

TENURE REGULATION

Pursuant to section 26 of the *Lands and Resources Act*, the Council orders as follows:

1. The Tenure Regulation is hereby made.
2. This Order comes into force on January 1, 2012.

Dated at Mayo, in the Yukon Territory, this _____ day of November, 2011.

Chief
First Nation of Nacho Nyak Dun

Short title

1. This regulation may be cited as the *Tenure Regulation*.

Definitions

2. In this Regulation, the definitions of the Act apply and:
 - (a) "Act" means the *Lands and Resources Act*;
 - (b) "Authorization" means a licence, permit, lease, easement or other grant established under the these Regulations and issued under the Lands and Resources Management Regulations;
 - (c) "Citizen" means a person who is enrolled as a member of the First Nation of Nacho Nyak Dun pursuant to the First Nation of Nacho Nyak Dun Citizenship Code;
 - (d) "Department" means the Department of Lands and Natural Resources of the First Nation established by the Act;
 - (e) "Exploration Work" means:
 - (i) work done in stripping, drilling, trenching, sinking shafts and driving audits or drifts;
 - (ii) geological, geochemical and geophysical investigations of the exploration area made on the ground or from aircraft;
 - (iii) Exploration Work other than that described in paragraph (i) and (ii) of a kind and to the extent approved by the Department;
 - (iv) a survey of the exploration area approved in writing by the Department; and
 - (v) the extraction of not more than 1,000 tonnes of ore in a year within the exploration area for sampling purposes.

- (a) "Final Agreement" means the land claim agreement entered into by the First Nation of Nacho Nyak Dun, Her Majesty the Queen in Right of Canada and Government of Yukon which was brought into legal effect on February 14, 1995;
- (f) "Forest Resources" has the same meaning as in the Final Agreement;
- (g) "Gas" has the same meaning as in the Final Agreement;
- (h) "Manager" means the Manager of the Department or other official of the Department, as appropriate, if the Manager has delegated in writing a power, responsibility or function of the Manager under these Regulations to the other official;
- (i) "Mineral" has the same meaning as in the Final Agreement;
- (j) "Oil" has the same meaning as in the Final Agreement;
- (k) "Placer Work" means stripping, ditching and draining and trenching activities related to the digging or washing of gravels to recover placer mineral;
- (b) "Resources" means the Forest Resources, Gas, Minerals and Oil located on or in Settlement Land;
- (l) "Settlement Land" means the land retained by the First Nation of Nacho Nyak Dun under the Final Agreement;
- (m) "Traditional Activities" means traditional or cultural activities undertaken by a Citizen, including the harvest of fish and wildlife and the use of Forest Resources in accordance with the Final Agreement.

LEASE

Traditional land use

1. The issuance of a traditional use lease authorizes the exclusive use and occupancy of a specific portion of Settlement Land by a Citizen for Traditional Activities.
2. A traditional use lease will only be issued to a Citizen if the portion of Settlement Land:
 - (a) is not used for any other purpose, including any commercial purpose;
 - (b) does not contain a permanent structure other than a cabin, tent frame, cache, fish, rack or other like improvement that is used primarily for trapping and other traditional purposes; and
 - (c) is not a permanent residence.

Residential

3. A residential lease authorizes a person to reside on a specific portion of Settlement Land.

Recreational

4. A recreational lease authorizes a person to use and occupy a specific portion of Settlement Land for non-commercial purposes and not as a primary or permanent residence without the written consent of the Manager.

Commercial

5. A commercial lease authorizes a person to carry out commercial activities on a specific portion of Settlement Land, including gas stations, restaurants, retail stores, hotels and automobile dealerships.

Industrial

6. An industrial lease authorizes a person to carry out industrial activities on a specific portion of Settlement Land, including manufacturing, quarrying, warehousing and storage, vehicle or machinery repair, and does not authorize any other use of that Settlement Land without the written consent of the Manager.

Institutional

7. An institutional lease authorizes activities on a specific portion of Settlement Land related to offices, schools, medical facilities, airports, administration buildings, parking lots and access roads.

Agricultural

8. An agricultural lease authorizes farming activities on specific portion of Settlement Land, including hay and food production.

Grazing

9. A grazing lease authorizes the use of a specific portion of Settlement Land for grazing purposes.
10. A holder of a grazing lease will not:
 - (a) till or make other alteration to the Settlement Land;
 - (b) plant non-native plant species on Settlement Land; or
 - (c) install any permanent structures on Settlement Land;without the written consent of the Manager.
11. The holder of a grazing lease will report annually to the lands officer if he installs any structures on Settlement Land.

Tourism

12. A tourism lease authorizes the use of a specific portion of Settlement Land for outdoor recreational activity provided on a fee-for-service basis for natural environment experiences, such as the provision of guiding services for hiking, horseback riding, canoeing, wildlife photography and traditional land use instruction, and does not authorize any other use of Settlement Land without the written consent of the Manager.
13. A holder of a tourism lease will not:
 - (a) make any alteration to the land; or
 - (b) install any permanent structures.

Standard terms of lease

14. Every lease will set out the period for which it is valid and provisions, if any, for the renewal of the lease upon the expiry of its term.
15. Every lease of Settlement Land will contain, in addition to such terms and conditions as the Manager may deem necessary, a reservation of:
 - (a) all Minerals whether solid, liquid or gaseous which may be found to exist within such Settlement Land together with the powers to work the same and for that purpose to

- enter upon, use and occupy the lands or so much of the lands and to such an extent as may be necessary for the effectual working and extracting of the Minerals;
- (b) the rights of recorded holders of rights, claims and permits relating to Minerals within Settlement Lands;
 - (c) all timber that may be on the Settlement Land; and
 - (d) the right of employees, contractors and agents of the First Nation of Nacho Nyak Dun to enter upon the Settlement Land for the purpose of installing and maintaining any public utility.
16. Every lease of Settlement Land will confirm that the lease only grants a leasehold interest and does not grant or transfer any right or interest in the ownership of the Settlement Land to the lessee.
17. Subject to the rights of any mortgagor, when a lease is cancelled or expires and there are no arrears of rent or taxes, the lessee may, within three months of the cancellation or expiration, remove any buildings or other structures owned by the lessee that may be on the Settlement Land or the portion of the Settlement Land withdrawn from the lease.
18. Where a lessee described in section 17 does not remove his or her building or other structures within three months of the expiration or cancellation of a lease:
- (a) the improvements, structures, or infrastructure located on the Settlement Land will become, unless otherwise agreed to by the parties in writing and without anything further required, the property of the First Nation of Nacho Nyak Dun; and
 - (b) the Manager may make an appraisal of the buildings or other structures that have been left on the Settlement Land by the lessee and direct the sale of the same by public auction.
19. Where the buildings or other structures described in section 18 have been offered for sale by public auction and have not been sold, the Manager may authorize the disposal of them by private sale.
20. Leases will be transferable in accordance with the terms of the lease.
21. Each lessee will, at the expiration or termination of the lease, peaceably yield possession of the land to the First Nation of Nacho Nyak Dun.
22. A lease does not authorize any other use of Settlement Land other than the express purpose set out in the lease, unless the Manager provides written consent for other uses.
23. Every lease will be consistent with this Regulation and the land use plans made pursuant to the Lands and Resources Management Regulation.

LAND USE PERMIT

24. A person must obtain a land use permit from the Department in order to carry out activities on Settlement Land that involve:
- (a) the use of explosives;
 - (b) the use of any power-driven machinery for earth drilling purposes;
 - (c) the establishment of any campsite that is to be used for more than 100 man-days;
 - (d) the establishment or operation of any petroleum fuel storage facility;

- (e) the use of any self-propelled power-driven machine for moving earth or clearing land of vegetation;
- (f) the use of any stationary power driven machine for hydraulic prospecting, moving earth or clearing land, other than a power saw;
- (g) the leveling, grading, clearing, cutting or snow ploughing or any line, trail or right-of-way exceeding one metres in width and exceeding two hectares in area; or
- (h) any other activity identified by the Department.

Term

- 25. Every permit will set out the period for which it is valid and such period will be based on the estimated dates of commencement and completion as set out by the applicant in his application, but in no case will a permit be valid for a period exceeding two years.
- 26. Upon receipt of a written request from a permittee for an extension of a term of his permit, the Manager may extend the permit's term subject to terms and conditions consistent with those of the original term, for a period not exceeding a further two years.

Excavation

- 27. Subject to the terms and conditions of the land use permit or the written authority of a lands officer, every permittee will replace all materials on Settlement Land removed by him in the course of excavating and will level and compact the area of the excavation.

Clearing of lines, trails or right-of-ways

- 28. Unless authorized in a land use permit, no permittee will:
 - (a) clear a new line, trail or right-of-way where there is an existing line, trail or right-of-way that he can use;
 - (b) clear a line, trail or right-of-way wider than 5 metres; and
 - (c) leave leaners or debris in standing timber when clearing a line, trail or right-of-way.
- 29. Where, in the opinion of a lands officer, serious erosion may result from a land use operation, the permittee will adopt such measures to control erosion as may be required by the lands officer.

Archaeological sites

- 30. Where in the course of a land use operation, a suspected archaeological site or burial ground is unearthed or otherwise discovered in absence of an agreement under section 13.9.2 of the Final Agreement, the permittee will immediately:
 - (a) suspend the land use operation on the site; and
 - (b) notify the Manager or lands officer of the location of the site and the nature of any unearthed materials, structures or artifacts.

Campsites

- 31. Subject to the terms and conditions of his permit, every permittee will dispose of all garbage, waste and debris from any campsite used in connection with a land use operation by removal, burning or burial or by such other method as may be directed by a lands officer.
- 32. Sanitary sewage produced in connection with a land use operation will be disposed as directed by the lands officer.

Restoration of permit area

33. Subject to the terms and conditions of his permit, every permittee will, upon completion of a land use operation, restored the permit area as nearly as possible to the same condition as it was prior to the commencement of the land use operation.

Removal of buildings and equipment

34. Every permittee will, upon completion of a land use operation, remove all buildings, machinery, equipment, materials and fuel drums or other storage containers used in connection with the land use operations.

Emergencies

35. Any person may, in an emergency that threatens life, property or natural environment, carry out such operations as he deems necessary to cope with the emergency, whether or not the operation is carried out in accordance with a permit and such person will provide a written report to the Manager as soon as practicable describing the duration, nature and extent of the operation.
36. The First Nation of Nacho Nyak Dun is not liable for any costs incurred by a person taking any action under section 35.

Display of permit

37. Every permittee engaged in a work or undertaking authorized by a permit will display an exact copy of the permit, including the terms and conditions, in such manner and at such places as the Manager may require.

Final plan

38. Every permittee will, within 60 days after the completion of a land use operation or the expiry of his permit, whichever occurs first, submit a final plan to the Manager setting out:
- (a) the area of Settlement Lands used and occupied by the permittee for the land use operation;
 - (b) the location of lines, trails, right-of-ways and cleared areas that were used by the permittee during the land use operation, specifying those that were cleared by the permittee and those that existed before the commencement of the land use operations; and
 - (c) the location of buildings, campsites, air landing strips, air navigation aids, fuel and supply storage sites, waste disposal sites, excavations and other works and places that were constructed or used by the permittee during the land use operation.
39. Upon receipt of a written request from a permittee for an extension of the time for filing a final plan, the Manager may extend the time for filing the final plan for no more than 30 days.

TIMBER HARVEST PERMIT

40. A timber harvest permit will authorize a person to:
- (a) cut dead standing trees; or
 - (b) harvest trees for personal fuel wood use
- within a specific portion of Settlement Land.
41. The term of a timber harvesting permit will not exceed one year.

COMMERCIAL RECREATIONAL ACTIVITY PERMIT

42. A commercial recreational land use permit authorizes a person to provide commercial recreational activities to others on a specific portion of Settlement Land.
43. The term of a commercial recreational activity permit will not exceed six months.
44. Commercial recreational activity permit holders will not:
 - (a) make any unauthorized alteration to the Settlement Land; and
 - (b) built any unauthorized structures on the Settlement Land.

PLACER LICENCE

45. A placer licence authorizes a person to conduct Placer Work on a specific portion of Settlement Land.
46. The holder of a placer licence is authorized to carry out Placer Work in the placer area in accordance with the terms and conditions of the placer licence and applicable land use permit.
47. The proposed placer area in an application for an placer licence must not, at the time the placer licence application is submitted, be subject to any other placer right, an existing exploration licence or an existing production licence, held by any third party. Areas subject to such rights will automatically be excluded from the proposed placer area by the Department.
48. There is no limit to the number of placer licences an applicant may apply for and hold.

Need for other authorizations

49. Before any work can be carried out under a placer licence, the holder of a placer licence may be required, in addition to an placer licence, to obtain a permit and comply with other regulatory requirements stipulated by the Department or territorial or federal regulators.

EXPLORATION LICENCE

50. An exploration licence authorizes a person to conduct Exploration Work on a specific portion of Settlement Land.
51. The holder of an exploration licence is authorized to explore for Minerals within the exploration area in accordance with the terms and conditions of the exploration licence and applicable land use permit.
52. For greater certainty, exploration licences do not grant rights to substances which are not Minerals.
53. The proposed exploration area in an application for an exploration licence must not, at the time the exploration licence application is submitted, be subject to any existing mineral right, an existing exploration licence or an existing production licence, held by any third party. Areas subject to such rights will automatically be excluded from the proposed exploration area by the Department.
54. There is no limit to the number of exploration licences an applicant may apply for and hold.
55. If the holder of an exploration licence which has been kept in good standing to expand the exploration area of the existing exploration licence, the holder of the exploration licence must submit an application for the proposed expanded exploration area.

Need for other Authorizations

56. Before any Exploration Work may be carried out within the exploration area, the holder of the exploration licence may be required, in addition to an exploration licence, to obtain a permit and comply with other regulatory requirements stipulated by the Department.

PRODUCTION LICENCE

57. The holder of an exploration licence that is valid and in good standing may apply in writing to the Department to convert a portion of the exploration area into a production licence, if as of the date of the written application:
- (a) the holder of the exploration licence has complied with all terms and conditions of the exploration licence and any benefit agreement entered into pursuant to the Act, if any;
 - (b) the holder has delivered to the Department a bankable feasibility study which, to the satisfaction of the Department, demonstrates the existence of an economically-viable mineral resource within the proposed area of the production licence;
 - (c) the holder demonstrates, to the satisfaction of the Department, that the proposed project will satisfy the principles of environmental, economic, social and cultural sustainability; and
 - (d) the holder has entered into a production agreement with the First Nation of Nacho Nyak Dun or its delegate which may include the following:
 - (i) environmental protection measures, including monitoring, inspections and audits, before and during production, and after closure of the proposed project;
 - (ii) measures to support and protect the land use practices and rights from impacts of the proposed project;
 - (iii) compensation to the First Nation of Nacho Nyak Dun for any disturbance or interference with the land use activities or interests of the First Nation of Nacho Nyak Dun and its Citizens that may be affected by the proposed project;
 - (iv) reporting requirements to the First Nation of Nacho Nyak Dun;
 - (v) economic benefits to the First Nation of Nacho Nyak Dun and its Citizens and their businesses, including preferential business and employment opportunities, community development contributions and training and education programs;
 - (vi) equity participation in the proposed project;
 - (vii) financial contributions to the First Nation of Nacho Nyak Dun; and
 - (viii) any other benefits negotiated for the First Nation of Nacho Nyak Dun and its Citizens.
58. Prior to issuing a production licence, the Department may request that the applicant undertake at his expense further studies, as directed by the Department, which identify the extent of environmental or socio-economic impacts of the proposed project, including any cumulative impacts.

Rights granted under the production licence

59. A production licence is an interest in land and conveys to the holder the rights to the Minerals within the area that is subject to the production licence.

Reporting

60. The holder of an exploration licence or a production licence is required to provide annually copies of all plans, drill logs or reports of any geological, geochemical, geophysical, engineering or other surveys relating to exploration, development or operation of the exploration licence or the production licence.

61. The Department may not disclose publicly any materials provided by the holder under section 60 if it is determined to be confidential and is provided in confidence to it without the written consent of the holder.

Assignment

62. The written approval of the Manager is required for any assignment of an exploration licence or a production licence.

SCIENTIFIC RESEARCH PERMIT

63. A scientific research permit authorizes a person to carry out scientific research on specific portions of Settlement Land, including the historic and prehistoric research of human culture and the natural environment, and not any other use without the written consent of the Manager.
64. Every scientific research permit will be for a term of not more than six months and may be renewed for further terms of six months by the Manager.
65. Scientific research permit holders will not:
- (a) alter the land; and
 - (b) install permanent structures and other infrastructure.
66. Upon the completion of the scientific research, the permit holder will submit a report to the First Nation of Nacho Nyak Dundetailing the findings of his or her research.
67. For greater certainty, permit holders will not remove any thing or any resources from Settlement Land, without the written consent of the Manager.

EASEMENT

68. An easement establishes a right-of-way on Settlement Land for infrastructure, such as power lines, waterlines, seismic lines and trails, and limited access to maintain and use that infrastructure , but does not authorize any other use without the written consent of the Manager.
69. Every easement will be for a term of not more than ten years and may be renewed for further terms of ten year by the Manager.

MISCELLANEOUS

Form of Authorization

70. The Department may establish the form of the leases, permits, licences, and easements established in this Regulation.

Other Authorizations

71. In addition to the leases, permits, licences and easements established in this Regulation, the Manager may issue other Authorizations, as appropriate, for the use, possession or occupation of Settlement Land or the use or possession of Resources and establish terms and conditions.

Fees

72. The fee for an Authorization will be determined by the Department and set out in that Authorization.