

## Taking on the Management of Our Settlement Lands Summary for C/TFN Consultation Process

### Overview of the Regulations

The Land Interests Act, 2014 is a proposed law that established how C/TFN will lease Settlement Lands to Citizens and non-Citizens. The law also sets out rules related to how one acquires other legal interests in Settlement Land, such as easements and mortgages. In addition, the law establishes rules on land management so that decisions made by C/TFN Government under the law are fair and transparent.

The Land Interests Act, 2014 is about legal interests in Settlement Land. It does not apply to all of C/TFN traditional territory. In particular, the legislation does not establish or put into writing any C/TFN laws over managing C/TFN traditional territory that is not Settlement Land (for example, traditional territory in British Columbia).

### Summary of the Interests in Settlement Land Regulations

This Regulation was made pursuant to section 63 of the *Land Interests Act, 2014* and describes:

- specific definitions of terms used in the Regulations;
- the Lands Manager's authority to delegate its duties;
- the process by which a person may obtain a Disposition, which is as follows:
  - the applicant submits an application (and the applicable fee)
  - the Lands Manager ensures the application and supporting information/Land Status Report is brought before the LMB as soon as practicable
  - the LMB reviews, approves and returns (or else rejects) the application
  - the Lands Manager negotiates the terms of the Disposition with the applicant and forwards a letter of recommendation to the Executive Council or its duly authorized delegate
  - upon review of the LM's recommendations the Executive Council (a) approves or rejects the recommendation by resolution or (b) returns the recommendation for clarification and resubmission.
- any approval or negotiation is non-binding until properly executed by the Executive Council or its duly authorized delegate; and
- the procedure for registering new Interests.

This Regulation also includes the following sets of criteria:

- Criteria for Approval of a Disposition, including the principles and factors to be taken into consideration when making a decision as to whether to approve or reject an Application
- Criteria for Consent to a Transfer or Assignment of an Interest in Settlement Land
- Criteria for Consent to a Charge or Mortgage of an Interest in Settlement Land

### Summary of the Land Management Board Regulations

This Regulation was made pursuant to section 63 of the *Land Interests Act, 2014* and describes:

- specific definitions of terms used in the Regulations
- what the Land Management Board is authorized to do
- that the dispute resolution process set out in Part Four of the Land Interests Act also applies to decisions of the Land Management Board, except that a dispute is first heard and decided by the Executive Council and then by the Justice Council should the decision be appealed.

This Regulation also states that any decision to repeal this regulation must be approved by General Council by Resolution.

## Q & A for the Land Interests Act, 2014 and Regulations

### What is the *Land Interests Act, 2014*?

The *Land Interests Act, 2014* (the "Act") is a proposed law that will establish rules for how the C/TFN Government will lease or grant other legal interests (e.g. easements for hydro lines) in Settlement Land to Citizens and non-Citizens. The law also provides for the assignment or transfer of an interest from Citizens to other Citizens or non-Citizens in Settlement Land. In addition, the Act establishes rules and structures for land management so that decisions made by decision makers under the Act are fair and transparent.

### Does the Act apply to our entire territory?

No. The *Land Interests Act, 2014* is about legal interests in Settlement Land. It does not apply to all of C/TFN traditional territory. Thus, this legislation does not establish or put into writing any C/TFN laws. Nor does it create rules for managing C/TFN traditional territory that is not Settlement Land (for example, traditional territory in British Columbia).

### What is the Land Management Board?

The Land Management Board ("LMB") is the proposed new name for the Land Use Team. Under the proposed legislation, the LMB is the decision-making body that grants legal interests in Settlement Land. The LMB is made up of 6 members and 6 alternate members, all of whom are Clan appointed. The current members of the Land Use Team will be the members of the LMB for the current term. The LMB is supported by the Department of Heritage, Lands and Natural Resources (the "Department") and reports to General Council and Executive Council.

Under the proposed legislation, the LMB is obligated to:

- act for the benefit of C/TFN and all C/TFN Citizens;
- incorporate C/TFN virtues, values and traditions into its recommendations and decisions
- protect Settlement Land for future generations
- protect the environment
- make decisions that are compatible with historic land uses and C/TFN heritage
- consider socio-economic benefits to C/TFN
- consider applicable criteria and principles in reaching decisions about Settlement Land set out in sections 16-22 of the proposed *Interests in Settlement Land Regulation*

### How does the Act affect C/TFN Fee Simple and Fee Simple Equivalent Title to Settlement Land?

Under the Act, the LMB or anyone acting on behalf of C/TFN cannot grant C/TFN's ownership (fee simple and fee simple equivalent title) in Settlement Land to anyone. This ensures that Settlement Lands will always be owned and ultimately held by C/TFN.

## **What Legal Interests are granted under the Land Interests Act, 2014**

The highest form of ownership a Person can obtain under the *Land Interests Act, 2014* is a leasehold interest – i.e. the LMB can grant leases to Settlement Land. A lease is a type of legal interest in Settlement Land. The LMB can also grant easements and consent to other legal interests, such as transfers and mortgages. To be valid, legal interests follow the rules set out in the Act and regulations.

## **What about Natural Resources?**

In general, the rights to natural resources will not be granted under the Act. Unless a legal instrument, such as a lease, explicitly states otherwise, mines and minerals and the right to work mines and minerals in or under Category A Settlement Land will not be granted. Timber harvesting rights on parcels of Fee Simple, Category A and Category B land will not be granted unless explicitly provided for in a legal instrument.

The proposed legislation does not establish the system through which C/TFN will manage natural resources. That system will be considered in a proposed *Land Use, Planning and Development Act* that the Department and the LMB will develop together for consultation in 2015/16.

## **What are encumbrances and what is an encumbering right under the Final Agreement?**

An encumbrance is a certain type of interest or charge on land. It includes mortgages, liens authorized by statute to be filed in a registry, caveats, and writs of execution or other writs against land.

A legal interest in Settlement Land may also be subject to an encumbrance arising from the Final Agreement. Encumbering rights are the rights listed in 5.4.2 of the Final Agreement (they are Final Agreement-specific rights such as mining or petroleum development). These rights are an encumbrance on parcels of Settlement Land.

## **What if I want someone to inherit my leasehold interest in my will?**

Under the *Land Interests Act, 2014*, Citizens or non-Citizens can will their leasehold interest in Settlement Land to a C/TFN Citizen. However, Citizens and non-Citizens cannot will their leasehold interest in Settlement Land to a non-Citizen without first obtaining consent. Individuals can apply for consent to will their legal interest to a non-Citizen through the Department and decisions on consent will be reached by the LMB pursuant to section 3(b) the *Land Management Board Delegation Regulation*.

## **Do I already have a Legal Interest in C/TFN Settlement Land?**

To be enforceable, all legal interests in Settlement Land must be in writing. If you think you already have a legal interest in Settlement Land, you should contact the Department. All valid legal interests in Settlement Land that are already in effect must be registered in a land registry.

## **What are the Registration Requirements?**

Under the legislation, legal interests must be registered in an applicable Registry to ensure priority of right. This means that depending on the parcel of land, a legal interest must be registered in either the Yukon Land Titles Office or in C/TFN's Land Registry, once it is established and operational. A legal interest does not have priority over other legal interests if it is not registered.

## What about Expropriation?

Under the *Land Interests Act, 2014*, the General Council may expropriate interests in Settlement Land for community purposes, but must compensate the interest holder. Compensation is based on the fair market value of the interest, the replacement value of improvements, and any damages. General Council will first make good faith efforts to acquire the interest by mutual agreement, before relying on its power to expropriate under the *Land Interests Act, 2014*. Expropriation would only occur if General Council determined that the land was needed for community purposes, including, for example:

- fire halls, sewage or water treatment facilities, community centres, public works, roads, schools, day-care facilities, hospitals, health care facilities, or retirement homes.

## What about Dispute Resolution under the Act?

The *Land Interests Act, 2014* sets out dispute resolution procedures.

- If someone wants to appeal a decision of the Executive Council or the General Council under the Act, he or she would appeal to the Justice Council
- If someone wants to appeal a decision of the LMB, he or she would appeal to the Executive Council first, and then to the Justice Council.

In the absence of a Justice Council, however, and as an interim solution for dispute resolution, the dispute will be referred to an independent evaluator appointed by the department to resolve the dispute.

It is always open to parties to resolve disputes through mediation or another mutually agreed-upon dispute resolution process.

## What do all these terms in the Act and Regulations mean?

Below listed you will find some of the terms as defined in the Land Interest Act and regulations. You will find a complete list of definitions in the act and regulations themselves.

**Easement** means a non-exclusive Interest in Settlement Land granted under this Act, giving one person the right to use or control the land of another for a specific limited purpose. For example, there might be an easement for a hydro line across a property. This would allow the hydro provider the use of the easement to provide power to the home.

**Expropriation** refers to the taking back of a legal interest in land by C/TFN government for community purposes.

**Legal Interest in Land** means an interest in Settlement Land less than the entire interest and includes a leasehold, mortgage and easement but does not include the fee simple title or the rights, obligations and liabilities equivalent to fee simple to that land.

**Registration** refers to the act of registering a legal interest in Settlement Land in a Registry.

**Registry** means a registry established under the Yukon *Land Titles Act* or a registry established by C/TFN. C/TFN is currently working with other Yukon First Nations to create a Yukon First Nation Land Registry and a *Land Titles Act* to establish the Registry.