

# **Government of Yukon**

## **Policy for**

### **Exchange of Crown and Settlement Land**

#### **Pursuant to Section 9.6.1 of a Yukon First Nation Final Agreement**

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## **1.0 Policy Authority**

- 1.1 This policy is issued under the authority of Cabinet meeting No. 10-06 dated February 25, 2010.

## **2.0 Definitions**

"Crown Land" means land vested in Her Majesty in Right of Canada, the administration and control of which is appropriated to the Commissioner of Yukon.

"First Nation Offering" means the Settlement Land proposed for exchange and that may be acquired by the Government of Yukon.

"Yukon Offering" means the Crown Land proposed for exchange and that may be acquired by the Yukon First Nation and, if agreed, that may become Settlement Land.

Other capitalized terms used in this document have the same meaning as defined in the Yukon First Nation Final Agreement.

## **3.0 Purpose**

- 3.1 This policy will guide the Government of Yukon when considering proposals for the exchange of Settlement Land and Crown Land as provided for in section 9.6.1 of a Yukon First Nation Final Agreement.

## **4.0 Policy Objective**

- 4.1 The Government of Yukon intends to maintain the integrity of the arrangements related to identification of Settlement Land set out in sections 9.2.0, 9.3.0, 9.4.0 and 9.5.0 of Yukon First Nation Final Agreements.

## **5.0 Application**

- 5.1 This policy applies to a proposed land exchange involving Crown Land and Settlement Land under section 9.6.1 of a Yukon First Nation Final Agreement, other than exchanges of Crown and Settlement Land pursuant to:
- 5.1.1 a *Proposed Site Specific Settlement Land Memorandum of Understanding* (PSSSL MOU) among the Government of Canada, Government of Yukon and the affected Yukon First Nation; and
  - 5.1.2 specific provisions under section 9.6.1 of a Yukon First Nation Final Agreement whereby the parties have agreed to the terms of the land exchange under certain conditions (for example, sections 9.6.1.1 and 9.6.1.2 of the Kwanlin Dun First Nation Final Agreement).

## **6.0 Background**

6.1 Section 9.6.1 of the Yukon First Nation Final Agreement provides that:

6.1.1 A Yukon First Nation and Government may agree to exchange Crown Land and Settlement Land.

6.1.2 A Yukon First Nation and Government may further agree that the Crown Land may become Settlement Land, however any aboriginal title or right on this land will remain released and surrendered, and would not be regained through the First Nation's acquisition of the Crown Land as Settlement Land.

***Final Agreement: 9.6.0 -- Crown and Settlement Land Exchange:***

*"9.6.1 A Yukon First Nation and Government may agree to exchange Crown Land for Settlement Land and may agree that Crown Land exchanged for Settlement Land will be Settlement Land provided that any such agreement shall not affect the cession, release and surrender of any aboriginal claim, right, title or interest in respect of that Crown Land."*

6.2 Any party to a Yukon First Nation Final Agreement may propose an exchange of Crown Land and Settlement Land to the other parties to the Agreement.

6.3 The exchange of Crown Land and Settlement Land may include any category of Settlement Land (Category A, Category B, or Fee Simple).

## **7.0 Policy Statement**

7.1 In recognition of the finality of the land claim agreements and the land quantum negotiated for the reasons indicated in Chapter 9 of the Final Agreements, the Government of Yukon recognizes the importance of preserving the integrity of the original agreed-to Settlement Land packages for all Yukon First Nations. Accordingly, the Government of Yukon will consider an exchange of Crown Land and Settlement Land only when such an exchange would be in the best interests of the Government of Yukon and Yukon public while taking into consideration the stated desires of a First Nation for a land exchange.

## **8.0 Consideration of Proposed Exchanges of Crown Land and Settlement Land**

8.1 Proposals for exchange of Crown Land and Settlement Land will be considered on a case-by-case basis, and each proposal will be considered on its own merits.

8.2 The Government of Yukon will consider whether a proposal for exchange of Crown Land and Settlement Land (a "proposed land exchange") meets the interests set out in 7.1 of this policy. Such consideration will address the following matters:

8.2.1 Evaluation of a proposed land exchange will consider whether the interests of the parties can be satisfactorily met by other means or other land disposition processes.

- 8.2.2 Evaluation of a proposed land exchange will consider if the land proposed in both the First Nation Offering and the Yukon Offering are suitable for their intended uses.
- 8.2.2.1 A land exchange is not in itself subject to assessment under the *Yukon Environmental and Socio-Economic Assessment Act*. However, the use intended for the First Nation Offering and/or the Yukon Offering may be subject to such an assessment, in which case the parties will consider whether to obtain the assessment to inform their consideration of the proposed land exchange.
- 8.2.3 The proposed land exchange shall be considered under "*Chapter 9 Settlement Land Amount*" of the relevant Yukon First Nation Final Agreement and shall be consistent with sections 9.4.0 and 9.5.0 of the Yukon First Nation Final Agreement.
- 8.2.4 The proposed land exchange must result in each party receiving a fair and equitable exchange. Determination of value for this purpose may consider the monetary values of the affected Crown Land and Settlement Land, non-monetary factors or a combination of both.
- 8.2.5 The parties to the proposed land exchange must identify and disclose all interests, rights, encumbrances, caveats or other factors applicable to the First Nation Offering and Yukon Offering.
- 8.2.6 Evaluation of the proposed land exchange will consider applicable laws, regulatory regimes and land use plans or other planning regimes.
- 8.2.7 If the proposed land exchange contemplates that the Crown Land exchanged for Settlement Land will become Settlement Land:
- 8.2.7.1 The quantum of resulting Settlement Land shall not exceed the maximum amounts of Category A Settlement Land, Category B Settlement Land and Fee Simple Settlement Land set out in "*Chapter 9 Schedule A, Allocation of Settlement Land Amount*" of the relevant Yukon First Nation Final Agreement.
- 8.2.7.2 Evaluation of a proposed land exchange shall consider how provisions of the relevant Yukon First Nation Self-Government Agreement that pertain to land-related matters such as taxation, compatible land use, application of self-government powers and other relevant matters would apply to the proposed Settlement Land, and shall consider whether amendment of the Self-Government Agreement as well as the Final Agreement will be required if the proposed land exchange is agreed to by the parties.

## **9.0 Land Exchange Agreements**

- 9.1 If the parties to a Yukon First Nation Final Agreement agree in principle to a proposed land exchange, the parties shall negotiate a land exchange agreement setting out the legal descriptions for the First Nation Offering and Yukon Offering and any terms and conditions associated with the exchange or the lands to be exchanged.
- 9.2 A land exchange agreement negotiated pursuant to 9.1 of this policy must be consistent with applicable laws and with the Yukon First Nation Final and Self-Government Agreements; and for greater certainty, the land exchange agreement shall not affect the cession, release and surrender of any aboriginal claim, right, title or interest in respect of the Crown Land exchanged for Settlement Land.
- 9.3 Unless the parties agree to other arrangements in the land exchange agreement, the party that proposed the land exchange shall pay any associated costs (e.g. land surveys, title registrations and associated fees) applicable to both the First Nation Offering and Yukon Offering.

## **10.0 Approval of a Proposed Land Exchange**

- 10.1 An exchange of Crown Land for Settlement Land pursuant to section 9.6.1 of a Yukon First Nation Final Agreement is subject to the review and approval of Cabinet. Cabinet review and approval will include the associated land exchange agreement and any amendments which may be required to the Final Agreement or the Self-Government Agreement and any associated Orders-In-Council that may be required.

## **11.0 Roles and Responsibilities**

### **11.1 Cabinet:**

- Approves any Government of Yukon policies applicable to exchanges of Crown and Settlement Land pursuant to section 9.6.1 of Yukon First Nation Final Agreements;
- Approves a proposed land exchange via approval of associated land exchange agreement and any Final Agreement amendment and Self-Government Agreement amendment that may be required; and
- Approves any amendments to Yukon First Nation Final and Self-Government Agreements that may be required to give effect to the land exchange agreement.

### **11.2 Minister responsible for the Land Claims and Implementation Secretariat:**

- Directs the Land Claims and Implementation Secretariat in the review of a proposed land exchange and on the proposed terms to be negotiated in an associated land exchange agreement;
- Recommends to Cabinet any Government of Yukon policies applicable to exchanges of Crown and Settlement Land pursuant to section 9.6.1 of Yukon First Nation Final Agreements;
- Recommends to Cabinet any land exchange agreements concluded pursuant to this policy; and

- Recommends to Cabinet any amendments to Yukon First Nation Final and Self-Government Agreements and related Orders-In-Council that may be required to give effect to the land exchange agreement.

### 11.3 Land Claims and Implementation Secretariat:

- Advises its Minister and Government of Yukon departments on any proposed land exchange pursuant to section 9.6.1 of Yukon First Nation Final Agreements;
- Leads the internal interdepartmental review of the proposed land exchange;
- Coordinates the Government of Yukon's communications with the other parties to the proposed land exchange, and with any other affected Yukon First Nations, agencies and stakeholders;
- Represents the Government of Yukon in the negotiation of a land exchange agreement under this policy;
- Coordinates with the parties to undertakes the steps necessary to give effect to the land exchange agreement; and
- Ensures that exchanges of Crown Land and Settlement Land pursuant to 9.6.1 of Yukon First Nation Final Agreements are properly documented and that relevant records are maintained.

11.3.1 The Land Claims and Implementation Secretariat shall conduct an internal interdepartmental review of the proposed land exchange and shall prepare a preliminary report for its Minister in sufficient form and detail to enable the Minister to provide direction regarding further pursuit of the proposed land exchange and the proposed terms of an associated land exchange agreement.

11.3.2 The Land Claims and Implementation Secretariat shall prepare a submission to Cabinet seeking approval of any land exchange agreement-in-principle and of any Final Agreement amendment and Self-Government Agreement amendment that may be required.

### 11.4 Land Management Branch, Department of Energy, Mines and Resources:

- In keeping with its responsibilities under the *Lands Act*, the *Territorial Lands (Yukon) Act* and *the Financial Administration Act*, leads and/or undertakes performance of the technical tasks, for which the Government of Yukon is responsible, that are required to give effect to an approved land exchange.

## 12.0 Inquiries

12.1 Inquiries concerning this policy may be directed to the Assistant Deputy Minister of the Land Claims and Implementation Secretariat:

Assistant Deputy Minister

Executive Council Office - Land Claims and Implementation Secretariat

2<sup>nd</sup> Floor, 204 Main Street, Whitehorse, Yukon Y1A 2B2