

## **CAFN Rights and Opportunities Within Their Traditional Territory**

### **Introduction**

The following compilation has been produced to assist quartz, placer and coal mineral interest holders in understanding the rights and opportunities of Champagne and Aishihik First Nations (CAFN) on Crown land within the CAFN Traditional Territory. Clauses have been extracted from the CAFN Final Agreement and Yukon Environmental and Socio-economic Assessment Act (YESAA) to provide a quick reference to CAFN's rights and opportunities as they relate to mineral interests. This compilation is not intended to replace the legislation or give the impression it is a complete representation of all the applicable clauses. The reader is advised to return to the original document for the full context of the clauses.

### **CAFN Final Agreement Clauses :**

#### **General Provisions**

**2.6.2.2** Where there is any inconsistency or conflict between any federal, territorial or municipal Law and a Settlement Agreement, the Settlement Agreement shall prevail to the extent of the inconsistency or conflict.

**2.6.7** Objectives in Settlement Agreements are statements of the intentions of the Parties to a Settlement Agreement and shall be used in the interpretation of doubtful or ambiguous expressions.

#### **Consult or Consultation** means:

- a) to the party to be consulted, notice of a matter to be decided in sufficient form and detail to allow that party to prepare its views on the matter;
- b) a reasonable period of time in which the party to be consulted may prepare its views on the matter, and an opportunity to present such views to the party obliged to consult; and
- c) full and fair consideration by the party obliged to consult of any views presented.

#### **Development Assessment**

**12.1.1** The objective of this chapter is to provide for a development assessment process that:

- 12.1.1.1** recognizes and enhances to the extent possible, the traditional economy of Yukon Indian People and their special relationship with the wilderness Environment;
- 12.1.1.2** provides for guaranteed participation by Yukon Indian People and utilizes the knowledge of Yukon Indian People in the development assessment process;
- 12.1.1.3** protects and promotes the well-being of Yukon Indian People and of their communities and of other Yukon residents and the interests of other Canadians;

**12.1.1.8** requires Project proponents to consider the environmental and socio-economic effects of Projects and Project alternatives and to incorporate appropriate mitigative measures in the design of Projects.

**12.4.2** YDAB and each Designated Office shall consider the following matters when carrying out their functions:

**12.4.2.1** the need to protect the special relationship between Yukon Indian Person and the Yukon wilderness Environment;

**12.4.2.2** the need to protect the cultures, traditions, health and lifestyles of Yukon Indian Person and other residents of the Yukon

**12.4.2.3** the need to protect the rights of Yukon Indian Person pursuant to the provisions of Settlement Agreements;

**12.4.2.7** any significant adverse effects on Heritage Resources;

**12.8.1.4** YDAB shall upon request by Government, or with the consent of Government, upon request from a YFN,

(a) conduct a review;

(b) review a temporary shut down, abandonment, decommissioning or significant change;

(c) conduct an audit, or

(d) monitor effects

of a Project or Existing Project, as the case may be.

**12.8.1.5** YDAB may review Plans which may have significant environmental or socio-economic effects in the Yukon, upon request of Government or with the consent of Government, upon request from a YFN.

**12.9.1** In accordance with YESAA, the Executive Committee shall, before exercising any of its functions relating to the screening or review of a Project, satisfy itself that the Project proponent has,

(a) consulted with affected communities

(b) taken into account the matters identified in 12.4.2

**12.4.2** YDAB and each Designated Office shall consider the following matters:

**12.4.2.1** the need to protect the special relationship between Yukon Indian Person and the Yukon wilderness Environment;

**12.4.2.2** the need to protect the cultures, traditions, health and lifestyles of Yukon Indian Person and other residents of the Yukon;

**12.4.2.6** measures of mitigation of and compensation for significant environmental and socio-economic effects.

## **Heritage**

**Heritage Site** means an area of land which contains moveable Heritage Resources or which is of value for aesthetic or cultural reasons.

**Yukon First Nation Burial Site** means a place outside a recognized cemetery where the

remains of a cultural ancestor of a Yukon Indian Person has been interred, cremated or otherwise placed.

**13.3.2** Subject to 13.3.5 to 13.3.7, each YFN shall own and manage ethnographic moveable Heritage Resources and Documentary Heritage Resources that are not Public Records and that are not private property of any Person, that are found in its respective Traditional Territory.

**13.4.6.1** The heritage routes identified in Schedule A - Heritage Routes, attached to this chapter, and on map CAHR in Appendix B - Maps, which forms a separate volume to this Agreement, are recognized as having cultural and heritage significance to Champagne and Aishihik People and CAFN.

1. The Shakat Trail that goes from Aishihik Village to Nisling River to Onion Creek to Tincup Lake to Talbot Creek to Albert Creek to Aishihik Village.
2. Isaac Creek Trail which goes from Aishihik Village to Thetchal Mun (Sekulmun Lake) to Isaac Creek to Gladstone Creek to Kluane Lake to Talbot Arm (Kluane Lake) to Talbot Creek where it meets with Route 1. Above.
3. Hutshi trail that goes from Hutshi to Giltana lake to Thechal Mun (Sekelmun Lake) to Aishihik Village to Nisling River to Carmacks.
4. Kloo Lake to Aishihik Village trail that goes from Kloo Lake to Dry Pass to Bear Lakes to Thetchal Mun (Sekulmun Lake) to Aishihik Village.
5. Selkirk Lake trail that goes from Kusawa Lake (west side) to Takhini River to Klusha Creek to Nordenskiold River to Yukon River to Fort Selkirk (with a branch from Kusawa Lake to Klukshu Village.

**13.8.1.4** When requested by CAFN, Government shall consider protection within existing Legislation, for a period of time, of a Heritage Site directly related to the culture and heritage of Champagne and Aishihik People which is on Non-Settlement Land, Cat B land or Fee Simple Settlement Land within CAFN Traditional Territory, pending a decision of the Minister whether to designate the Heritage Site as a Designated Heritage Site.

**13.9.1** Government and YFNs shall each establish procedures to manage and protect YFN Burial Sites which shall:

**13.9.1.1** restrict access to YFN Burial Sites to preserve the dignity of the YFN Burial Sites;

**13.9.1.3** provided that, subject to 13.9.2, where a Yukon First Nation Burial Site is discovered, the Yukon First Nation (YFN) in whose Traditional Territory the Yukon First Nation Burial Site is located shall be informed, and the YFN Burial Site shall not be further disturbed.

**13.9.2** Where a Person discovers a YFN Burial Site in the course of carrying on an activity authorized by Government or a YFN, as the case may be, that Person may carry on the activity with the agreement of the YFN in whose Traditional Territory the YFN Burial Site is located.

## **Water Management**

**14.5.1** Subject to Laws of GA, a Yukon Indian Person shall have the right to use Water for a Traditional Use in the Yukon.

**14.8.1** Subject to the Rights of Water Users authorized in accordance with this chapter and the Laws of GA, a YFN has the right to have water which is on or flowing through or adjacent to its Settlement Land remain substantially unaltered as to quality, quantity and rate of flow, including seasonal rate of flow.

**14.8.3** The Board shall not grant a Licence that interferes with the rights provided in favour of a YFN in 14.8.1 unless:

**14.8.3.1** notice, in the form prescribed by the Board, of receipt of an application has been given to an affected YFN; and

**14.8.3.2** the Board is satisfied that,

(a) there is no alternative which could reasonably satisfy the requirements of the applicant, and

(b) there are no reasonable measures whereby the applicant could avoid the interference.

**14.8.4** In deciding whether to grant a Licence that interferes with the rights provided in favour of a YFN in 14.8.1, the Board shall consider:

**14.8.4.2** the effect of the Water Use on the YFN or a Yukon Indian Person enrolled pursuant to that YFN Final Agreement; and

**14.8.4.3** means of mitigating the interference.

**14.8.5** If the Board grants a Licence that interferes with the rights provided in favour of a YFN in 14.8.1, the Board shall order the licensee to pay compensation for loss or damage to the affected YFN in accordance with 14.12.0.

**14.8.8** A YFN has a cause of action against any Person in respect of any Use of Water in violation of the terms and conditions of a licence to Use Water or contrary to the Laws of GA, which violation or contrary use substantially alters the quality, quantity or rate of flow, including seasonal rate of flow, of Water which is on or flowing through or adjacent to its Settlement Land, with such remedies as if the YFN had riparian rights.

**14.8.9** A YFN shall have standing at all times in a court of competent jurisdiction in the Yukon to seek a declaration as to whether any Person substantially altering the quality, quantity or rate of flow, including seasonal rate of flow, of Water in that YFN's Traditional Territory has lawful authority to do so.

**14.8.10** In any civil court proceedings pursuant to 14.8.8 or 14.8.9, if the YFN proves the defendant who is in violation of a Water Licence is substantially altering the quality, quantity or rate of flow, including seasonal rate of flow, at the place in the body of Water where the defendant's Use of Water is taking place, then the onus shall rest on the defendant to prove that such Use of Water is not substantially altering the quality, quantity or rate of flow, including seasonal rate of flow, at any place downstream where

the YFN has the exclusive right to Use Water...

**14.9.1** Before granting a Licence in any drainage basin in the Yukon that causes substantial alteration in the quality, quantity or rate of flow, including seasonal rate of flow, of Water so as to adversely affect a Traditional Use by a Yukon Indian Person in that Yukon Indian Person's Traditional Territory, the Board shall:

**14.9.1.1** give notice, in a form prescribed by the Board, of receipt of an application to the affected YFN; and

**14.9.1.2** upon request of an affected YFN, consider whether,

- (a) there is an alternative which could reasonably satisfy the requirements of the applicant while avoiding any adverse effect on the Traditional Use, and
- (b) there are reasonable measures whereby the applicant could avoid the adverse effect.

**14.9.2** a licensee who substantially alters the quality, quantity or rate of flow, including seasonal rate of flow, of Water in violation of a Licence or contrary to Law in a manner which causes loss or damage arising from an interference with a Traditional Use by a Yukon Indian Person within that Yukon Indian Person's Traditional Territory shall be liable to pay compensation pursuant to 14.12.0 for such loss or damage thereby caused to that Yukon Indian Person.

**14.11.1** A YFN may apply to the Board to determine whether:

**14.11.1.1** there is an alternative that will reasonably satisfy the requirements of a licensee without interfering with the right of the YFN to have Water which is on or flowing through or adjacent to its Settlement Land remain substantially unaltered...

**14.11.1.2** measures can be taken to avoid interference with Water rights referred to in 14.11.1.1 and Uses of Water of the YFN;

**14.11.1.3** the Water licensee is in compliance with the terms and conditions of the Licence;

**14.11.1.4** the terms and conditions of the Licence need to be reviewed due to unforeseen impacts on the YFN; or

**14.11.1.5** the YFN is entitled to compensation under the provisions of this chapter.

**14.11.2** In addition to any other powers available to the Board on application being made to the Board under 14.11.1, the Board may make an order amending, suspending or canceling the Licence, or deciding the YFN is entitled to compensation by the licensee, or a combination of the foregoing.

**14.11.3** Where an application under 14.11.1 is being considered by the Board and prior to the Board's decision thereon, the Board may make an interim order restraining the water licensee from exercising such rights with respect to water as are specified in an

interim order and containing such terms and conditions as the Board may determine including the payment of interim compensation.

**14.11.5** A Yukon Indian Person may apply to the Board to determine whether he is entitled to compensation pursuant to 14.9.2.

### **Fish and Wildlife**

**16.1.1** The objectives of the Fish and Wildlife Chapter are as follows:

- 16.1.1.3** to preserve and enhance the culture, identity and values of Yukon Indian People;
- 16.1.1.9** to honor the Harvesting and Fish and Wildlife management customs of Yukon Indian Person and to provide for Yukon Indian Person's ongoing needs for Fish and Wildlife.

**16.4.2** Yukon Indian Person shall have the right to harvest for Subsistence within their Traditional Territory, and with the consent of another YFN in the YFN's Traditional Territory, all species of Fish and Wildlife for themselves and their families at all seasons of the year and in any numbers on Settlement Land and on Crown Land to which they have a right of access pursuant to 6.2.0, subject only to the limitations prescribed pursuant to Settlement Agreements.

**16.5.3** A YFN shall have standing as an interested party to participate in public proceedings of any agency, board or commission on matters that effect the management and Conservation of Fish, Wildlife and their habitat in its Traditional Territory.

**16.5.4** Government shall consult with a YFN prior to taking action on Fish and Wildlife matters which may affect the YFN's management responsibilities or the exercise of Harvesting rights under a Settlement Agreement of Yukon Indian Person enrolled under that YFN Final Agreement.

**16.11.13** Yukon Indian Person holding traplines whose Furbearer Harvesting opportunities will be diminished due to other resource development activities shall be compensated. Government shall establish a process for compensation, including designating the Person responsible for compensation.

**16.11.13.1** Nothing in 16.11.13 shall be construed to effect a Yukon Indian Person's right to compensation pursuant to Law before the process in 16.11.13 is established.

### **Chapter 22 Schedule A - Economic Measures, Part I,**

**2.2** Where the Yukon has the jurisdiction to issue a Decision Document for a Project in CAFN Traditional Territory which is reviewed by a panel of YDAB, the Yukon Minister may require in the Decision Document that the developer, CAFN and the Yukon negotiate a Project agreement.

**2.3** Project agreements referred to in 2.2 may include:

- 2.3.1** employment opportunities for Champagne and Aishihik people;

**2.3.2** business opportunities for CAFN, including contracts and the provision of goods and services;

**2.3.3** investment opportunities for CAFN including equity purchase; and

**2.3.4** other measures to mitigate negative socio-economic effects of the project on CAFN or Champagne and Aishihik people.

**3.1** Government may enter into economic development agreements with CAFN which provide:

**3.1.1** technical and financial assistance for economic development purposes to residents of the CAFN Traditional Territory and to organizations, businesses and corporations owned by those residents.

### **Yukon Environmental and Socio-economic Assessment Act (YESAA):**

The CAFN Final Agreement provisions are supported by the Yukon Environmental and Socio-economic Assessment Act in the following clauses:

**5(2)** The purposes of this Act are

(c) to protect and promote the well-being of Yukon Indian Persons and their societies and Yukon residents generally, as well as the interests of other Canadians;

(f) to recognize and, to the extent practicable, enhance the traditional economy of Yukon Indian Persons and their special relationship with the wilderness environment;

(g) to guarantee opportunities for participation of Yukon Indian Persons - and to use their knowledge and experience - in the assessment process.

**42. (1)** In conducting an assessment of a project or an existing project, a designated office, the executive committee or a panel of the Board shall take the following matters into consideration;

(g) the need to protect the rights of Yukon Indian Persons under final agreements, the special relationship between Yukon Indian Persons and the wilderness environment of Yukon, and the cultures, transitions, health and lifestyles of Yukon Indian Persons and other residents of Yukon.

**43.** A designated office, the executive committee or a panel of the Board may require a Proponent to provide any supplementary information that it considers necessary for its assessment, whether or not it has commenced the assessment.

**50. (3)** Before submitting a proposal to the executive committee, the proponent of a project shall consult any first nation in whose territory, or resident of any community in which, the project will be located and might have significant environmental or socio-economic effects.

**55. (4)** Before making a recommendation under any of paragraph 56 (1), a designated

office shall seek the views about the project, and information that it believes relevant to the evaluation, from any first nation identified under 55(1) (b) ... or first nation that has notified the designated office of its interest in the project or in projects of that kind.

**60. (1)** A request for a review of a project may be made to the executive committee **(c)** by a first nation with the consent of the federal minister and, if the territorial minister is a decision body for the project, with the consent of the territorial minister.