



MANDATE GUIDE

FIRST NATION OF NA-CHO NYAK DUN



MANDATE GUIDE FOR MINING ACTIVITIES AND PROJECTS

A. INTRODUCTION

The First Nation of Na-cho Nyak Dun (the “NND”) is a self-governing Yukon First Nation which supports mining activities in its traditional territory so long as those activities bring long-term benefits to the NND and its citizens and do not compromise the integrity of our lands and resources or undermine our culture, heritage and way of life.

The NND seeks the opportunity to be part of these activities and, if appropriate, a partner with proponents who wish to undertake mining activities within the traditional territory of the NND before they commence such activities. To that end, the NND intends to enter into a resource agreement with each proponent on a fair and equitable basis based on the emerging industry standards for such agreements across Canada. These resource agreements are intended to promote a partnership between the NND and mining proponents.

The purpose of this mandate guide is to promote the development of partnerships between the NND and proponents who carry out mining activities in the NND traditional territory. The NND will use this guide to direct the negotiation of resource agreements with proponents. This guide sets out the expectations and objectives of the resource agreements. It intends to provide that a strategic approach is applied in a consistent and coordinated manner with respect to the various activities and projects in its traditional territory. A map of the NND traditional territory is set out in Appendix 1 of this guide.

A resource agreement will benefit both the NND and the proponent. Firstly, it is “good business” for proponents to reach agreement and secure the support of the NND with respect to the mining activities. A resource agreement may serve to provide certainty to the timelines of the proposed activities and identify benefits and opportunities for the NND and its citizens and businesses related to the activities. Secondly, a resource agreement will address any adverse environmental or socio-economic effects of the proposed activities and this should expedite the assessment and regulatory approvals.

Our ultimate goal is the current and future well-being of our community. It is our belief that this mandate guide will facilitate a balance between community, environmental and industry needs.





B. PRINCIPLES

The following principles will guide NND actions and decision making in all discussions, negotiations, approvals and implementation of Resource Agreements for mining projects in NND traditional territory.

1. Stewardship. The NND has a responsibility to care for and protect its Settlement Lands and other lands and resources throughout its traditional territory for future generations. This responsibility, above all others, will guide the participation decisions of the NND with respect to proposed mining activities and projects. If the proponent is using, crossing or occupying a portion of Settlement Land, he will likely be required to obtain an authorization from the NND in accordance with its land and resource management law.
2. Partnership. The NND wants to enter into resource agreements with mining proponents to carry out mining activities on Non-Settlement Land in its traditional territory in order to establish mutually beneficial partnerships. For instance, these agreements may provide certainty to the proponent's timelines for the activities or project and provide the development of a local and skilled labour force. They would also address any socio-economic and environmental concerns of the NND and provide opportunities to the NND and its citizens and businesses.
3. Consent. A mining proponent must obtain the consent of the NND if he wishes to undertake mining activities on its Category A Settlement Land or to use or cross its Settlement Land with respect to a new mineral right. In particular, it is a requirement of the NND's land and resource management law that any proponent intending to undertake mining activities on the NND's Category A Settlement Land must enter into a resource agreement with the NND. This agreement will encompass all stages of a mine, including exploration, advanced exploration, construction, operations and closure.

In addition, the consent of the NND is also required if the proponent is proposing to undertake mining activities in the NND traditional territory located in the Northwest Territories where the NND has not yet finalized its transboundary agreement.

A resource agreement will set out the conditions under which NND provides consent for a project to proceed under the conditions outlined in the resource agreement. The negotiation of a resource agreement is required under the NND's land and resource management law relating to Category A Settlement Land.



4. Traditional knowledge. All projects within NND traditional territory will be subject to appropriate land and environmental studies which may include a traditional knowledge study in the project area.
5. Environmental matters. By entering a resource agreements, the NND is not giving up its right to review, comment and approve or not, any environmental studies, permit applications or environmental monitoring regimes related to a project. For greater clarity, even though a resource agreement is in place and the NND provides its consent for a project to proceed, this does not constitute “an environmental blank cheque.” The regulatory arm of the NND retains its right to take any position on environmental matters related to the project.
6. Duty to consult. The fact that NND may have entered a resource agreement with respect to a project, does not in and of itself, relieve the Crown of its duty to consult and, where appropriate, accommodate the NND’s concerns and interests. Moreover, the duty to consult is not discharged or fulfilled by any review conducted under the *Yukon Environmental and Socio-Economic Assessment Act* (Canada).
7. Meaningful provisions. In negotiations with the NND, proponents are expected to negotiate agreements that contain meaningful provisions – not token “best efforts” clauses. The resource agreements will address matters related to wealth sharing, employment and training, business opportunities and compensation to address adverse impacts on the NND’s aboriginal or treaty rights.
8. Capacity-building. Enhancing the capacity of NND citizens, businesses, government and our community is a key objective of NND involvement in mining activities and projects in our traditional territory.
9. Funding and support for the NND. The NND’s participation in resource agreement negotiations will require access to legal, technical, negotiation and community consultation expertise. proponents have an obligation to ensure the NND has the required reasonable funding for all aspects of the resource agreement negotiation process.



C. EXPLORATION AND PROJECT AGREEMENTS

As discussed earlier, a resource agreement is a legally-binding agreement between the NND and a proponent who seeks to carry out mining activities in the NND traditional territory. There are two types of resource agreements: an exploration agreement and a project agreement. An exploration agreement would deal with activities related to exploration and advanced exploration, while a project agreement would deal with activities related to the construction and operation of a mine and its closure.


1. **Engagement with the NND.** The NND has established a protocol, the “Cooperative Engagement Process for Economic Activities Proposed in the traditional territory of the First Nation of Na Cho Nyak Dun”, which is attached to this mandate guide, to direct the initial contact between the NND and proponents. As part of the formal engagement under this protocol, if the proposed activities are consistent with the goals and interests of the NND, the proponent will be requested to work with the NND to develop a resource agreement in accordance with this mandate guide for the consideration of the Chief and Council.

Please note that the NND must provide its consent before a proponent can stake claims or explore on its Category A Settlement Land. If a proponent wishes to stake claims or undertake exploration activities on Category B Settlement Land or Fee Simple Settlement Land, the proponent must first advise the NND.

2. **Negotiation of an exploration agreement.** The NND wishes to enter into exploration agreements with proponents at the exploration stage. An exploration agreement will encompass all exploration and advanced exploration activities and will be in place until the proponent decides not to further pursue the project or until a project agreement has been concluded between the NND and proponent. It will serve as a basis of the partnership between the NND and proponent.

An exploration agreement will:

- set out non-derogation provisions confirming that the agreement does not define, change or undermine the aboriginal and treaty rights, titles and interests of the NND and its citizens;
- provide a detailed description of the project area and the exploration activities;
- set out interim measures including employment and business opportunities;
- set out the environmental impact mitigation measures the proponent will take;

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- deal with compensation and financial matters, such as the granting of an equity interest to the NND in the project or the proponent's company;
 - ensure capacity for the NND to be consulted and to conduct due diligence with respect to the exploration activities; and
 - contain commitments with respect to the negotiation of a project agreement if the project proceeds to the mine construction and operation stage.

3. **Moving beyond exploration.** Once a decision has been made by the proponent that it intends to move to mine construction and operation based on the results of the exploration and advanced exploration activities, the NND and proponent would negotiate process agreement that:

- sets out the terms and conditions for negotiation of a project agreement;
- includes interim measures for benefits while a project agreement is being negotiated;
- sets the agenda, topics and schedule for the negotiation of a project agreement; and
- identifies negotiation funding to support NND participation in the negotiation of a project agreement.

4. **Negotiation of a project agreement.** A project agreement must be concluded prior to the commencement of mine construction or operation. This agreement will usually be a 'life of mine' agreements so that its provisions apply during the entire construction, operations and closure stages of the project. A project agreement will address the following matters.

- **Non-derogation.** Provisions to confirm that the terms conditions in the project agreement do not prejudice, limit or derogate from NND's treaty and aboriginal rights, titles and interests.
- **Environmental protection, mitigation, monitoring and reporting.** To establish and promote measures intended to protect the environment and minimize the adverse environmental effects of the project. The project agreement may include provisions for the establishment of a NND environmental monitor who would have access to the project site during all phases of the project. The agreement would provide funding for the monitor position. A meaningful permit review process must be included which will provide the time and resources for NND review of the proponent's permit applications prior to submission to regulators. The proponent must agree make reasonable efforts to address or resolve any concerns that may be raised by NND during the permit review process. Nothing in the permit review process will limit the

ability of NND to raise reasonable environmental concerns in good faith to regulators with respect to the project.

- **Consultation.** To establish a consultation process and promote effective communication and development of measures to minimize the effects of the project on the aboriginal and treaty rights of the NND and its citizens. To include measures to protect and conserve all cultural heritage, sacred sites, archaeological sites and specimens that may be impacted by the activities or projects.
- **Community well-being.** If the proposed activities or projects have the potential for adverse impacts on the wellness of the NND's cultural and community's socio-economic well-being, the proponent must confirm its commitment to work with the NND to take concrete steps to protect cultural and community well-being. This may include funding for socio-economic and health baseline studies.
- **Education and training.** Provisions to provide ongoing opportunities for NND citizens to become qualified for employment opportunities during all phases of the project. Should address specific commitments to provide pre-employment training (such as life skills), on-the-job training, and apprenticeship opportunities to the NND citizens in order to achieve the employment objectives of the agreement. Support for the NND education system may include scholarships, bursaries and support for stay-in-school programs.
- **Employment opportunities.** Provisions to enable NND citizens to secure employment during all phases of the project, at all job levels, and to reduce barriers to NND employment on the project. Employment provisions must address requirements for employment, retention and advancement of NND employees. Employment opportunities must include first opportunity for qualified NND citizens. The NND will require assurances that the proponent's contractors and sub-contractors will be contractually bound to honour the employment provisions negotiated in the project agreement. The NND will maintain and make available to the proponent an updated NND human resources inventory. Mitigation measures to ensure that collective or union agreements do not limit or infringe on employment preferences will be included in agreements.
- **Business Opportunities.** Provisions to maximize the benefit NND citizens and their businesses from business opportunities associated with all phases of the project. To include provisions for set-asides and first bidding opportunity through an "open book" process for all contracts related to work at all stages





of the project. In return, NND businesses will be required to provide goods and services in accordance with the project schedule, at a quality the proponent reasonably expects and at a fair industry price. Provisions to scope contracts to meet the capacities of NND businesses will be included. The NND will require assurances in the project agreement that the proponent's contractors will be required to honour the business opportunities provisions negotiated in the project agreement. The NND will maintain an updated NND business registry and will provide the proponent with updated lists of eligible businesses and their capacity.

- **Financial participation.** Fixed or lump sum payments, signing bonus, implementation funding (such as funding for NND environmental monitors), interim minimum payments and other considerations may be relevant.
- **Legacy foundation.** Proponents are expected to support the NND legacy foundation. This foundation will support activities and programs specific to the NND and its citizens, including community infrastructure projects or programs related to NND entrepreneurship with respect to resource development. It may also sponsor training and wellness initiatives that promote a healthy and sustainable community.
- **Revenue sharing.** Provisions to provide for the sharing of a portion of the wealth generated by the project which may be negotiated as a share of the revenues (net smelter return or royalty) or of the profits of project at the operational stage. Profit sharing can be provided as a cumulative percentage share of net profits over the course of the project, calculated before deduction of debt payments and taxes, a royalty stream, equity or a combination of the above.
- **Equity participation.** The NND may choose to acquire equity interest through the acquisition of shares or warrants, the establishment of a joint venture, ownership in the real property or some other form. The NND does not intend to invest its financial resources in order to obtain such an equity interest.
- **Compensation.** Compensation for interference with aboriginal and treaty rights must be provided at all stages of a project. Compensation must be for more than direct losses and may include interference and loss of use compensation. Establishment of compensation fund for impacted NND citizens, such as trappers and harvesters.
- **Workplace conditions.** Provisions to promote a workplace and working conditions that are safe, healthy and supportive of NND employees and which



are respectful and supportive of language and culture of the NND. Cross-cultural training may be a requirement for all employees during the operations stage. May include the establishment of an aboriginal employees workplace committee. Appropriate counseling and other employee support services must be available for NND employees.

- **Implementation.** To set out implementation processes that will guide the ongoing relationship between the parties, including a dispute resolution process. Establishment of an implementation committee to guide and monitor the effective implementation of the agreement and related provisions. May include the establishment of an environment sub-committee and a business, employment & training sub-committee. Ongoing communication between the NND and proponent, including annual monitoring, reporting and evaluation of the implementation of commitments set out in the agreement. This evaluation may include the collection and analysis of data related to employment, training, procurement, cultural well-being and community wellness.
- **Other topics.** As may be agreed.

Where proposed mining activities are located in an area overlapped with the traditional territory claimed by another First Nation, the NND, in consultation with other affected First Nation, will provide direction on how the proponent is to deal with the NND and the affected First Nation.

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Appendix 1- First Nation of Na-Cho Nyak Dun traditional territory

