

The Lands and Resources Act of the First Nation of Nacho Nyak Dun

1st Reading: October 16, 2010
Moved by Ed Champion
2nd by Art Hoogland
Passed by consensus at 1:50 pm with 36 citizens in attendance

2nd Reading: February 5, 2011
Moved by
2nd by
Passed by consensus with 34 citizens in attendance

The Lands and Resources Act of the First Nation of Nacho Nyak Dun

Preamble

WHEREAS:

- A. Since time immemorial, the people of the First Nation of Nacho Nyak Dun have lived together in our traditional territory, having accepted the unique responsibilities bestowed on us by God, to serve for all time as custodians of the territory's lands, waters and resources, and have therefore ever governed ourselves and our affairs so as to respect the spirit, needs and inter-dependence of each and every living thing;
- B. The Assembly of the First Nation of Nacho Nyak Dun on August 21, 1992 approved and enacted by consensus the Constitution of the First Nation of Nacho Nyak Dun (the "Constitution") in which is set out all of the fundamental principles by which the First Nation of Nacho Nyak Dun (the "Final Agreement");
- C. The First Nation of Nacho Nyak Dun on May 29, 1993 entered into an agreement with Her Majesty the Queen in Right of Canada ("Canada") and the Government of the Yukon (the "Yukon") which sets out the aboriginal and treaty rights, titles and interests of the First Nation of Nacho Nyak Dun (the "Final Agreement");
- D. The First Nation of Nacho Nyak Dun on May 29, 1993 entered into an agreement with Canada and the Yukon in which Canada and the Yukon recognized and affirmed the inherent right of the First Nation of Nacho Nyak Dun to govern ourselves and our lands (the "Self-Government Agreement");
- E. The Final Agreement and Self-Government Agreement confirm the authority and jurisdiction of the First Nation of Nacho Nyak Dun as an order of government empowered to engage in government-to-government relations with Canada, the Yukon, other first nations, or any other government;

Now therefore the Assembly of the First Nation of Nacho Nyak Dun, under the authority of our Constitution and on the recommendation of the Council of the First Nation of Nacho Nyak Dun, enacts as follows:

Introduction

Short Title

1. This Act may be cited as the Lands and Resources Act.

Commencement

2. This Act shall come into force on the Effective Date.

Definitions

3. In this Act
 - (a) “Act” means an enactment passed by the Assembly containing rules intended to have the force of law, and includes the Constitution and this Act;
 - (b) “Assembly” means the body of Citizens having overall responsibility for government powers and responsibilities of the First Nation of Nacho Nyak Dun, constituted and duly assembled in accordance with the Constitution;
 - (c) “Citizens” means a person who meets the criteria of subsection 17.1 of the Constitution but is not a person to whom subsection 19.1 of the Constitution applies;
 - (d) “Council” means that body of Citizens which is duly appointed or elected by the Assembly, from time to time, in accordance with the Constitution, having overall responsibility for the administration of the government of the First Nation of Nacho Nyak Dun;
 - (e) “Effective Date” means the date on which the Final Agreement and the Self-Government Agreement takes effect;
 - (f) “Elders Council” means that body of Citizens constituted in accordance with the Constitution and having the primary responsibility of ensuring the continuity of our values and traditions, by providing advice and assistance to our Government Bodies;

- (g) “Fish” means all saltwater and freshwater species of fish, shellfish, crustaceans, marine animals and marine plants except Exotic Species or Transplanted Population (both as described in the Final Agreement) including portions and all juvenile stages, and all fish products and by-products as are prescribed in section 34 of the Fisheries Act, R.S.C. 1985, c. F-14;
- (h) “Forest Resources” means all flora in a wild state;
- (i) “Governing Body” means the Assembly or the Council;
- (j) “Harvesting” means gathering, hunting, trapping or fishing in accordance with the Final Agreement or a Trans-Boundary Agreement, as defined in the Final Agreement;
- (k) “Heritage Resources” means
- i. Moveable non-documentary works or assemblies of works of people or of nature that re of scientific or cultural values for their archaeological, paleontological, ethnological, prehistoric or aesthetic features, including moveable structures,
 - ii. An area of land which contains any of the items listed in paragraph 3(k)i, or which is of value for aesthetic or cultural reasons, and
 - iii. Records, regardless of physical form or characteristics, that are of heritage significance, including correspondence, memoranda, books, plans, maps, drawings, diagrams, pictorial or graphic works, photographs, films, microforms, sound recordings, videotapes, machine-readable records, and any copy thereof;
- (l) “Law” means any Act or Regulation enacted or passed by a Governing Body, including any amendment thereto;
- (m) “Minerals” means precious and base metals and other non-living, naturally occurring substances, whether solid, liquid or gaseous, and includes coal, Petroleum and Specified Substances;
- (n) “Mines” means mines, opened and unopened;
- (o) “Non-Settlement Land” means all land and water in the Yukon Territory other than Settlement Land, including Mines and Minerals in Category B Settlement Land and Fee Simple Settlement Land, other than Specified Substances;

- (p) “Petroleum” means
- i. Crude oil, regardless of gravity, produced at a well head in liquid form, and any other hydrocarbons except coal and Gas and, without limiting the generality of the foregoing, including hydrocarbons that may be extracted or recovered from deposits of oil sand, bituminous sand, oil shale or from any other type of deposits on the surface or subsurface, and
 - ii. Natural gas and all substances other than those listed in paragraph 3(p)i that are produced in association with natural gas;
- (q) “Regulation” means an enactment containing rules intended to have the force of law, passed by the Council under the authority of an Act of the Assembly;
- (r) “Resources” means all natural resources, whether renewable or non-renewable, and includes Fish, Forest Resources, Heritage Resources, Minerals, Specified Substances, Water, and Wildlife;
- (s) “Settlement Land” means Category A Settlement Land, Category B Settlement Land and Fee Simple Settlement Land, all as defined in the Final Agreement;
- (t) “Specified Substances” means any of carving stone, flint, limestone, marble, gypsum, shale, slate, clay, sand, gravel, construction stone, sodium chloride, volcanic ash, earth, soil, diatomaceous earth, ochre, marl and peat;
- (u) “Traditional Territory” means the geographic area identified as the traditional territory of the First Nation of Nacho Nyak Dun, shown in Appendix B – Maps to the Final Agreement as “First Nation of Nacho Nyak Dun Traditional Territory, (NNDTT)”;
- (v) “Water” means waters in any river, stream, lake or other body of inland water on the surface or underground;
- (w) “Wildlife” means a wild, vertebrate animal of any species or sub-species, but does not include Fish, or Exotic Species or Transplanted Population (both as defined in the Final Agreement); and
- (x) “Yukon Indian Person” means a person enrolled under one of the Yukon First Nation Final Agreements.

Interpretation

4. All Acts, Regulations and agreements referred to in this Act include any amendments made to them.
5. The words “our”, “ourselves”, “us” and “we”, were used in this Act, refer to the First Nation of Nacho Nyak Dun.
6. References to sections, subsections and paragraphs, unless otherwise stated, refer to sections, subsections and paragraphs in this Act.

Purpose

7. The purpose of this Act is to enact into First Nation of Nacho Nyak Dun Law such standards, processes and means as will honour and confirm our traditional principles of conservation, preservation and enhancement of the natural environment, as applied to the use, occupation, management and economic development of Settlement Land, and any other lands or resources over which we have authority, ownership, control, jurisdiction, co-management or custodial powers or responsibilities.

PART 1

CONSENT

Consent required

8. Subject to section 10 and the Final Agreement, no person may use, occupy, traverse, or purport to exercise any right on Settlement Land without having first obtained the consent of the First Nation of Nacho Nyak Dun.
9. Every person must produce evidence of the consent described in section 8, upon the request of any person authorized by the First Nation of Nacho Nyak Dun.
10. Any Citizen who used, occupied or exercised a right on Settlement Land on the Effective Date is not deprived of his or her continued enjoyment of same solely by the operation of section 8 of this Act, but shall use, occupy or exercise such right subject to our Laws.

PART 11

LANDS AND RESOURCES DEPARTMENT

Creation of the Lands and Resources Department

11. We establish a Land and Resources Department of the First Nation of Nacho Nyak Dun.

Objectives

12. The Lands and Resources Department shall operate for the benefit of all Citizens, in a manner designed to further the purposes of this Act and to achieve the following objectives:

- (a) To preserve and enhance all the Resources found on Settlement Land or any land for which the First Nation of Nacho Nyak Dun has authority, ownership, control, jurisdiction, co-management or custodial powers or responsibilities;
- (b) To integrate the management of all Resources owned, controlled or co-managed by the First Nation of Nacho Nyak Dun;
- (c) To preserve and enhance those aspects of our culture, identity and values that are related to land and Resources;
- (d) To promote and manage economic activity related to or based on Resources found on Settlement Land;
- (e) To honour our harvesting and management customs, taking into account the knowledge and experience of our Citizens;
- (f) To deal fairly with all persons who are authorized to use Resources, where the activities of these persons impact on Resources or Settlement Land;
- (g) To protect and preserve those sites, of whatever nature and wherever located, which have spiritual or cultural significance to use; and
- (h) To protect, preserve, monitor and manage all waters flowing or found within, through, on, or adjacent to Settlement Land to such standards of quantity, quality and

rate of flow as we require for our purposes and for the enhancement of all water-related aspects of the ecosystem.

Responsibilities

13. The Land and Resources Department shall be responsible for administering our Laws respecting:

- (a) The management or protection of land and Resources found within our Traditional Territory;
- (b) The use, occupation or exercise of rights by any persons on Settlement Land;
- (c) The activities of Citizens on Non-Settlement Land where such activities affect land and Resources;
- (d) The Harvesting activities of Yukon Indian Persons within our Traditional Territory;
- (e) Such other activities, as may be directed by the Council, related to the management of land and Resources.

14. Without restricting the generality of section 13, the Lands and Resources Department is authorized to:

- (a) Participate with Governing Bodies in the development and implementation of regulations, policies, programs and land use plans for the effective administration of our Laws respecting land, Resources and any activities related to such land or Resources;
- (b) Under the direction of the Council, create and maintain the Register of Settlement Land;
- (c) Recommend that the Council issue, give, or agree to the issuing or giving of any licence, permit, consent, or decision document related to land or Resources;
- (d) Under the direction of the Council, enforce this Act and its Regulation;
- (e) Collect fees or penalties set or levied by the Council;
- (f) For the better administration and management of Resources or Settlement Land

- i. Conduct research and monitoring programs, and
 - ii. Maintain a record of harvesting or other information,
- All under the direction of the Council;
- (g) Recommend to the Council that the First Nation of Nacho Nyak Dun participate in a regulatory or other process which may affect land or Resources in our Traditional Territory; and
 - (h) Do such other things as may be directed by the Council from time to time.

Reporting

- 15. The Land and Resources Department shall report to the Council as required, but no less than twice annually.

PART 111

REGISTERING OF SETTLEMENT LAND

Creation of Register of Settlement Land

- 16. Under the direction of the Council, the Land and Resources Department shall create and maintain, in accordance with this Part III, a Register of Settlement Land.

Contents

- 17. The Register of Settlement Land shall contain the following information for each parcel or Settlement Land:
 - (a) Whether the parcel of Settlement Land is Category A Settlement Land, Category B Settlement Land, or Fee Simple Settlement Land, all as defined in the Final Agreement;
 - (b) Any of the following exceptions or reservations to which the parcel of Settlement Land is subject:

- i. A right, title or interest less than the entire fee simple existing at the date the land became Settlement land;
 - ii. A licence, permit or other right, issued by Canada or the Yukon for the use of land or other resources, existing at the date the land became Settlement Land;
 - iii. A renewal or replacement of a right, title or interest, licence or permit described in paragraph 5.4.2.1 or 5.4.2.2 of the Final Agreement;
 - iv. A new licence, permit or other right in respect of Petroleum or of Mines or Minerals, which may be granted in accordance with 5.4.2.4 of the Final Agreement to a person holding a right, title or interest described in paragraphs 5.4.2.1, 5.4.2.2. or 5.4.2.3 of the Final Agreement;
 - v. A right-of-way, easement, reservation, exception, restriction or special condition made pursuant to 5.3.1 of the Final Agreement;
 - vi. A public right of access for Wildlife Harvesting;
 - vii. A public right-of-way along navigable water, pursuant to 5. 15.0 of the Final Agreement;
 - viii. A flooding right pursuant to 7.8.0 of the Final Agreement;
 - ix. A right granted to Canada or the Yukon in a Quarry, as defined in the Final Agreement, pursuant to section 18.2.0 of the Final Agreement;
 - x. A reservation pursuant to 5.7.4.2 of the Final Agreement, agreed to by the First Nation of Nacho Nyak Dun; and
 - xi. Where available, copies of all relevant survey plans.
18. The Register of Settlement Land may also contain the following information respecting our Traditional Territory, whether on Settlement Land or Non-Settlement Land:
- (a) Licences or permits of any nature issued or renewed by the First Nation of Nacho Nyak Dun;
 - (b) Any areas to which our zoning regulations apply;

- (c) Any applicable land use plans;
- (d) The location of fish camps, hunting camps or traplines;
- (e) Any areas of First Nation of Nacho Nyak Dun traditional use or occupation, including any historical data or patterns of such use or occupation;
- (f) The name of any person who has the consent of the First Nation of Nacho Nyak Dun to use, occupy or exercise a right on Settlement Land, and the nature of such use, occupation or exercise of a right;
- (g) The location of any Moveable or Non-Moveable Heritage Resources, and of Burial Sites, all as defined in the Final Agreement;
- (h) The location of any sites, of whatever nature, which have spiritual or cultural significance to the First Nation of Nacho Nyak Dun;
- (i) Those sites, routes, habitats or areas which the Land and Resources Department, in consultation with the Elders Council and others, has determined as being important, strategic or necessary for the proper management, protection and utilization of land or Resources by the First Nation of Nacho Nyak Dun; and
- (j) Such other information as the Council may deem appropriate from time to time.

Register of Settlement Land creates no rights

19. The Register of Settlement Land is a record of information only and does not create, deprive, increase or diminish any rights it records.

Registrar

20. The Council may name a person to maintain and manage the Register of Settlement Land (the “Registrar”).
21. The Registrar shall:
- (a) Make reasonable efforts to maintain the accuracy of the Register of Settlement Land;
 - (b) Implement policies and procedures governing the operation and management of the Register of Settlement Land, as determine by the Council;

(c) Provide to the public the information described in section 17 and other information as the Council may authorize; and

(d) Report to the Council from time to time.

No liability

22. Notwithstanding section 21(a), neither the First Nation of Nacho Nyak Dun, its Governing Bodies, the Land and Resources Department, the Registrar, nor their authorized representatives, employees or agents shall be liable for information contained in the Register of Settlement Land which is not accurate.

Location

23. The Register of Settlement Land shall be located either at the offices of the First Nation of Nacho Nyak Dun or at the offices of the Land and Resources Department.

Access of Register of Settlement Land

24. The Register of Settlement Land shall be available for review by the public in accordance with policies set by the Council from time to time.

Security

25. The Council, in consultation with the Land and Resources Department shall develop policies and procedures designed to protect the security of the Register of Settlement Land.

Regulations

26. The Council may make such regulation as are necessary for the purpose of carrying out any provision of this Act.