

TA'AN KWÄCH'ÄN COUNCIL

Lands and Resources Act

24 November 2010

TO THE BOARD OF DIRECTORS FOR THE FIRST READING

Ta'an Kwäch'än Council
LANDS AND RESOURCES ACT

Enacted on this _____ day of _____ 2010

Chief Brenda Sam

The Board of Directors of the Ta'an Council hereby enacts as follows:

Preamble

1. The Ta'an Kwäch'än Council seeks to uphold the fundamental importance of
 - (a) protecting and enhancing the cultural identity, traditional values and lifestyle; and
 - (b) balancing the protection of natural resources and the inherent right and socio-economic interests of citizens making use of settlement lands.

Short title

2. This Act may be cited as the *Lands and Resources Act*.

Definitions

3. In this Act

"Board" means the Board established in accordance with the *Constitution of the Ta'an Kwäch'än Council*;

"citizen" means a person enrolled as a citizen in accordance with *the Constitution of the Ta'an Kwäch'än Council*, schedule I, Ta'an Kwäch'än Council citizenship code, section 2.0, citizenship;

"Director" means a Family Director of the Board selected in accordance with the *Constitution of the Ta'an Kwäch'än Council*;

"final agreement" means the agreement entered into by the Ta'an Kwäch'än Council, Her Majesty the Queen in Right of Canada and Government of Yukon and given effect by the *Yukon First Nations Land Claim Settlement Act*, S.C. 1994, c.34, and *An Act Approving Yukon Land Claims Final Agreements*, S.Y. 1993, c.19, as of April 1, 2002;

"land steward" means the person designated by the Board under section 19 to exercise the powers and authorities provided under this Act;

“land use authorization” means a licence, lease, permit, concession, easement or other interest in land issued by the Ta’an Kwäch’än Council in relation to the use and occupation of settlement land;

“lands, resources and heritage department” means the lands, renewable resources and heritage department established by the Ta’an Kwäch’än Council;

“manager” means the public officer having senior responsibility for the administration and enforcement of this Act;

“natural person” means a real human being;

“register of land” means the register of land established pursuant to Part Eleven of this Act; and

“settlement land” means settlement land in accordance with the final agreement.

PART ONE GENERAL PROVISIONS

Purpose

4. (1) The purpose of this Act is to ensure
- (a) the responsible management of and sustainable development on settlement land; and
 - (b) that settlement land shall be held in trust by the Ta’an Kwäch’än Council for the use and benefit of present and future generations of citizens.

Application

5. This Act applies to settlement land, including any resources thereon or therein, retained by the Ta’an Kwäch’än Council under its final agreement.

Traditional activities

6. (1) Nothing in this Act is intended to annul, repeal or extinguish a right of any citizen recognized in the final agreement.

(2) A citizen shall have the right to use and occupy settlement land to exercise a traditional activity of the Ta’an Kwäch’än Council, including

- (a) the harvesting of fish and wildlife;
- (b) the gathering of flora for subsistence, ceremonial, cultural or medicinal purposes; and
- (c) such other rights of a citizen recognized in the final agreement.

(3) The rights described in subsection (2)

- (a) may be exercised without the issuance of a land use authorization under this Act; and
- (b) shall be exercised in accordance with the final agreement and this Act and any other law made by the Ta’an Kwäch’än Council.

Restrictions

7. (1) No settlement land shall be sold.

(2) No land use authorization issued under this Act or any other law made by the Ta'an Kwäch'än Council shall be construed as granting any person any form of ownership or right to ownership in relation to any portion of settlement land.

(3) Settlement land shall not be used by the Ta'an Kwäch'än Council to warranty, guarantee or otherwise act as security or collateral for any investment, loan, advance, mortgage or other instrument to obtain credit.

Liability

8. (1) A person shall be liable to the Ta'an Kwäch'än Council for his or her wilful or negligent acts or omissions that cause harm, injury, loss or damage to settlement land or to any improvement located on settlement land.

(2) The Ta'an Kwäch'än Council shall be liable for provable loss or damage caused to a person by virtue of anything unlawfully done or omitted to be done by the Ta'an Kwäch'än Council, the Board or its employees, agents or contractors.

(3) The Ta'an Kwäch'än Council, the Board or its employees, agents or contractors are not liable for anything done or omitted in the good faith execution of any duty or power under this Act.

PART TWO
LAND MANAGEMENT COMMISSION

Establishment of commission

9. The land management commission is hereby established.

Powers of commission

10. (1) The land management commission shall review the recommendations made by a land steward regarding applications for land use authorizations and may issue land use authorizations in accordance with this Act.

(2) The land management commission may advise and make recommendations to the land, resources and heritage department and the Board on matters relating to

- (a) the management of settlement land;
- (b) the establishment of land use plans for parcels of settlement land;
- (c) the establishment or amendment of resource management plans; and
- (d) such other matters as may be directed by the Board.

Composition of commission

11. (1) The Board shall
- (a) establish the composition and membership of the land management commission;
 - (b) establish the terms of appointment of the members of the land management commission; and
 - (c) approve the terms of reference for the land management commission.

Procedures of commission

12. (1) The land management commission shall meet as required, but not less often than once each calendar quarter.

(2) The quorum of the land management commission shall be a majority of the members of the land management commission.

(3) The manager shall be an *ex officio* member and chair the meetings of the land management commission. Land stewards and other technical support staff of the Ta'an Kwäch'än Council may participate in the discussions of the land management commission as appropriate.

(4) The land management commission shall submit a written, annual report to the Board.

(5) The land, resources and heritage department shall provide administrative and secretarial services to the land management commission.

Funding

13. Subject to Ta'an Kwäch'än Council fiscal year operating budgets, the Board may provide funding to the land, resources and heritage department for the purpose of allowing the land management commission to fulfill its responsibilities and carry out its functions under this Act.

PART THREE
LAND USE AND RESOURCE MANAGEMENT PLANS

Land use and resource management plans

14. (1) The Board may establish, amend or revoke a land and resource management plan with respect to a designated area of settlement lands to

- (a) guide and direct the management and use of land or certain resources and wildlife;
- (b) protect and conserve land or certain resources and wildlife; or
- (c) restrict the issuance of certain interests to lands or certain resources and wildlife.

(2) To the extent practicable, plans established under subsection (1) shall be consistent and coordinated with the regional land use plans developed under the final agreement in order to minimize any overlap, redundancy or inconsistency.

Existing non-conforming use or occupation

15. Subject to section 25, where

- (a) a person uses or occupies settlement land before the date that a land use or land and resource management plan comes into effect; and
- (b) that person does so in a manner that is not consistent with the applicable land use or land and resource management plan,

he or she may continue that non-conforming use or occupation, but only to the extent of his or her use or occupancy of that date, and otherwise that person, after that date, shall use and occupy the settlement land in a manner consistent with the plan so long as that he or she possesses that portion of settlement land.

Non-conforming building or other structure

16. (1) A non-conforming building or other structure existing at the date of the adoption of a land use or resource management plan or amendments may continue to be used, but the building or other structure may not be enlarged, added to, rebuilt or structurally altered except to increase its conformity.

(2) The lawful use of a part of a building or other structure existing at the time of the adoption of a land use or resource management plan that does not conform to the plan may be extended throughout the rest of the building or structure, but no structural alterations or construction of other buildings or other structures, except those required by law, shall be made while the non-conforming use is continued.

(3) For the purpose of subsections (1) and (2), repairs, maintenance or installations that do not alter the size of the building or other structure or involve the rearrangement or replacement of structural supporting elements shall not be considered to be structural alterations.

(4) If a building or other structure that does not conform to a land use or resource management plan is destroyed by fire, or is otherwise damaged to an extent of 75 per cent or more of the assessed value of the building or other structure, it may not be rebuilt or repaired except in conformity with the land use or resource plan.

PART FOUR
ADMINISTRATION

Establishment of department

17. The land, resources and heritage department of the Ta'an Kwäch'än Council is hereby established.

Responsibilities of department

18. The land, resources and heritage department shall operate for the benefit of the Ta'an Kwäch'än Council and its citizens to

- (a) promote responsible and sound management of settlement land;
- (b) ensure that any use and occupation of settlement land is lawful and carried out in a sustainable manner;

- (c) implement the provisions and principles of the final agreement and intergovernmental accords; and
- (d) conserve and protect settlement land.

Reporting

19. The land, resources and heritage department shall report to the annual meeting of the General Assembly and to the Board quarterly.

Land steward

20. (1) The Board may designate any person or class of persons as land stewards for the purposes of this Act and may limit in any manner the Board considers appropriate the powers that a land steward may exercise under this Act or any other law made by the Ta'an Kwäch'än Council.

(2) Each land steward shall be provided with a certificate in a form the Board considers appropriate certifying a land steward's designation as such and, where the powers of a land steward is limited pursuant to subsection (1), specifying the powers that a land steward may exercise under this Act or any other law made by the Ta'an Kwäch'än Council.

Cross-jurisdictional appointments

21. The Board may enter into agreements with other governments to permit
- (a) land stewards to enforce specific laws of other governments; or
 - (b) designation of any person or class of persons employed by other governments to be deemed a land steward under this Act to carry out the responsibilities of a land steward and exercise a land steward's powers under this Act.

PART FIVE APPLICATIONS

Requirement of land use authorization

22. (1) A person is not required to obtain a land use authorization for use and occupancy of settlement land if

- (a) the person is a citizen exercising a traditional activity as recognized in section 6;
- (b) the person is involved in the delivery of emergency services or actions to protect public health, welfare or safety or to prevent irreparable harm to settlement land;
- (c) the use or occupancy by the person is authorized under any other law made by the Ta'an Kwäch'än Council; or
- (d) the person is exercising use and occupancy as authorized under the final agreement.

(2) Subject to subsection (1), no person may use or occupy a portion of settlement land unless the Ta'an Kwäch'än Council has issued an authorization under this Act in relation to that use or occupancy.

(3) The Ta'an Kwäch'än Council is not required to obtain a land use authorization under this Act for the use and occupation of settlement but such use and occupation shall be consistent with any land use and resource management plans made under this Act.

Terms and conditions for use and occupation

23. (1) Each land use authorization shall provide that no person shall

- (a) cause damage to settlement land or improvements located on settlement land without the express consent of the owner of such improvements;
- (b) commit any mischief;
- (c) interfere with the use and enjoyment of settlement land by others;
- (d) disturb any cultural sites, including burial sites;
- (e) abandon or discard any rubbish, refuse, debris, garbage, waste or such material on settlement land; and
- (f) anything else the Ta'an Kwäch'än Council sees reasonable.

(2) A land use authorization may contain terms and conditions consistent with any law made by the Ta'an Kwäch'än Council, including this Act, and may require the applicant to

- (a) take certain steps to
 - (i) protect the environment,
 - (ii) protect fish and wildlife,
 - (iii) reduce conflicts with traditional and cultural uses of settlement land by the Ta'an Kwäch'än Council and citizens,
 - (iv) protect the use and peaceful enjoyment of settlement land by the Ta'an Kwäch'än Council and citizens,
 - (v) avoid or mitigate impacts on settlement land and improvements located on settlement land;
- (b) deposit a security before issuance of the land use authorization when required;
- (c) enter into a compensation agreement with the Ta'an Kwäch'än Council or any affected persons, including citizens and trapline holders, for any potential loss or damage that may arise from the applicant's actions under the land use authorization; and
- (d) enter into a benefit agreement with the Ta'an Kwäch'än Council to, among other matters, provide employment and training opportunities for citizens and business and contract opportunities for the Ta'an Kwäch'än Council and citizens in relation to the applicant's actions under the land use authorization.

(3) If the Ta'an Kwäch'än Council has issued a land use authorization for a use or occupation, that use or occupation shall be carried out in accordance with any terms and conditions prescribed by the land use authorization.

(4) Any person who uses or occupies settlement land contrary to subsection (1) shall be liable for any damage to property or improvements on settlement land resulting from his or her actions.

Application for land use authorization

24. A person who wishes to obtain a land use authorization shall complete and submit the prescribed form to the land steward office and provide any information required under the form or requested by the land steward.

Determination of application

25. (1) In reviewing applications for land use authorizations, a land steward shall
- (a) ensure that the application is complete and contains all required information;
 - (b) provide written recommendations for each completed application to the land management commission, and the reasons for the recommendations, to
 - (i) reject the application,
 - (ii) approve the application, or
 - (iii) vary the application;
 - (c) provide written recommendations to the land management commission on how to mitigate impacts on settlement land and improvements located on settlement land;
 - (d) consult citizens and other affected persons, as appropriate, in relation to the applications reviewed by the land management commission; and
 - (e) give full consideration to
 - (i) any comments submitted by citizens and other affected persons,
 - (ii) any regulation or policy under this Act,
 - (iii) any land use or and resource management plan established under this Act.

(2) The land management commission shall make a final decision, subject to section 66, and forward it, including the reasons for the decision and the terms and conditions, to the applicant in a timely manner.

(3) If the land management commission does not exercise its powers to make a final decision with respect to an application for a land use authorization under subsection (2) within 45 days, that application shall be deemed to be rejected and the applicant may seek reconsideration of that decision under section 66.

(4) The land management commission may defer consideration of an application until such time as a land and resource management plan or land use plan for the area applicable to the application is approved in accordance with this Act.

- (5) A decision made by the land management commission shall be consistent with
- (a) any regulation or policy under this Act;
 - (b) any land use and land and resource management plans established under this Act.

PART SIX
LEASE OF SETTLEMENT LAND

Present occupation

26. (1) The interest of a citizen who, at the date this Act comes into force, occupies any parcel of settlement land for the purposes of a traditional activity shall have priority over the application of any other person.

(2) A citizen who occupies any parcel of settlement land in accordance with subsection (1) shall not have priority over an expression of interest that was recorded by a land steward under section 27 before the date that the citizen occupied that portion of settlement land.

Expressions of interest

27. (1) A citizen may notify the land steward office in writing that he or she wishes to acquire a leasehold interest with respect to all or a portion of a parcel of settlement land and the land steward shall record the name of that person and the proposed use of that parcel and the time and date at which the notice was received.

(2) The Board may require the approval of a land use and resource management plan with respect to all or a portion of a parcel of settlement land before any lease is issued under this Act with respect to that settlement land.

(3) Efforts shall be made to give priority to each expression of interest in a parcel of settlement land in accordance to the time and date at which it was received providing that an expression of interest conforms and is consistent with

- (a) any other law made by the Ta'an Kwäch'än Council;
- (b) any policy made by the Ta'an Kwäch'än Council;
- (c) any planning initiative undertaken by the Ta'an Kwäch'än Council; and
- (d) programs and best management practices that support the principles of accommodating a citizen's interest while preserving the environment.

(4) Every written expression of interest made in good faith and received by the Ta'an Kwäch'än Council before the coming into force of this Act shall be deemed to have been received under this Act and shall have effect in the order in which it was received in the first instance.

(5) An expression of interest by a citizen since deceased shall remain in effect for the benefit of his or her heir or heirs.

Rights under a lease

28. Subject to this Act, a lessee of settlement land shall have
- (a) an exclusive right to use and occupation of the land described in the lease for the purpose stated in the lease and in accordance with any laws made by the Ta'an Kwäch'än Council;
 - (b) a right of access to enter and cross any adjacent settlement land, other than settlement land designated as developed settlement land under the final agreement, for the purpose of exercising access to the land described in the lease; and
 - (c) a right to transfer or assign the lease in accordance with the regulations.

Transfer by will

29. Where the lessee is a natural person
- (a) he or she may transfer his or her interest in the lease by will to any person; or
 - (b) if he or she dies without a will, his or her interest in the lease shall pass to the heir or heirs of that person.

Lease shall be filed in register of land

30. Any lease, including any terms and conditions, shall be filed in register of land.

PART SEVEN
LAND USE AUTHORIZATIONS

Show land use authorization

31. Upon the request of a land steward or other employee of the land, resources and heritage department, a person shall produce a copy of the land use authorization, including any terms and conditions, issued to the person.

Proof of land use authorization

32. If holding a land use authorization is a defence to a prosecution of an offence under this Act, the defendant has the burden of proving that at the material time the defendant had the required authorization.

Transfer

33. (1) No person shall have possession of a land use authorization issued to another person and claim to be that person or exercise or attempt to exercise any rights or privileges provided by the authorization which the person would not otherwise have.

(2) Subject to section 28, a person shall not transfer or assign a land use authorization to another person without the written consent of the land management commission.

(3) If any land use authorization is transferred or assigned, the terms and conditions of that authorization shall continue to apply unless the authorization is amended by the land management commission.

(4) Any transfer or assignment of a land use authorization, including a lease, shall not have effect until it is filed in the register of land.

Duplication of land use authorizations

34. No person shall alter, imitate or duplicate a land use authorization. Only copies certified with an original signature, initialled on each page and marked duplicate by a land steward shall be considered as a valid copy.

PART EIGHT
MONITORING AND ENFORCEMENT

Suspension, termination or amendment of land use authorization

35. (1) A land steward, after giving a land use authorization holder reasonable notice and an opportunity to make representations, may, by written order,
(a) suspend all or some of the rights of a land use authorization holder under a land use authorization;
(b) terminate a land use authorization; or

- (c) amend or attach new conditions to a land use authorization.
- (2) A land steward may only make an order under this section if
 - (a) a term or condition of a land use authorization or a provision of this Act is contravened; or
 - (b) the use or occupation to which a land use authorization relates has caused or is likely to cause a threat to public health or safety or cause irreparable or costly damage to the environment.
- (3) Upon receiving an order, the land use authorization holder shall immediately comply with the order.
- (4) If a land steward is satisfied that adequate steps have been taken to remedy the conditions that led to the issuance of an order pursuant to subsection (1), the land steward shall rescind the order and reinstate the land use authorization or issue a new land use authorization that is consistent with the original land use authorization.

Letter of clearance

- 36.** (1) Where a land use authorization expires and a holder of that authorization does not wish to make an application for renewal or where the use or occupation permitted under an authorization is no longer required by a holder, the land steward shall, after a final inspection of the affected area and if appropriate, issue the holder a letter of clearance to confirm that the terms and conditions have been completed and the holder may vacate the settlement land with no further responsibilities.
- (2) The land steward shall file the letter of clearance in the register of land.

Notice of discontinuance

- 37.** (1) Where a holder of a land use authorization wishes to discontinue use or occupation of settlement land under that authorization before its expiration, the holder shall give notice of discontinuance in writing to a land steward that identifies the date upon which the holder proposes to discontinue the use or occupation.
- (2) A notice of discontinuance shall be given to the land steward at least 30 days before the proposed date of the discontinuance.
 - (3) Upon receipt of a notice of discontinuance, the land steward shall inspect the affected area and, if appropriate, issue a letter of clearance in accordance with this Act.

Continuing obligations

- 38.** The issuance of a notice of discontinuance or termination of a land use authorization by a land steward shall not relieve a holder of a land use authorization from any obligations arising from the terms and conditions of the land use authorization or under this Act, including compliance with any notice or direction provided by the land steward to the holder of a land use authorization.

Powers of a land steward

39. (1) A land steward shall have the powers and authorities provided under this Act and under any other law made by the Ta'an Kwäch'än Council.

- (2) A land steward shall
- (a) carry out compliance monitoring and inspection activities;
 - (b) exercise enforcement duties; and
 - (c) issue orders, notices and tickets.

Stop work order

- 40.** (1) If
- (a) a term or condition of a land use authorization or a provision of this Act; or
 - (b) the use or occupation to which a land use authorization relates has caused or is likely to cause a threat to public health or safety and cause irreparable or costly damage to the environment,

a land steward, after giving to the holder or person in charge of the use or occupation reasonable notice and an opportunity to make representations, may issue a written order, including the reasons therefore, directing the person to stop all such use or occupation or to carry out measures to mitigate the effects of non-compliance within any time specified in the order. Upon receiving an order, the person shall immediately comply with the order.

(2) If the land steward is satisfied that adequate steps have been taken to remedy the conditions which led to the making of a suspension, the land steward shall rescind the order issued under subsection (1).

Arrest

41. A land steward may arrest, without warrant, a person who that steward believes, on reasonable grounds, has committed an offence against this Act or whom the land steward finds committing or preparing to commit an offence against this Act.

Seizure

42. A land steward may seize any property or thing that the land steward believes, on reasonable grounds, was used in the land management commission of an offence under this Act or shall afford evidence of an offence under this Act.

Entry by land steward

43. In the discharge of his or her duties, a land steward or other person authorized to such effect by a land steward may enter on and pass through or over settlement land, including portions of settlement land that have been designated as developed or improved, without being liable for trespass.

Inspection, searches and seizures

44. (1) On entering any place under this Act, a land steward shall, upon request, show the certificate of designation to the person in charge of the place.

(2) Subject to subsection (3), for the purpose of ensuring compliance with this Act, a land steward may, at any reasonable time, enter any place or premises where the land steward believes, on reasonable grounds, that any use or occupation resulting or likely to result in a contravention of this Act is occurring, occurred or is likely to occur, and the land steward may, for any purpose related to the enforcement of this section,

- (a) conduct inspections, including examination of any substance or product found therein;
- (b) take samples;
- (c) conduct tests and measurements; and
- (d) require any person to produce for examination or copying any records, books of account or other documents that the land steward believes, on reasonable grounds, contain information that is relevant to the enforcement of this Act.

(3) Where any place or premises referred to in subsection (1) is a dwelling-house, a land steward may not enter that dwelling-house without the consent of the occupant except under the authority of a warrant issued under subsection (4).

(4) Where, on an application without notice, a justice of the peace is satisfied by information on oath

- (a) that the conditions for entry described in subsection (1) exist in relation to a dwelling-house;
- (b) that entry to a dwelling-house is necessary for any purpose relating to the enforcement of this Act; and
- (c) that entry to a dwelling-house has been refused or that there are reasonable grounds for believing that entry thereto will be refused,

the justice of the peace may issue a warrant authorizing the land steward named therein to enter that dwelling-house subject to such conditions as may be specified in the warrant.

(5) A land steward with a warrant issued under subsection (6) may enter and search any place or premise in which the steward believes, on reasonable grounds, there is any use or occupation that is being or has been carried out or is occurring or has occurred in contravention of this Act.

(6) Where, on application without notice, a justice of the peace is satisfied by information on oath that there are reasonable grounds to believe that there is in a place

- (a) a thing by or in relation to which a provision of this Act has been contravened; or
- (b) a thing that there are reasonable grounds to believe will afford evidence with respect to the land management commission of an offence under this Act,

the justice of the peace may issue a warrant authorizing a land steward, or authorizing any other person named in the warrant, to enter and search the place and to seize any thing referred to in paragraph (a) or (b).

(7) Subject to any conditions specified in a warrant, a person authorized by a warrant issued under subsection (6) may

- (a) at any reasonable time enter and search a place referred to in a warrant;
- (b) seize and detain any thing referred to in a warrant or any thing in plain view that may provide evidence of the land management commission of an offence under this Act; and
- (c) exercise the inspection powers pursuant to subsection (1).

(8) Subject to subsection (3), a land steward may exercise the powers described in subsection (7) without a warrant if the delay necessary to obtain a warrant under subsection (6) would result in a risk of serious harm to human life or the environment or the loss or destruction of evidence of the land management commission of an offence under this Act.

(9) The person in charge of a place entered by a land steward under this section and every person who is of legal age found in the place

(a) shall, when requested by the land steward, give the land steward all reasonable assistance in the person's power to enable the land steward to carry out duties and functions under this Act; and

(b) shall provide the land steward with any information with respect to the administration of this Act as the land steward may reasonably require.

(10) While a land steward is exercising powers or carrying out duties and functions under this Act, no person shall

(a) knowingly make any false or misleading statement, either orally or in writing, to the land steward; or

(b) otherwise obstruct or hinder the land steward.

(11) Subject to subsection (3), a land steward may, without a warrant or court order, seize anything that is produced to the land steward, or that is in plain view, during an inspection under this section, if the land steward reasonably believes that there has been a contravention of this Act.

(12) A land steward may remove the thing seized under subsection (11) or may detain the thing in the place where the thing is seized.

(13) A land steward shall inform the person from whom the thing was seized under subsection (11) of the reason for the seizure and shall give the person a receipt for the thing seized.

(14) Anything seized as evidence under this section may be released from detention

(a) by a land steward or the manager if the thing seized is no longer required as evidence; or

(b) by the court, subject to any appeal, when the accused is acquitted of the matter to which the evidence relates or when the matter is stayed.

(15) If the lawful ownership of or the identity of the person from whom a thing was seized, with or without a warrant, has not been ascertained within 60 days after the seizure, the thing is forfeited to the Ta'an Kwäch'än Council.

(16) Despite any provision of the *Summary Convictions Act* (Yukon), a thing seized shall not be ordered or otherwise returned to any person if the use or possession of the thing is an offence under any law of the Ta'an Kwäch'än Council, and the thing is forfeited to the Ta'an Kwäch'än Council.

(17) Subsection (16) applies whether or not a charge is laid in respect of the thing seized, and if a charge is laid, subsection (16) applies even if the defendant is acquitted or the charge is withdrawn or stayed.

(18) A thing forfeited to the Ta'an Kwäch'än Council under this Act shall be disposed of in accordance with the regulations.

(19) The lawful owner and any person lawfully entitled to possession of any thing seized or forfeited under this Act are jointly and severally liable for all costs of inspection, seizure, forfeiture or disposition incurred by the Ta'an Kwäch'än Council that exceed any proceeds from the disposition of the thing that was forfeited to the Ta'an Kwäch'än Council under this Act.

(20) No liability attaches to the Ta'an Kwäch'än Council, Council or any Director or steward for loss or damage arising from the seizure, disposal or return in accordance with this Act of anything that has been seized, or from the deterioration of anything while it is being held under seizure, other than loss or damage resulting from negligence or wilful neglect in its care, custody or return.

(21) If a person is convicted of an offence under this Act, the justice may order that any thing seized in connection with the offence be forfeited to the Ta'an Kwäch'än Council.

(22) Subsection (21) applies in addition to any other penalty.

Duty to report to land steward

45. (1) Where, out of the normal course of events, an occurrence takes place in respect of any use or occupation authorized by a land use authorization issued by the Ta'an Kwäch'än Council that has caused or is likely to cause a threat to public health or safety or cause irreparable or costly damage to the environment, any person who at the material time

(a) has charge, management or control of the use or occupation; or

(b) causes or contributes to the causation of the danger thereof,

shall report such occurrence to a land steward.

(2) Every person referred to in paragraphs (1)(a) or (b) shall, as soon as possible in the circumstances, take all reasonable measures consistent with public health or safety and protection of the environment to prevent any occurrence referred to in subsection (1) or to counteract, mitigate or remedy any adverse effects that result or may reasonably be expected to result therefrom.

(3) Where a land steward, whether or not a report has been made under subsection (1), is satisfied on reasonable grounds that there is an occurrence referred to in subsection (1) and that immediate action is necessary in order to carry out any reasonable measures referred to in subsection (2), the land steward may take or direct any person referred to in paragraph (1)(a) or (b) to take such measures.

(4) For the purposes of subsections (1) to (3), any land steward may enter and have access to any place or premises and may take all reasonable action in order to comply with those subsections or any of them, but nothing in this subsection relieves any person from liability at law for his or her illegal or negligent acts or omissions or for loss or damage caused to others by such entry, access or action.

Posting of signs and notices

46. (1) Where considered necessary or advisable in order to carry out the provisions of this Act, a land steward may post signs or notices on settlement land.

(2) No person shall without lawful authority remove, alter or damage a sign or notice posted by a land steward or a person providing assistance to a land steward.

PART NINE
ADMINISTRATIVE REMEDIES AND SANCTIONS

Request for compliance

47. (1) A land steward may issue a notice of non-compliance to a person when the land steward believes that the person, or an activity under the person's control, is not in compliance with this Act or the land use authorization issued by the Ta'an Kwäch'än Council relating to the use or occupation.

- (2) A notice under subsection (1) shall state
- (a) the nature of the non-compliance;
 - (b) a request for compliance;
 - (c) the steps which should be taken to achieve compliance; and
 - (d) the date by which compliance should be effected.

(3) The land steward shall file a notice of non-compliance in the register of land.

(4) If the land steward is satisfied that the person to whom a notice of non-compliance was issued under subsection (1) has effected compliance pursuant to the notice, the land steward shall withdraw the notice of non-compliance and the manager shall then cause the copy of the notice to be removed from the register of land.

Tickets

48. If a land steward believes, on reasonable grounds, that a person has committed an offence under subsections 22(2) and 23(3), then, as an alternative to prosecution for the offence or other sanctions, the land steward may issue a ticket against the alleged offender in the following amounts:

- (a) for a first offence, up to \$750 and, in the case of a continuing offence, to a further penalty of up to \$500 for each day or part of a day during which the offence continues after the first day; and
- (b) for a second offence, up to \$1,000 and, in the case of a continuing offence, to a further penalty of up to \$750 for each day or part of a day during which the offence continues after the first day.

Content of ticket

49. No exception, exemption, excuse or qualification under this Act is required to be set out or negated in any ticket commencing proceedings in respect of an offence under this Act.

Defect in form

50. A conviction or order made in any matter under this Act, either originally or on appeal, shall not be quashed for any defect in form.

Supreme Court order for compliance or stop work

51. (1) If a land steward considers that any person is not complying or has not complied with

- (a) a notice of non-compliance issued by the land steward under this Act; or
- (b) an order made by the land steward under this Act directing the person to stop all work or carry out measures to mitigate the effects of non-compliance,

the Board may apply to the Supreme Court of the Yukon for an order directing the person to comply with the order or restraining the person from violating the order.

(2) On application by the Board under subsection (1), the Supreme Court may make an order it considers appropriate.

Injunctions

52. The Board may apply to a judge of the Supreme Court of the Yukon for and the judge may grant an injunction enjoining any person from continuing conduct that is in contravention of this Act.

Penalties

53. Every person who contravenes subsections 22(2) or 23(3) is guilty of an offence punishable on summary conviction and liable to a fine not exceeding \$300,000 or to imprisonment for a term not exceeding six months, or to both.

Continuing offences

54. Where any contravention of this Act is committed or continued on more than one day, it constitutes a separate offence for each day on which the contravention is committed or continued.

Other penalties

55. On a conviction for a contravention of this Act, in addition to or instead of a fine or other penalty, the Supreme Court of the Yukon may require a convicted person

- (a) to take any action as may be necessary to refrain from causing any further adverse effect;
- (b) to take any action as may be necessary to restore or rehabilitate the natural environment affected by the land management commission of the offence;
- (c) to make restitution to any person who suffered damages as a result of the land management commission of the offence as the judge may consider appropriate; or
- (d) to undertake any other actions as may be necessary to achieve compliance.

Punishment not otherwise provided for

56. Except as otherwise provided in this Act, every person who contravenes this Act or the regulations is guilty of an offence punishable on summary conviction and liable to a fine not exceeding \$5,000 and, or, to imprisonment for a term not exceeding six months, or to both.

Offences by corporations

57. Where a corporation commits an offence under this Act, any officer, manager or agent of that corporation who directed, authorized, assented to, acquiesced or participated in the land management commission of the offence is a party and guilty of the offence and is liable on conviction to the penalty provided under this Act, whether or not the corporation has been prosecuted.

Offences by employees or agents

58. In any prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused and the accused knew or ought to have known of the offence, whether or not the employee or agent is identified or has been prosecuted for the offence.

Due diligence

59. No person shall be convicted of an offence under this Act if the person establishes that he or she

- (a) exercised all due diligence to prevent the land management commission of the offence; or
- (b) reasonably and honestly believed in the existence of facts that, if true, would render his or her conduct innocent.

Proceedings respecting offences

60. (1) Proceedings under this Act relating to an offence under this Act shall not be commenced more than two years after the later of

- (a) the day on which the alleged offence was committed; and
- (b) the day on which evidence of the offence sufficient to justify a prosecution for the offence first came to the knowledge of a land steward.

(2) No proceedings in respect of any offence under this Act shall be instituted except by the Board on behalf of the Ta'an Kwäch'än Council.

(3) Any offence or administrative penalty created under this Act shall be prosecuted as an offence or ticket against an enactment pursuant to the *Summary Conviction Act* (Yukon), with any modifications that are necessary.

Sentencing principles

61. (1) A court shall take into account the sentencing objectives and principles in this section when imposing a sentence for an offence.

(2) The fundamental purpose of sentencing is to contribute to respect for the law and the maintenance of a safe and healthy environment by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct;

- (b) to deter the offender and other persons from committing offences;
 - (c) to provide reparations for harm done to the community;
 - (d) to promote a sense of responsibility in offenders and acknowledgment of the harm done to the community;
 - (e) to protect the special relationship between citizens and the environment; and
 - (f) to protect the cultures, traditions, health and lifestyle of citizens and other residents of the Yukon Territory.
- (3) The following sentencing principles will be taken into account:
- (a) a sentence should be proportionate to the gravity of the offence and the degree of responsibility of the offender;
 - (b) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender; and
 - (c) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

Disposition of fines and property

62. Any fine paid by a person convicted of an offence under this Act, and property forfeited pursuant to such a conviction, shall be paid or transferred to the Ta'an Kwäch'än Council.

Recovery of fines

63. (1) When a fine, or any part of a fine, imposed on a person under this Act is not paid within 30 days after its imposition, or within any other time that may be allowed for its payment, the fine shall be deemed to be a debt due to the Ta'an Kwäch'än Council, and on the proof of the non-payment of the fine, a justice shall grant default judgment in favour of the Ta'an Kwäch'än Council.

(2) If a default judgment is granted under subsection (1), the justice shall complete a default judgment in the prescribed form, and on the filing of the default judgment with the Small Claims Court, if the unpaid amount is within that court's jurisdiction, or the Supreme Court, it shall be deemed to be a judgment of that court for all purposes.

(3) A default judgment shall not be granted under this section more than two years after the day on which the fine was to be paid in full.

Remedies preserved

64. A proceeding, conviction or penalty for an offence under this Act does not relieve a person from other liability.

Judicial notice

65. (1) Judicial notice shall be taken of laws made by the Ta'an Kwäch'än Council.

(2) A copy of a law made by the Ta'an Kwäch'än Council and deposited in the register of laws maintained by the Ta'an Kwäch'än Council at its principal administrative offices is evidence of that law and of its contents, unless the contrary is shown.

- (3) Judicial notice will be taken of
- (a) a notice of non-compliance issued by a land steward under this Act;
 - (b) an order made by a land steward under this Act directing a person to stop all work or carry out measures to mitigate the effects of non-compliance; and
 - (c) an order made by a land steward under this Act suspending, terminating or amending a land use authorization.

PART TEN RECONSIDERATION AND REVIEW

Reconsideration of decision or order

66. (1) Subject to subsection (2), decisions and orders of the land management commission and land steward under this Act shall be final and binding and not subject to appeal or judicial review in any court provided.

(2) An applicant, a citizen or the Ta'an Kwäch'än Council may make an application to the Judicial Council with respect to

- (a) a decision made with respect to an application for a land use authorization under section 24;
 - (b) the suspension, termination or amendment of a land use authorization under section 34; or
 - (c) the issuance of an order, notice or ticket under section 39,
- upon the grounds that the land management commission or land steward
- (e) failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
 - (f) erred in law in making its decision or order, whether or not the error appears on the face of the record; or
 - (g) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

(3) An application to the Judicial Council for an appeal shall be made within 30 days of the issuance of the decision or order.

(4) The Judicial Council shall adopt procedures to ensure a fair and timely process for the review and determination of appeals made under this section.

(5) The Judicial Council shall deny or accept the application for appeal or refer the matter back to the land management committee or land steward, as appropriate, with direction and guidance. If the Judicial Council accepts an application for appeal, the Judicial Council shall affirm, vary, substitute or rescind the decision or order which is the subject of the application and provide written reasons.

(6) A decision or order shall remain in full force and effect pending the decision of the Judicial Council unless the Judicial Council decides otherwise.

PART ELEVEN
REGISTER OF LAND

Establishment of register of land

- 67.** (1) The Ta'an Kwäch'än Council register of land is hereby established and shall contain
- (a) original documents of all land use authorizations and each renewal, replacement, transfer, surrender or cancellation of such document made under this Act or any other law made by the Ta'an Kwäch'än Council;
 - (b) a copy of each order or notice made by a land steward, including each active notice of non-compliance and letter of clearance;
 - (c) all surveys of settlement land;
 - (d) a copy of any law or regulation of the Ta'an Kwäch'än Council that is relevant to matters under this Act; and
 - (e) any other document required under this Act or any other law made by the Ta'an Kwäch'än Council to be placed in the register of land.

(2) The Ta'an Kwäch'än Council and the Board and its employees, including the clerk of the register of land and any person acting under the authority of the clerk, is liable to any person who relies upon the register of land, or to any action or proceedings, for or in respect of any act done or omitted to be done in good faith in the performance of his or her duties or the exercise of powers under this Act.

Conclusive record

- 68.** A person shall be entitled to rely upon the register of land as a conclusive record.

Administration of register of land

69. (1) A clerk of the register of land shall be designated by the Board who shall be responsible for the administration and maintenance of the register of land.

(2) The register of land shall be located at the land, resources and heritage department office of the Ta'an Kwäch'än Council and shall be accessible to any person during normal business hours of the Ta'an Kwäch'än Council.

(3) A person shall pay any prescribed fee for the registration of documents and for the costs of copying documents in the register of land.

PART TWELVE
MISCELLANEOUS

Service

70. Any order, notice or other document to be given or delivered under this Act may be given or delivered effectively

- (a) by personal delivery to the person to whom it is directed;

- (b) by registered mail addressed to the person to whom it is directed at the address for that person last known to the sender; or
- (c) if the person is unknown, by posting the order, notice or other document in a conspicuous location where the use or occupation of concern is occurring or has occurred.

Conflict and inconsistency

- 71.** In the event of an inconsistency or conflict between
- (a) a land use authorization and its terms and conditions, if any, and the final agreement or this Act, as the case may be, the final agreement or this Act shall prevail to the extent of the inconsistency or conflict; and
 - (b) this Act and the final agreement, the final agreement shall prevail to the extent of the inconsistency or conflict.

Regulations

- 72.** The Board may establish any regulation it deems necessary to carry out the provisions and purposes of this Act and, without limiting the generality of the foregoing, may make regulations with respect to
- (a) the administration of the register of land, including the establishment of fees for the registration of documents in the register of land and for any costs for copying documents contained in the register of land;
 - (b) fire protection of settlement land;
 - (c) emergency action;
 - (d) the closure or withdrawal of portions of settlement land for certain uses and purposes;
 - (e) the expropriation of settlement land;
 - (f) composition and provisions of financial security;
 - (g) the establishment of parcel sizes for certain uses of settlement land;
 - (h) the requirement of licences and permits for certain activities and actions on settlement land;
 - (i) the establishment of terms for the various types and classes of land use authorizations and the right to renewal such authorizations;
 - (j) the transfer or assignment of land use authorizations, including leases;
 - (k) the subdivision of settlement land;
 - (l) the form of any prescribed forms, notices or documents; and
 - (m) the disposal of a thing forfeited to the Ta'an Kwäch'än Council under this Act.

Power to prohibit

- 73.** Every power of the Board under this Act to make regulations respecting an activity includes the power to make regulations regulating or prohibiting the activity in whole or in part.

Act in force

- 74.** This Act comes into force on a day to be fixed by the Board.