

First Nation of Na-Cho Nyak Dun Traditional Knowledge Policy



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Part 1—*User Guide*

This Policy Framework was developed by the Yukon First Nations Heritage group, and intended to be used by First Nation Governments as a model policy to help them in developing Traditional Knowledge Policies adapted specifically to their needs.

The First Nation of Na-Cho Nyak Dun Chief and Council approved the Traditional Knowledge policy on February 4, 2008 (Motion #001-2008). It is being used by the Heritage and Education Department in its work with other NND Departments, researchers, government and other agencies.

Part 2– *First Nation Traditional Knowledge Policy*

1. Purpose and Application of This Policy

The First Nation of Na-Cho Nyak Dun Government has adopted this Traditional Knowledge Policy (the “policy”) in order to start discussion and consultation to further develop and strengthen the protection and preservation of its traditional knowledge.

This policy applies to the First Nation of Na-Cho Nyak Dun Government, its employees, contractors and members of its Chief and Council, Elders Council and Youth Council and committees established by the First Nation of Na-Cho Nyak Dun Government and its Self Government Agreements.

2. What is Traditional Knowledge?

What is the First Nation of Na-Cho Nyak Dun’s Traditional Knowledge?

The following definitions of traditional knowledge are examples and require further consultation with the First Nation of Na-Cho Nyak Duns membership and government bodies. This consultation needs to occur to clearly define what is Na-Cho Nyak Dun Governments Traditional Knowledge, and what should be included in the First Nation of Na-Cho Nyak Dun’s Traditional Knowledge Policy.

▶ *Sample Definitions of NNDFN Traditional Knowledge*

The First Nation of Na-Cho Nyak Duns traditional knowledge encompasses traditional spirituality, beliefs, knowledge, customs, clans, language, oral history, stories, art forms, laws, land-based activities, land use and everyday life-skills. The First Nation of Na-Cho Nyak Duns traditional knowledge is held and passed on by its Elders Council and is included in the First Nation of Na-Cho Nyak Dun government structure through the Land Claims and Self Government Agreements, Citizenship Code, Constitution and Land Based Laws.

▶ *Description of Traditional Knowledge*

Traditional knowledge has the potential to include or explain a very wide range of kinds of information – for example:

- 1.) Traditional Sites
- 2.) Medicines and Sites
- 3.) Songs
- 4.) Stories, legends

- 5.) Harvesting- set nets, set hooks, rabbit snaring, berry picking, hunting, fish (trapping, gaffing).
- 6.) Sewing- caribou skin (mattress, tarp), baby (training pants, diapers, swing, pacifier, pack, belt), sinew, birch baskets, babice, set net development, beading, moose tufting, drum making, dog pack, snowshoes, drum making, rabbit (blankets, clothes), moose hide (clothes, footwear).
- 7.) Tanning Hides
- 8.) Cooking- Spruce gum, sap, ice cream, pemmican, soaps, preserving, dry (meat, fish).
- 9.) Parenting-Rules
- 10.) Sharing
- 11.) Feasts
- 12.) Dances-jig, waltz, rabbit, dog, grouse, square.
- 13.) Potlatches
- 14.) Ceremonies-Holidays, events, gatherings, funeral, 1st Hunt
- 15.) Northern Tutchone Language
- 16.) Burial Sites
- 17.) Tool Making- Fish (hook, gaff), bow and arrow, sling shot, snares, traps (deadfall, hook pole), skin scrapper, tent making, moose callers.
- 18.) Foods-bear root, moose, rabbit, berries, caribou, squirrel, gofer, grouse,
- 19.) Transportation- Paddle, toboggan, canoe, raft poles, moose skin boat, dog team.
- 20.) Culture Training Camps
- 21.) Dooli Laws
- 22.) Family trees
- 23.) Marriage laws
- 24.) Traditional spirituality.

Another way to appreciate the concept of traditional knowledge is to consider its broad, often commonly held, characteristics. For example:

- Traditional knowledge is fundamental to the identity of the First Nation of Na-Cho Nyak Dun and its citizens and is integral to the First Nation's culture, values, and beliefs.
- Traditional knowledge is integral to cultural, political, economic distinctiveness and social well-being of the First Nation and its citizens.
- Traditional knowledge includes knowledge that is held by individuals, groups of individuals, families or the collective as a whole.
- Traditional knowledge is steeped in the traditions, culture and history of the community and is closely linked to the environment – it is holistic in nature, linked

to the community's spiritual beliefs, way of life, connections to the land, and practices.

- Traditional knowledge originated in the First Nation's traditions, constantly evolves over time, and has contemporary applications.

► *Other Sample Definitions of Traditional Knowledge*

The *Yukon Environmental and Socio-Economic Assessment Act* defines traditional knowledge as:

"traditional knowledge" means the accumulated body of knowledge, observations and understandings about the environment, and about the relationship of living beings with one another and the environment, that is rooted in the traditional way of life of first nations.

The Royal Commission on Aboriginal Peoples adopted the following definition:

"A cumulative body of knowledge and beliefs handed down through generations by cultural transmission, about the relationship of living beings (including humans) with one another and with their environment..." (Volume 4, Page 454)]

3. Principles

The following principles will apply to the use and management of the First Nations traditional knowledge that is held by First Nation of Na-Cho Nyak Dun Government and its citizens:

- The protection, preservation and promotion of a community's traditional knowledge are the responsibilities of both the citizens of the First Nation and First Nation of Na-Cho Nyak Dun Government.
- First Nation of Na-Cho Nyak Dun Government is responsible for protecting the cultural, political, and economic distinctiveness and social well-being of its citizens, which include the traditional knowledge of the First Nation.
- First Nation of Na-Cho Nyak Dun Government will consider traditional knowledge in the design, implementation, and delivery of its programs and services in a manner that ensures, to the extent possible, the integrity of traditional knowledge.

- First Nation of Na-Cho Nyak Dun Government will maintain holdings of documented traditional knowledge to protect, preserve, and manage the use of traditional knowledge.
- Third parties outside the First Nation community may only use traditional knowledge after they have received the prior informed consent of the First Nation of Na-Cho Nyak Dun or the citizen(s) who holds the traditional knowledge.
- The application of this policy is not intended to impair the traditional or ongoing uses of traditional knowledge by citizens of the First Nation.
- The First Nation of Na-Cho Nyak Dun Government will develop education materials for its employees and citizens, as well as for third parties and other governments, to explain this policy and to support its effective implementation
- The implementation of this policy will assist in the implementation and enhancement of the provisions of our land claim agreement and self-government agreement that incorporate aspects of the First Nation of Na-Cho Nyak Duns traditional knowledge.

4. Definitions

The following definitions apply to this policy:

“**citizens**” means the citizens of the First Nation as determined by the Na-Cho Nyak Duns Citizenship Code and Final Agreement;

“**documented traditional knowledge**” means records, regardless of physical form or characteristics, that include traditional knowledge including correspondence, memoranda, books, plans, maps, drawings, diagrams, pictorials or graphic works, audio or visual recordings, photography, films, geographic information systems, electronic scanning, or any other technique used to make a physical or digital record;

“**First Nation of Na-Cho Nyak Dun Government**” mean the Na-Cho Nyak Dun First Nation Government as established by the Yukon First Nation’s Constitution;

“**land claim agreement**” means the First Nation of Na-Cho Nyak Dun’s comprehensive land claim agreement;

“**prior informed consent**” means consent to an activity that is given after receiving full disclosure regarding the reasons for the activity, the specific procedures that activity would entail, the potential risks involved, and the full implications that can realistically be foreseen;

“**self-government agreement**” means the First Nation of Na-Cho Nyak Duns self-government agreement;

“**third party**” means the individuals, organizations, corporations, researchers, federal government, territorial government, municipal governments and other First Nation governments including any regulatory board or agency established by these respective organizations;

“**traditional knowledge**” means *(to be determined after the membership and internal First Nation of Na-Cho Nyak Dun Government consultations occur).*

5. General Policies

The following general policies will guide the First Nation of Na-Cho Nyak Dun Government, its staff, contractors and members of its Chief and Council and other governing bodies:

- 5.1. First Nation of Na-Cho Nyak Dun Government shall be the body responsible for the development and implementation of all aspects of this policy.
- 5.2. First Nation of Na-Cho Nyak Dun Government will provide effective communication and education about this policy to all First Nation of Na-Cho Nyak Dun Government employees and contractors, its citizens, other First Nation organizations, other First Nation of Na-Cho Nyak Dun Governments, and to third parties affected by decisions under this policy.
- 5.3. First Nation of Na-Cho Nyak Dun Government will use this policy as part of its broader political, legal and regulatory strategy to protect, preserve and manage the use of traditional knowledge.
- 5.4. First Nation of Na-Cho Nyak Dun Government is responsible for the management and safeguarding of traditional knowledge in its care.
- 5.5. First Nation of Na-Cho Nyak Dun Government will be the primary point of contact for third parties to access traditional knowledge from either First Nation of Na-Cho Nyak Dun Government holdings or First Nation citizens.

5.6.

6. First Nation of Na-Cho Nyak Dun Government Traditional Knowledge Holdings

Background

The primary source of traditional knowledge is the community and its citizens. However, the First Nation of Na-Cho Nyak Dun Government has a responsibility to protect its citizens and the shared heritage of the community's traditional knowledge. Also, the First Nation of Na-Cho Nyak Dun Government maintains holdings of documented traditional knowledge. An objective of this policy is to establish the First Nation of Na-Cho Nyak Dun Government as the primary point of contact respecting access to traditional knowledge belonging to the community. As such, the First Nation of Na-Cho Nyak Dun Government must establish effective safeguards and information management systems that enable it to collect and hold information and to ensure access to and use of traditional knowledge is appropriate and respectful.

First Nation of Na-Cho Nyak Dun Government's traditional knowledge holdings must be organized, catalogued, and indexed in such a way as to be searchable, accessible and capable of sharing based on identified terms and conditions. Having a well-catalogued

and indexed collection will enable First Nation of Na-Cho Nyak Dun Government to assess whether a request can be met by information in the holdings, or whether new research is required, and to identify research priorities.

First Nation of Na-Cho Nyak Dun Government will determine the levels of accessibility of their holdings. First Nation of Na-Cho Nyak Dun Government will determine the sensitivity of the traditional knowledge in their holdings and depending on the levels of sensitive, First Nation of Na-Cho Nyak Dun Government may restrict the access to and use of the information. First Nation of Na-Cho Nyak Dun Government must keep some information confidential.

First Nation of Na-Cho Nyak Dun Government must assess the implications of making traditional knowledge public. Traditional knowledge is not considered confidential if it is in the public realm.

First Nation of Na-Cho Nyak Dun Government must maintain the integrity of the traditional knowledge in these holdings so it is available for future generations and retain its value to the community. First Nation of Na-Cho Nyak Dun Government must ensure the quality of traditional knowledge for use in applications such as environmental assessment.

Policies

- 6.1. First Nation of Na-Cho Nyak Dun Government Heritage and Education Department and Lands Department will house the documented traditional knowledge in First Nation of Na-Cho Nyak Dun Government's possession, which will be defined as the "traditional knowledge holdings", in an appropriate manner.
- 6.2. In order for First Nation of Na-Cho Nyak Dun Government to assess whether recorded traditional knowledge is of an appropriate standard and quality to be included in its holdings, and to manage access to the traditional knowledge holdings, it will require detail about the following to be included with the traditional knowledge in its holdings:
 - research methods used to collect traditional knowledge;
 - confidentiality requirements identified by the holder of the traditional knowledge or determined during collection of traditional knowledge;
 - statement of prior informed consent and any attached terms and conditions provided by the citizen who originally shared the knowledge or, if that is not possible, by another citizen who the First Nation considers appropriate;

- sensitivity of traditional knowledge as identified by the holder of the traditional knowledge, and/or according to customary laws of the First Nation:
 - Low sensitivity – e.g., information commonly known outside the First Nation;
 - Medium sensitivity – e.g., information known only to those within the traditional circle of the First Nation;
 - High sensitivity – e.g., spiritual information known only according to customary laws or information which might harm the First Nation or its citizens if it was released.

6.3. Taking into account the parameters identified in 6.2 and any proprietary considerations (Section 9.0), First Nation of Na-Cho Nyak Dun Government will identify the appropriate level of disclosure and any associated conditions or limitations on disclosure for the traditional knowledge in its holdings:

- full disclosure – access with few or no limitations;
- partial disclosure – partial access, with such limitations as:
 - no reproductions;
 - no electronic exchange of information;
 - only certain types of uses allowed; and
 - certain portions of the information may be blacked out or deleted for documentation provided.
- in-house access only;
 - no reproductions;
 - no electronic exchange of information;
 - only certain types of uses allowed; and
 - certain portions of the information may be blacked out or deleted for documentation provided.
- No disclosure – Information is confidential and is not released or disseminated outside of First Nation of Na-Cho Nyak Dun Government. First Nation of Na-Cho Nyak Dun Government will designate staff in the Heritage and Education Department and Lands Department who can view information requests and information under consideration.

6.4. First Nation of Na-Cho Nyak Dun Government will protect all confidential information in First Nation of Na-Cho Nyak Dun Government holdings against unauthorized access, collection, copying, use, disclosure, retention, and disposal through security measures and records management. These measures may include:

- limiting access to information only to authorized employees;
- specify which additional persons may have access to the information;
- allowing users only to view information (no copying or distribution);

- 6.5. First Nation of Na-Cho Nyak Dun Government will protect confidential information in electronic databases using means such as allowing sign on only by authorized staff, and using individual and confidential passwords and read-only formatting.
- 6.6. Where the level of disclosure has not been assessed, First Nation of Na-Cho Nyak Dun Government will treat traditional knowledge holdings as confidential.
- 6.7. First Nation of Na-Cho Nyak Dun Government will inform all employees, contractors, and members of boards or committees of disclosure limitations and confidentiality requirements set out in this policy, contractor policy, personnel policy and oath of office policies. Failure to comply with these policies may be grounds for dismissal and further action.
- 6.8. Prior to the First Nation of Na-Cho Nyak Dun Government agreeing to the disclosure of traditional knowledge to a third party, First Nation of Na-Cho Nyak Dun Government will require an agreement with the third party identifying the level of disclosure, the terms and conditions for sharing the information, the steps the third party will take to ensure confidentiality (when required) is maintained, the purpose for which the traditional knowledge can be used and ultimate ownership of traditional knowledge that has been gathered.
- 6.9. First Nation of Na-Cho Nyak Dun Government employees and contractors who have acquired traditional knowledge while in the employ of the First Nation of Na-Cho Nyak Dun Government shall seek the prior informed consent of the original holder of the traditional knowledge prior to place that traditional knowledge in the First Nation of Na-Cho Nyak Dun Government holdings.
- 6.10. Wherever possible, the First Nation of Na-Cho Nyak Dun Government will make efforts to repatriate materials pertaining to traditional knowledge in collections outside the First Nation to its holdings.
- 6.11. First Nation of Na-Cho Nyak Dun Government will maintain the integrity of its traditional knowledge holdings by ensuring only data collected and stored in keeping with this policy is included in its holdings.

7. Prior Informed Consent to Use Traditional Knowledge

First Nation of Na-Cho Nyak Dun Government and citizens are not obliged to share their traditional knowledge. They can decide whether to share the information and on what terms to share it. First Nation of Na-Cho Nyak Dun Government and citizens must have the opportunity to decide whether to give consent to the use of traditional knowledge, and to make this decision after being fully informed as to the nature and purpose of the use of its traditional knowledge. First Nation of Na-Cho Nyak Dun Government and the citizens must have the opportunity to make this informed decision before any traditional knowledge is shared.

7.1 Consent from First Nation of Na-Cho Nyak Dun Government to Use Traditional Knowledge

Background

First Nation of Na-Cho Nyak Dun Government has a responsibility to protect traditional knowledge as the shared cultural heritage of the First Nation. It also has a responsibility to ensure its citizens are treated appropriately when they share their traditional knowledge. First Nation of Na-Cho Nyak Dun Government will only allow access to its traditional knowledge holdings with prior informed consent. First Nation of Na-Cho Nyak Dun Government will also require third parties to obtain prior informed consent from its citizens prior to their sharing traditional knowledge.

Policies

- 7.1.1. First Nation of Na-Cho Nyak Dun Government will require a prior informed consent statement be in place before allowing access to any traditional knowledge from its holdings.
- 7.1.2. If a prior informed consent statement was provided with the traditional knowledge when it was entered into the holdings, First Nation of Na-Cho Nyak Dun Government will determine appropriate access in accordance with the consent statement.
- 7.1.3. If the traditional knowledge in the holdings does not have a prior informed consent statement, or if a prior informed consent statement does not address aspects of the access required (Appendix 1) then the First Nation of Na-Cho Nyak Dun Government will seek the prior informed consent of the individual who provided the information, or if that individual is no longer able to consider consent (e.g., deceased), then the First Nation of Na-Cho Nyak Dun Government will determine whether consent from the original source is required or may determine culturally appropriate means of determining consent (e.g., according to customary laws)(Appendix 3).

- 7.1.4. First Nation of Na-Cho Nyak Dun Government will require a prior informed consent statement (Appendix 1) be obtained prior to issuing any First Nation of Na-Cho Nyak Dun Government authorizations for a project that involves using traditional knowledge or working with the project proponent on a project.
- 7.1.5. In circumstances where First Nation of Na-Cho Nyak Dun Government is submitting documents that incorporate traditional knowledge to third parties, First Nation of Na-Cho Nyak Dun Government will consider the context and purpose in which the document will be considered prior to submitting the document to determine whether the use of the document by third parties is consistent with the prior informed consent statement (Appendix 1) for the material within the document.

7.2 Consent from Citizens to Use Their Traditional Knowledge

Background

First Nation of Na-Cho Nyak Dun Government will request third parties obtain prior informed consent from its citizens when third parties are seeking traditional knowledge from citizens.

Policies

- 7.2.1. First Nation of Na-Cho Nyak Dun Government will request a citizen complete a prior informed consent statement prior to sharing traditional knowledge with third parties or for any use beyond the customary sharing of traditional knowledge. (Appendix 1) First Nation of Na-Cho Nyak Dun Government may identify a First Nation of Na-Cho Nyak Dun Government representative to accompany the third party when interacting with the citizen(s).
- 7.2.2. First Nation of Na-Cho Nyak Dun Government will educate its citizens as to the importance of prior informed consent before sharing their traditional knowledge beyond the customary recipients.
- 7.2.3. First Nation of Na-Cho Nyak Dun Government will request the party wanting to collect and use the traditional knowledge to provide a copy of the prior informed consent form signed by the citizen.

8. Access to Traditional Knowledge

8.1 Access to First Nation of Na-Cho Nyak Dun Government Traditional Knowledge Holdings

Background

First Nation of Na-Cho Nyak Dun Government must understand fully why traditional knowledge in its holdings is being requested, how it will be used, and who will be using it, before deciding whether to provide its informed consent to the proposed use. First Nation of Na-Cho Nyak Dun Government must manage access to traditional knowledge and establish controls to protect sensitive traditional knowledge, to ensure traditional knowledge is handled appropriately, and to ensure First Nation citizens are treated respectfully. First Nation of Na-Cho Nyak Dun Government must assess requests to determine whether to provide consent, the level of disclosure of sensitive information, the degree of involvement by First Nation of Na-Cho Nyak Dun Government, and the need for formal agreements with the user.

Policies

Requesting Access to First Nation of Na-Cho Nyak Dun Government Holdings

- 8.1.1. First Nation of Na-Cho Nyak Dun Governments Heritage and Education Department and/or Lands Department Staff will be the point of contact for inquiries – both internal and external to First Nation of Na-Cho Nyak Dun Government – for access to First Nation of Na-Cho Nyak Dun Government traditional knowledge holdings.
- 8.1.2. First Nation of Na-Cho Nyak Dun Government will require all parties requesting traditional knowledge – both internal and external to First Nation of Na-Cho Nyak Dun Government – to complete an *First Nation Protocol for Conducting Traditional Knowledge Research or Accessing Traditional Knowledge (Appendix 2)* (*First Nation of Na-Cho Nyak Dun Government may want to consider an exception for citizens who want access for personal use, not connected with their employment.*)
- 8.1.3. First Nation of Na-Cho Nyak Dun Government will evaluate all requests to determine whether information is available in its holdings or whether collection of new traditional knowledge from citizens would be required.
- 8.1.4. First Nation of Na-Cho Nyak Dun Government will evaluate requests and determine what access can be granted to traditional knowledge within its holding based on the level of disclosure of the traditional knowledge and the purposes for which it is to be used (Section 6.0).

Granting Access to First Nation of Na-Cho Nyak Dun Government Holdings

8.1.5. If traditional knowledge within its holdings can be disclosed, First Nation of Na-Cho Nyak Dun Governments Heritage and Education Department and/or Lands Department will establish terms and conditions in keeping with the level of disclosure, which may include limitations on:

- time period of use;
- location of use;
- specifications regarding use;
- use for purposes other than original purpose;
- sharing beyond primary user;
- rights or interests associated with use.

8.1.6. First Nation of Na-Cho Nyak Dun Government will put all grants of access in writing (Appendix 2), which will include terms and conditions regarding use and the measures that both First Nation of Na-Cho Nyak Dun Government and the third party will take to ensure the required level of disclosure is respected.

8.1.7. First Nation of Na-Cho Nyak Dun Government may require a confidentiality agreement, research agreement, or other contractual agreements, and/or legal intellectual property mechanisms are in place before allowing access to its traditional knowledge holdings (Section 10).

8.1.8. First Nation of Na-Cho Nyak Dun Government will evaluate any requests for changes to access or use of traditional knowledge in accordance with this policy.

8.1.9. First Nation of Na-Cho Nyak Dun Government may negotiate with third parties for an equitable sharing of monetary or non-monetary benefits arising from the use of the traditional knowledge by the third party.

8.2 Requesting Access to Citizens Holding Traditional Knowledge

Background

The primary source of traditional knowledge is the community and its citizens. The First Nation of Na-Cho Nyak Dun Government recognizes that traditional knowledge may be shared with third parties through the participation of citizens in meetings, interviews or public consultations. Also, citizens may be approached directly and asked to share their traditional knowledge. In some cases, the information being requested may already be in the First Nation of Na-Cho Nyak Dun Government traditional knowledge holdings and does not need to be collected again. However, in other cases, new traditional knowledge research may be required. In such cases, First Nation of Na-Cho Nyak Dun Government or third parties may collect information by working directly with citizens. First Nation of

Na-Cho Nyak Dun Government wants to ensure the rights and interests of its citizens are protected in this exchange of traditional knowledge.

Policies

Requesting Access from Citizens

- 8.2.1. First Nation of Na-Cho Nyak Dun Government employees or contractors requesting traditional knowledge from citizens will follow First Nation of Na-Cho Nyak Dun Government research guidelines (Appendix 3).
- 8.2.2. First Nation of Na-Cho Nyak Dun Government will assist those requesting traditional knowledge from citizens to determine whether information already exists in the First Nation of Na-Cho Nyak Dun Government traditional knowledge holdings.
- 8.2.3. First Nation of Na-Cho Nyak Dun Government will support its citizens by ensuring they are made aware of the principles and intent of the policy and its provisions, particularly the importance of and need to protect intellectual property interests they may have (Section 10) and ensuring that the prior informed consent of citizens is obtained (Section 7).
- 8.2.4. First Nation of Na-Cho Nyak Dun Government will require a third party requesting traditional knowledge who wishes to have direct access to citizens, to agree that:
 - all information gathered will be vetted by First Nation of Na-Cho Nyak Dun Government to determine the level of sensitivity and to ensure the cultural integrity of the traditional knowledge is retained in the process of documenting it; and
 - Copies of all information gathered will be provided to First Nation of Na-Cho Nyak Dun Government to be included in its holdings (including videos, photos, recordings and printed materials). Included with this information will be prior informed consent documentation, confidentiality requirements, research methods, and the level of sensitivity determined for the traditional knowledge gathered during the project (Section 6).
- 8.2.5. First Nation of Na-Cho Nyak Dun Government will endeavor as necessary to enter into further agreements with the third parties conducting the activities that lead to the accumulation of traditional knowledge, to protect the rights and interests of First Nation of Na-Cho Nyak Dun Government and its citizens.
- 8.2.6. First Nation of Na-Cho Nyak Dun Government may negotiate with third parties for an equitable sharing of any monetary or non-monetary benefits arising from the use of the traditional knowledge by the third party. Where appropriate or if requested, the First Nation of Na-Cho Nyak Dun Government may assist or

negotiate on behalf of traditional knowledge holders and/or the citizens of the First Nation.

- 8.2.7. First Nation of Na-Cho Nyak Dun Government will promote understanding by third parties of the customs and practices associated with sharing traditional knowledge.

9. Projects Using Traditional Knowledge

Background

The user of traditional knowledge should avoid, when possible from taking the traditional knowledge out of its cultural context. This means the user of traditional knowledge, whether a staff member within the First Nation, or a third party, should recognize that traditional knowledge is more than just factual information, and appreciate and respect the sensitivity of the traditional knowledge, the time frames and manner in which it should be collected, the appropriate ways of using the data, and other customary requirements for the treatment and use of traditional knowledge.

Policies

- 9.1. First Nation of Na-Cho Nyak Dun Government will encourage and promote early communication with third parties when the First Nation of Na-Cho Nyak Dun Government is aware of projects that may require the utilization of traditional knowledge.
- 9.2. First Nation of Na-Cho Nyak Dun Government will determine the extent of its involvement in a project, and the contractual or other agreements required according to the nature of the project and the traditional knowledge being requested. Establishing good communications while in the early stages of planning a project will help the First Nation of Na-Cho Nyak Dun Government assess the information that may be needed and help to determine the availability of sources of traditional knowledge.
- 9.3. First Nation of Na-Cho Nyak Dun Government will require that third parties seeking traditional knowledge from the First Nation of Na-Cho Nyak Dun Government or its citizens fill out the First Nation Protocol for Conducting Traditional Knowledge Research or Accessing Traditional Knowledge (Appendix 2).
- 9.4. First Nation of Na-Cho Nyak Dun Government will work with its citizens to determine to what extent they want to be involved in a project, and the role delegated to staff in sharing traditional knowledge. Further consultation with the Elders Council will be required to determine the level of involvement and role they will play in various projects.

- 9.5. First Nation of Na-Cho Nyak Dun Government will request that all research utilize appropriate research methods for collecting and using traditional knowledge in accordance with the research guidelines set out in Appendix 3.
- 9.6. First Nation of Na-Cho Nyak Dun Government will request all parties using any of the First Nation's traditional knowledge to provide First Nation of Na-Cho Nyak Dun Government and, where appropriate, the holder of the traditional knowledge with the results of their traditional knowledge project.
- 9.7. First Nation of Na-Cho Nyak Dun Government will encourage and support its citizens in their efforts to ensure traditional knowledge is treated respectfully and appropriately by keeping citizens informed of their rights and responsibilities regarding traditional knowledge, prior informed consent, and the principles and intent of this policy.
- 9.8. Depending on the level of sensitivity of traditional knowledge sought and the extent of information required by the third party, the First Nation of Na-Cho Nyak Dun Government may work with the third party requesting the traditional knowledge to help establish project principles that are consistent with the principles of this policy.
- 9.9. In situations where traditional knowledge is being accessed directly from citizens by a third party, the First Nation of Na-Cho Nyak Dun Government may work with the parties to develop guidelines to help ensure that traditional knowledge collected by the third party is handled appropriately.

10. Protecting Rights to Traditional Knowledge

Background

The extent to which intellectual property rights and mechanisms can be used to protect traditional knowledge is limited under Canadian law. First Nation of Na-Cho Nyak Dun Government may not have intellectual property rights to all of the traditional knowledge in its holdings; however, First Nation of Na-Cho Nyak Dun Government should preserve whatever rights and interests it does have, and avoid alienating any possible rights that may be established in the future.

Policies

- 10.1. First Nation of Na-Cho Nyak Dun Government will assess its rights and interests including any intellectual property rights it may have in the particular information being requested before granting prior informed consent to any access that traditional knowledge.

- 10.2. First Nation of Na-Cho Nyak Dun Government will not grant, waive or alienate any rights to traditional knowledge to a third party that may affect or limit the ability of the First Nation of Na-Cho Nyak Dun Government to obtain proprietary interests in the traditional knowledge held in First Nation of Na-Cho Nyak Dun Government's traditional knowledge holdings.
- 10.3. First Nation of Na-Cho Nyak Dun Government will require, prior to granting access to traditional knowledge holdings or holders, that third parties not seek intellectual property rights to the traditional knowledge. The First Nation of Na-Cho Nyak Dun Government will also require that the third party agree that all reports, publications or any other form of public documentation of traditional knowledge include as part of the citing of the traditional knowledge the following text:

Cited with the consent of the First Nation of Na-Cho Nyak Dun Government and/ or citizen. The First Nation of Na-Cho Nyak Dun Government has requested that anyone wishing to use this information, contact the First Nation of Na-Cho Nyak Dun Government prior to any such use.
- 10.4. First Nation of Na-Cho Nyak Dun Government may negotiate with third parties for an equitable sharing of benefits including any monetary and/or non-monetary benefits arising from the use of the traditional knowledge by the third party.

Legal Tools for Protecting Traditional Knowledge

Background

Intellectual property is a legal term that deals with protecting a creator's expressions in artistic and literary works, the propriety technology in inventions, the words and symbols used to identify products and services and the aesthetic aspects of designs. Generally, the purposes of intellectual property rights are to promote sharing of information while ensuring that the creator's interests in the information are protected. Once an intellectual property right is established, it allows the owner of the right the ability to control the use of the intellectual property. Intellectual property rights will not protect traditional knowledge but they can limit the use of traditional knowledge in some situations. For example, the use of Intellectual Property Rights can be used to exclude others from making, using, copying or selling the rights holders' intellectual property for a fixed period of time. Many of the rights are recognized internationally.

Some examples of intellectual property rights that can be used to protect interests in traditional knowledge include:

- *Copyright* – protect original literary, artistic, dramatic or musical works and computer software when they are expressed or fixed in a material form; Copyright provides a “moral right” which prevents others from modifying or manipulating copyrighted works which affect the honour or integrity of the creator. Copyright can protect artist’s works; however, the right would be vested in the artist and not the First Nation of Na-Cho Nyak Dun Government.
- *Neighbouring rights* – refer to the rights of performers and producers to be compensated when their performances and sound recordings are performed publicly or broadcast;
- *Trademarks* – protect words, symbols or pictures used to distinguish goods or services of an individual or organizations from those of others in the marketplace;
- *Patents* – protect new technological products and processes;
- *Trade secrecy* – protects trade secrets and confidential information from public disclosure and unauthorized use;

Using Intellectual Property

The First Nation of Na-Cho Nyak Dun Government will assess what are its interests in the specific traditional knowledge holding to determine how to best protect the traditional knowledge including:

- Determine what is the nature of the interest?
- Is the traditional knowledge or form of information new, novel, original or distinctive? The First Nation of Na-Cho Nyak Dun Government cannot establish an intellectual property right for someone else’s creation, ideas or information.
- If the First Nation of Na-Cho Nyak Dun Government creates an intellectual property rights to limit or prevent use of information then the First Nation of Na-Cho Nyak Dun Government consider whether there is an interest in enforcing the protections in the right.
- Ideas and orally held information cannot get an intellectual property protection. The First Nation of Na-Cho Nyak Dun Government must consider how best to preserve information and whether it is appropriate to write or put information into a physical form that can allow the First Nation of Na-Cho Nyak Dun Government to create an intellectual property right. As well, information in the public domain cannot be protected. Intellectual property rights have time frames that limit how long the intellectual property right can be used. Once the time frames have expired the information becomes public.

11. Education and Communication

Background

Traditional knowledge is sensitive information, and therefore requires measures to control access and to ensure appropriate use. Users of traditional knowledge must understand traditional knowledge in its cultural context to fully appreciate its content and significance to the First Nation of Na-Cho Nyak Dun Government.

Policies

- 11.1. First Nation of Na-Cho Nyak Dun Government will keep its citizens informed as to the objectives, principles, intent and provisions of this policy and their rights and options regarding their traditional knowledge. In particular, the provisions regarding the confidentiality and sensitivity of traditional knowledge, and the importance of prior informed consent before sharing their knowledge with third parties.
- 11.2. First Nation of Na-Cho Nyak Dun Government will inform traditional knowledge users as to the sensitivity of traditional knowledge and the need for controls over use of traditional knowledge.
- 11.3. First Nation of Na-Cho Nyak Dun Government will inform users of the cultural context of traditional knowledge and the need to consider traditional knowledge in this context.

12. Authority and Accountability

Policies

- 12.1. This policy applies to all branches, departments, agencies, employees and contractors of the First Nation of Na-Cho Nyak Dun Government and includes all boards and committees established by the First Nation of Na-Cho Nyak Dun Government.
- 12.2. First Nation of Na-Cho Nyak Dun Governments Heritage and Education Department and/or Lands Department has the primary responsibility to manage the First Nation of Na-Cho Nyak Dun Government's traditional knowledge holdings.
- 12.3. First Nation of Na-Cho Nyak Dun Government will review all applications for authorization pursuant to [First Nation of Na-Cho Nyak Dun Government legislation, regulations] for compliance with this policy prior to issuing authorizations.

- 12.4. First Nation of Na-Cho Nyak Dun Government will review all research permits and licenses pursuant to the *Scientists and Explorers Act* [and other First Nation of Na-Cho Nyak Dun First Nation of Na-Cho Nyak Dun Governments' legislation in which authorizations are issued] for compliance with this policy prior to providing its advice to the authority issuing the authorization.
- 12.5. When exercising authority under section 16.5.1.11 of the First Nation's Final Agreement to screen and approve applications for fish and wildlife surveys and research permits for private surveys and research within the first nation's settlement land, the First Nation of Na-Cho Nyak Dun Government will review the application for compliance with this policy.
- 12.6.

13. Monitoring and Enforcement

Policies

- 13.1. First Nation of Na-Cho Nyak Dun Government is responsible for enforcing this policy as it applies to its employees, contractors, members of committees, Boards and any other institutions of First Nation of Na-Cho Nyak Dun First Government.
- 13.2. First Nation of Na-Cho Nyak Dun Governments Heritage and Education Department and/or Lands Department will develop information management systems to track the requests for traditional knowledge and monitor the use of traditional knowledge to ensure access and use conditions, and other contractual or legal requirements are being met.
- 13.3. First Nation of Na-Cho Nyak Dun Government will inform all staff and members of First Nation of Na-Cho Nyak Dun Government boards or committees of the provisions of this policy, including the confidentiality provisions. Failure to comply with the policy provisions will be addressed in accordance with any applicable First Nation of Na-Cho Nyak Dun Government personnel policies and procedures.

14. Review

- 14.1 First Nation of Na-Cho Nyak Dun Government will review this policy within five years.

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APPENDICES

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Appendix 1– First Nation of Na-Cho Nyäk Dun Prior Informed Consent Statement

Interviewee: _____

Project Title: _____

Interviewer: _____

(Please set out name as well as any company, employer or institution)

Date of Interview: _____

Location of interview: _____

Project Manager Name, Title, Affiliation: _____

Project Purpose: _____

What will information be used for?

Who will have access to information?

I _____ have reviewed and understand The Protocol for Conducting Traditional Knowledge Research or Accessing Traditional Knowledge which is attached to this form.

Names of people present during interview:

Initial

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How will information be documented and/or recorded during the interview?

Statement of Consent:

I, _____, have reviewed the information provided in this form and agree to participate in the interview and I agree to the use of the traditional knowledge provided for the above named project, for the uses identified in the attached protocol. I understand that in participating in the interview I do not have to answer any questions I do not want to and that I may choose to end the interview if I so choose. I may also withdraw information provided during the interview.

Signature

Date

Witness (name)

Signature

Date

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Appendix 2–First Nation of Na-Cho Nyäk Dun Government Protocol for Conducting Traditional Knowledge Research or Accessing Traditional Knowledge

1. Project Manger Name, Title: _____

2. Affiliation: _____

3. Project Title: _____

4. Project Purpose: _____

5. Project Goals: _____

6. Project Description.

7. Why is traditional knowledge necessary for project?

8. What issues are expected to be addressed by the traditional knowledge?

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9. What other sources of information have you sought in association with this project?

10. Are there any rules, by-laws or other limitations that may affect how you handle the information? (i.e. Institutional research guidelines, funding agreements) If yes, please explain.

A. Conducting Primary Research Using Traditional Knowledge

1. Research outline. Attach outline indicating how research conforms to First Nation research guidelines. Project applicant has research guidelines: _____

Research outline is attached: _____

B. Accessing Traditional Knowledge in First Nation Holdings

1. Request for a general search _____; or specific traditional knowledge source _____

2. What are the issues to which you believe that traditional knowledge would be associated with? (be as specific as possible; use classification system used for collections; identify attributes that can be used to search collection, e.g., keywords, topics)

Source (title, author, date, who collected information) _____

Video ___ Document ___ Photograph ___ Other _____

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Location (what geographical location do you want information for?)

Person(s) _____

Time Period _____ Event _____

Type of Activity (e.g., hunting, fishing, children playing):

Type of Knowledge (stories, first person accounts)

C. Interviewing First Nation Citizens

1. Interviewee (complete the following for each interviewee):

2. Interviewer(s):

3. Date(s) of interview(s):

4. Duration of interview(s):

5. Location of interview(s):

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6. Method of recording information (tape, DVD, video, notes):

7. Topics – attach outline of general topics or questions.

8. Payment rate:

D. Use of Traditional Knowledge

1. Who will use/have access to the traditional knowledge?

Primary user: _____

Other users: _____

2. Final product(s) of this project (e.g., recorded, documented, book, video, research thesis paper, environmental assessment, education curriculum). Include # copies, storage, and distribution.

3. Who is the audience for the final product(s)?

4. How will confidentiality and sensitivity of information be maintained?

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5. Is there any access to information legislation that the traditional knowledge may be subject to?

6. Project outcomes: How will the First Nation First Nation of Na-Cho Nyak Dun Government and citizens benefit from the project?

7. What benefits will others gain from the project, including the project proponent?

E. Prior Informed Consent (Attach prior informed consent statements for this project)

I verify that the above information is true to the best of my ability.

Signature

Name

Position

Date

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Appendix 3–Prior Informed Consent to Use Traditional Knowledge in the First Nation of Na-Cho Nyäk Dun Government Holdings

Project Title: _____

Project Manager, Name, Title, Affiliation _____

Project Purpose: _____

What will the traditional knowledge information be used for:

Who will have access to the traditional knowledge information:

Source of traditional knowledge material:

Name of holdings (e.g., First Nation archives, database file name):

Name of project where traditional knowledge originally recorded:

Person who originally provided the traditional knowledge information:

Date traditional knowledge information originally recorded:

Location traditional knowledge information originally recorded:

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I, _____ have reviewed and understand the *“Protocol for Conducting Traditional Knowledge Research or Accessing Traditional Knowledge”*, which is attached to this form.

Signature: _____ Date: _____

A statement of prior informed consent for use of the traditional knowledge information for this purpose is on file in the holdings, and a copy is attached.

Yes _____;

Name of person providing consent _____

No _____ (section 9 must be completed)

I, _____ have reviewed the information provided in this form and agree to share the traditional knowledge information identified above for the use in the above named project, for the uses identified in the attached protocol. I understand that I can withdraw this approval at any time if the traditional knowledge information is not being used in accordance with this consent statement and the attached protocol.

Signature _____

Date _____

Witness Name _____

Signature _____

Date _____

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Appendix 4–First Nation of Na-Cho Nyäk Dun Government Checklist for Evaluating Requests to Use Traditional Knowledge

1. Evaluating Requests to Use Traditional Knowledge

- a. Has the protocol for conducting research or accessing traditional knowledge in holdings been completed?
- b. Is traditional knowledge available in the holdings?
- c. Is an interview required to obtain new traditional knowledge?
- d. What is the sensitivity rating of the traditional knowledge?
- e. What confidentiality provisions have been identified?
- f. Have First Nation of Na-Cho Nyäk Dun Government research guidelines been followed?

2. Obtain Prior Informed Consent

- a. If traditional knowledge is in the holdings:
 - does a prior informed consent statement exist with the traditional knowledge in the holdings;
 - if not, determine who is to provide the consent for use of the material in the holdings and ensure the “*Prior Informed Consent to Use of Traditional Knowledge in the First Nation of Na-Cho Nyäk Dun Government Holdings*” is completed
- b. if citizen(s) will be interviewed for traditional knowledge:
 - ensure each individual completes the prior informed consent statement. Review the project information in the protocol with each interviewee prior to them completing the statement.

3. Decision/action options

- a. identify the appropriate level of disclosure;
- b. work with project applicant on how level of disclosure and confidentiality will be maintained;
- c. identify ownership of traditional knowledge materials and results of research;
- d. identify intellectual property rights and how they will be maintained;
- e. identify how community verification of the project results will occur;
- f. identify how the results of the project will be shared with the First Nation.

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Appendix 5–First Nation of Na-Cho Nyäk Dun Government Research Guidelines

First Nation of Na-Cho Nyäk Dun Government should develop a code of ethics or guidelines for conducting traditional knowledge research which may incorporate the following general principles:

- First Nation of Na-Cho Nyäk Dun Government has its own customary laws regarding how traditional knowledge is held, shared and passed on; these should be respected in the design of research and consultation programs;
- First Nation of Na-Cho Nyäk Dun Government identifies its own research priorities, and advocates for these to be addressed in traditional knowledge research;
- First Nation of Na-Cho Nyäk Dun Government supports and encourages collaborative, participatory research in which the First Nation is involved throughout the research project;
- First Nation of Na-Cho Nyäk Dun Government ensures its internal research guidelines/policies meet ethical standards established by formally recognized research institutions;
- First Nation of Na-Cho Nyäk Dun Government identifies the proper way of working with Elders using culturally appropriate methods;
- First Nation of Na-Cho Nyäk Dun Government reviews research proposals, study methods;
- Community needs adequate lead time to review and approve research proposals and research methods, and to participate in research projects;
- Researcher identifies methods used to maintain confidentiality of interviewees;
- Researcher ensures quality control measures in research design to ensure traditional knowledge information is collected in a manner that is consistent and complimentary to the collection of scientific information;
- Community requires opportunity to verify traditional knowledge data that has been collected and documented;
- Researcher acknowledges sources of traditional knowledge;
- Researcher reports findings back to community;
- Researcher provides copies of research materials and final products to First Nation of Na-Cho Nyäk Dun Government;
- Researcher obtains appropriate authorizations for conducting research;
- Researcher uses and applies appropriate language and dialects;

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-
- First Nation of Na-Cho Nyäk Dun Government determines appropriate compensation rates for traditional knowledge interviewees;
 - Researcher provides compensation to participants.

Sources

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APPENDIX 6– First Nation of Na-Cho Nyäk Dun Government Contractual Agreements, Terms

The First Nation of Na-Cho Nyäk Dun Government should develop template contracts that incorporate the following concepts:

- Term of agreements;
- Rights and responsibilities of parties;
- Intellectual property rights – who is able to obtain or attach rights;
- Uses of information;
- Potential needs for compensation;
- Prior informed consent;
- Purpose is to clearly define the reasons and methods, potential impacts and expected outcomes of research or use of information;
- Who will be using information and how;
- How the information may be utilized or presented;
- Limitation or restrictions on use of information;
- Confidentiality Agreement;
- Designed to prevent other parties from using or disclosing information; and
- Agreements can be signed with consultants, employees or contractors, First Nation of Na-Cho Nyäk Dun Governments or businesses.

When considering the use of contracts the following factors should be considered:

- A contractual agreement can be easily developed and entered into between the parties at a low cost and address specific issues and interests as well as addressing certain remedies in the event that there is a breach of the contract.;
- Contractual agreements can only be enforced by the parties to the contract and can only address what is in the agreements.