

Order Number: \_\_\_\_-2016

Date Enacted:

## CARCROSS/TAGISH FIRST NATION LAND INTERESTS ACT

### INTERESTS IN SETTLEMENT LAND REGULATION (2016)

The following regulation is made by the Executive Council pursuant to section 64 of the *Land Interests Act*

#### Citation

1. This regulation may be cited as the *Interests in Settlement Land Regulation*.

#### Definitions

2. (1) For the purposes of this regulation, and unless they are otherwise defined in this regulation, capitalized terms have the same meaning as in the *Land Interests Act*.

(2) In this regulation,

**“Act”** means the *Land Interests Act*;

**“Application Fee”** means the application fee as set out in Schedule 4;

**“Application for an Interest in Settlement Land”** and **“Application”** mean an application set out in Schedule 1;

**“Board”** means the Land Management Board established in section 9 of the Act;

**“Decision Document”** has the same meaning as in the *Yukon Environmental and Socio-economic Assessment Act*, S.C. 2003, c. 7.

**“Disposition,”** for the purposes of this regulation, includes the grant of an Interest, but does not include an assignment, transfer, sale, Sub-lease, Mortgage or charge of an Interest;

**“Lands Branch”** means the C/TFN Lands Branch operating within the Department;

**“Land Inspection Form”** means the form set out in Schedule 3;

**“Land Status Report”** means the report set out in Schedule 2;

**“Lands Manager”** means the manager of the Lands Branch of the Department;

**“Resolution”** means a resolution approving or rejecting the issuance of a Disposition under section 14 of this regulation using the form set out in Schedule 5;

**“Site Suitability Assessment”** means an assessment of the suitability of a site for a Disposition with particular focus on traditional use and community knowledge of site history, including for greater certainty, assessment of all aspects of C/TFN culture and heritage.

**“YESAA”** means the *Yukon Environmental and Socio-economic Assessment Act*, S.C. 2003, c. 7.

### **Delegation**

3. The Lands Manager may, with the consent of the Executive Council, assign the performance of any duties of the Lands Manager under this regulation to any C/TFN officer, employee, contractor or agent.

### **Application for a Disposition of an Interest in Settlement Land**

4. A Person who seeks to obtain a Disposition must submit an Application for an Interest either in person to the Lands Manager during regular business hours, or by regular mail.
5. The Lands Manager will review the Application for completeness, and if complete, date stamp the Application, and provide a copy of the stamped Application to the applicant:
  - (a) where the Application was made in person, upon delivery of the Application or by mail as soon as practicable; or
  - (b) where the Application was made by mail, by mailing it to the applicant to the address indicated on the Application.
6. If an Application is not complete, the Lands Manager will so advise the applicant in writing.
7. The applicant shall supply such further information that is requested by the Lands Manager and which is reasonably required to assess the Application, within thirty (30) days or within an otherwise agreed upon period of time.
8. The Lands Manager shall prepare a Land Status Report stating whether the grant of the Interest will or will not cause a conflict with existing Registered Interests and meets minimum requirements.

## **Application Fee**

9. An application will not be accepted unless accompanied by the Application Fee.

## **Disposition Approval Process**

10. The Lands Manager shall ensure that the Application and supporting information including the Land Status Report is brought before the Land Management Board as soon as practicable after he or she has determined that the Application is complete.
11. The Land Management Board shall, upon review of the Application, approve, return with a request for additional information, or reject the Application. If the Application is approved, the Land Management Board shall direct the Lands Manager to negotiate the terms of the Disposition instrument and may direct the Lands Manager on required terms to include in the Disposition instrument.
12. Approval of an Application by the Land Management Board, or any negotiations or arrangements whether in writing or otherwise, before the execution of a Disposition instrument by the Executive Council or its duly authorized delegate pursuant to the Act, are not binding on and do not commit C/TFN to perform or complete a transaction.
13. Upon reaching agreement with the applicant as to mutually acceptable Disposition instrument terms, the Lands Manager shall as soon as practicable forward a letter of recommendation to the Executive Council or its duly authorized delegate:
  - (a) describing the proposed transaction;
  - (b) recommending the issuance of the Disposition instrument; and
  - (c) attaching the draft instrument.
14. Upon reviewing a letter of recommendation with respect to a Disposition, Executive Council or its duly authorized delegate will:
  - (a) approve the recommendation and the issuance of the Disposition by passing a Resolution; such Disposition may be issued conditional on the applicant completing one or more criteria set out in section 16;
  - (b) reject the recommendation by passing a Resolution; or
  - (c) return the recommendation for clarification and resubmission.
15. Disposition instruments may be executed on behalf of C/TFN by two members of Executive Council or by the Board if acting as Executive Council's duly authorized delegate.

## Criteria for Approval of a Disposition

16. An Application will not be approved until all of the applicable following requirements have been satisfied at the applicant's expense:
- (a) a survey has been carried out that meets Registry requirements;
  - (b) at the discretion of the Board, an Environmental Site Assessment, to determine the environmental condition of the lands and the presence of any contaminants;
  - (c) at the discretion of the Board, a Site Suitability Assessment, to determine the suitability of the lands for the purpose of the Interest;
  - (d) where the consideration payable under the Disposition is fair market rent or fees, an appraisal by an accredited appraiser;
  - (e) a Decision Document, if required under YESAA;
  - (f) evidence and supporting documentation of an encumbrance check carried out within thirty (30) days of the date on which the Application was stamped pursuant to section 5 of this Regulation, including sufficient documentation to demonstrate to the Board that the Disposition will not conflict with the Final Agreement;
  - (g) if the Disposition may be affected by an encumbering right(s), proof that the applicant is aware of the encumbering right(s) and the impact that the encumbering right(s) may have on the disposition;
  - (h) if the Disposition may conflict with an existing Registered Interest holder, proof of consent of the Registered Interest holder;
  - (i) proof of corporate status, if applicable;
  - (j) a credit investigation, if required;
  - (k) reasonable proof that the proposed transferee/assignee has not been charged or sued for harming the environment in any jurisdiction in Canada, and has not been involved in a lawsuit or dispute regarding an Interest in land in any jurisdiction in Canada, within the last two (2) years.
  - (l) a Land Inspection Form signed by the Lands Manager addressing:
    - (i) access to the land,
    - (ii) availability of services (water, sewer, power) sufficient for the proposed use; and
    - (iii) confirmation that the site will accommodate the proposed use.
17. The Executive Council or its duly authorized delegate shall take into account the following principles and factors when making a decision as to whether to approve or reject an Application:

- (a) the interests of C/TFN;
- (b) the benefit to C/TFN;
- (c) consistency of the types of occupation and/or use with any applicable plan and/or zoning law; for greater certainty, applications will not be approved in areas where zoning laws are not in force;
- (d) environmental protection;
- (e) well-planned and orderly development of Settlement Land;
- (f) whether the applicant currently occupies or has improvements on the land subject to the Application;
- (g) potential impacts on adjacent land holders and existing uses of the land and surrounding land by Citizens and others;
- (h) balance between the interests of the applicant, community, and C/TFN;
- (i) consideration for existing and historic uses, historical connections, and C/TFN customary landholdings, and whether the Disposition would create a conflict with such uses, connections, and landholdings;
- (j) potential or actual conflict with existing legal interests;
- (k) the equitable distribution of Settlement Land among Citizens, families, and Clans;
- (l) heritage protection; and
- (m) any other factors the Executive Council or its duly authorized delegate consider relevant to the Disposition.

**Criteria for Consent to a Transfer or Assignment of an Interest in Settlement Land**

18. Where the Act provides that the Executive Council's consent to an assignment, transfer, or similar transaction is required, the Executive Council or its duly authorized delegate shall provide its consent to a transfer or assignment by way of an assignment consent agreement with the following mandatory terms:
  - (a) The assignee agrees to assume all of the current Interest-holders' obligations, responsibilities and covenants.
19. The Executive Council or its duly authorized delegate shall not consent to a transfer or assignment of an Interest in Settlement Land until the following requirements have been satisfied at the applicant's expense:
  - (a) proof of corporate status, if applicable;
  - (b) a credit investigation;

(c) reasonable proof that the proposed transferee/assignee has not been charged or sued for harming the environment in any jurisdiction in Canada, and has not been involved in a lawsuit or dispute regarding an Interest in land in any jurisdiction in Canada, within the last two (2) years.

20. Once approved by the Executive Council or its duly authorized delegate, an assignment consent agreement may be executed on behalf of C/TFN by two members of the Executive Council or by two members of the Board if acting as Executive Council's duly authorized delegate.

#### **Criteria for Consent to a Charge or Mortgage of an Interest in Settlement Land**

21. (1) Where the Council's consent to a Mortgage is required, then the Council or its duly authorized delegate shall provide its consent by way of a mortgage consent agreement signed by the mortgagee with the following mandatory terms:

(a) the mortgagee acknowledges that the Interest created under the Mortgage is no greater than the Interest in land to which the Mortgage applies;

(b) the mortgagee acknowledges agrees not to assign or sell the mortgage without C/TFN consent; and

(c) the mortgagee acknowledges that if the mortgagee takes possession of or acquires the lessee's Interest, the mortgagee must agree to perform all covenants and obligations set out in the terms of the Disposition instrument.

22. Once approved by the Council or its authorized delegate, a mortgage consent agreement may be executed on behalf of C/TFN by two members of the Council or by two members of the Board if acting as Council's duly authorized delegate.

#### **Registration**

23. Upon disposition of a new Interest, the Interest holder shall forthwith deposit the Disposition instrument in the applicable Registry under the Act and in accordance with applicable Enactments.

24. A person acquiring an Interest in an existing Interest as a result of a transfer, assignment, Mortgage, devise or other Disposition in accordance with the Act shall forthwith register the instrument evidencing his or her Interest in the applicable Registry under the Act and in accordance with applicable Enactments.

#### **Forms**

25. The Council may, on the recommendation of the Director, amend the schedules to this regulation by resolution.

**Schedule 1: Application for an Interest in Land**

To be completed by the Applicant, pursuant to s. 4, *Interests in Settlement Land Regulation*

<b>I. PERSONAL INFORMATION to be completed by Applicant</b>	
<b>1. Name in full:</b>	<b>2. Company Name:</b>
<b>3. Citizen?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO	<b>4. Clan (if applicable)</b>
<b>5. Address:</b>	
<b>6. Telephone Nos.</b> (Res.)	(Fax)
(Bus.)	<b>7. Company No.</b>
<b>8. Directors and officers of the company:</b>	
<u>Name</u>	<u>Position</u>
<b>9. Applicant's Occupation</b>	
<b>10. Employer's name:</b>  <b>Address:</b>	<b>11. Number of years with employer:</b>



Residential <input type="checkbox"/>	Recreational <input type="checkbox"/>
Commercial <input type="checkbox"/>	Trapline <input type="checkbox"/>
<input type="checkbox"/> Agricultural/Grazing <input type="checkbox"/>	Traditional Use
Critical Wildlife Habitat <input type="checkbox"/>	Other <input type="checkbox"/>

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**5. Improvements:**  
 Are there any existing improvements located on the application area?  
 Yes  No

If yes, please describe and state who owns the improvements (attach additional documentation if required)

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**6. Utilities:**  
 Are there any overhead or underground utilities located within or adjacent to the application area?  
 Yes  No

If yes, please describe (attach additional documentation if required)

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**7. Access:**

(a) Is there existing vehicle access to the site: Yes  No

If yes, please describe:

If no, how do you plan to access the site?

(b) Are you planning to construct new access  or improve existing access?

If so, please describe:

<p>(c) Are other people affected by your access plan?      Yes <input type="checkbox"/>      No <input type="checkbox"/></p> <p>If yes, please describe how you plan to obtain support for it:</p>	
<p><b>8. Utilities</b>          What are your plans for the following services?</p> <p><b>Drinking water:</b> Well <input type="checkbox"/>    Piped <input type="checkbox"/>    Hauled <input type="checkbox"/>    Other:</p> <p><b>Sewage Disposal:</b> Septic <input type="checkbox"/>    Piped <input type="checkbox"/>                      Other:</p> <p><b>Garbage Disposal</b> (approved landfill you will use):</p> <p><b>Electricity:</b> Existing <input type="checkbox"/>    Planned <input type="checkbox"/>            Please give details of plan:</p> <p><b>Telephone:</b> Existing <input type="checkbox"/>    Planned <input type="checkbox"/>                      Other:</p>	
<b>9. Proposed commencement date:</b>	<b>10. Proposed term:</b>
<b>11. Proposed rent offered:</b>	
<b>III. COMPLIANCE WITH SECTION 16 OF THE REGULATION</b>	
<p>Please attach documentation to the application form to satisfy all of the following applicable requirements:</p> <p>(a) Survey                      <input type="checkbox"/> Attached                      <input type="checkbox"/> Forthcoming</p> <p>(b) Environmental Site Assessment                      <input type="checkbox"/> Attached                      <input type="checkbox"/> Forthcoming                      <input type="checkbox"/> N/A (Explain)</p> <p>(c) Site Suitability Assessment                      <input type="checkbox"/> Attached                      <input type="checkbox"/> Forthcoming                      <input type="checkbox"/> N/A (Explain)</p> <p>(d) Appraisal                      <input type="checkbox"/> Attached                      <input type="checkbox"/> Forthcoming                      <input type="checkbox"/> N/A (Explain)</p>	

(e) YESAA Decision Document	<input type="checkbox"/> Attached	<input type="checkbox"/> Forthcoming	<input type="checkbox"/> N/A (Explain)
(f) Encumbrance Check	<input type="checkbox"/> Attached	<input type="checkbox"/> Forthcoming	<input type="checkbox"/> N/A (Explain)
(g) Statement on Affected Encumbering Rights	<input type="checkbox"/> Attached	<input type="checkbox"/> Forthcoming	<input type="checkbox"/> N/A (Explain)
(h) Statement of Consent Regarding Conflicting Interests	<input type="checkbox"/> Attached	<input type="checkbox"/> Forthcoming	<input type="checkbox"/> N/A (Explain)
(i) Proof of Corporate Status	<input type="checkbox"/> Attached	<input type="checkbox"/> Forthcoming	<input type="checkbox"/> N/A
(j) Credit Investigation	<input type="checkbox"/> Attached	<input type="checkbox"/> Forthcoming	<input type="checkbox"/> Consent to C/TFN to Conduct
(k) Proof that Applicant has not been Charged or Sued for an Environmental Offence	<input type="checkbox"/> Attached	<input type="checkbox"/> Forthcoming	

Please provide sufficient documentation with respect to all of the applicable above-listed requirements with an application. If it is the opinion of the applicant that he/she does not need to submit documentation to satisfy a particular criteria or criterion, please provide an explanation as to why not.

I/WE HEREBY CERTIFY THAT THIS APPLICATION IS TRUE AND COMPLETE TO THE BEST OF MY/OUR KNOWLEDGE AND HEREBY CONSENT TO HAVING THE CARCROSS/TAGISH FIRST NATION CONDUCT OR CAUSE TO BE CONDUCTED A CREDIT INVESTIGATION.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Witness

Applicant

Witness

Co-Applicant



9. ANY PENDING LAND TRANSACTIONS?  YES (describe below)  NO

10. ANY OTHER RELEVANT INFORMATION ABOUT THIS PARCEL:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

VERIFICATION: I have researched the applicable Registry under the Act with regard to the subject land(s). Based upon this review the subject site:

MAY  WILL  WILL NOT  
CAUSE A CONFLICT WITH EXISTING REGISTERED INTERESTS

\_\_\_\_\_  
20\_\_

Name

Signature

Date

\_\_\_\_\_  
Title:

**Schedule 3: Land Inspection Form**

To be completed by the Lands Manager, pursuant to s. 16(l),  
*Interests in Settlement Land Regulation*

<b>1. Description of Site:</b> <i>(General location, proximity to water frontage, river, etc)</i>
<b>2. Topography:</b> <i>(Soil, ground cover, etc)</i>
<b>3. Access to public road:</b>  <input type="checkbox"/> YES <input type="checkbox"/> NO
<b>4. Distance to nearest community:</b>
<b>5. Available services:</b> Water <input type="checkbox"/> Telephone <input type="checkbox"/> Sewer <input type="checkbox"/> Garbage collection <input type="checkbox"/> Power <input type="checkbox"/> Other <i>(specify)</i> Natural gas <input type="checkbox"/>
<b>6. Present &amp; historic uses &amp; compatibility with proposed use:</b>

**7. Heritage Assessment**

(Attach a copy of any applicable Heritage Assessment that has been carried out and that covers the land under consideration. If no assessment has been carried out, consult with Heritage Manager with respect to Heritage matters to consider.)

**8. Critical Habitat Assessment**

(Natural Resource Manager to determine whether there is any impact on critical habitat recommended mitigation measures.)

**9. Comments:**

20 \_\_\_\_\_

Name

Signature

Date

\_\_\_\_\_  
Title

**Schedule 4: Fees**

**APPLICATION FOR AN INTEREST IN LAND**

**\$ X**

**Schedule 5: Settlement Land Disposition Resolution**

Pursuant to \_\_\_\_\_ of the *Land Interests Act* and applicable regulations enacted under the *Land Interests Act*:

[Insert name of authorized decision maker: The Council of the Carcross/Tagish First Nation or The Land Management Board of the Carcross/Tagish First Nation] do hereby resolve and consent to the granting of a [insert type of legal Interest: lease, easement] by the Carcross/Tagish First Nation of the lands described in Schedule "A" attached, for a term of [insert term length set out in approved Disposition Instrument] years, for the benefit of [insert name of Person/Entity being granted the Disposition] under the terms and conditions as described in Schedule "A" attached [attach copy of duly approved Disposition Instrument].

[signature lines]

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.