which may have significant negative effects on the environment, communities and people of the Yukon, if requested by Government, or with the consent of Government, if requested by a Yukon First Nation;
- hold joint reviews with other assessment bodies;
- undertake studies of the accumulated effects of Projects on a specific area or over time; and

- review a proposed Project outside the Yukon if there may be significant negative impact on the environment, communities and people of the Yukon.

In addition to the functions of the YDAB, the Executive Committee has a number of functions. In particular, it must:

- determine which Projects are referred to a YDAB panel;
- establish YDAB panels, including their terms of reference, and appoint a chairperson for each panel;
- determine whether the effects of a Project are primarily on Settlement or Non-Settlement Land;
- make written recommendations to a Decision Body as to whether or not a Project should be allowed to proceed (when YDAB, not a panel, is reviewing the Project); and
- ensure that the person responsible for a Project has Consulted with the affected communities.

### **(c) YDAB Panel**

When the Executive Committee decides that a review will be done by a panel, it must determine where the significant effects of the Project will be, as:

- two-thirds of the panel members will be YDAB members nominated by the Council of Yukon First Nations and one-third of the panel members will be nominated by Government, where the effects of the Project are primarily on Settlement Land;
- two-thirds of the panel members will be YDAB members nominated by Government and one-third of the panel members will be nominated by the Council of Yukon First Nations, where the effects of the Project are primarily on Non-Settlement Land; and
- there will be equal representation where the effects of the Project are on both Settlement and Non-Settlement Land.

A YDAB panel established by the Executive Committee to review a Project will:

- conduct a public review;
- determine the information required from the person responsible for the Project and the manner of the review; and
- make written recommendations to a Decision Body about whether a Project should be able to proceed.

The written recommendations of a YDAB panel will be considered as if prepared by the Board itself.

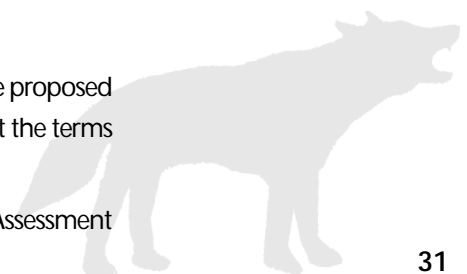
In addition, a YDAB panel may make written recommendations to a Decision Body that the effects of a Project be monitored.

## **6. PROJECT DECISIONS**

### **(a) Decision Bodies**

A Decision Body may be a Yukon First Nation or Government or both depending on where the proposed Project is located. A Decision Body will be able to issue a Decision Document which will set out the terms and conditions for a Project to proceed.

If the Decision Body rejects or changes recommendations made by the Yukon Development Assessment



Board, it must make written reasons for doing so available to the public.

### **(b) Determination of the Decision Body**

When a Project is located wholly or partially on Settlement Land, a Decision Document is required from the following Decision Body:

- a Yukon First Nation; or
- Government, when the Project involves mining on Category B or Fee Simple Settlement Land, or when the Project requires an approval or other authorization from Government.

When a Project is located wholly or partially on Non-Settlement Land, a Decision Document is required from Government.

The Yukon First Nation and Government will Consult with each other before issuing a Decision Document for a Project where Decision Documents for a Project are required from both Decision Bodies.

### **(c) Independent Regulatory Agencies**

The chapter sets out specific provisions where the Project requires a licence, permit, or other authorization from the National Energy Board or other independent regulatory agency.

## **7. MONITORING AND ENFORCEMENT**

The DAP legislation may provide for the enforcement of Decision Documents.

The YDAB may recommend to a Decision Body that a public hearing be held if YDAB believes that the terms and conditions of a Decision Document have been violated.





## 8. TRANSBOUNDARY IMPACTS

In Consultation with Yukon First Nations, Government must try to negotiate with neighbouring jurisdictions arrangements that provide for development assessments similar to DAP for activities located outside the Yukon which may have significant effects on the environment, communities, and people in the Yukon.

## 9. LAND USE PLANNING

Where the YDAB or a Designated Office receives a Project application in a region where a regional land use plan is in effect, the YDAB or Designated Body must ask the affected Regional Land Use Planning Commission to determine whether or not the Project is in conformity with the approved regional land use plan.

When a YDAB panel is reviewing a Project and a Regional Land Use Planning Commission has determined that the Project does not conform with the approved regional land use plan, the panel must:

- (1) consider the regional land use plan in its review;
- (2) invite the affected Regional Land Use Planning Commission to make representations to the panel;  
and
- (3) make recommendations to the Decision Body that conform with the regional land use plan as much as possible.

The reader should refer to "Chapter 11 - Land Use Planning" for further information about the land use planning process.

## 10. FUNDING

After Consultation with the affected Yukon First Nation, each Designated Office will prepare a budget and submit it to YDAB or Government.

If the budgets of the Designated Offices are submitted to the YDAB, it will prepare an annual budget for its responsibilities and for those of the Designated Offices, and will submit the budget to Government. The approved expenses of YDAB and the Designated Offices will be paid by Government.

## 11. REVIEW OF DAP LEGISLATION

Five years after the enactment of the DAP legislation, Government and Yukon First Nations will undertake a full review of DAP.

## 12. INTERIM MEASURES

Prior to the establishment of the DAP legislation, the Government and Yukon First Nations will make best efforts to develop interim measures for assessing Projects which will be consistent with the spirit of this chapter and within the existing framework of law.

The following also directly relate to DAP:

- "Chapter 5 - Tenure and Management of Settlement Land";
- "Chapter 6 - Access"; and
- "Chapter 8 - Surface Rights Board".



*This chapter establishes how Yukon Indian People will participate in the management of Heritage Resources in the Yukon.*

### 1. WHAT IS HERITAGE?

Heritage is an important part of culture. Heritage is made up of the things that have been passed down from our cultural past. For instance, language, stone tools, ceremonial costumes, and burial sites form part of Yukon First Nations' cultural heritage. Legends, spiritual beliefs and ceremonies are also part of the cultural heritage of Yukon First Nations.

Yukon First Nations believe it is necessary to maintain their cultural heritage if they are to preserve their way of life and identity as Yukon First Nations.

### 2. WHAT DOES THIS CHAPTER AIM TO DO?

The objectives of this chapter include the following:

- (a) to promote public awareness and appreciation of the culture and heritage of the Yukon, in particular of Yukon Indian People;
- (b) to promote the recording and preservation of traditional languages, beliefs and histories, legends and cultural knowledge of Yukon Indian People;
- (c) to ensure Yukon First Nations are involved in the management of Heritage Resources;
- (d) to manage Heritage Resources owned by Yukon First Nations or Government, or in their custody, according to the values of Yukon Indian People;
- (e) to promote public access with respect to Heritage Resources;
- (f) to reduce the impact of development on Heritage Resources through integrated resource management including land use planning and development assessment processes;
- (g) to facilitate research into Heritage Resources; and
- (h) to recognize the importance of oral history as a valid research tool.

### 3. OWNERSHIP AND MANAGEMENT

Each Yukon First Nation shall own and manage Moveable and non-Moveable Heritage Resources and Non-Public Records found on its Settlement Land and on the beds of waterbodies owned by that Yukon First Nation. "Moveable Heritage Resources" refers to moveable structures and objects, for example stone tools, Gold Rush artefacts, cabins, etc. "Non-Moveable Heritage Resources" refers to structures or objects that cannot be moved, for example petroglyphs, pictographs, caribou fences, etc.

Any Moveable and Documentary Heritage Resources found within Traditional Territories of Yukon First Nations, which directly relate to the culture and history of Yukon Indian People and which are not privately owned, will be owned and managed by Yukon First Nations. "Documentary Heritage Resources" refers to records of heritage significance, for example correspondence, books, maps, photographs, sound recordings, etc.

However, Moveable and Documentary Heritage Resources which do not relate to the culture and history of Yukon Indian People and which are found on Non-Settlement Land will be owned by Government.

The Yukon Heritage Resources Board will determine whether a Heritage Resource is directly related to the history and culture of Yukon Indian People. If the Board is not able to reach an agreement, then the dispute resolution process will be used.

#### 4. YUKON HERITAGE RESOURCES BOARD

A Yukon Heritage Resources Board will be made up of ten members. Half of the members will be nominated by the Council of Yukon First Nations.

The Yukon Heritage Resources Board will operate in the public interest.

#### 5. WHAT WILL THE HERITAGE RESOURCES BOARD DO?

The Heritage Resources Board will make recommendations to the Minister and Yukon First Nations with respect to the management of Moveable Heritage Resources and Heritage Sites. In particular, the Board may make recommendations on the following matters:

- (a) the management of non-documentary Heritage Resources;
- (b) ways by which the traditional knowledge of Yukon Indian Elders may be used in the management of certain Heritage Resources;
- (c) ways by which the traditional languages of Yukon First Nations can be recorded and preserved;
- (d) the review, approval, amendment or repeal of laws concerning certain Heritage Resources in the Yukon;
- (e) the development of a strategic plan for heritage preservation and management of certain Heritage Resources and Heritage Sites in the Yukon;
- (f) the development of a manual to help with the management and interpretation of these Heritage Resources;
- (g) the development of a list of Yukon Indian Heritage Resources;
- (h) ways to foster public awareness and appreciation of Heritage Resources;
- (i) designation of Heritage Sites under the law, as Designated Heritage Sites; and
- (j) any other matter related to Heritage Resources of the Yukon.

#### 6. GENERAL POINTS

The Umbrella Final Agreement acknowledges that the Heritage Resources of Yukon Indian People are underdeveloped compared to other Heritage Resources. Therefore, the Heritage Resources of Yukon Indian People will be given priority in the allocation of Government program resources for Heritage Resource development and management, until a fair distribution between Yukon Indian and other Heritage Resources has been achieved.

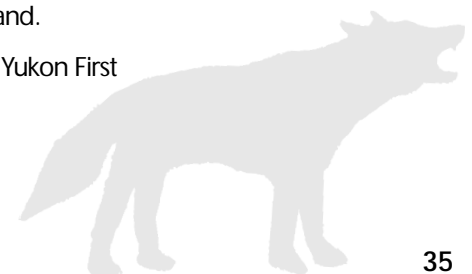
Government will assist Yukon First Nations to "repatriate" or bring back Yukon First Nations' Heritage Resources that have been removed from their possession.

Government will Consult with Yukon First Nations when developing heritage legislation and related policies.

Any rights of access to Settlement Land granted to the public, third parties or Government does not affect Yukon First Nation ownership or management of Heritage Resources on Settlement Land.

In addition to the provisions of this chapter in the Umbrella Final Agreement, Chapter 13 of Yukon First Nation Final Agreements may include provisions for the following matters:

- territorial heritage parks or sites;
- heritage rivers;



- heritage routes;
- heritage buildings;
- special management areas for heritage resources; and
- other sites or areas of unique culture or historical significance.

## 7. RESEARCH

Research reports produced by Government regarding Heritage Resources will be made available to the affected Yukon First Nation.

## 8. HERITAGE SITES

Ownership and management of Heritage Sites in a Yukon First Nation's Traditional Territory will be addressed in that Yukon First Nation Final Agreement.

The land use activities of other resource users will be considered by Government and the affected Yukon First Nation in managing research activities at Heritage Sites.

## 9. YUKON FIRST NATION BURIAL SITES

Government and Yukon First Nations will establish ways to manage and protect Yukon First Nation Burial Sites so that these sites are treated with respect and dignity.

Access to Yukon First Nation Burial Sites on Settlement Land will be restricted to preserve the dignity of those sites.

When a Yukon First Nation Burial Site is on Non-Settlement Land, the Government and the affected Yukon First Nation will have to agree on any management plans for that site.



## 10. DOCUMENTARY HERITAGE RESOURCES

Documentary Heritage Resources refers to such things like books, correspondence, pictures, maps and Government records, which have special value. Yukon First Nations will own all Documentary Heritage Resources found on Settlement Land other than Public Records or privately owned records.

Government will own Documentary Heritage Resources relating to Yukon Indian People which are found on Non-Settlement Land, but it must Consult with the affected Yukon First Nation on their management.

Public Records will remain under the control and management of Government wherever they are found. Public Records refer to Government records.

## 11. PLACE NAMES

The Umbrella Final Agreement established the Yukon Geographical Place Names Board, comprised of six members. The Council of Yukon First Nations nominates three of those members; the others are nominated by Government.

The Board will be involved in the naming or renaming of places or features in the Yukon.

A Yukon First Nation may name or rename places or geographical features on its Settlement Land, and these names will be deemed to be approved by the Yukon Geographical Place Names Board.

## 12. ECONOMIC OPPORTUNITIES

Economic opportunities, including training, employment and contract opportunities for Yukon Indian People at Heritage Sites and other facilities related to Heritage Resources, will be considered in Yukon First Nation Final Agreements.



## WATER MANAGEMENT

*This chapter outlines the rights of Yukon First Nations and Yukon Indian People to use and protect the use of Water. It provides new rules for the Yukon Territory Water Board in deciding on water licences which might affect the Water rights of Yukon First Nations and Yukon Indian People. The objective of this chapter is to keep the Water of the Yukon in its natural condition in order to ensure that it can be used by future generations. In general, Water rights will be decided by the laws which generally apply to such matters for everybody in the Yukon (the "laws of general application"), subject to the special rights for Yukon First Nations and Yukon Indian People set out in this chapter.*

### 1. YUKON TERRITORY WATER BOARD

Water use issues will be decided by the Yukon Territory Water Board. The Council of Yukon First Nations will nominate one-third of the members of the Board.

The Minister will appoint a chairperson and a vice-chairperson from among the Board's members, in Consultation with the Board.

The expenses of the Water Board will be paid for by the Government.

### 2. WATER RIGHTS OF YUKON FIRST NATIONS

Yukon Indian People will have the right to use Water for a Traditional Use in the Yukon, subject to the laws which generally apply in respect of Water. A Traditional Use is the use of Water for trapping, non-commercial harvesting, traditional heritage, cultural and spiritual purposes. Yukon Indian People will not need a Water licence for Traditional Use purposes.

A Yukon First Nation will have the right to use Water which is on or flowing through its Settlement Land. The Yukon Territory Water Board cannot refuse a Water licence to a Yukon First Nation or set out terms and conditions on the licence unless the quality, quantity or rates of flow of the Water will be substantially altered or the use will result in a deposit of waste prohibited by the Yukon Waters Act, R.S.C. 1992, c. N-40.

The Water rights of a Yukon Indian Person and a Yukon First Nation can be limited from time to time for:

- (a) emergency purposes;
- (b) public navigation and passage on Water;
- (c) any hunting, fishing or trapping by the public; and
- (d) any right of access set out in a Yukon First Nation Final Agreement.

### 3. GOVERNMENT'S MANAGEMENT POWERS

Although Yukon First Nations own certain Beds of waterbodies on Settlement Land, Government has the right to protect, manage and use Water and Beds of waterbodies throughout the Yukon for the following matters:

- (a) management, protection and research related to Fish and Wildlife and their habitats;
- (b) management and protection of navigation and transportation routes;
- (c) protection of Water supplies from pollution;
- (d) emergency purposes;
- (e) research and testing Water quality and quantity; and
- (f) other Government public purposes.

### 4. WATER RIGHTS OF OTHER PARTIES ON SETTLEMENT LAND

Other people with a right or interest in Settlement Land who need to use Water when exercising their right or interest will be able to do so. They will have to follow the laws of general application, however. The Yukon Territory Water Board can issue Water licences to these people provided that the term of such

a licence is not beyond the term of their right or interest in Settlement Land.

Those with existing Water licences on Settlement Land will continue to have the same rights as they did before the lands became Settlement Land. However, after a Yukon First Nations Final Agreement has been in effect for three years, a Person with an existing Water licence may be required to compensate the Yukon First Nation for the exercise of the licence.

Where an existing Water licence is for more than 5 years, the Person has a right to apply to renew or replace the licence. The Yukon Territory Water Board will notify the affected Yukon First Nation which will have an opportunity to be heard before the licence is renewed or replaced. If the Yukon First Nation does not agree, the Surface Rights Board can grant a right of access to use Settlement Land to a Person with an interest in Settlement Land so that the Person can exercise his or her right to use Water. However, the Person requesting access must show that the access is necessary and that Crown Land cannot be used instead.

## 5. PROTECTION OF QUANTITY, QUALITY AND RATE OF FLOW OF WATER

### (a) Yukon First Nations' right to no change in the water

In general, subject to the rights of authorized Water users, a Yukon First Nation has the basic right to have Water which is on or flowing through or next to its Settlement Land remain unchanged. In other words, this is a right to have no change in the quality, quantity and rate of flow of that Water.

There is also a responsibility on Yukon First Nations to not change the quality, quantity or rate of flow of water which is on, flowing through or next to Settlement Land.

### (b) Effect of Water licences on Yukon First Nations' right

The Yukon Territory Water Board may grant a Water licence which interferes with the Yukon First Nation's right to no change in the Water, described in (a) above, if it is satisfied that there are no other reasonable alternatives and the affected Yukon First Nation is given notice. When deciding whether to issue a Water licence that will interfere with that right, the Board will consider:

- the effect of the Water Use on Fish, Wildlife and their habitats;
- the effect of the Water Use on the Yukon First Nation or Yukon Indian Person; and
- ways of reducing the interference.

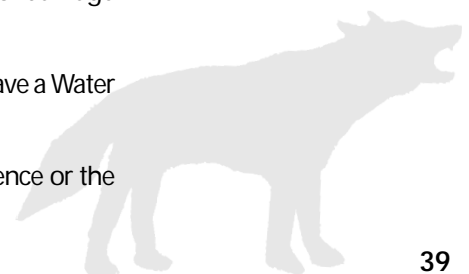
The decisions of the Yukon Territory Water Board must not conflict with a Decision Document issued pursuant to "Chapter 12 - Development Assessment".

### (c) Compensation

If the Yukon Territory Water Board grants a Water licence that interferes with the Yukon First Nation's right to no change in the Water, described in (a) above, compensation will be ordered for the loss or damage to the Yukon First Nation.

A Yukon First Nation can apply to the Board for compensation when a Person who does not have a Water licence uses Water in a way that interferes with that right.

A Yukon First Nation also has legal remedies when a Person violates the applicable Water licence or the laws of general application.



## 6. PROTECTION OF YUKON FIRST NATION TRADITIONAL USES ON NON-SETTLEMENT LAND

Before a Water licence is granted that will affect the quality, quantity or rate of flow of Water so as to adversely affect a Yukon Indian Person's Traditional Use within the affected Yukon First Nation's Traditional Territory, the Board will give notice to the affected Yukon First Nation.

If the Yukon First Nation requests, the Board will consider whether there is an alternative and whether reasonable measures can be taken to avoid the effect on the Traditional Use.

If the terms of the Water licence are not kept and a Yukon Indian Person suffers damage or loss relating to the Traditional Use within that Yukon Indian Person's Traditional Territory, the Person with the licence will be liable to pay compensation.

## 7. WATER USE DISPUTES AND COMPENSATION

The Yukon Territory Water Board will settle basic disputes about the issuance of Water licences. It will also decide upon any compensation due to a Yukon First Nation or a Yukon Indian Person for losses or damages in relation to their Water rights.

Yukon First Nations or Yukon Indian People have a right to be compensated for provable losses or damages. The Yukon Territory Water Board will determine the amount and the terms of compensation payable to a Yukon First Nation. In determining the compensation payable in respect of an activity which interferes with the Yukon First Nation's right to no change in the Water, described in 5(a) above, the Board will include the loss or damage suffered by a Yukon Indian Person who is enrolled under the Yukon First Nation's Final Agreement.

In addition, the Yukon Territory Water Board has the authority to determine the amount and the terms of compensation payable to a Yukon Indian Person for loss or damage in respect of a Traditional Use.

Decisions of the Board will have the same authority as if they were issued by the highest court in the Yukon.

## 8. OTHER LEGISLATION

Laws that directly relate to this chapter are:

- (a) The Yukon Waters Act, R.S.C. 1992, c. 40, respecting the management of water resources in the Yukon;
- (b) The Dominion Water Power Act, R.S.C. 1985, c. W-4, respecting the control and management of water power on public land or other water power that is the responsibility of the Government of Canada. Water power refers to energy that is or could be generated or produced by water; and
- (c) The National Energy Board Act, R.S.C. 1985, c. N-7, establishing the National Energy Board. The National Energy Board hears and determines matters related to energy projects, such as pipelines and international powerlines.



## BOUNDARIES AND MEASUREMENTS

### 1. WHAT ARE BOUNDARIES AND MEASUREMENTS?

As referred to in the title of this chapter, boundaries are the dividing lines between Settlement Land and Non-Settlement Land. Measurement refers to the survey system that is used to mark out Settlement and Non-Settlement Land on the ground and to show them on Yukon maps.

### 2. ADMINISTRATION OF SURVEYS OF SETTLEMENT LAND

This chapter provides that the boundaries of Settlement Land will be surveyed in order to correctly establish their location.

The Government of Canada will pay the full costs of the initial surveys of Settlement Land. However, the costs of any subsequent surveys of Settlement Land will be paid for by the affected Yukon First Nation.

The Surveyor General has the responsibility for and control over all legal surveys arising out of the Yukon First Nation Final Agreements.

### 3. SETTLEMENT LAND COMMITTEES

Settlement Land Committees will be set up by each Yukon First Nation within one month after the Yukon First Nation has signed its Final Agreement.

No more than five people will be appointed to a Yukon First Nation's Settlement Land Committee:

- (a) a chairperson representing the Surveyor General of Canada;
- (b) no more than two representatives appointed by the Yukon First Nation; and
- (c) no more than two representatives appointed by Government.

Each Settlement Land Committee will be responsible for:

- (a) identifying and selecting the Site Specific Settlement Land from within Proposed Site Specific Settlement Land;
- (b) determining which Settlement Land will be surveyed first; and
- (c) deciding what, if any, Special Management Areas boundaries will be surveyed.

*This chapter sets out how Settlement Land will be measured and provides for the creation of Settlement Land Committees to advise Government and Yukon First Nations on the priorities for surveying Settlement Land.*



Although the surveying of Settlement Land will take several years, to the extent practicable Yukon Indian People will be able to use Settlement Land for their use and enjoyment even if a survey and plan have not been completed.

Where a Settlement Land Committee does not agree on how Site Specific Settlement Land should be identified or selected or which lands should be surveyed first, the Government, the affected Yukon First Nation or the Committee may refer the matter to the dispute resolution process.

#### 4. EMPLOYMENT AND ECONOMIC OPPORTUNITIES

The Umbrella Final Agreement provides that where employment in surveying of Settlement Land will occur because of a Yukon First Nation Final Agreement, the parties will negotiate in that Final Agreement how Yukon Indian People with appropriate qualifications and experience will participate in such employment.

Opportunities for business and employment will come out of this chapter. This chapter makes sure that Yukon First Nation businesses and First Nation members will be given the first opportunities to provide technical and support services for surveying contracts, provided that they have the necessary qualifications and experience.

The reader should refer to the provisions of this chapter for a more detailed understanding of the technical matters of the surveying process, and to Yukon First Nation Final Agreements regarding the details of economic opportunities for Yukon Indian People, associated with this chapter.

## FISH AND WILDLIFE

### 2. FIRST NATION HARVESTING RIGHTS

Yukon Indian People have the right to harvest Fish and Wildlife for their food needs, in any numbers, at any time during all seasons of the year, within their Traditional Territory, on Settlement Land and on vacant Crown Land. The harvesting rights of Yukon Indian People can be restricted only for Conservation, public health or public safety reasons, and only by the processes set out in Yukon First Nation Final Agreements.

A Yukon Indian Person who wishes to hunt or fish in another Yukon First Nation's Traditional Territory will have to ask for the permission of that other Yukon First Nation, or purchase a hunting or fishing licence and harvest in accordance with the Wildlife Act, R.S.Y. 1986, c. 178.

Each Yukon First Nation Final Agreement may set out "Total Allowable Harvests" for some Fish and Wildlife species. This would guarantee that, if harvesting limits are placed on certain species for Conservation purposes, the Yukon First Nation will have a guaranteed share of that limit which it will be able to harvest.

In addition, the Umbrella Final Agreement provides that a Yukon First Nation can establish the harvesting levels of Fish and Wildlife that it requires for food needs. This is referred to as the "Basic Needs Level". Although a Basic Needs Level can be adjusted, it cannot fall below the Basic Needs Level established in the Final Agreement without the consent of the affected Yukon First Nation.

Yukon First Nation Final Agreements can include special Harvesting rights for Freshwater Fish in order to maintain the priority for Yukon Indian People's food fish needs over other uses.

### 3. MANAGEMENT STRUCTURES

This chapter provides that several bodies have roles in determining how certain species and populations of Fish and Wildlife will be managed and harvested. They are:

- (a) Government;
- (b) Yukon First Nations;
- (c) Renewable Resources Councils;
- (d) Yukon Fish and Wildlife Management Board; and
- (e) Salmon Sub-Committee.

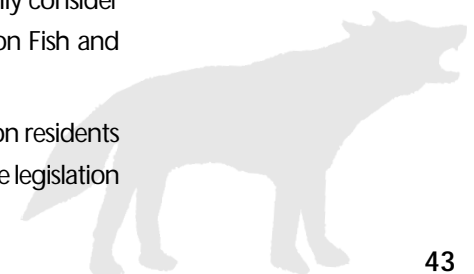
The Yukon Fish and Wildlife Management Board is the main instrument of Fish and Wildlife management in the Yukon. In addition, in each Yukon First Nation's Traditional Territory, a Renewable Resources Council is established as the main body for local renewable resources management.

Although these structures have management responsibilities, the Government has the final authority for the management of Fish and Wildlife and their habitats. However, the Government must fully consider the recommendations and decisions made by the Renewable Resources Councils, the Yukon Fish and Wildlife Management Board, or the Salmon Sub-Committee.

The harvesting rights set out in the Yukon First Nation Final Agreements will not prevent Yukon residents and others from harvesting Fish and Wildlife according to the laws of the Yukon. Fish and Wildlife legislation will continue to apply, subject to the provisions of Yukon First Nation Final Agreements.

### 1. WHY DO WE NEED AN AGREEMENT ON FISH AND WILDLIFE?

*This chapter addresses the management, use and conservation of fish and wildlife populations in the Yukon. This means, for example, ensuring the salmon run is protected and the populations of moose and other animals are not getting too low. The chapter's underlying principle in respect of both Settlement and Non-Settlement Land is the Conservation of Fish and Wildlife and their habitats. The chapter sets out the rights of Yukon First Nations and Yukon Indian people to use and harvest Fish and Wildlife and participate in their management. The chapter also sets out certain rights of other Yukon residents in respect of these matters.*



## **A. Yukon First Nation Responsibilities**

Yukon First Nations will manage local populations of Fish and Wildlife on Settlement Land, to the extent that coordination with other Fish and Wildlife Management programs is not considered necessary by the Yukon Fish and Wildlife Management Board.

For example, a Yukon First Nation may:

1. determine who may harvest its Basic Needs Allocation of Fish and Wildlife;
2. request an adjusted Basic Needs Level to be considered by the Yukon Fish and Wildlife Management Board when its food requirements increase; and
3. make recommendations to and work with the Renewable Resources Council and the Yukon Fish and Wildlife Management Board on various matters related to Fish and Wildlife.

In addition, Yukon First Nations nominate half the members of the Renewable Resources Council and the Yukon Fish and Wildlife Management Board. Government nominates the other members and appoints all the nominees.

A Yukon First Nation may delegate its responsibilities under this chapter to another Yukon First Nation, the Renewable Resources Council, the Yukon Fish and Wildlife Management Board, or Government, if the other body agrees.

## **B. Renewable Resources Councils**

A Renewable Resources Council will be the main body for renewable resources management in each Yukon First Nation's Traditional Territory. Renewable resources management refers to Fish and Wildlife and Forest Resources Management.

Each Council will have six members appointed by the Minister. Three members will be nominated by the Yukon First Nation, the other three by Government. The members of the Council must live within the Traditional Territory, unless the Yukon First Nation has agreed otherwise in its Yukon First Nation Final Agreement. The members will select a Chairperson from among themselves.

The members of the Council will be appointed for five years unless the Yukon First Nation Final Agreement provides otherwise.

Each Council may make recommendations to the Minister, to the affected Yukon First Nation, the Yukon Fish and Wildlife Management Board and the Salmon-Sub-Committee on any matter related to Conservation of Fish and Wildlife. For example, the Council may make recommendations for the following matters:

1. harvesting requirements;
2. content and timing of Freshwater Fish, Wildlife and Salmon management plans;
3. management of Furbearers;
4. commercial and other uses of Salmon; and
5. allocation and conditions for commercial uses of Fish and Wildlife (for example, outfitting).

## **C. Yukon Fish and Wildlife Management Board**

The Yukon Fish and Wildlife Management Board has responsibilities regarding management of Fish and Wildlife throughout the Yukon.



The Board has twelve members appointed by the Minister. Yukon First Nations nominate six members of the Board, and Government nominates the others. Like the Renewable Resources Councils, the Board appoints a Chairperson from among its members.

The members of the Board are appointed for five years (except for the initial appointments which have staggered end dates of three, four and five years).

The Board may make recommendations to the Minister, to Yukon First Nations and to the Renewable Resources Councils on all matters related to Fish and Wildlife management, laws, research, policies and programs. For example, the Board may make recommendations on the following matters:

1. policies for the management of Fish and Wildlife and their habitats;
2. content and timing of all Yukon Fish and Wildlife management plans for various species;
3. population goals and management options set out in management plans recommended by the Renewable Resources Council;
4. establishment of a Total Allowable Harvest where required for the Conservation of a species;
5. adjustments to the Basic Needs Levels of a Yukon First Nation; and
6. methods and practices of harvest.

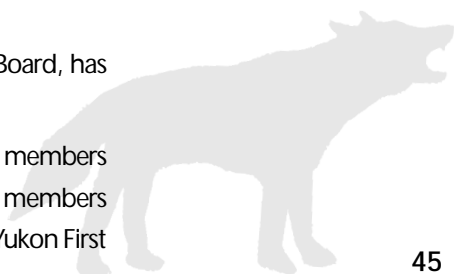
In addition, the members of the Board are also trustees for the Yukon Fish and Wildlife Enhancement Trust. The members are responsible to ensure that the monies of the Yukon Fish and Wildlife Enhancement Trust are allocated to restore, enhance and protect Fish and Wildlife populations and their habitat in accordance with Chapters 16 and 27.

The Director of Fish and Wildlife for the Yukon will be an advisor to the Board and ensure that technical support is provided to the Board.

#### **D. Salmon Sub-Committee**

The Salmon Sub-Committee, a sub-committee of the Yukon Fish and Wildlife Management Board, has been established to be the main instrument of Salmon management in the Yukon.

The Salmon Sub-Committee is comprised of two members nominated by the Minister and two members assigned from the membership of the Yukon Fish and Wildlife Management Board. The two members assigned from the Yukon Fish and Wildlife Management Board include a representative of the Yukon First



Nations.

In addition, the affected Yukon First Nation nominates two additional members for the Sub-Committee when it deals with matters affecting Salmon in the:

- Yukon River drainage basin;
- Alsek River drainage basin; and
- Porcupine River drainage basin.

When the Salmon Sub-Committee is dealing with matters which affect more than one drainage area, all the members appointed for each area may sit on the Salmon Sub-Committee. However, their combined voting power will be limited to two votes.

Therefore, the overall representation on the Salmon Sub-Committee will always be balanced.

Like the Renewable Resources Councils and Yukon Fish and Wildlife Management Board, the members of the Salmon Sub-Committee are appointed for a period of five years (except for the initial appointments).

The Salmon Sub-Committee may make recommendations to the Minister and to Yukon First Nations on all matters related to Salmon, their habitats and management, including laws, research, policies and programs.

For example, the Salmon Sub-Committee may make recommendations on the following matters:

1. management of Salmon and their habitats;
2. content and timing of Salmon Harvesting and management plans;
3. new opportunities and proposed management measures for commercial uses of Salmon; and
4. allocation, in amount and by area, of Salmon to users.

When any Yukon River panel is established in relation to the Canada-United States Pacific Salmon Treaty, the members of the Salmon Sub-Committee will form the majority of the Canadian representatives.

#### **4. WHAT WILL BE THE AUTHORITY OF THE COUNCILS, BOARD AND SUB-COMMITTEE?**

Final decisions of the Renewable Resources Councils, the Yukon Fish and Wildlife Management Board, and the Salmon Sub-Committee, within their mandates set out in the Yukon First Nation Final Agreements, are final and binding unless a party appeals the decision to a court within sixty days of the decision. This would occur by application to the Supreme Court of the Yukon for judicial review. Judicial review refers to an appeal of a decision on the legal basis that the Council, Board or Sub-Committee acted unfairly or wrongly exercised its authority in making the decision.

Recommendations to the Minister made by the Councils, Board or Sub-Committee may be accepted, varied, set aside or replaced by the Minister. However, if the Minister intends to vary or set aside such a recommendation, he or she must provide the body with written reasons for doing so. The body must also be allowed to reconsider its initial recommendation in light of those reasons and to submit a final recommendation.

#### **5. HOW WILL SALMON BE ALLOCATED?**

- (a) Basic needs of Yukon Indian people

The basic needs allocation for each Yukon First Nation of each species of Salmon in the various drainage basins will be set out in the applicable Yukon First Nation Final Agreement.

Unless the affected Yukon First Nations otherwise agree, the basic needs allocation for a drainage basin will have priority over all other fisheries in the allocation of the Total Allowable Catch of Salmon for that drainage basin. "Total Allowable Catch" means the total number of a species of Salmon returning to a drainage basin which are not deemed to be required for Conservation purposes.

If the Total Allowable Catch is less than the basic needs allocation of a Yukon First Nation, the Total Allowable Catch will be distributed among the affected Yukon First Nations on a proportional basis reflecting their share of the total basic needs allocation for the entire drainage basin.

- (b) Commercial Salmon Fishing
- (i) Yukon River drainage basin

Yukon First Nations whose Traditional Territories include part of the Yukon River drainage basin will have issued to them a number of new commercial Salmon Fishing licences equal to 26 percent of the number of such licences in effect at the date of ratification of the Umbrella Final Agreement. In practice, this amounts to 8 new licences.

- (ii) Alsek River and Porcupine River drainage basins

The allocation of commercial Salmon fishing licences in the Alsek River drainage basin for the Champagne and Aishihik First Nations and in the Porcupine River drainage basin for the Vuntut Gwitchin First Nation are set out in their Final Agreements.

Nothing in the Umbrella Final Agreement prevents a Yukon Indian Person or Yukon First Nation from acquiring a commercial Salmon or commercial sport fishing licence through the normal regulatory process.

## 6. TRAPPING

The Yukon First Nation Final Agreements will set out the manner in which Yukon First Nations, the Yukon Fish and Wildlife Management Board, Renewable Resources Councils, and Government participate in the management and use of Furbearers.

Under the Umbrella Final Agreement, approximately 70 percent of the traplines in a Yukon First Nation's Traditional Territory will be held by Yukon Indian People and aboriginal people who are beneficiaries of Transboundary Agreements. In those Traditional Territories where the overall percentage of traplines held by Yukon Indian People and aboriginal people who are beneficiaries of Transboundary Agreements is less than 70 percent, the Yukon First Nation Final Agreement will set out the process to raise the overall percentage to 70.

As well, up to 70 percent of the traplines in the Traditional Territory of a Yukon First Nation may be designated as Category 1 Traplines. Registered trapline holders can choose whether or not to have their trapline designated as a Category 1 Trapline. A trapline is designated Category 1 with the written consent of the registered holder of that trapline. A Yukon First Nation is the final allocation authority for its Category 1 Traplines.

Category 2 Traplines are all those other traplines not designated as Category 1 Traplines. The Minister will remain the final allocation authority for Category 2 Traplines.

Renewable Resources Councils will review the use of traplines and make recommendations to the Yukon



First Nations and the Minister on the assignment and reassignment of all new, vacant and under-utilized traplines in accordance with Chapter 16.

Nothing in this chapter forces registered trapline holders to sell or give up their traplines.

Sometimes a trapline may be affected by resource development activities such as mining or road construction. Therefore, Government must establish a process for compensation of the registered holders of such traplines in those cases.

## **7. WHAT RIGHTS WILL TRAPPERS AND OUTFITTERS HAVE TO HARVEST WILDLIFE ON SETTLEMENT LAND?**

Any trapper whose trapline is located on Settlement Land will be able to exercise his or her rights as a trapper to that trapline without fee. This includes the right to construct and occupy cabins on Settlement Land necessary for the use of the trapline. In addition, necessary trails may be cut on the trapline.

An outfitter may cross and make necessary stops on Settlement Land to reach an outfitting area, without the consent of the affected Yukon First Nation. The outfitter may erect temporary camps and graze horses, but he or she does not have the right to hunt on Settlement Land or to erect a permanent camp.

In addition, any Person has a right of access to enter and stay on Undeveloped Category B Settlement Land without the consent of the affected Yukon First Nation for the purpose of non-commercial Harvesting of Fish and Wildlife in accordance with laws of general application.

For a further understanding of matters of access to Settlement Land by third parties, the reader should refer to "Chapter 6 - Access".

## **8. TRAINING AND EDUCATION**

Yukon First Nations and Government have agreed to design programs and structures necessary to develop human resources needed by Yukon First Nations and other Yukon residents in renewable resources management and related economic development opportunities.

Furthermore, the Government of Yukon will provide trapper training programs until February 14, 2005, to encourage effective involvement of trappers in the management and development of traplines.



## FOREST RESOURCES

### 1. FOREST RESOURCES ON SETTLEMENT LAND

Subject to its Yukon First Nation Final Agreement, each Yukon First Nation shall own, manage, allocate and protect the Forest Resources on its Settlement Land.

### 2. FOREST RESOURCES HARVESTING

At any time during the year, Yukon Indian People will be able to harvest Forest Resources on Crown Land that are related to:

- (a) their traditional pursuits of hunting, fishing, trapping and gathering; and
- (b) the practice of their traditional customs, culture and religion of the making of traditional handicrafts and tools.

In addition, each Yukon First Nation will have the right to harvest trees on Crown Land for non-commercial community purposes to a maximum of 500 cubic metres of wood a year, without a fee.

However, the harvesting rights of Yukon Indian People and Yukon First Nations for Forest Resources do not apply on Crown Land:

- (a) where the exercise of those rights conflict with the carrying out of an activity authorized by Government;
- (b) where the Crown Land is subject to a surface lease or agreement for sale (unless the Person holding that interest consents); and
- (c) where public access to the Crown Land is limited or not allowed.

The harvesting rights of Yukon Indian People or Yukon First Nations for Forest Resources on Crown Land do not:

- (a) suggest that any Yukon First Nation or Indian Person owns those Forest Resources;
- (b) guarantee the supply of Forest Resources to a Yukon First Nation or Yukon Indian Person;
- (c) prevent any person from harvesting Forest Resources when they are allowed to according to law; or
- (d) give the Yukon First Nation or any Yukon Indian Person a priority of use or the right to be compensated for any loss or damage to Forest Resources or harvesting opportunities on Crown Land.

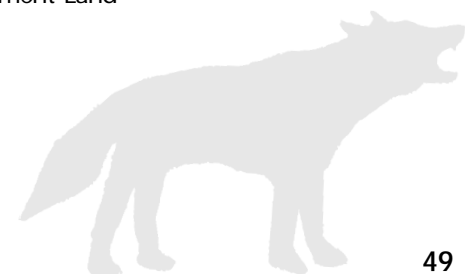
### 3. RENEWABLE RESOURCES COUNCILS

Each Renewable Resources Council may provide recommendations to Government and the affected Yukon First Nation on Forest Resources Management on Settlement Land and Non-Settlement Land within that Yukon First Nation's Traditional Territory on matters including:

- (a) the coordination of Forest Resources management throughout the Yukon;
- (b) the content and timing of Forest Resources inventories and management plans;
- (c) the policies, programs and laws that affect Forest Resources;
- (d) proposals for Forest Resources research;

*This chapter recognizes that, subject to its Yukon First Nation Final Agreement, each Yukon First Nation will own, manage, allocate and protect Forest Resources on its Settlement Land. "Forest Resources" includes all plants in a wild state.*

*The management of Forest Resources involves such activities as controlling fires, diseases and pests. It also refers to the control of logging and the re-planting of trees, among other management and development-related activities.*



- (e) the plans to handle forest fires, including the resources needed;
- (f) the allocation and use of Forest Resources for commercial use;
- (g) employment opportunities and training requirements in Forest Resources Management and commercial harvesting;
- (h) the control of forest pests and diseases; and
- (i) other matters relating to the protection and management of Forest Resources.

#### 4. MANAGEMENT PLANS

The Minister may prepare a management plan for Forest Resources Management on Non-Settlement Land. Likewise, each Yukon First Nation may develop a management plan on Settlement Land.

When developing Forest Resources Management plans, Yukon First Nations and the Minister will take the following things into account:

- (a) the principle that Forest Resources must be used in a way that will allow for future use by future generations;
- (b) the principle of an integrated and balanced approach to the management and protection of Forest Resources in a watershed;
- (c) the principle of integrated Forest Resources Management on Settlement and Non-Settlement Land;
- (d) the Forest Resources harvesting and management customs of Yukon Indian People;
- (e) Fish and Wildlife Harvesting rights and management plans as set out in "Chapter 16 - Fish and Wildlife"; and
- (f) the knowledge and experience of both Yukon Indian People and scientists in Forest Resources Management and use.

A Forest Resources Management plan and a forest fire management plan has to be consistent with any approved regional land use plans. Yukon First Nations and Government must manage, allocate and protect their Forest Resources in a manner consistent with the Development Assessment Process.

#### 5. CONTROL OF PESTS AND DISEASES

Often Forest Resources are threatened by certain pests and diseases. It is common forest management practice today to apply chemicals to deal with pests and disease in order to protect Forest Resources. Some of these chemicals can be very harmful to the environment and people so Government and Yukon First Nations agree that they must Consult with each other before chemicals are applied to Forest Resources.

When the use of chemicals for pests and diseases is on Settlement Land, the affected Yukon First Nation has to Consult with the Minister before applying the chemicals. Similarly, the Minister has to Consult with the affected Yukon First Nation before chemicals are applied to Crown Land in that Traditional Territory. The application of pesticides is subject to "Chapter 12 - Development Assessment."

#### 6. FOREST FIRES

The chapter does not obligate Government to fight forest fires on Settlement Land. However, Government will continue to fight forest fires on Settlement Land for a period of five years after a Yukon First Nation Final Agreement takes effect.

Government will Consult with Yukon First Nations on general priorities for fighting forest fires on Settlement Land and on Non-Settlement Land located next to Settlement Land.

## **7. THIRD PARTY INTERESTS**

Where a Person has a timber harvesting agreement existing before the effective date of a Yukon First Nation Final Agreement, the Person will still be able to exercise all the rights under the agreement as though the land had not become Settlement Land.

## **8. ACCESS TO SETTLEMENT LAND**

Any holder of a commercial timber permit in place at the time a Yukon First Nation Final Agreement comes into effect will be allowed access to use Settlement Land for purposes of harvesting timber related to that permit, without the permission of the affected Yukon First Nation.

The holder of the timber permit will also have a right to cross and make stops on Settlement Land to reach land next to it or to reach Settlement Land that is subject to the timber permit, with the consent of the affected Yukon First Nation. If the affected Yukon First Nation does not agree, the holder may apply to the Surface Rights Board for an access order.

A similar right of access also applies to the holder of an existing timber harvesting agreement. Persons having access to Settlement Land must ensure that there is:

- (a) no unnecessary damage to Settlement Land;
- (b) no mischief; and
- (c) no interference with the use and enjoyment by the Yukon First Nation of its Settlement Land.

There will be no fee payable to the Yukon First Nation for access. Neither will there be any compensation payable for damage, except for unnecessary damage to Settlement Land or significant damage to improvements on it.

## **9. ACCESS RIGHTS ON DEVELOPED SETTLEMENT LAND**

As a general rule, access rights to Settlement Land do not apply to Developed Settlement Land. However, where a commercial timber permit or a timber harvesting agreement is on a Parcel of Developed Settlement Land, the same rights of access apply as are described in section 8 above.

## **10. ECONOMIC OPPORTUNITIES**

When a Yukon First Nation Final Agreement is being negotiated, the parties will address economic opportunities for the Yukon First Nation in the management, protection and harvesting of Forest Resources. In the case of Forest Resources, "economic opportunities" often refers to logging. There are also many small business opportunities related to keeping the forest in a healthy state. Tourism is also an important economic opportunity that depends on healthy forests and wildlife habitat.



## NON-RENEWABLE RESOURCES

*Non-renewable resources are those resources which, once used or developed, can never be replaced in their original form or renewed. For example, gold is a Non-Renewable Resource. On the other hand, renewable resources refer resources such as forests, water and fish and wildlife. This chapter deals largely with the Mineral Rights and related interests of third parties.*



### 1. DEFINITIONS

For the purposes of understanding this chapter, it is helpful to be aware of the following definitions:

"Specified Substances" - means any of carving stone, flint, limestone, marble, gypsum, shale, slate, clay, sand, gravel, construction stone, sodium chloride, volcanic ash, earth, soil,

diatomaceous earth, ochre, marl and peat.

"Minerals" - means precious and base metals and other non-living, naturally occurring substances, whether solid, liquid or gaseous, and includes coal, Petroleum and Specified Substances.

"Mineral Right" - means any licence, permit or other right to explore for, locate, develop, produce or transport any Minerals other than Specified Substances and to enter on land for those purposes.

### 2. SPECIFIED SUBSTANCES

A Specified Substances Right is the right of a Yukon First Nation to take and use a Specified Substance, without payment of any royalty. Each Yukon First Nation has a Specified Substance Right on its Settlement Land.

A Yukon First Nation having a Specified Substances Right and a Person having a Mineral Right must exercise their rights in ways to avoid any conflicts.

Where there is a conflict between the use of Specified Substances by a Yukon First Nation and the exercise of a Mineral Right, either the Yukon First Nation or the Person holding the Mineral Right may apply the Surface Rights Board to resolve the matter.

The Surface Rights Board will set out the terms and conditions of exercising either the Specified Substance Right, the Mineral Right or both, to reduce interference between the two rights.

If the interference with the Specified Substances Right cannot be avoided, the Surface Rights Board will give priority to the Mineral Right, requiring that compensation be paid to the affected Yukon First Nation for interference and loss of opportunity to exercise the Specified Substances Right.

### 3. QUARRIES

A Quarry is a pit or other place made to remove non-renewable Construction Materials such as rock, gravel, or sand for the construction and maintenance of public roads.

Before a Yukon First Nation's land selections are finalized, Government must try to identify any Quarries

required for public purposes within the Traditional Territory of that Yukon First Nation. Where it can, Government will try to locate a Quarry on Non-Settlement Land instead of Settlement Land. Government will also try to relocate existing Quarries on Settlement Land to Non-Settlement Land where it is reasonable and practical to do so.

Where Government cannot identify all the Quarries required for public purposes before a Yukon First Nation's land selections are finalized, the Yukon First Nation's Final Agreement will set out a time period after the Final Agreement takes effect during which Government may identify further Quarries needed on Settlement Land.

Where Government has identified Quarries on Settlement Land either before the Yukon First Nation's land selections are finalized or during the time period set out in its Final Agreement, Government may use the Quarries and take Construction Materials from them without compensating the Yukon First Nation. Government must use such a Quarry in accordance with accepted land use standards and try to minimize interference with other uses of the Settlement Land. Also, if required by the Yukon First Nation, Government must restore the Quarry site when finished using it.

Apart from those Quarries identified by Government as described above, where Government needs a Quarry and there is no suitable alternative site available on Non-Settlement Land, the affected Yukon First Nation will allow Government to establish and use the Quarry under such terms and conditions as they may agree. These terms and conditions may include compensation to the Yukon First Nation for the Construction Materials taken.

If the affected Yukon First Nation and Government cannot agree on:

- (a) whether Government requires the Quarry;
- (b) whether there is a suitable alternative Quarry; or
- (c) the terms and conditions for Government's use of the Quarry,

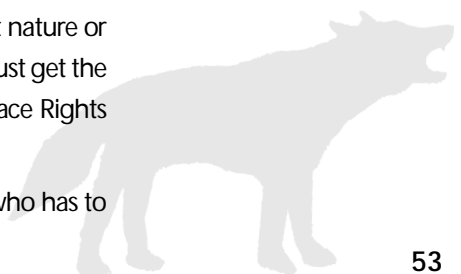
either may refer the dispute to the Surface Rights Board for resolution.

#### **4. ACCESS TO SETTLEMENT LAND FOR AN EXISTING MINERAL RIGHT**

A Person who has a Mineral Right on Settlement Land or on Non-Settlement Land, existing at the time the applicable Yukon First Nation Final Agreement comes into effect, has a right of access for the purpose of exercising the Mineral Right to cross and make stops on Settlement Land without the consent of the affected Yukon First Nation, provided that the access is of a casual and insignificant nature, or the route travelled is generally recognized and used and the access will not result in a significant alteration to the route.

The Person also has a right, for the purpose of exercising the Mineral Right, to use the Parcel of Settlement Land without the First Nation's consent, where that is provided by laws of general application. Where these rights of access do not apply — for example, where the access would be of a significant nature or the route would be changed — a Person with an Existing Mineral Right on Settlement Land must get the permission of the affected Yukon First Nation. If an agreement cannot be reached, the Surface Rights Board can set out the terms and conditions of access.

These same rules apply to a Person with an Existing Mineral Right on Non-Settlement Land who has to cross or make stops on Settlement Land in order to exercise that right.



If an order is made by the Surface Rights Board for access, under certain conditions it may also order compensation to the affected Yukon First Nation.

## 5. ACCESS TO SETTLEMENT LAND FOR A NEW MINERAL RIGHT

A "New Mineral Right" means a licence, permit or other right obtained after the effective date of a Yukon First Nation Final Agreement.

Generally, a Person with a New Mineral Right on Category B or on Fee Simple Settlement Land has a right of access to cross and make stops on Settlement Land without the permission of the Yukon First Nation, provided that the access is of an insignificant nature, or is on a route that is regularly used and where the access will not result in a significant alteration to the route.

A Person with a New Mineral Right on Category B or Fee Simple Settlement Land has a right to access that Parcel for mining purposes without the Yukon First Nation's permission if the work does not involve heavy equipment or affect the land more than hand labour methods would.

Where the access is of a significant nature or results in the change of a route, a Person having a New Mineral Right on Category B or Fee Simple Settlement Land needs the permission of the Yukon First Nation to use, cross and make stops on Settlement Land. If the affected Yukon First Nation does not agree, an order of the Surface Rights Board is required for access.

The same rules apply to a Person who has a New Mineral Right on Non-Settlement Land who has to cross or make stops on Settlement Land in order to exercise that right.

## 6. ACCESS ON DEVELOPED SETTLEMENT LAND

Generally speaking, the rights of access set out in the Umbrella Final Agreement in respect of an Existing Mineral Right or a New Mineral Right do not apply to Developed Settlement Land. However, if the Mineral Right is on a Parcel of Developed Settlement Land, the rights of access do apply on that Parcel.

## 7. CONDITIONS OF ACCESS

The rights of access to Settlement Land set out in the Umbrella Final Agreement in respect of an Existing or New Mineral Right are subject to the conditions that there shall be no:

- (a) significant damage to the land or to improvements made on the land;
- (b) mischief committed on the land;
- (c) significant interference with the peaceful enjoyment of the land by the Yukon First Nation;
- (d) fee or charge payable to the Yukon First Nation; or
- (e) compensation for damage other than for significant damage.

## FINANCIAL COMPENSATION

### 1. DEFINITIONS

The following terms are referred to in this chapter:

**1989 Aggregate Value** - this means how much the money is worth; it is the whole value of the money based on what it was worth in the third quarter of the year 1989.

**Unadjusted Final Share** - means the Yukon First Nation's share of the 1989 Aggregate Value as set out in Schedule A to this chapter, entitled "Apportionment of the 1989 Aggregate Value".

**Inflation** - means the decrease in the value of money over time. In the technical language of the chapter, the inflation rate is referred to as the Final Domestic Demand Price Index.

**In Trust** - in this case, it refers to the Council of Yukon First Nations or another organization chosen by Yukon First Nations to receive and hold the money for Yukon Indian People until they decide what to do with it.

### 2. FINANCIAL COMPENSATION

The amount of money that will be paid by the Government of Canada to Yukon First Nations is expressed as the "1989 Aggregate Value". This amount is \$242.673 million dollars, in 1989 dollars, to be paid over a 15 year period to Yukon First Nations. The amount of each Yukon First Nation's share of the financial compensation is set out in "Schedule A -Apportionment of the 1989 Aggregate Value".

The financial compensation owed to each Yukon First Nation will be paid out over 15 years. The first payment is due when a Yukon First Nation Final Agreement takes effect and then every year after that for 14 years. A schedule of payments including the remaining 14 payments will be included in the Final Agreement.

*This chapter sets out the amount of money that the Government will have to pay Yukon First Nations. It also set out how loans made to Yukon First Nations will be paid back to Government.*



### 3. LOANS

Each Yukon First Nation Final Agreement will set out the outstanding amount of loans made to that First Nation and its share of loans made to the Council for Yukon Indians for which that Yukon First Nation is liable. In addition, the Yukon First Nation Final Agreement will establish a schedule of repayments which will be deducted from the Yukon First Nation's annual payments of financial compensation.

### 4. WHO WILL GET THE COMPENSATION MONEY?

This chapter guarantees that each Yukon First Nation will receive a share of the compensation money. Each Yukon First Nation is free to carry out certain permitted activities in order to fulfill its social and economic goals without being subject to tax. These activities are set out in "Chapter 20 - Taxation".

### 5. LOANS AGAINST FUTURE PAYMENTS

Three years after Settlement Legislation a Yukon First Nation may request a loan against the total amount of money that is owed to it. The federal Minister of Finance may negotiate with the affected Yukon First Nation the amount and the terms and conditions of the loan.

### 6. INFLATION

Although each Yukon First Nation's Adjusted Final Share will include an additional amount of money to offset inflation, the inflation rate used to calculate the total amount will depend on when a Yukon First Nation signs its Final Agreement.

For example, a Yukon First Nation which signs its Final Agreement later than two years after Settlement Legislation will not have its Adjusted Final Share increased for inflation beyond that two year date. This date is February 14, 1997.



### 1. TAXATION ON COMPENSATION AND OTHER PAYMENTS

There will be no tax payable on financial compensation payments to Yukon First Nations under their Yukon First Nation Final Agreements. This means that if a Yukon First Nation or a Settlement Corporation receives financial compensation payments, there will be no tax payable on these amounts.

There will also be no tax payable on the money received by Yukon First Nations for the buy-out of income tax exemptions available to Yukon First Nations and Yukon Indian People under section 87 of the Indian Act.

### 2. SETTLEMENT CORPORATIONS

Settlement Corporations refers to entities which may be created by one or more Yukon First Nations to receive and manage financial compensation money. Each Yukon First Nation may set up one or more Settlement Corporations to invest the financial compensation.

The purpose of Settlement Corporations is to carry out certain community and social development activities (referred to as "permitted activities") and make permitted investments.

Settlement Corporations will have a trust relationship with each member of the Yukon First Nation and must manage the money in the best interests of the people.

A Settlement Corporation cannot control or own a corporation or other entity which carries on a commercial business, and still keep its tax-free status.

### 3. PERMITTED ACTIVITIES

There will be no tax payable by a Settlement Corporation on income received from qualified investments or property which is used to carry out community and social development activities (the "permitted activities"). These permitted activities are set out in "Schedule A -Permitted Activities for Settlement Corporations."

A qualified investment is one which is made in the course of carrying out permitted activities. Investment income is money that is earned from investing in a money-making enterprise. Qualified investments are set out in "Schedule B - Qualified Investments".

The permitted activities of a Settlement Corporation are listed below:

#### (a) Program Funding and Administration

Supplementing programs funded by Government that deal with child care, adoption, alcohol and drug abuse, hospital construction or upgrading, medical, dental and mental health care, justice and similar programs.

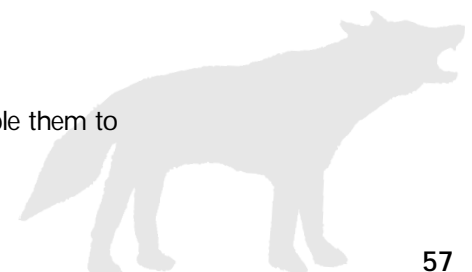
#### (b) Housing and Municipal Local Tax Assistance

Funding or providing:

- low interest or no interest mortgages or other loans to low income people to enable them to acquire housing in the Yukon;
- grants to low income people to help them make down payments for housing;

*This chapter describes what taxes will apply to Settlement Corporations and what taxes Yukon Indian People will have to pay.*

*NOTE: The taxation matters in this chapter are very technical and complex. The information that follows is a summary only. It is advisable to consult with taxation experts in order to fully understand the meaning and effect of this chapter.*





- funding for construction and operation of cooperative or communal housing for low income people;
- funding for renovations or repairs for housing either owned or rented by low income people; and
- funding to low income people to help them pay taxes on improved Settlement Land.

A low income person is a person whose total family income is less than 75% of the Yukon average household income.

**(c) Municipal Services Upgrading**

This refers to improving municipal services and utilities for the benefit of Yukon Indian People. For example, a Yukon First Nation may decide to improve road services in a particular area. If so, tax would not be charged on the money used.

**(d) Band Assistance**

Funding to Yukon First Nations for reasonable management and personnel costs.

**(e) Economic Development**

Loans provided under certain specified conditions to persons or organizations involved in economic development opportunities which benefit Yukon Indian People.

**(f) Commercial Fishing**

Loans or equity provided under certain specified conditions for the creation and operation of fish enhancement programs for the benefit of Yukon Indian People.

**(g) Traditional Harvesting and Cultural Activities**

Loans or equity provided under certain specified conditions for traditional harvesting and cultural activities including manufacture of handicrafts, arts and crafts, hunting, fishing and trapping.

**(h) Elders Assistance Program**

Providing assistance to Yukon Indian Elders in an amount to not exceed \$3000.00 per person per year in 1988 dollars.

**(i) Recreational Lands and Facilities**

Funding and administering parks and other recreational activities such as skating rinks, arenas, libraries, assembly halls and similar facilities that are not for commercial use.

**(j) Education and Training**

Funding and providing:

- courses for non-native and native teachers and other instructors to enable them to conduct courses in native culture, language and similar areas;
- training for Yukon Indian Elders to enable them to participate in the delivery of native culture and language instructional programs;
- native studies, culture and language programs for "school age" and adult people;
- scholarships and other expenses for juvenile and adult Yukon Indian People to enable them to attend conventional educational institutions within and outside the Yukon;
- vocational training and similar programs and facilities for youth and adults within and outside the Yukon;
- native language and cultural education teaching and research programs; and
- training for justices of the peace and other persons employed in connection with the implementation of an Indian justice program.

**(k) Other Permitted Costs**

- payments to low income Yukon Indian People;
- provision of a one-time payment of \$3000.00 per person in 1988 dollars to all Yukon Indian People (beneficiaries);
- settlement costs;
- costs to implement the Yukon First Nation's Final Agreement;
- transfers to other Settlement Corporations or to registered charities; and
- reasonable administration costs of Settlement Corporations.

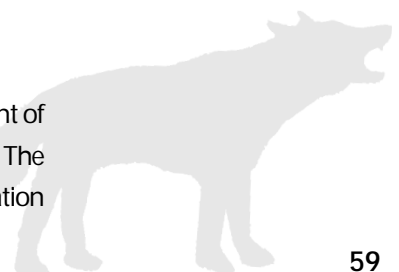
**4. TAXES ON TRANSFER OR REGISTRATION OF SETTLEMENT LAND**

No fees or taxes will be paid for the transfer or registration of the initial title to Fee Simple Settlement Land and the fee simple title to Mines and Minerals of Category A Settlement Land. However, fees or taxes will be payable for registration in the Yukon Land Titles Office of the initial title of former Category A and B Settlement Land and for subsequent registrations of any Settlement Land.

The reader should refer to "Chapter 5 - Tenure and Management of Settlement Land" for information about the establishment of a Yukon First Nation system to record interests in Settlement Land.

**5. PROPERTY TAX ASSISTANCE**

For the ten years following the effective date of a Yukon First Nation Final Agreement, the Government of Canada will assist that Yukon First Nation with the payment of Property Taxes on Settlement Land. The reader should refer to "Chapter 21 - Taxation of Settlement Land" for further information about taxation of Settlement Land.



## 6. TAXATION OF RESOURCE REVENUES

Some Yukon First Nations may wish to develop their own resources to earn income directly from them. The first \$20 million of resource revenues from Settlement Land will not be taxed.

## 7. SECTION 87 OF THE INDIAN ACT

Section 87 of the Indian Act provides income tax exemptions for status Indian people. Basically it provides that status Indian people are not required to pay income tax on income earned on a Reserve.

This chapter provides that section 87 of the Indian Act will cease to apply to Yukon First Nations and Yukon Indian People who live in the Yukon, three years after the effective date of Settlement Legislation. This is known as the "section 87 tax buy-out".

In return for the section 87 tax buy-out, Yukon First Nations will receive approximately \$26.57 million, expressed in 1989 dollars, in addition to their financial compensation payments. The \$26.57 million will be divided among all the Yukon First Nations in the same way as the financial compensation was allocated.

Therefore, on the third anniversary of the Settlement Legislation, the Government of Canada will be able to tax the income of Yukon First Nations and Yukon Indian People.

However, depending on the circumstances, the Indian Act tax exemption may still benefit a Yukon Indian Person who does not live in the Yukon.

## 8. TAXATION OF YUKON INDIAN PEOPLE OR YUKON INDIAN ORGANIZATIONS

A Yukon Indian Person, a Yukon First Nation, or any Yukon First Nation corporation will not be subject to any tax when receiving money from a Settlement Corporation for one of the activities permitted under this chapter.

However, where the money is given out as an income supplement for Elders and low income people, the money received will be considered as personal income subject to taxation.

## TAXATION OF SETTLEMENT LAND

### 1. DEFINITIONS

The following terms may help to understand this chapter:

"Community Boundary" means:

- (a) for a municipality or hamlet designated as such under the Municipal Act, R.S.Y. 1986, c. 119, the boundary as set out in that Act; and
- (b) for a community not designated under the Municipal Act, the boundary as set out in the Yukon First Nation Final Agreement of that Yukon First Nation in whose Traditional Territory the community is located.

"Improved Rural Settlement Land" means Settlement Land outside a Community Boundary which is used for business purposes or which has permanent buildings on it. Such buildings do not refer to those used in trapping or non-commercial wildlife Harvesting such as a cabin, camp, tent frame, cache or fish rack.

"Unimproved Rural Settlement Land" means Settlement Land outside a Community Boundary other than Improved Rural Settlement Land.

"Government" means local, territorial or federal government, as the case may be.

"Yukon First Nation Corporation" means a corporation owned or controlled by a Yukon First Nation.

### 2. TAXATION OF SETTLEMENT LAND

#### (a) Fee Simple Settlement Land

If a Yukon First Nation has selected Fee Simple Settlement Land, those lands will be taxed like other fee simple private land. In other words, Yukon First Nations will have to pay Property Taxes on its Fee Simple Settlement Land, as other people in the Yukon do.

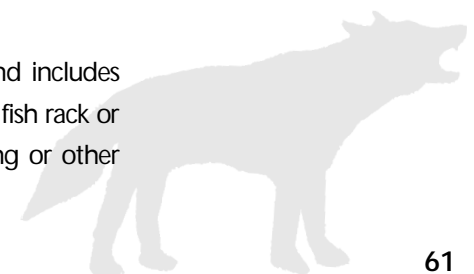
In addition, Government and a Yukon First Nation may agree in a Self-Government Agreement that Yukon First Nations can also tax Fee Simple Settlement Land for the use or occupation of Settlement Land, including Property Taxes.

However, anyone owning land and occupying a personal residence on Fee Simple Settlement Land can qualify for any homeowner's grant programs that may be available from time to time. These grants are provided to help offset the owner's property taxes. In the case of Settlement Land, any personal residence of a Yukon Indian Person on Fee Simple Settlement Land is deemed to be owner-occupied for the purpose of homeowner's grant programs, even though the land on which the residence is situated is owned by a Yukon First Nation or one of its corporations.

#### (b) Unimproved Rural Settlement Land

Unimproved Rural Settlement Land will not be taxed. Unimproved Rural Settlement Land includes Settlement Land outside a Community Boundary that contains a cabin, tent frame, cache, fish rack or other similar improvement used primarily for trapping, non-commercial wildlife harvesting or other traditional purposes.

*This chapter is about Property Taxes and how they will apply or not apply to Settlement Land.*



When a Community Boundary is expanded to include a Parcel of Unimproved Rural Settlement Land, the Parcel will not be taxed until an agreement has been reached between the affected Yukon First Nation and Government for services, such as water and sewage. Other terms can also be added to this matter in a Yukon First Nation Final Agreement.

All other Settlement Land will be taxed unless there are situations where it is agreed otherwise in the Yukon First Nation Final Agreement.

### **3. NON-PAYMENT OF PROPERTY TAXES**

Settlement Land held by a Yukon First Nation or a Yukon First Nation Corporation cannot be taken away for the non-payment of Property Taxes. However, if taxes owing remain unpaid for more than two years, the taxing authority may withdraw all services to the land until the taxes are paid.

Unless the parties otherwise agree, if the Property Taxes still remain unpaid six months after the withdrawal of any Local Government Services, then the taxing authority may claim against the assets or things owned by the Yukon First Nation or any Yukon First Nation Corporation owned by it.

### **4. NON-PAYMENT FOR THE PROVISION OF LOCAL GOVERNMENT SERVICES**

Local Government Services refers to such things as water and sewer services provided by a local government. Unless otherwise agreed in a Yukon First Nation Final Agreement, Local Government Services may be withdrawn if the arrears for the services remain unpaid for 6 months. If they still remain unpaid 6 months after the services are withdrawn, the matter maybe referred to mediation, and, if necessary, to arbitration as set out in "Chapter 26 - Dispute Resolution."

### **5. RATES FOR LOCAL GOVERNMENT SERVICES**

Yukon First Nations and Yukon First Nation Corporations will pay similar rates for user-pay Local Government Services as are paid by property owners in the same or similar communities. "Local Government Services" means services generally supplied by a local government, for example recreational facilities, water, sewage, waste disposal and road maintenance.

### **6. OUTSTANDING PROPERTY TAXES**

Government and the affected Yukon First Nation will resolve the issue of any outstanding property taxes on Settlement Land before that First Nation's Agreement is ratified by the parties.

However, Government has already agreed in the Umbrella Final Agreement not to collect any property taxes on Unimproved Rural Settlement Land that are outstanding when a Yukon First Nation Final Agreement takes effect.

### **7. TAXES ON LAND SET ASIDE**

Prior to the completion of Yukon First Nation Final Agreements, the Government of Canada pays a sum of money to taxation authorities instead of paying property taxes in respect of Land Set Aside for the use and benefit of Yukon Indian People. This no longer occurs for such lands once the affected Yukon First Nation Final Agreement is in force and those lands have become Settlement Land.

## ECONOMIC DEVELOPMENT MEASURES

### 1. WHAT IS ECONOMIC DEVELOPMENT?

Economic development means, among other things, establishing businesses and developing people so they can create and distribute services, goods and wealth within the community.

In addition to this chapter, many economic opportunities available to Yukon Indian People arise from other parts of the Umbrella Final Agreement. A Yukon First Nation will have to consider other chapters of its Yukon First Nation Final Agreement when planning for economic development. For instance, other chapters may set out economic and training opportunities in relation to forestry, heritage and surveying. This chapter also ensures that Yukon First Nations will continue to have access to economic programs that are available to the public.

However, it should be noted that Government is not required to provide additional funding to carry out many of the measures in this chapter. Therefore, most of the measures will be done within the existing budgets of Government.

### 2. YUKON FIRST NATION FINAL AGREEMENTS

#### (a) Economic Development Opportunity Plans

After the effective date of a Yukon First Nation Final Agreement, that Yukon First Nation and Government will develop a plan for Yukon Indian People to take advantage of economic development opportunities arising from the Final Agreement. This plan is referred to as an economic development opportunity plan.

An economic development opportunity plan will include recommendations to:

- increase opportunities for training for Yukon Indian People and identify the experience needed to take advantage of economic opportunities generated by the Yukon First Nation Final Agreement;
- increase the use of available financial and technical resources; and
- identify the funding requirements and measures required to stimulate the community-level economy.

#### (b) Specific Economic Measures

Each Yukon First Nation Final Agreement will provide specific measures which will include:

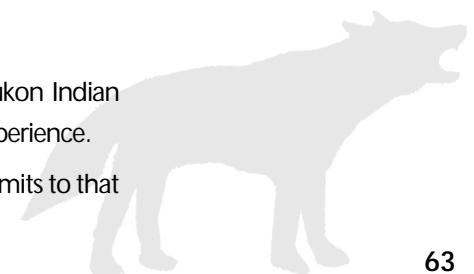
- access to employment and contract opportunities generated from the Yukon First Nation Final Agreements;
- access to employment and contract opportunities generated from the land and resource management regime set out in the Umbrella Final Agreement;
- participation by Yukon Indian People in harvesting activities; and
- the interest of Yukon First Nations in strategic investments.

The agreement on specific measures will include the condition that the participation of Yukon Indian People in employment opportunities will be based on the appropriate qualifications and experience.

A Yukon First Nation Final Agreement will also set out a process for providing licenses and permits to that Yukon First Nation for:

*The objectives of this chapter are:*

- (a) to provide Yukon Indian People with opportunities to participate in the Yukon economy;*
- (b) to develop economic self-reliance for Yukon Indian People; and*
- (c) to make sure that Yukon Indian People obtain economic benefits that arise from their Yukon First Nation Final Agreements.*



- (a) outfitting;
- (b) commercial fishing (other than for salmon); or
- (c) other natural resource uses.

### 3. GOVERNMENT EMPLOYMENT OPPORTUNITIES

Government will assist in facilitating the training and professional development of Yukon Indian People so that they will have access to Government employment opportunities, where those opportunities exist. Emphasis will be placed on increasing the number of Yukon Indian People in technical, managerial and professional positions within Government.

### 4. CONTRACTING

Yukon First Nations will have the opportunity to:

- (a) take part in competitive bidding for public tenders and contracts put out by Governments; and
- (b) be advised on contracts made available by Government.

The Government of Yukon will also make best efforts to break down its contracts so that small businesses may take advantage of these contracts.

### 5. PUBLIC CORPORATIONS

The Government of Yukon will appoint Yukon Indian People to the Board of Directors of the Yukon Development Corporation. In addition, the Government of Yukon will make best efforts to structure the Board of Directors of the Yukon Energy Corporation so that at least 25 percent of the directors are Yukon Indian People.





Yukon First Nation corporations may participate in joint ventures and partnerships with the Yukon Development Corporation for economic opportunities.

When public participation is invited, Yukon First Nations will also be given an opportunity to participate in ventures by the Yukon Development Corporation where a business venture is being bought or sold.

## 6. ECONOMIC PLANNING

The Government of Yukon will make its best efforts to make sure that:

- (a) the Yukon Council on the Economy and Environment is structured so that at least one-quarter of the members are Yukon Indian People; and
- (b) at least one-quarter of the delegates at the annual review of the Yukon Economic Strategy are Yukon Indian People.

## 7. YUKON FIRST NATION TRUST COMPANY

Within two years of the effective date of the Settlement Legislation, Yukon First Nations and Government will study whether a Yukon First Nation controlled trust company (which is something like a bank) could be established.

If the establishment of such a trust company appears to be workable, Government will take reasonable steps to help Yukon First Nations set up a trust company.

## 8. IMPLEMENTATION

In the year 2010, the Yukon First Nations and Government will review whether the obligations under this chapter have been met. If they agree that the obligations have been met, the obligations of Government will end on January 1, 2011.

As long as Government's obligations under this chapter remain in effect, a review will be held every five years after the initial review to determine if the obligations have been met.



## RESOURCE ROYALTY SHARING

*This chapter describes how Yukon First Nations and Government will share resource royalties. Resource royalties arise when a Government allows a resource, such as a mineral deposit, to be developed. In return, Government receives money.*

### 1. DEFINITIONS

"Resource" means mines and minerals whether solid, liquid or gaseous found in, on or under the Yukon Territory. It does not include, however, the "Specified Substances" which the affected Yukon First Nation owns on its Settlement Land.

"Crown Royalty" means the money the Government collects from the resource development industry, where Government owns the resource. A royalty is a type of tax on a company or individual who is taking a resource. The amount of money which an individual or company has to pay to Government as a royalty depends upon the amount of the resource which is produced in any given year and upon the royalty rates prescribed in Government's legislation.

A "Yukon First Nation Royalty" is the amount of money a Yukon First Nation receives for the extraction or development of a natural resource on Category A Settlement Land, as if that land were owned by Government.

### 2. CROWN ROYALTY SHARING

A Yukon First Nation will be able to receive royalties in two ways:

- (a) from directly taxing resource developers on Category A Settlement Land; and
- (b) from resource royalty sharing with the Government of Yukon if the Government of Canada transfers to the Government of Yukon the right to receive and collect royalties in respect of the production of a resource.

In other words, this second method only applies if the Government of Canada transfers the administration and management of resources in the Yukon to the Government of Yukon. This would include the right to receive and collect royalties in respect of the production of a resource.



If the authority to collect royalties is transferred to the Government of Yukon, it will share its royalties with Yukon First Nations; on a yearly basis, an amount equal to:

- (a) 50% of the first \$2 million the Government of Yukon collects beyond what the Yukon First Nations collect as a Yukon First Nation Royalty on their Category A Settlement Land; and
- (b) 10% of any additional amount collected beyond the first \$2 million.

### 3. LIMITS ON CROWN ROYALTY SHARING

The most Yukon First Nations could receive in a year would be the amount, if distributed equally among all Yukon Indian People, that would result in an average per capita income for Yukon Indian People equal to the average Canadian per capita income (how much money the average Canadian person would earn in a year), multiplied by the number of Yukon Indian People. In any year, the Crown Royalty could actually amount to millions of dollars before the cap would apply.

### 4. SHARING OF CROWN ROYALTIES

The Crown Royalties that are payable to Yukon First Nations by the Government of Yukon will be divided amongst them in the same way that the compensation money is shared among the Yukon First Nations as set out in "Chapter 19 - Financial Compensation".

However, the Umbrella Final Agreement provides that if a Yukon First Nation has not entered into a First Nation Final Agreement, its share will not be payable and will be kept by the Government of Yukon.

### 5. CONSULTATION

Yukon First Nations will decide the rate of Yukon First Nation Royalties on Category A Settlement Land only.

The Government of Yukon will Consult with Yukon First Nations before it makes any changes to the Crown Royalty regime.

It will also Consult with a Yukon First Nation before a fee simple interest in a resource is granted within a Yukon First Nation's Traditional Territory.

### 6. DEVOLUTION OF RESOURCES

In this chapter, the parties to the Umbrella Final Agreement recognize there will be negotiations involving the Government and Yukon First Nations for the devolution of Resources in the Yukon, and that Government of Yukon will represent the interests of all Yukon residents in those negotiations. Any agreement as a result of those negotiations must be consistent with this chapter. The Council for Yukon First Nations may participate with the Government of Yukon in the development of its negotiating positions for negotiations of the transfer of administration and management of Resources.



## YUKON INDIAN SELF-GOVERNMENT

*This chapter assures Yukon First Nations that Government will negotiate Self-Government Agreements with Yukon First Nations, to accompany their Final Agreements.*

### 1. LEGAL STATUS OF SELF-GOVERNMENT AGREEMENTS

Under the terms of the Umbrella Final Agreement, Yukon First Nation Self-Government Agreements negotiated on terms set out in this chapter do not receive protection under the Constitution of Canada. In other words, while the Final Agreement of a Yukon First Nation will be a land claim agreement protected by the Constitution, its Self-Government Agreement will not be protected by the Constitution.

For this reason, each Yukon First Nation negotiates a Self-Government Agreement at the same time, but separate from, its Final Agreement.

At the present time, however, Yukon First Nations are working with the Government of Canada and the Government of Yukon on arrangements to constitutionally protect parts of the Yukon First Nation Self-Government Agreements.

### 2. WHAT IS SELF-GOVERNMENT?

First, what is government? It is the system that we use to govern the affairs of our communities. This may refer to education, justice, health care, and management of our lands.

Self-government may have different meanings for different people. However, it is generally considered to be a government under the control and direction of people living in a community. To Yukon First Nations, self-government means Yukon Indian People controlling and directing their own affairs in accordance with their aboriginal rights as recognized in their Yukon First Nation Final and Self-Government Agreements.

This chapter sets out how Yukon First Nation rights to self-government will be exercised to ensure that Yukon First Nation communities will be self-sufficient and healthy.

### 3. WHAT DOES THIS CHAPTER DO?

This chapter sets out:

- the guidelines within which each Yukon First Nation will be able to negotiate its own governing powers, rights and responsibilities; and
- the process by which Yukon First Nations' powers, rights and responsibilities will be established within Canadian law.

Government will negotiate the powers, rights and responsibilities of each Yukon First Nation when requested to do so. These negotiations will be within the guidelines of this chapter.

### 4. YUKON FIRST NATION POWERS

This chapter identifies the powers that Yukon First Nations will be able to negotiate in accordance with the Canadian Constitution. In particular, a Yukon First Nation's powers may include those to:

- enact laws and regulations of a local nature for the good government of its Settlement Land and the people living on these lands, and for the general welfare and development of the Yukon First Nation;
- develop and administer programs in areas of Yukon First Nation responsibility for example, health and welfare and cultural programs;

- appoint representatives to Boards, Councils, Commissions and Committees as provided for in Yukon First Nation Final Agreements;
- make decisions on the use and management of Settlement Land;
- make contracts with people or other governments;
- form corporations (business organizations) and other such structures;
- borrow money; and
- decide what taxes should be in place, if any, on Settlement Land.

## 5. SUBJECTS FOR NEGOTIATIONS

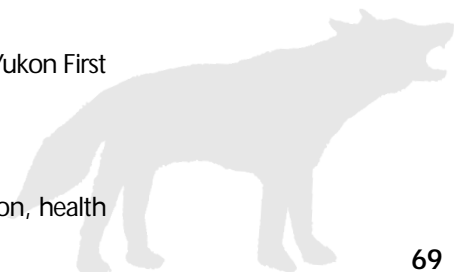
Negotiations regarding Yukon First Nation Self-Government Agreement may include the following matters:

- the Yukon First Nation constitution;
- the Yukon First Nations community infrastructure (lands, water and sewer systems, etc.), public works and government services;
- community development and social programs;
- education and training;
- communications;
- culture and aboriginal languages;
- spiritual beliefs and practices;
- health services;
- personnel administration;
- civil and family matters;
- the raising of revenue for local purposes, including taxation (within the framework of federal tax laws);
- economic development;
- the administration of justice and the maintenance of law and order;
- relations with the Government of Canada, the Government of Yukon or local governments;
- financial transfer arrangements;
- an implementation plan; and
- all matters that may be part of the above, or as may be agreed otherwise.

## 6. DEVOLUTION OF PROGRAMS AND SERVICES

This chapter provides that Yukon First Nations will be able to negotiate the transfer of programs and services dealing with the following matters:

- authority (the power to decide and act) for the design, delivery and management of Yukon First Nation languages and cultural education;
- authority for design, delivery and administration of tribal justice; and
- authority for the design, delivery and administration of programs relating to education, health and social services, justice, and employment opportunities.





Yukon First Nations have the ability to request when the transfer of specific programs and services will take place. For instance, Yukon First Nations may not be in position to assume responsibilities for some programs and services until a few years after the conclusion of their Self-Government Agreements.

## **7. REPRESENTATION ON GOVERNMENT BOARDS**

This chapter provides that Yukon First Nations may negotiate Yukon First Nation representation on the various commissions, councils, boards and committees of Government that are established to deal with the following matters:

- education;
- health and social services;
- justice and law enforcement; and
- other matters that may be agreed upon by the parties.

## **8. YUKON FIRST NATION CONSTITUTIONS**

A "constitution" describes the powers a government has and the rules it must follow in using its power. Negotiations regarding a Yukon First Nation's constitution may include the following:

- design and structure of the Yukon First Nation government;
- membership in the Yukon First Nation;
- election procedures;
- meeting procedures;

- financial management procedures;
- powers and duties of the Chief and Councillors (or other political leaders);
- duties and powers of all Committees;
- the rights of individual members of a Yukon First Nation in relation to the powers of the Yukon First Nation governing council;
- amending procedures (ways to change the constitution);
- internal management of the Yukon First Nation, including regional or district management structures; and
- use, occupation and lease or sale of the Yukon First Nation's Settlement Land and resources.

## 9. FINANCIAL TRANSFER ARRANGEMENTS

The financial transfer arrangements negotiated between each Yukon First Nation and Government will set out the financial contributions from Government to the Yukon First Nation towards the funding of its institutions and programs. A financial transfer arrangement may provide for five-year block-funding. That is, the Yukon First Nation may negotiate the total amount of money it needs for its programs and services for a five year period. It may do this every five years.

The financial transfer arrangements will:

- set out a method to determine the levels of money that Government will provide to a Yukon First Nation;
- set out the obligations of all parties including basic program delivery standards for Yukon First Nation programs and services; and
- set standards of accountability for funds transferred (reporting how funds are used).

## 10. TAX STATUS OF YUKON FIRST NATIONS

Like other governments in Canada, a Yukon First Nation will be considered to be a similar public body for the purposes of the Income Tax Act. Generally speaking, this means that Yukon First Nations will be treated in the same manner as other governments and municipalities in Canada.

However, if a Yukon First Nation is involved in business activities or owns any other entity that carries on business or makes investments, then it may not be considered a public body performing the functions of government. In other words, if a Yukon First Nation is involved in business activities, it may have to pay more taxes.

Therefore, Yukon Indian People may wish to establish corporations to undertake business activities on their behalf. The reader should refer to "Chapter 20 - Taxation" for further information.



## TRANSBOUNDARY AGREEMENTS

*This chapter describes how the Council of Yukon First Nations, Yukon First Nations, and Government will work together to settle transboundary aboriginal claims. Transboundary claims extend into the Yukon from First Nations in the Northwest Territories and British Columbia and there are also transboundary claims of Yukon First Nations which extend into those areas.*



### 1. WHAT IS A TRANSBOUNDARY CLAIM?

For many years, Yukon Indian People have occupied specific large areas of land in order to hunt, fish and trap. These areas are referred to as traditional areas or "territories".

When Canada was divided into provinces and territories, boundary lines were drawn between the Yukon, Northwest Territories, and British Columbia. These boundary lines often cut through the traditional areas of Yukon Indian People leaving parts of their traditional areas in the Yukon and other parts in the Northwest Territories or British Columbia.

An example is the traditional area of the Kaska Dena people. The Kaska Dena people used to hunt and fish in what is now known as the southern Yukon and northern British Columbia. As a result, the Kaska Dena living in the southern Yukon may wish to claim part of northern British Columbia as their Settlement Land, and, for the Kaska Dena living in northern British Columbia, the opposite may be true. These are examples of what is known as a "transboundary claim".

### 2. TRANSBOUNDARY AGREEMENTS

Under this chapter, the Council of Yukon First Nations, Yukon First Nations, and Government must work together on each transboundary claim to negotiate a Transboundary Agreement. Only those Yukon First Nations whose Traditional Territories are affected by a transboundary claim are involved in these negotiations. Negotiations of transboundary claims in British Columbia or the Northwest Territories will necessarily require the involvement of their respective governments.

A "Transboundary Agreement" means a land claims agreement with respect to:

- (a) any aboriginal claims in the Traditional Territory of a Yukon First Nation made by the Kaska Dena



Council, Tahltan Tribal Council or Taku River Tlingits of British Columbia and the Dene/Metis of the Northwest Territories (also known as "transboundary claimant groups"); and

(b) any aboriginal claims in the Northwest Territories or British Columbia by Yukon Indian People.

Efforts to conclude a Transboundary Agreement will be based on traditional use and occupancy of the land rather than on its ownership and title.

### **3. INTERNAL RELATIONS**

Aside from Transboundary Agreements, Yukon First Nations and transboundary claimant groups may make agreements between themselves to share the management and development of their lands and resources, or to develop their own forms of internal relationships.

### **4. FUNDING**

Canada will make resources available to those Yukon First Nations that have to negotiate Transboundary Agreements.

### **5. AMENDMENT**

Any changes to a Transboundary Agreement may only be made by the consent of the parties to that agreement.

### **6. TRANSBOUNDARY AGREEMENT CONFLICTS**

A Yukon First Nation Final Agreement will have provisions to resolve any conflicts that may arise between that Yukon First Nation Final Agreement and a Transboundary Agreement that applies (or will apply in the future) in the Traditional Territory of that Yukon First Nation. Canada will not agree in Transboundary Agreements to provisions which primarily affect matters for which the Government of Yukon has jurisdiction without the Government of Yukon's consent.



## DISPUTE RESOLUTION PROCESS

The objectives of this chapter are to establish a dispute resolution process to avoid complex and costly litigation in the courts.

### 1. WHAT IS DISPUTE RESOLUTION?

Dispute Resolution is a way to resolve a disagreement.

On occasion, Yukon First Nations and Government may not agree on how the Yukon First Nation Final Agreements are interpreted and implemented. When this happens, the dispute resolution process set out in this chapter will be used to settle the disagreement.

### 2. DISPUTE RESOLUTION PROCESS

The dispute resolution process is a two stage process. The first stage is mediation. If an agreement cannot be reached between the disputing parties through mediation, the matter may be referred to binding arbitration to resolve the dispute.

Yukon First Nation Final Agreements specifically refer some matters to the dispute resolution process. They also allow the parties to refer other matters to the dispute resolution process.

Any Person whose interests are affected by a dispute is allowed to participate in the dispute resolution process.

### 3. DISPUTE RESOLUTION BOARD AND PANEL

A Dispute Resolution Board will be established consisting of three members jointly chosen by the Council of Yukon First Nations and Government. If they cannot agree on the members, the Council of Yukon First Nations and Government will each choose one member. A chairman will then be chosen by the two members.

The Dispute Resolution Board, if it thinks the circumstances warrant, may form a Dispute Resolution Panel consisting of no more than 15 members. The Board is allowed to appoint persons to the Panel from its own members.



The main duties of the Dispute Resolution Board will be:

- (a) to ensure Panel members have or receive training in mediation and arbitration;
- (b) to keep a list of mediators and arbitrators from those appointed to the Panel;
- (c) to appoint mediators and arbitrators;
- (d) to set the fees paid for the services of Panel members;
- (e) to prepare the budgets for the Board and the Panel and to submit those budgets to Government for approval; and
- (f) to establish rules and procedures governing mediation and arbitration in Consultation with the Council of Yukon First Nations and the Governments of Yukon and Canada.

#### 4. MEDIATION

Mediation is a process that is used to resolve disagreements between people. In mediation, a third party works with the two groups having the problem and tries to find a solution with them.

The mediator does not make a final, binding decision. Rather a mediator tries to facilitate a decision which the disputing parties make themselves.

Under this chapter, the following rules apply to the mediation process:

- (a) a mediator can be chosen by the parties to the dispute or if the parties cannot agree on a mediator the Dispute Resolution Board will choose the mediator for them;
- (b) the mediator will try to meet with the parties as soon as possible and assist the parties in resolving the dispute;
- (c) the mediation cannot last for more than four hours unless the mediator and the parties to the dispute agree to work longer;
- (d) the mediator, at his or her own option or by the request of the parties, may provide a brief written recommendation to the parties which will not be binding on them;
- (e) the mediation and the mediator's recommendations will be confidential unless the parties to the dispute otherwise agree; and
- (f) the fees of the mediator will be paid by the Board for the first four hours. If the mediation is longer than four hours, the additional cost will be shared by the parties to the mediation.

#### 5. ARBITRATION

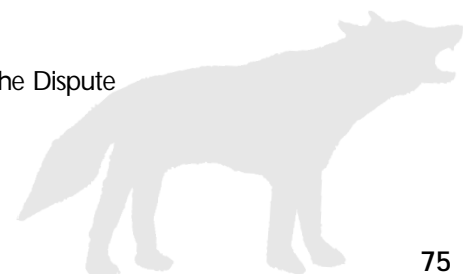
When mediation is not successful, the dispute may be referred to arbitration. In some cases, this referral may be made by any party to the dispute; in other cases, the referral may be made if all parties to the dispute agree.

When a matter has been referred to arbitration, the parties to the dispute will have 15 days in which to choose an arbitrator.

If the parties fail to agree on the selection of an arbitrator, then either party can apply to the Dispute Resolution Board which will appoint an arbitrator from the Dispute Resolution Panel.

Under this chapter, the arbitrator will have the authority to:

- (a) determine the rules under which the hearing will proceed;



- (b) subpoena (summon) witnesses and documents;
- (c) administer oaths, as in a court of law;
- (d) order a party to stop an activity that is in violation of a Yukon First Nation Final Agreement;
- (e) order a party to follow the terms of a Yukon First Nation Final Agreement;
- (f) determine, in money terms, the loss or injury suffered by a party;
- (g) determine the rights and obligations of the parties to a dispute;
- (h) make an order providing interim relief (this means that before the arbitrator decides the matter, the arbitrator can order a party from continuing a certain activity); and
- (i) refer any questions of Law to the Supreme Court of the Yukon.

A decision or order of an arbitrator will be final and binding on the parties to the arbitration.

The cost of the arbitration will be the responsibility of the parties to the dispute unless the arbitrator decides differently.

## 6. JUDICIAL REVIEW

A decision or order of an arbitrator is final and binding unless a party appeals the decision to a court within 60 days of the decision. This would be done through an application to the Supreme Court of the Yukon.

Judicial review refers to an appeal of a decision on the legal basis that the arbitrator acted unfairly or wrongly exercised his or her authority in making the decision.

## YUKON FISH AND WILDLIFE ENHANCEMENT TRUST

### 1. THE ENHANCEMENT TRUST

"Enhancement" means to make something better or stronger. "Trust" means, generally, to safely hold something of value for another. In this case, the objective of the Fish and Wildlife Enhancement Trust is to restore, enhance, and protect Fish and Wildlife in the Yukon and the places where they live so that they will continue to exist and grow.

### 2. MANAGEMENT OF THE FISH AND WILDLIFE ENHANCEMENT TRUST

The Trust will be managed by trustees who are also the members of the Fish and Wildlife Management Board. The trustees may initiate, sponsor, fund, direct and carry out activities to meet the chapter's objective of Fish and Wildlife enhancement, using Trust funds.

Reasonable administration costs are covered by the Trust.

### 3. HOW WILL THE TRUST BE FUNDED?

The general idea of a trust fund is to begin with a basic amount of capital (money), invest it safely and only use the proceeds for the purposes of the trust. If only the profits earned on the investments are used, the trust can be in place forever because it will never use up its initial capital. The initial capital for the Fish and Wildlife Enhancement Trust will be provided by the Government of Canada, the Government of Yukon and the Council of Yukon First Nations. The exact amount given by each party will be based upon a figure of \$1,050,400, adjusted for inflation. Each party's payments will be spread over four years beginning soon after the effective date of Settlement Legislation.

Over the four years, each party will contribute approximately \$1 million dollars to the Trust.

### 4. PAYMENT OF TAXES

The Trust capital can be increased by gifts, donations, grants or by other sources of funds. For income tax purposes, the Trust is a charitable organization so people can make tax deductible donations.

The original Trust capital and any income it earns will not be taxable by any Government.

### 5. WILL THE FISH AND WILDLIFE ENHANCEMENT TRUST REPLACE OTHER GOVERNMENT ENHANCEMENT PROGRAMS?

The Trust is not intended to replace or duplicate (do the same things) as Government Fish and Wildlife enhancement programs. It is put in place to make sure even more work is done to enhance Fish and Wildlife in the Yukon.



## IMPLEMENTATION AND TRAINING FOR SETTLEMENT IMPLEMENTATION

*Implementation means a process to ensure that the Settlement Agreements work in the ways that the negotiators intended ("Settlement Agreements" refers to Yukon First Nation Final Agreements and Transboundary Agreements). This chapter establishes the process and a fund to properly implement the Settlement Agreements. In addition, this chapter ensures that Yukon Indian People will receive training in order to participate in the opportunities arising from implementation of the Settlement Agreements.*

### 1. IMPLEMENTATION PLANS

Implementation plans must be put in place for the Umbrella Final Agreement and for each Yukon First Nation Final Agreement. The implementation plans provide direction and guidance to those people and governments that are working with the Settlement Agreements.

In particular, the implementation plans will identify:

- (a) specific activities and projects required to implement the Settlement Agreements;
- (b) economic opportunities for Yukon Indian People arising from the Settlement Agreements;
- (c) who will be responsible for specific activities and costs;
- (d) approaches to inform the public and beneficiaries about the Settlement Agreements; and
- (e) a process to monitor and evaluate the implementation of the Settlement Agreements.

In addition, the implementation plan for the Umbrella Final Agreement also identifies a number of other activities and tasks common to all the Yukon First Nation Final Agreements. For example, the Umbrella Final Agreement implementation plan deals with the implementation of boards and commissions established under the Umbrella Final Agreement. The implementation plan for the Umbrella Final Agreement has been completed.

The implementation plans for each Yukon First Nation Final Agreement are negotiated by the affected Yukon First Nation and Government. Implementation plans for Yukon First Nation Final Agreements that are currently in effect have also been completed.

The implementation plans for the Umbrella Final Agreement and the relevant Yukon First Nation Final Agreement do not form part of the Yukon First Nation Final Agreements. In other words, the implementation plans are not constitutionally protected.

### 2. FUNDING

#### (a) Implementation Planning Fund

After the effective date of the Settlement Legislation, \$500,000 was provided to the Council of Yukon First Nations by the Government of Canada in order to negotiate the implementation plans for the Yukon First Nation Final Agreements.

#### (b) Yukon First Nation Implementation Fund

In accordance with this chapter, the Council of Yukon First Nations has established a Yukon First Nation Implementation Fund. The main objectives of the Yukon First Nation Implementation Fund are:

- (a) to support Yukon First Nations to establish the government structures necessary for a Yukon First Nation to carry out its responsibilities under the Umbrella Final Agreement and its Final Agreement; and
- (b) to support Yukon First Nations and Yukon Indian People to take advantage of opportunities arising from the Yukon First Nation Final Agreements.

The Government of Canada has provided \$4 million (1990 dollars) to the Council of Yukon First Nations as the initial capital for the Yukon First Nation Implementation Fund.

No taxes will be paid on the \$4 million provided to the Council of Yukon First Nation.

### 3. THE TRAINING TRUST

This chapter provides for the establishment of a Training Trust in order to advance the training of Yukon Indian People. The training needs of Yukon Indian People will be set out in a training plan. The Training Policy Committee has the responsibility to prepare the training plan.

The members of the Training Policy Committee are the trustees of the Training Trust. They will ensure that the money from the Training Trust will be spent on the training of Yukon Indian People.

The Government of Canada and the Government of Yukon have each contributed \$3.25 million (1988 dollars) to the Training Trust. There will be no tax payable on this money.

In addition, the amount of money in the Training Trust may be increased by a donation, grant or by other sources of funds and this will not be taxable.

The money in the Training Trust must only be spent to advance the training of Yukon Indian People in accordance with the training plan. However, the reasonable administration expenses of the Training Trust may be paid from its money. For instance, an accountant may be paid for work done on the Training Trust from the money of the Training Trust.

### 4. TRAINING POLICY COMMITTEE

This chapter established a Training Policy Committee comprised of five members. The Council of Yukon First Nations nominates three members; the Governments of Canada and the Yukon each nominate one.

This chapter provides that the Training Policy Committee must develop a training plan which identifies training activities for Yukon Indian People. The training plan must be approved by the Council of Yukon First Nations and Government.

In addition, the Training Policy Committee must:

- (a) establish training programs for Yukon Indian People;
- (b) develop guidelines on how the money of the Training Trust can be spent;
- (c) spend the money of the Training Trust in accordance with the training plan; and
- (d) prepare an annual report for the Council of Yukon First Nations and Government.

The Training Policy Committee developed a work plan which was included as an annex to the implementation plan for the Umbrella Final Agreement.

Nothing in this chapter prevents the establishment of future training programs for Yukon Indian People.



