

**LAND MANAGEMENT FOR SENIOR
ADMINISTRATIVE OFFICERS
WORKSHOP**

PARTICIPANT'S MANUAL

Table of Contents

LAND MANAGEMENT FOR SENIOR ADMINISTRATIVE OFFICERS WORKSHOP

Introduction

Section One: Land Management: Territorial Laws.....7

The Federal Crown.....	8
Aboriginal Lands.....	8
Private Land.....	9
Commissioner's Land.....	9
GNWT Policies.....	12
Community Government Legislation.....	13

Section Two: Land Management: Community

Government Laws.....15

Authority and Responsibility.....	15
Land Administration By-laws.....	16
Municipal Lands Policy.....	17
Land administration By-law Contents.....	18
Acquisition By-laws	19
Land Disposal By-laws.....	21
Advertising is Necessary.....	23
Land Speculation.....	24

Section Three: Land Management:

Planning and Development.....26

Community Planning.....	26
Successful Planning depends on Citizen Participation.....	28
Authority for Planning: the <i>Planning Act</i>	29
Zoning By-laws.....	30
Land Use Plans.....	31
Land Development – How and Who.....	32
Financing Municipal Land Development.....	35
Recovering the Costs of Land Development – Lot Pricing.....	36

Section Four: Land Management:

Land Administration Practices.....41

- Land Inventories.....42
- Mapping..... 43
 - Legal Surveys and the Land Titles Office.....44
- Land Application Process.....45
- Tenure and Rights over Land.....46
- The Lease.....47
- Easements.....49
 - Land Use Permits.....49
- Quarries.....50

Section Five: Self-Government and Community Lands.....56

- The Tłıchǵ Agreement – Background.....56
- The Tłıchǵ Agreement – Self Government.....57
- Tłıchǵ Agreement - Tłıchǵ Government Structure.....59
- The Tłıchǵ Agreement – Tłıchǵ Lands.....62
- Tłıchǵ Agreement - The Creation of Tłıchǵ
Community Governments.....63
- Tłıchǵ Agreement - Tłıchǵ Community Lands.....66

APPENDIX

- 1. Excerpt From The Hamlets Act.....70
- 2. Land Development Roles And Responsibilities.....73
- 3. Types Of Documents Registered
At The Land Titles Office.....76
- 4. Certificate of Title.....77
- 5. Sample Land Administration By-Law.....78
- 6. Glossary of Terms for Land Management.....89

Land Management for Senior Administrative Officers Workshop

Introduction

Community land management is a complex task and a vitally important one to all community governments in the NWT.

Effective land management is about more than just the technical aspects of drafting and ensuring correct lease documents. Dealing with such a valuable resource as community land requires a broad range of knowledge and experience that touches on community development, community planning, the financing of land development as well as land agreements and leases. Good land management is about more than pushing paper. In fact, effective land management can set a community apart and make a substantial contribution to community building.

Why is the effective management of land so important to community governments?

Effective land management has a direct impact on:

- Housing choices;
- Community Infrastructure;
- Economic development;
- Community confidence;
- Public health; and
- Community growth

While it is understood that the SAO will generally not be involved in the day to day tasks of land administration, an understanding of key land management authorities, responsibilities and administrative processes is important for an effective SAO. Knowledge of key issues and of what the powers, authorities, responsibilities and processes of the community government are in relation to land also helps SAO's to communicate with his/her land manager and to understand the staff's duties.

SAO's need to be familiar with the key issues related to effective land management and also must be aware of the opportunities and different approaches that may be available to help build on and improve the way their community government deals with land.

This Workshop provides what SAO's need. It can serve as a 'refresher' on the authorities for land management, an opportunity to understand the rationale behind land management practices and it provides SAO's with the information needed in providing advice to their councils.

Land administration requires that council make decisions on the following:

- Acquisition of land;
- Disposal of land including land tenure (selling or leasing);
- Terms and conditions of land contracts and permits;
- Use and development of land; and
- Land pricing

In order to have a good grasp of land management matters, the SAO should have a basic understanding of:

- Legislative authorities;
- Community planning;
- Land development;
- Property and contract law; and
- Surveying

In order to cover off these matters, the material has been organized into five sections:

Section 1 Land Management and Territorial Laws

- An overview of the 'big picture' for land ownership and authorities in the NWT.

Section 2 Community Government Laws

- A focus on the opportunities, authorities and responsibilities of community governments as they own and dispose of land.

Section 3 Policy and Planning


- A review of how community planning, land development and land pricing affect and promote good land management.



Section 4 Land Administration Practice

- An overview of key land administration issues and procedures, including land applications, leases and quarries.

Section 5 Self-Government and Community Lands

- A focus on the Tłıchǫ Agreement and Tłıchǫ community government legislation and ownership of lands along with the related authorities, opportunities and challenges.



This Workshop is designed to highlight Tłıchǫ land administration issues throughout the curriculum. While Section Five provides a detailed review of the legislation and certain authorities held by Tłıchǫ community governments, text marked with  appear in all Sections, in order to identify  Tłıchǫ-specific issues over the entire range of the Workshop material.

Section One

Land Management: Territorial Laws

Introduction

Section One provides an overview of the laws relating to land in the Northwest Territories with an emphasis on those land laws that impact community governments. The Section provides the 'big' picture and some context for understanding where community government land administration fits into the scheme of things.

The SAO should feel comfortable with this 'big picture' in order to provide any necessary clarification to council as it deals with the range of land management issues facing it.

Beyond the lands owned by the community government, there are several other categories, or 'labels', for land in the NWT.

- Federal crown
- Aboriginal lands
- Private land
- Commissioner's land

The big picture starts with:

The Federal Crown

Most land in the Northwest Territories is federal crown land. Crown land is in public trust and the Government is not usually said to be the owner of land. The Crown has the administration and control of the lands and powers over its disposal. For the most part, those powers to dispose of land are similar to those held by a private landowner.

In the Northwest Territories, Indian and Northern Affairs Canada (INAC) administer Crown land outside of communities.



As a result of the Tłıchǫ Agreement, a large block of land owned by the Tłıchǫ Government has been created around the Tłıchǫ communities. Tłıchǫ Government laws apply to this land, concurrent with federal law.

The *Territorial Lands Act* and Regulations is the federal legislation that is used to administer Crown lands.

While the Act provides a general outline of how INAC manages federal Crown land, there are a number of Regulations passed under the Act that provide the details. The Regulations address how to get permission to occupy and use federal Crown land for:

- leases
- mining,
- oil and gas and
- quarries.

Land Use Permits are now issued by the Land and Water Boards created under the *Mackenzie Valley Resource Management Act*.



For the Tłıchǫ settlement area, the Wek'eezhii Land and Water Board now handles all aspects of land use permits.

The obvious exception to crown land in the NWT is the land owned by Aboriginal organizations under the terms of land claims.

Aboriginal Lands

Aboriginal lands outside community boundaries are usually referred to as settlement lands. These lands cannot be bought or sold, but they can be leased. The ownership of these lands is registered in the Land Titles Office.

Some parcels of land owned by Aboriginal organizations lie within community boundaries. Aboriginal organizations must work with community governments in the use and development of these lands. Each Aboriginal organization has procedures for the management of its land. These lands are also registered in the Land Titles Office.



A block of 39,000 square kilometres of Tłıchǵ settlement lands, owned by the Tłıchǵ Government, has been created as a result of the Tłıchǵ Agreement.

Private Land

Besides Aboriginal lands, privately owned land is mostly found within community boundaries. Historically, there has been little private land in smaller communities, while the developed areas of larger centres are mostly privately held. Private lands are referred to as lands held in fee simple title. This is the highest interest in land that a person may possess. This does not mean that the holder can manage his/her land in any way they want – there are some restrictions on this, as will be discussed in later Sections.



In the Tłıchǵ communities, there is very little privately-owned land. The Roman Catholic Church owns several parcels in Behchoko.

Commissioner's Land

The federal government has, over time, transferred administration and control over Crown land to the GNWT. The initial reason for this transfer was that it is assumed that the territorial government was 'closer to the people' and could do a better job of managing and administering land needed by NWT residents.

The land transferred to the GNWT, or the 'Commissioner', has generally been in and around NWT communities. The legal term used for the transfer is the 'Block Land Transfer', or BLT. The boundaries of the BLT may be the same as the boundaries of the community, but in some cases the BLT boundaries are larger than the community boundary. (Yellowknife is a good example where the BLT extends further than the City's boundaries).

Once the GNWT had control of Commissioner's land, it needed rules for its administration. Those rules are found in the *Commissioners Land Act* and Regulations.



With the approval of the Tłıchǫ Agreement, Commissioner's land has been transferred to the Tłıchǫ community governments.

Commissioner's Land Act

The GNWT's Department of Municipal and Community Affairs (MACA) is responsible for administering the *Commissioner's Land Act* and Regulations. The Act and regulations set out the rules for the administration and disposal of Commissioner's land. Subjects dealt with in the Act include:

- land applications,
- land leases,
- quarry permits and leases.

The 'meat' of the administration of Commissioner's land is found in the regulations. It is there that some of the detailed rules for GNWT land management are found.

There are two regulations enacted under the Commissioners Land Act:

- Commissioners Land Regulations; and
- Commissioners Airport Land Regulations

Commissioners Land Regulations

The Regulations under the *Commissioner's Land Act* contain the details of how the GNWT administers and manages Commissioners land.

The process to accept, review and approve a land application is outlined in the regulations. The application fee for Commissioner's land is set in the regulations, as well as the length of leases. MACA, working on behalf of the Commissioner, uses the regulation to:

- sign and prepare leases;
- assign leases;
- surrender or cancel leases; and
- issue quarry permits and land use permits

Most of the land administered by MACA is within community boundaries. MACA involves community governments in land matters through consultation. It is important the SAO ensures that council has an opportunity to review and recommend on applications for Commissioner's land. While the final authority to sign permits and leases remains with MACA, council comment should influence the decisions made.

Commissioner's Airport Land Regulations

The Commissioners Airport Land regulations is a specific set of rules that provides guidance for the administration of airport lands, including rules for issuing leases at airports. The regulations apply to all land within the surveyed airport boundaries.

It is the Department of Transportation – not MACA – that issues leases in this case. Community governments do not have direct involvement in the administration of these lands. Councils are consulted about building activity on airport lands such as terminals and hangers, but council approval is not required.

Since airports are under the jurisdiction of the territorial government (the land is under territorial administration and control) there is a question of how much attention the Commissioner must pay to community government plans and zoning requirements. Hopefully (!) a cooperative relationship between council and the GNWT has been/will be developed so that both parties understand and support airport development and the related leases required.

Land Titles Act

The *Land Titles Act and Regulations* apply to all titled lands in the NWT. The office of the Registrar of Land Titles is located in Yellowknife.

The Registrar of Land Titles is responsible for issuing a Certificate of Title, which is the 'proof' that the individual or organization named in the title owns the land described in the title. A sample Certificate of Title can be viewed in the Appendix.

Once there is a Certificate of Title for a parcel of land, this Act goes on to describe the procedures for 'filing documents' with the Registrar. Documents that may be filed include leases, transfers of leases, surrenders of leases, mortgages and legal survey plans, an overview of which will be reviewed later in the material.

The key point for SAO's and council to be aware of is that before land owned by the community government can be leased, sold, mortgaged etc., there must be a Certificate of Title registered in the Land Titles Office. And before a Certificate of Title can be issued, there needs to be a legal survey of the land.

Much of the undeveloped land within community boundaries is not surveyed and therefore is not registered in the Land Titles Office.



As will be explained in following sections, Tłıchǫ community governments must also survey and register their interests in land in the Land Titles Office.

GNWT Policies

The laws of the territorial government are only part of the story when it comes to providing direction and guiding management practices for Commissioner's land. The GNWT has also implemented a number of policies to guide its land management practices.

Land Pricing Policy

Territorial legislation provides little direction on pricing Commissioner's land. However the Land Pricing Policy

provides a range of specific guidance. MACA uses this Policy for setting lease rents on Commissioner's land. The Policy addresses pricing for regular leases and equity leases as well as sales of land.



Tłıchǫ community governments develop their own rules for pricing parcels of land. These rules will be outlined in each community government's land administration by-law (see Section Two).

Land Lease-Only Policy

The Land Lease Only Policy applies to those areas where the settlement of land claims or treaty rights has not been completed. The Policy is meant to protect the interests of Aboriginal groups by ensuring that 'crown' land remains available for selection and is not sold to others. The Policy does make some exceptions to the general rule of 'lease only'. The exceptions generally address possible transfer of land to community governments where there is a need for land for development purposes.



Since the approval of the Tłıchǫ Agreement, the Land Lease-Only Policy no longer applies in the Tłıchǫ settlement area. However, as a result of provisions in the Tłıchǫ Agreement, Tłıchǫ community governments cannot sell land – leases are used instead.

Municipal Lands Policy

It is the Municipal Lands Policy that generally has the most direct impact on community governments. The Policy sets out the conditions under which the GNWT will transfer Commissioner's land to community governments – or allow community governments to act on behalf of the Commissioner in disposing of Commissioner's land. In short, the Municipal Lands Policy outlines the principles and the rules for community land administration. As such, it is a Policy that will be reviewed in more detail in Section Two.

Community Government Legislation

The final area of legislation to introduce is the key one for community government. It concerns the territorial laws that provide for the creation of community government and the authorities of community governments when it comes to land.

There is a range of community government legislation in the NWT. The variety of legislation reflects the different sizes, needs and complexities facing community governments in the NWT. The current list of legislation is:

- *Cities, Towns and Villages Act;*
- *Hamlets Act;*
- *Charter Communities Act;*
- *Tłıchǫ Community Government Act; and*
- *Settlements Act*

Settlements are not authorized to own land. However the territorial legislation provides the authority for all other NWT community governments to:

- own land;
- use, subdivide and develop land;
- own land close to, or under, a body of water; and
- develop and operate a quarry.

Community governments do not own mineral rights however.

The legislation also states that before a community government owns and deals in land it needs to have a set of rules in place for how it deals with land. That set of rules is known as a 'land administration by-law' and that is the focus of the next Section.

Section Summary:

A variety of legislation exists to deal with the variety of land ownership in the NWT. The federal government has its own laws to deal with federal crown land, the GNWT has laws dealing with Commissioner's Land and emerging Aboriginal governments are developing laws to deal with their land. Community governments are governed by the provisions of GNWT legislation and policies (such as the Municipal Lands Policy) in how they acquire and dispose of land.

Section Two

Land Management: Community Government Laws

Introduction

Section One provided an overview of territorial laws relating to land and its management within community boundaries.

A key point in this discussion is that the laws focus on two different types of land ownership and control.

Land administered and controlled by the GNWT within community boundaries is governed by the *Commissioner's Land Act* and Regulations. The GNWT has developed, over the years, a system to administer this land, and often works in partnership with community governments.

Section Two focuses on land owned by community governments.

Authority and Responsibility

Community governments of nearly all types – cities, towns, villages, hamlets, charter communities and Tłjchq community governments – are empowered to own and manage land within their boundaries. The authority to own and deal in land comes from the territorial legislation that creates the particular form of community government – whether it be, for example, the *Hamlets Act* or the *Charter Communities Act*.

The *Hamlets Act* says:

- 55.(1) A hamlet may, for a municipal purpose,
- (a) acquire real property;
 - (b) use, hold or develop real property owned by the hamlet; and
 - (c) subdivide, in accordance with the *Planning Act*, real property owned by the hamlet.

This provision provides clear authority for a community government to own land.

However, along with authority comes responsibility. The *Hamlets Act* also says:

- 55.(3)** A hamlet may not acquire real property unless
- (a) council has made a land administration bylaw and the acquisition is made in accordance with that bylaw; and
 - (b) the acquisition is specifically authorized or approved by a bylaw.

The key 'condition' for owning land is that Council must adopt a land administration by-law.

Sections 55 and 56 of the *Hamlets Act* are included in the Appendices for further reference on community government authority and responsibility regarding land dealings.



For the Tłıchǵ communities, the *Tłıchǵ Community Government Act* spells out similar authorities and responsibilities, at Section 50. Tłıchǵ community councils must approve a land administration by-law before dealing in land.

Land Administration By-laws

The creation and application of a land administration by-law is central to successful community government land management.

➤ The big picture and what the SAO should know
In the broadest sense, a land administration by-law is rule book by which Council must play when dealing in land.

SAO's should be able to advise Council on the rules in play when considering and approving a land administration by-law.

The legislation does not provide a lot of direction on the contents of the by-law.

In fact, the legislation governing land ownership is much different than that governing land use. When Council considers the passing of a by-law regulating the use of land – such as a

community plan or zoning by-law the *Planning Act* provides a great deal of guidance on what can and cannot be included in the by-laws. Planning and land use will be discussed further in Section Three.

While there may not be detail on land administration by-laws in community government legislation, the GNWT does provide policy guidelines. These guidelines are contained in the Municipal Lands Policy.

Municipal Lands Policy

Council should be aware of the Municipal Lands Policy because generally it is the reference point used by the GNWT in deciding whether to transfer land to a community government.

The Municipal Lands Policy can be viewed at:

[http://www.gov.nt.ca/publications/policies/maca/Municipal_Lands_\(21.02\).pdf](http://www.gov.nt.ca/publications/policies/maca/Municipal_Lands_(21.02).pdf)

The principles of the Policy are central to its operation. Those principles talk about how community governments should draft their rules for land dealings. It says that the rules should reflect the following principles:

- Fairness to all residents
- Consistent administrative practices
- Compatible with other governments
- Discouragement of land speculation
- Pricing of land in a way that is reasonable but that recovers the cost of development

How community governments go about managing their land and keeping with these principles is largely up to them. There is more than one way to skin the cat.

A key message that SAO's can deliver to Council is that:
While the good news is that council does not need the Minister's approval for its land administration by-law, the bad news is that failure to follow the Municipal Lands Policy could make it difficult to acquire more land from the territorial government in the future.



The Tłıchǫ Agreement, at Chapter Nine, provides for the transfer of land ownership to Tłıchǫ community governments. However the expectation remains that land management by Tłıchǫ community governments will be in keeping with the principles of the Municipal Lands Policy.

Land administration By-law Contents – the Nuts and Bolts

A land administration by-law is doing its job for Council when it addresses the following matters:

- Focus on the lease – terms and conditions for leasing land
- Rules for disposal of land by Council
- Procedures for advertising and notice of available land
- Pricing for land disposal
- Establishment and operation of a land development reserve fund
- Rules for transfer of interests in land
- Revenue collection and enforcement
- Quarries
- Land use permits

See the Appendices for a sample land administration by-law that addresses all these matters.



The land administration by-law for Behchoko has been approved by council and is appended.

Land administration by-law – SAO responsibilities

As SAO, there is a responsibility for by-law review prior to first reading. The level of review required by an SAO often is related to the support and experience of land administration staff available within the community government.

Preparation and review includes being aware of any potential issues. Pricing and arrangements for the advertising and disposal of available land are often flash points that will get the attention of the public.

Land administration by-law – Council responsibilities

When a draft by-law is complete, Council must review the by-law and give first and second readings to it. The territorial legislation directs that after second reading, a public meeting must be held and that notice of the meeting must be provided at least two weeks prior to the public hearing being held.

In order that Council is accountable for its dealings in land, the territorial legislation and therefore the land administration by-law require that land transactions – acquiring land and disposing of land – be done by by-law.



Tłıchǵ community governments must ensure that similar topics are covered in their land administration by-laws. The responsibilities of the SAO and of Council are also similar.

Acquisition By-laws

The type of the community government – hamlet, city, town etc. – usually helps to define the extent of land owned by that community government.

Historically, hamlets have owned only the land underneath their assets, while cities, towns and villages have owned vacant land as well, usually land earmarked for lot development.

Two important issues help to explain the differences in land holdings amongst community governments.

- Historically the GNWT was responsible for land development in all communities except the tax-based ones.
- Also, the fact that aboriginal land claims were not settled throughout much of the NWT meant that local land ownership was not yet appropriate.



As noted earlier, Tłıchǵ community governments own the land within community boundaries as a result of the provisions in Chapter Nine of the Tłıchǵ Agreement.

When does Council Need to Pass an Acquisition By-law?

The legislation provides a very broad definition of 'acquisition'. The need for a by-law arises anytime council is to acquire 'an interest in real property'. This includes buildings and land, just land or just buildings.

In most cases, the 'interest in real property' that council would like to acquire is presently owned by the GNWT. The passage of an acquisition by-law by council is the formal way of requesting the transfer of this interest from the GNWT.

With respect to land, it is a safe bet that land being acquired is Commissioner's land. And if it is undeveloped land, then it is also a safe bet that there is no existing title to the land – there is no legally registered interest for this particular parcel of land presently existing in the Land Titles Office.

Until 'title' to the land is created and registered in the Land Titles Office, the community government will not yet gain ownership of the parcel. In order to 'raise title' for a parcel of land, a legal survey is required. Arranging for, and completing a legal survey for a parcel of land to be acquired is usually the responsibility of the community government.


Council must be aware that a number of steps will be required after the passing of the by-law, before the community government obtains title to the land. Those steps involve actions by:

- MACA,
- the Commissioner's office and
- the Land Titles Office.

It is not a speedy process.

The SAO needs to be familiar with the process and the requirements on the part of the community government. The end of the process is the issuance, by the Land Titles Office, of a Certificate of Title for the lands to be acquired.

The SAO should also be aware that different rules apply when the parcel of land in question borders a water body. This is discussed in more detail in Section Four.



The legislation establishing the Tłıchǫ community governments establishes ownership of most lands in the name of the community government. Therefore Tłıchǫ community governments do not need to deal directly with MACA and the Commissioner's office. However a Certificate of Title must still be created through the Land Titles Office.

Once a parcel of land is in the hands of a community government, then what?

Land Disposal By-laws

A land disposal by-law is required each time a council agrees to sell, lease or grant an easement over land owned by the community government. *(Note that such a by-law is not required for lands the community government does not own, such as Commissioner's land within the community, even though the community government may be involved in the administration of Commissioner's land within its boundaries.)*

A land disposal by-law is a straightforward expression of council's intent to dispose of particular parcels of land. No public hearing is required prior to the passing of the by-law.

Where it gets interesting is in relation to:

- How the land is 'disposed'; and
- How the public will have a chance at 'acquiring' the land that Council has agreed to dispose.

The SAO has a big role in making sure that the public is satisfied that the land disposal process is fair – advice to council on what a 'fair' process is stands as an extremely important part of SAO involvement in land management.

How the land is 'disposed'

Disposal methods relate to options for sale and options for lease of the land.

Often a council's ability to sell land is constrained by aboriginal claims-related agreements as well as the territorial Land Lease Only Policy.



For Tłıchǵ community governments, land may only be leased for the first twenty years following the Tłıchǵ Agreement.

The pros and cons of sale versus lease can be a hotly debated topic in some communities. As well, there are different approaches to both sales and leases, which is an issue that will be discussed further in Section Four.

(Of particular note for leases is the lease vs. equity lease debate.)

How the public will have a chance at 'acquiring' the land that Council has agreed to lease/sell.

Once council has decided to dispose of particular parcels of land, a decision must be made on how to advertise the fact that the lands are available.

If the supply of land for residential, commercial or industrial uses is greater than the demand for the land, then a first-come, first-serve approach is the best and easiest approach.

However if there is demand, or if there is a real shortage of particular lands, then other approaches may be considered. Anything other than a first-come, first-serve approach will usually require a greater involvement from the SAO. Council may be called on to decide/confirm the best way to dispose of land and will be looking for the advice of the SAO. Examples of different ways to dispose of land include:

Ballot Draws

Ballot draws are one approach to land disposal that attempts to give everyone an equal opportunity to acquire land. A clear set of rules are required before attempting this approach, which is all about the 'luck of the draw' and avoiding potential claims of favoritism or unfair practices.

The City of Saskatoon has a very simple, straightforward set of rules for a ballot draw, or 'lot draw' as it's referred to in Saskatoon. It even calls for the Mayor to pull the names! It is available at

<http://www.saskatoon.ca/org/land/residential/lot%5Fprocedures/>

Proposal Call

For a special and important land parcel, such as a key commercial spot in the middle of town, another option is the proposal call. Again, a clear set of rules, including a request for both an offer to purchase and a development proposal, can provide council with some options and the opportunity to chose the best deal for the community.

Real Estate Agent

Another approach, used now by the City of Yellowknife, is to contract a real estate agent to market and dispose of community lands. Again, there are pros and cons in such an approach - some would argue that it is best to let an

expert handle the marketing of land, while others may argue that ‘middle men’ add to the cost of the land.

Advertising is Necessary

Council cannot dispose of land in any manner until the public has been informed that particular land parcels are in fact available. This is true even when a first-come, first serve approach is to be used.

The land administration by-law provides detail of how land must be advertised as ‘available’. In fact minimum requirements for advertising are stated in the territorial Municipal Lands Policy and should be reflected in the community government’s land administration by-law.

Another requirement under the Municipal Lands Policy – and therefore, in the land administration by-law – is that the community government keep a register of all community lands currently on offer and that the register be available for public review. This is especially important when council is disposing of parcels of land through the first-come, first serve approach. The public should be welcome to come into the community government office and have a look at what’s available, and at what price.

Land Speculation

Land speculation is a particularly important issue where there is a short supply of developed land.

There are methods to ensure that people do not make a quick profit from community land. They generally involve securing legal commitments to build a house within a certain period of time or commitment to spend a minimum dollar value in the agreement to lease or purchase.



Tłjchq community governments are able to provide conditions in a lease that address the maximum amount of time that a lessee has to build on the land.

Section Summary:

Territorial legislation provides community governments in the NWT with the opportunity to own, manage and dispose of land. In order to deal in land, councils must adopt a land administration by-law, which outlines the terms and conditions by which the community government will operate. While council has some options in land management, its land administration by-law must follow the general provisions of the GNWT Municipal Lands Policy.

Depending on specific situations, land may be sold or leased by a community government. Central to the provisions of the land administration by-law is how the land is to be priced. Other key considerations include the requirement for specific by-laws each time council decides to acquire or dispose of land, the need for advertising its intent to dispose of land and the method of land disposal.

Section Three

Land Management: Planning and Development

Introduction

The material so far has focused on the authorities and rules for administering and managing land and on how land is acquired and disposed of by community governments.

However it is also important to set the context for land administration. What land? Where? When? How? That's where a discussion on community planning, land development practices and on land pricing can come in handy.

Community Planning

How does an SAO explain what community planning is to his/her Council?

A simple explanation is this: Community planning is a way for communities to organize and control the use and development of land. The community planning process helps a community to make decisions about how land in the community should best be used, what the community priorities are and how to implement those priorities.

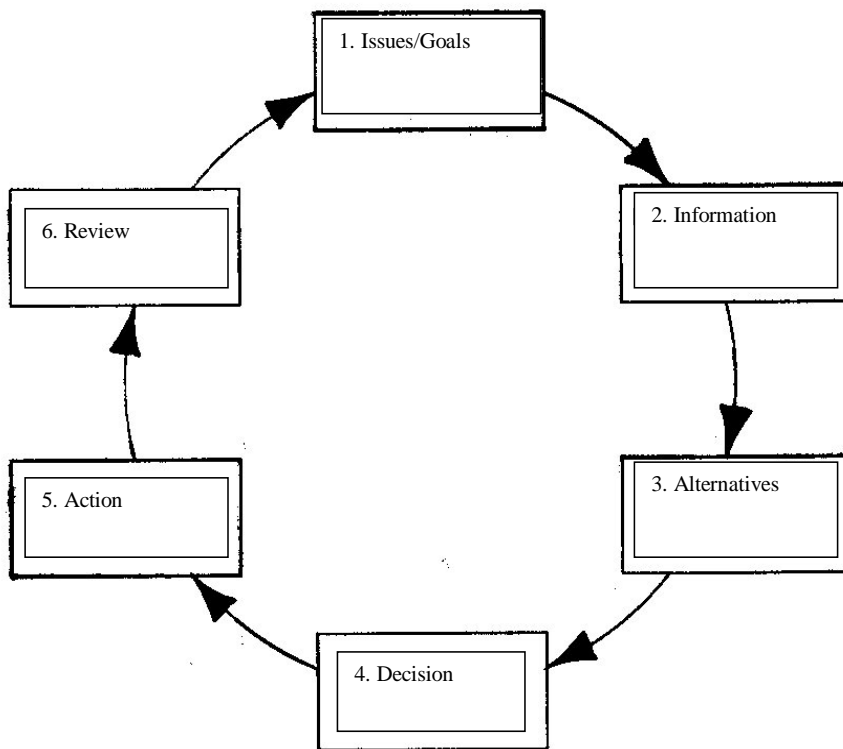
Community planning is useful to councils because it helps communities to:

- establish key goals and priorities for community development;
- anticipate future community needs and prepare for future growth and change;
- keep the cost of new development and services to the public as low as possible;
- control the use of land, the location of new development and avoid land use conflicts;
- protect important historic, cultural and natural features; and
- plan development which avoids unsuitable sites.



Tłuchq community governments may own all the land within community boundaries, but still face the same challenges in establishing goals and objectives for community development.

The land use planning process has been described as a six-step process:¹



The product of the community planning process is a 'community plan'. A community plan is the document that sets out the pattern for future development of the community,

¹ MACA has a short video available entitled 'The Six Step Planning Process' that provides a good overview of the process, with a northern context.

outlining the community's wishes about how, where and when development should take place.

The benefits of a community plan are that it becomes the 'roadmap' on how the community wants to grow and change in the future. Council's intentions are there for everyone to see. It allows the community to have more control over development, by restricting some types of development and regulating how land is used. A clear plan also provides the Council with a guide for decision making and allows it to develop the land more efficiently and therefore save money.

Successful Planning depends on Citizen Participation

Participation by community residents in the planning process is key in ensuring a successful outcome. A plan done in isolation – that is, one done in a planning consultants office and then reviewed and approved by council alone – is not likely to be supported by the wider community.

It is important that SAO's advise council to look at options for involving members of the community in the planning process. This could include the formation of a 'steering committee' at the outset of the process, the distribution of newsletters or the holding of open houses to view options and proposals for future land use.

MACA has produced a community participation guide entitled "Involving Community in Council Activity". It is designed for use over a broad range of community issues, not just land use planning, and can be a useful resource in gathering ideas of how best to involve community residents in the planning process.²

If community government staff is interested in an overview of how to explain planning, or if community residents are interested in reading more about land use planning, the City of Saskatoon has a useful 'Planning Education Program' at

² Available through the School of Community Government
*LAND MANAGEMENT FOR SENIOR ADMINISTRATIVE OFFICERS
WORKSHOP – PARTICIPANT'S MANUAL*

http://www.saskatoon.ca/org/city_planning/planning_education_program/index.asp that is designed as a general introduction to some key planning issues.

Authority for Planning: A brief introduction to the *Planning Act*

Community governments in the NWT are governed by the provisions of the *Planning Act* with respect to land use planning and control.

The *Planning Act* sets out:

- a) the legislative (lawmaking) framework for land-use planning;
- b) how the land-use planning system works;
- c) who the decision-makers are;
- d) how to resolve disputes; and
- e) how the public can provide input.

The *Planning Act* deals with the key parts of land use planning. As noted earlier, the *Planning Act* provides quite a bit of detail as to how land use planning and development control must be done in the NWT:

- **General plans (commonly referred to as ‘community plans’)**
 - Adopted as a planning by-law by council, a general plan must include:
 - A map showing the uses of land;
 - Proposals about the content of the Zoning By-law;
 - Proposals for the provision and location of community facilities;
 - A schedule of when these land uses and facilities are to be developed or redeveloped; and
 - Any other text or graphics that will further explain the plan proposal.
- **Zoning**
 - Adopted as a planning by-law by council;
 - Also referred to as development control, land use controls, plan implementation;
 - A zoning by-law promotes and controls development in a community by putting compatible land uses together and by setting out standards for

development. Zoning is directly linked to the general plan.

- **Subdivision**
 - Involves the creation of legal title (ownership) to separate parcels of land.
 - A technical and legal process that must meet the concerns of councils and third parties (like banks with respect to mortgages, and utility companies with respect to *easements*).
 - Issues like legal survey and the requirements of the *Land Titles Act* must also be considered with subdivisions.

- **Planning Procedures,**
 - The planning process, including giving public notice of meetings, rules for appealing the decisions of a community government, and
 - How to enforce the rules of a planning by-law.

SAO's should be aware that the approval power for planning by-laws and subdivisions rests with the Minister of MACA, not with community governments.



The provisions of the *Planning Act* apply to all Tłıchǵ community governments including the requirement for plan approvals by the Minister of Municipal and Community Affairs.

MACA is currently reviewing the *Planning Act* with an eye to make changes which will provide more community control and accountability over the planning and development process. MACA has produced a discussion paper on the *Planning Act* which can be obtained by emailing a request to: planningactreview@gov.nt.ca



In Tłıchǵ communities, only Behchoko has a community plan and zoning by-law.

Zoning By-laws

The *Planning Act* requires that if a community government adopts a community plan, it must then adopt a zoning by-law. A zoning by-law carries with it the requirement that all

proposals for development must receive development permit before proceeding. 'Development' as defined by the *Planning Act*, includes 'a change in land use or any construction, excavation or other change to land'.

Council must appoint a development officer in order to be responsible for the day-to-day administration of the zoning by-law.

Development officers:

- must receive applications for development permits;
- may consider and decide on applications for development permits; and
- may deal with unauthorized construction.

Zoning allows council to exercise a firm and sometimes detailed control over land use, and as such is a central tool in effective land management.

Some examples of the types of regulations that can be placed on buildings and land uses include the following:

- The ground area, height and size of buildings.
- The depth, dimensions and area of yards and other open spaces to be provided around buildings, and the maintenance of these areas;
- The location and maintenance of buildings on their sites and their relationship to other buildings and to streets and property lines;
- The placement, height and maintenance of fences;
- The removal of trees and placement of fill;
- Appearance of buildings; and
- Vehicle access to the site from public roadways.

Land Use Plans

Many communities in the NWT, especially those that do not have a great deal of development pressures, do not feel that such a formal and legalistic form of land use control as zoning is needed. So instead, many smaller NWT communities have adopted a land use plan. A land use plan is adopted by resolution of council and represents council's view of how and

where development should proceed in their community. It is not passed under the *Planning Act*, as to avoid the need for the further adoption of a zoning by-law.

Land Use Plans are approved by the Minister of MACA in order to signal that the territorial government agrees with council's vision for future development. In most ways, a land use plan is similar to a community plan in terms of its objectives and approaches.

Enforcement of a land use plan is a less formal process that depends on some goodwill on the part of developers, but more importantly, is closely linked to the land application procedures of a community government.



Gamètì, Whatì and Wekweètì have adopted land use plans. Since the community government owns most of the land, it is not as important to have a zoning by-law to regulate development and issue permits. Instead development can be controlled through the land application process.

The above discussion outlines the tools and authorities involved in helping community governments establish a plan for development and the tools to implement that plan.

So when an area of land has been identified for residential development and assuming that land acquisition and disposal matters are addressed, now what?

Land Development – How and Who

SAO's should know that land development practices and policies in non-tax based communities have been through a number of changes over the past 10 years. At one time land development was funded through a capital program of the GNWT, however a cost-recovery approach replaced this grant program in the late 1990's. Resources for land development was then rolled into the block funding approach now utilized by MACA. However some additional resources were made available, on the basis of community need for developed lots, through the re-introduction of capital funding assistance from

MACA. This additional assistance is set to be phased out however, in 2007.



Land development in all Tłıchǫ communities has changed over the past years. The community governments were eligible for capital grants for subdivision development in the mid-90's. That was changed so that funds available for land development were rolled into the overall block fund from MACA. Recently, MACA has made some funds available for land development assistance on a case by case basis. In 2006 Behchoko received \$200,000 and Wekweètì received \$60,000 in land development funding. This special assistance is being phased out however.

For tax based communities, the rules have generally remained unchanged – land development is a community government responsibility and cost recovery is mandatory.

To begin the overview, it is important that SAO's have a general understanding of the process – the 'how'. Typically, land development occurs in four stages:

STEP 1 PLANNING

- Subdivision Planning
- Lot Demand and Supply
- Five Year Capital Forecasts

STEP 2 APPROVALS

- Land Acquisition
- Land Disposal Rules
- Plan and Zoning Amendments
- Financing Approval
- Subdivision Approval

STEP 3 CONSTRUCTION

- Engineering Design
- Tendering and Project Management
- Legal Survey and Title

STEP 4 LOT SALES OR LEASES

- Land Disposal By-law
- Marketing and Lot pricing
- Revenue Collection

Given the many changes and the fluid situation it is important for the SAO to know 'who does what' when it comes to responsibilities for land development, in order that he/she may be able to advise council of the issues arising as it considers a land development project.

Land Development in NWT Communities – Who does what?

Community Governments are responsible for funding land development within community boundaries.

So what does 'funding land development' really mean? It means paying for the following activities related to a land development project:

- Subdivision Design & Engineering
- Clearing & Slashing of Right of Way
- Drainage work for Subdivision
- Provision of Public Roads
- Power and telephone Servicing to Subdivision
- Legal Survey of Subdivision



Land development in a portion of Behchoko (Edzo) also includes the provision of piped water and sewer, which adds substantially to the cost of the development.

As a community government must fund these aspects of land development, a community government can – and must – price the lots at a level that will recover those costs. (Lot pricing is discussed later.)

It is important for both council and the SAO to know that there is a difference between developing land – as defined above – and preparing a particular parcel, or 'building lot' for construction of a house and occupancy.

Preparing a lot for building is the responsibility of the occupant or in the case of non-market housing, the Housing Corporation. This aspect of 'lot development' includes:

- Gravel Pad & Lot Fill
- Culverts and Drainage work

- Installation of a Access Driveway
- Clearing and Slashing of Lot
- Power Service Connection to Building

In the Appendix there is a useful diagram showing land development responsibilities community government and the occupant of a parcel of land. As well, the document entitled 'LAND DEVELOPMENT ROLES AND RESPONSIBILITIES' in the Appendix provides a good summary of responsibilities in the land development process.

So what role does MACA have in the land development process? MACA supplies advice to council on planning issues related to the land development project as well as assistance in ensuring that the legal survey of the lots occurs.



The responsibilities for land development are similar for all Tłıchǫ community governments. However each community government may approach the financing of a land development project differently.

Financing Municipal Land Development

Establishing responsibilities and roles is one important part of the land development equation – the other key part is how to finance those responsibilities. There are several options for a community government in financing land development. No matter which approach is favoured by council, the need for cost recovery is front and centre. Options include:

- Reserve Fund – the land administration by-law directs that all revenue from land be put in a separate reserve fund;
- Block Funding – a portion of the community government grant from the GNWT can be used for some or all of a land development project;
- Long term Loans – a community government can apply for a debenture from the GNWT, or borrow from a bank

Council should know that if borrowing is an option, the lender will need to ensure that the community can repay the loan. They determine this by examining the demand for the lots and

their affordability. The credit history and current financial administration of the community government is also reviewed.

It may be that community governments are not ready, willing or able to take on land development projects. In this case, there are options that can be explored. That 'exploration' will need to be led by the SAO, working closely with council.

For example, community government may arrange to enter into business partnerships with Development Corporations, the NWT Housing Corporation or even a private land developer to undertake land development projects.

In such cases, the SAO will need to ensure that the developer enters into an agreement with the community government which outlines construction standards, schedule of development, method of land disposal and method of land pricing for the project.



In Tłıchǫ communities, council may borrow money for land development, or use its own funds. They may also consider entering into partnerships with local Development Corporations.

There are some good examples of community government taking the lead and developing land. The City of Medicine Hat, in southeast Alberta, has for years operated an aggressive public land development program which competes directly with privately held land development projects. The City has an extensive information portal, which it calls the "LandKiosk", including GIS mapping, full disclosure on pricing and land sales policy. It can be viewed at www.city.medicine-hat.ab.ca/cityservices/land/residential.html

Recovering the Costs of Land Development – Lot Pricing

A value must be placed on each lot created through a land development project. Whether the land being developed is owned by the community government or administered by the GNWT, there are clear rules regarding 'cost recovery' and lot pricing. The rules for lot pricing on community government land, are found in the land administration by-law (which must

be based on the principles of the GNWT's Municipal Lands Policy). For Commissioner's land, the rules are in the GNWT's Land Pricing Policy.

A key consideration is 'what costs can be recovered'? The cost of any construction work required to prepare the land for building may be recovered, in addition to planning and designing the subdivision, legal and survey fees.

There is one other cost that may be recovered as a surcharge on the price of a lot. 'Off Site levies' assist in recovering the capital cost of new or expanded infrastructure. Any infrastructure upgrades that are necessary in order to deliver the new lots are costs that can be recovered. Upgrades to access roads or utility services are examples of infrastructure upgrades.

To 'put it all together' and establish prices for lots, it is important to gather key pieces of information. The SAO will have a key role in making sure the information is available and complete. This information includes:

- Post construction reports for subdivision construction, which may include roads, drainage improvements, land fill, water and sewer lines
- Invoices for installation of electrical distribution lines
- Legal survey contracts
- Engineering contracts
- Planning contracts
- Expenditures for off site facilities associated with the subdivision
- Financial reports on grants and contributions by the GNWT
- Expenditure reports associated with land acquisitions
- Land Development Debenture

Not all subdivisions will include all these costs. Most communities have trucked services, and some do their own planning work. MACA may be of assistance in confirming associated costs, grants and contributions before lot prices are calculated.

Once all costs are known, the total can be applied to the total area of developed land, in order to provide a price per square metre. For example, if total costs for a land development project was \$80,000 and the developed lots totaled 4,000 square metres, the cost per square metre would be \$20. This in turn would mean that a 500 square metre lot would be priced at \$10,000.



MACA has done some work in estimating the development costs for Tłjchq communities:

Behchoko (trucked services): \$13.73 per square metre (2003 figures)
Behchoko (piped services): \$42.19 per square metre
Gameti: --
Wekweeti: \$14.02 per square metre (2003 figures)
Whati: \$14.67 per square metre (1996 figures)

The above discussion has as its focus newly developed lots. SAO's should know that lot pricing for existing lots can be based on market value, replacement cost or assessed value, as outlined in the community government's land administration by-law.

Reality Check – the Challenge of Cost Recovery

The above example of a lot price - \$10,000 – is not uncommon in smaller NWT communities. In larger centres, with piped services, lot prices are much higher, with Yellowknife prices being seven or eight times that amount.

If one contrasts these numbers with the level of lease payments that have been charged over the years in smaller NWT communities, the goal of 'cost recovery' becomes a real challenge.

After years of very low lease payments (\$250 per year on average) developed lots in smaller communities in the NWT were a real bargain! The end of capital grants for land development and move to cost recovery and higher lease rates

has been a challenge for councils and community government staff alike. And lease rates continue to rise.

Annual lease payments of \$250, or even the new minimum requirements of \$600, 'do not compute' with recovering lot costs of \$10,000 and higher.



The average lease payments for residential lots in Tłıchǫ communities is \$600 per year, however many older leases are still at \$250.

The NWT Housing Corporation has traditionally been the main 'consumer' of developed lots – to the extent that lots are used for public housing, the lot costs can be built into the Corporation's program costs. However, for home ownership programs, lot costs become a 'shared' responsibility between the Corporation and the home owner.

Community governments now face the challenge of cost recovery as they develop and dispose of land. After nominal lease rents for so long, many residents find it difficult to accept large cost increases.

In providing an overview of key elements of land administration, Section Four provides further discussion how council can address these difficult issues.

Section Summary:

Decisions on land disposal and land acquisition are made easier when the community government has a 'plan'. Whether the plan is a legal document adopted under the provisions of the Planning Act or a less formal land use plan, the community benefits. More formal approaches include the zoning of land and issuance of permits for all developments. Key in any process is community involvement.

Land development practices in the NWT have evolved from a government-funded program to cost-recovery with the responsibility squarely on the shoulders of the community government. Roles and responsibilities for community

government in the land development process are important to understand, as are the options for financing and pricing land development projects.

Section Four

Land Management: Land Administration Practices


The previous sections have described the legislation, regulations, policies and rules that affect community government land management in the NWT. The emphasis has been on council and SAO responsibilities.

Section 4 addresses some of the 'nuts and bolts' of land management – the administration of land and the tools required for effective administration.

The most important asset a community government has is the community lands administrator/lands officer. Generally, the duties of the lands administrator fall into three areas:

- Advice and assistance to council;
- Advice and assistance to the public; and
- Coordination with, and assistance to, other levels of government.

This position would generally report to the SAO and often staff relies on the SAO for support and assistance in dealings with all three bodies. The SAO must be able to provide that support. The job is made easier for all when the 'fundamentals' are well-covered.



The Tłıchǫ Agreement provides Tłıchǫ community governments with ownership of nearly all community lands. The demands on land administration have changed in a very big way. Behchoko has signed a Land Administration Agreement with the GNWT in order that MACA can provide assistance for a range of land administration tasks. The Agreement was signed with the GNWT in 2006 and has a term of three years, with a possibility of a renewal for one more year, after which the assistance provided by the GNWT will cease.

To be effective, the lands administrator should have a good knowledge of

- The land application process for community, commissioner's and federal land; and
- How to use and complete of necessary forms and documents used during land transactions.

To perform effectively, the land administrator must

- Be able to explain the requirements and options for land acquisition to the public; and
- Maintain appropriate local records in the form of maps, legal plans of survey, up to date inventory lists of all land in the community and individual files for each property in the community.

MACA helps: through the School of Community Government, a comprehensive series of courses for Community Land Administrators is available, which addresses a full range of technical and informational needs for current land management practice.

This section focuses on some of the 'tools of the trade' in land administration and on a discussion of issues related to 'tenure', or the various rights over land, faced by community government councils, SAO's and land administrators in the NWT.

Land Inventories

Perhaps the most basic tool in the community lands chest is the maintenance of an up to date listing of all parcels of land in the community. A land inventory is a list of land parcels, listed in an order that relates to the legal description of each parcel. A complete, accurate and up-to-date land inventory is essential in order to answer basic questions about community land:

- Which parcels of land in the community are available;
- How many vacant or available land parcels are available; and
- The status of any parcel of land; and

Information on community land can be kept in two different lists, or registries.

Public Registry of Available Lots

A registry available to the public, at the 'front counter' of the community government office would list parcels that are available for application. The list would include information on the zoning, the lot price, the lot size and location.

Application Registry

An application registry can be used to track the steps of each individual land application. The details of all applications for parcels of land in the community should be recorded in the registry.

Accurate, up to date information on land applications can be an extremely important resource for SAO's. Council members and members of the public can and do ask about particular land matters. The registry can provide the answers to questions like:

- 'why is the application taking so long'? and
- 'what needs to be done to complete the application process?'

As well, the information can help track how long it is taking the community government to accept and approve land applications. This is an important indicator of good customer service.

Mapping

The creation of community maps is a specialized task. MACA arranges for mapping through contracts to produce the aerial photographs and control surveys that are used to prepare an accurate map of the community. The MACA maps are digital maps that can be used on computers as well as printed off on paper. Computer mapping allows for easy changes to information on the maps.

Different pieces of information are added or subtracted in layers. The maps can be easily adjusted to show specific information such as legal surveys, buildings or roads. The most common map used in a community, called a site map, shows all this information on one map.

MACA has developed ATLAS,
<http://gis.maca.gov.nt.ca/Website/index.asp>

The Town of Hay River has taken the mapping material available on the ATLAS system and upgraded and customized it to provide fast, accurate mapping to help explain land matters with council and the public.

These 'base' maps can be used to prepare other types of maps such as community plan maps, subdivision plans, zoning bylaw maps, lease sketches, building number plans and land tenure maps.



All Tłıchǫ community governments have digital mapping available through the ATLAS as well as a range of maps showing a variety of community and lands information.

Legal Surveys and the Land Titles Office

Legal survey plans establish the limits or boundaries of individual parcels of land in the community. These plans can only be made by a licensed surveyor. Such a person, in the Northwest Territories, is known as a Canada Land Surveyor or C.L.S. It is costly to have a legal survey plan prepared, since the C.L.S. must spend time in the community marking the limits of each parcel of land.

When the plan is complete, it must be stored in a public place. The place where legal survey plans are stored is in the Land Titles Office or L.T.O. The Land Titles Office for the Northwest Territories is in Yellowknife. Copies of the plans are also available at the regional offices of Municipal and Community Affairs (MACA). Legal surveys plans can be purchased from the Land Titles Office.

In the Northwest Territories, land that has not been legally surveyed cannot be registered in the Land Titles Office. Many new houses, especially in smaller communities, are built on parcels of land not registered in the Land Titles Office. If the land is not 'registered', then it is impossible to register other interests, like mortgages for example, on individual parcels of land. Since an important purpose of the L.T.O. is to offer security in the registration of interests in land The Commissioner has therefore allowed an unofficial registry of

mortgages to be created. This system is run by MACA and has been in use since the 1980's.

See the Appendix for a brief description of the range of documents that may be registered in the Land Titles Office.

Land Application Process

Perhaps the real 'nuts and bolts' of the land management process is the land application process. The SAO must ensure that it is prepared to deal with applications for parcels of land from the public, government agencies and business interests.

Some examples of applications that come through the door:

- Lease of a lot to a private individual for a new business;
- Lease of a lot to a private individual for a house;
- Lease to the NWT Housing Corporation for housing; and an
- Easement to the NWTPC for a power line.

Again, the SAO should have a good idea of the steps involved in the process.

The key steps include:

- Assisting applicants to choose an available parcel which meets their needs while conforming with the community plan (and zoning by-law);
- Assisting clients in filling out the land application form and drafting a sketch plan;
- Confirming the application is complete and correct;
- Collecting the appropriate application fee;
- Providing an official receipt of a completed application;
- Recording the application;
- Consulting with other agencies;
- Preparing a recommendation to Council; and
- Advising the applicant of the Council decision

In some cases, MACA assists the community government with these tasks.



Behchoko's Land Administration Agreement with the GNWT sets out three goals:

- Provision of efficient and effective land administration services;
- Provision of hands-on training in lands administration; and
- Building capacity so that the Behchoko community government can take over full administrative responsibility for community lands.

Tenure and Rights over Land

How are interests in land 'nailed down'? What does council need to know? What are the key concepts and issues that an SAO should be aware of?

While it is not the intention to discuss the details of property law, a general overview helps to set the scene for the various 'interests' in land about which both an SAO and council should have general knowledge.

Private ownership, or a fee simple estate has the greatest bundle of rights. Those rights include:

- right to sole possession;
- right to use;
- right to mortgage (security);
- right to sell;
- right to lease;
- right to income; and
- right to the absence of a term

It is the exceptions to these rights that are of interest for community government land management.

Government can limit these rights, through powers of

- Expropriation;
- Taxation (property taxes); and
- Land Use regulation (zoning)

Also, when land is transferred, the Crown can also hold back interests in land that would otherwise be held by the owner – whether the owner is to be the community government or in time, members of the public.

Three common reservations to the Crown within municipal boundaries are:

- The 100-foot strip along the seacoast and navigable rivers and lakes
Land within in this area is not available for sale or lease. Sometimes it is debatable where the 100 foot (or 30.48 metres) setback begins and ends.
- The beds of water bodies
The reservation about the beds of bodies of water prevents community governments from leasing the land underneath the water, even if all land around those water bodies is Commissioner's, municipal or private.
- Mines and minerals (Subsurface rights)
Transfer of land to community government is not going to include the rights and ownership over mines and minerals. This is not to be confused with granular materials such as quarries – see below.

The Lease

In the smaller communities of the NWT, parcels of land have generally not been sold, but rather leased. A lease

- is a contract for land;
- provides exclusive rights of occupation and use of land; and
- is for a stated period of time

but does not provide ownership rights over the land. The lessor remains the owner. The lessor is usually the community government or the Commissioner.

Standard Leases

Historically, rates of home ownership in smaller communities have been low. If someone doesn't own the house they live in (for example, an NWT Housing Corporation rental unit), then there is no particular need to own or build up any equity in the parcel of land underneath the unit. This, combined with the former grant programs for developing land, resulted in a standard lease being issued.

A standard lease is a lease where the lessee makes annual lease payments over the term of the lease but does not accumulate any equity, or value. With the above-noted land development programs that accessed GNWT grants and did not practice cost recovery, the annual lease rates were very low, usually about \$250 per year.



Standard lease rental payments in Tłıchǫ communities were as low as \$100 per year, with many being \$250 per year. More recently, new leases are usually \$600 per year.

Equity Leases

However, things have changed. Land development is based on cost recovery now and more and more people own their own homes. In communities where residents are acquiring home ownership and sale of land is not practiced or permitted, it makes sense that home owners also acquire equity in the land. The manner in which this occurs is through the issuance of an equity lease.

In the past, all monies paid over the term of the lease were retained by the Commissioner (the GNWT). Historically, lessees paid but did not obtain any of the value, or 'equity' in the land.

Instead of paying an annual lease rental that builds up no value for the lessee, an **equity lease** is a lease for which the lessee's annual payments (excluding interest) build up towards the eventual full value of the lot. It is the equivalent of paying the lot price, and should the land ever be available for sale, the lot price will have already been paid.

The rules for payment of equity leases can vary. Some community governments require upfront payment of the full value of the lease, while others allow for payment over time, with interest. Council's land administration by-law provides the details.

The provisions for an equity lease in the Behchoko Land Administration By-law are:

- the initial payment shall be a minimum of 10 percent (10%) of the lot price, and
- payment of the remainder plus an annual interest charge of 11 percent (11%) per year, plus the annual lease administration fee must be made in equal payments, payable not less frequently than quarterly, over a maximum period not to exceed 10 years from the commencement date of the equity lease agreement. The unpaid balance of the equity lease may be paid at any time without penalty and with no further interest due.

Lease agreements must contain the conditions under which the land is rented. These conditions often describe what the lessee may and may not do with the land. To avoid inactivity or speculation, leases usually state that buildings or other improvements must be made within a certain period of time.

In Section Three, land use control and zoning was discussed. It was suggested that in some smaller communities, council is not interested in introducing a zoning regime. In the absence of zoning, and the issuance of development permits under the zoning by-law, land leases can be used to control development. Some examples include setbacks from property lines, storage of fuel, and land use.

Easements

An easement is permission to use a portion of someone's land for a specific purpose. Pipelines and power lines are common examples of development that requires an easement. Easements can be registered in the Land Titles Office.

Easements can be used as security for a loan and the rights are transferable. A right of way is another form of easement.

It is important that existing easements continue when land is transferred. In order to ensure that governments and utility companies can access lands to continue to provide services.

Land Use Permits

Some developments and use of land are not long-term in nature and do not require a lease to proceed. Land Use Permits (LUPs) are usually issued for activities and operations on lands that are temporary and/or short-term in nature. Examples are winter roads, geophysical seismic operations, use of access roads, and other related activities.

SAO's should be aware that usually a lot of information is required when someone applies for a land use permit, because the uses often can have a big impact on the land and there may be some big environmental issues. Activities such as:

- Earth moving;
- Road building;
- Clearing of land, establishing rights of way;
- Creation of camps for long term use; and
- The use of explosives

would normally require a land use permit.

LUP's are also handy for the construction phase of proposed permanent activities or facilities – for example a new community access road or new solid waste facility.

Indian and Northern Affairs Canada (INAC) has prepared guides that address all aspects of land use management with a particular emphasis on the impact of temporary activities. These manuals are:

- Environmental Operating Guidelines Access Roads and Trails
- A Guide to Territorial Land Use Regulations



The Behchoko Land Administration By-law addresses land use permits and states that:

‘Any environmental impacts of the proposed use must be addressed by the applicant to the satisfaction of the Community Government prior to the issuance of a permit, and such approvals will be subject to the review and approval of other regulatory authorities, if applicable’.

Owing to the range of potential environmental issues, both MACA and community governments must work closely with the Land and Water Boards before issuing a permit. DIAND also can assist in the monitoring and inspection of work underway.

Quarries

A "quarry" is defined as:

"any work or undertaking in which granular materials are removed from the ground or land by any method, and includes all ways, works, machinery, plant, buildings and premises belonging to or used in connection with the quarry." (GNWT *Commissioner's Land Act* and *Hamlets Act*)

Quarries are not mines. Granular material is not a mineral. Quarrying involves surface lands and the removal of granular materials. Unlike mines and mining, quarry operations do not deal with issues related to subsurface rights.

Community government legislation provides the opportunity to approve quarry activity, to charge fees and specifically allows a community government to operate a quarry should it wish to.

However, for many communities in the NWT, the undeveloped land outside the built up area of the community is still administered by the Commissioner. It is in these areas that proposals for quarrying are likely to take place. If the GNWT administers the quarry operation, it does so under the Quarry Regulations of the *Commissioner's Land Act*.

The GNWT is, however, willing to sign agreements with community governments that would allow for community government administration of quarries on Commissioners land. The agreements allow a community government to charge and keep fees. The agreements also call for the community government to collect royalties on behalf of the GNWT and to pass the royalties on to the GNWT.



In Tłıchǵ communities all land in the outlying areas of the community is under the authority of the Tłıchǵ community governments and therefore quarry management is the responsibility of the community government. Implementation of an administrative system and a schedule of fees is a priority.

Quarry development and 'who gets access to quarries' can be a hot item for council. The prospect of increased development in the NWT suggests that development and administration of quarry sites will become an increasingly important issue. The SAO should be ready to advise council on key quarry issues.

Quarry Considerations

In considering any proposal for quarry development, the first step is to make sure that all the information is clear, including:

- The size and location of the area to be quarried;
- What material is being quarried;
- How much material;
- How long the quarrying operation is to last; and
- Proposals for cleaning the site up after use (restoration)

A good sketch map or plan of the area to be quarried, including the access and location of stock piles should also be available for council review.

The answers to these questions will help council decide what sort of tenure, or permission, to give to the operation.

Lease versus Permit

Both a lease and a permit have the effect of granting permission to a contractor to use lands for a quarry operation. However the benefits of a lease are:

- A quarry lease is useful when the site is to be used for many years by one operator.
- A lease provides security for the operator if he/she is planning on doing major development on the site.
- A lease provides exclusive possession of the site, and allows for stockpiling.
- If a lease is to be granted, council will need to pass a disposal by-law.

However a key consideration for council is that if there are limited sites in the community for quarries, the granting of a lease could give the operator a monopoly over the provision of local gravel, sand etc. This may not be in the community's best interest.

Quarry Permit

The alternative is a quarry permit. A permit allows for short term use of land – usually for one year. A permit does not give exclusive occupation to a contractor – in other words, more than one permit could be given for the same quarry site. A permit does not require council to pass a land disposal by-law, since no exclusive interests in land are being granted.

As well, quarry permits are usually used in situations where a quarry has already been developed and the use is small-scale and short-term.

Fees

Council can charge fees to offset the costs related to the operation of a quarry in a community. This can include a fee for

- road maintenance;
- quarry administration; and
- site restoration.

Quarry fees collected by the community government must be put in a special account.

If the community government is administering a quarry on behalf of the GNWT – on Commissioner’s Land – it must also collect royalties and pass them on to the GNWT.



There is no guidance in the Tłıchǫ community government legislation regarding the fees that community government should charge for quarry-related matters. The important issue is that fees must be sufficient to cover the costs associated with effective quarry management.

Site restoration

Depending on the situation, quarry site restoration may be an important consideration – or condition – of council’s approval. Site restoration addresses how to ‘fix-up’ the site after the quarrying is finished. There can be safety, environmental and visual issues associated with a quarry no longer in use.

In fact it may be in the best interest of council to require the operator to submit a “Letter of Credit” – a type of bank loan that is given to the community government until the operator does everything he/she promises to do, in terms of fixing up the site after use as a quarry. If the operator does not fix things up, then the community government can cash the Letter of Credit in order to help pay for the restoration work required.

Section Summary:

Land Administration practices go to the heart of “the job to be done” – that is – what is required for effective administration of land. A well organized community lands office can be an effective tool in maintaining and indeed enhancing community satisfaction with land applications and other requests for information. The land administrator of a community needs to have the support of the SAO and needs to be able to explain the requirements and options for land acquisition to the public. He/she also needs to maintain good records, legal plans of

survey and inventories of lands in the community, which includes maintaining individual files for each property in the community.

The effective land administrator, supported by the SAO, should have a good handle on his or her office and its organization, including matters such as:

- Land Inventories;
- Mapping in the community;
- Legal Surveys and the Land Titles Office;
- The Land Application Process in the Community;
- Tenure and Rights over Land;
- Leases; and
- Easements, Land Use Permits and Quarries.

This is by no means an exhaustive list, but this is a good base from which the SAO can observe and, where necessary, direct the operations of the community's land administration office.

Section 5

Self-Government and Community Lands

Introduction

In this last section the focus is on the context and the sources of Tłıchǵ community government powers and ownership of lands along with the related authorities, opportunities and challenges.

As noted throughout the curriculum, effective land management is about more than the technical aspects of drafting and ensuring correct lease documents. Dealing with such a valuable resource as community land requires a broad range of knowledge and experience that not only touches on community development, financing of land development and community planning, but also requires a good idea of from where the authority of Tłıchǵ community governments has grown.

In order to understand how Tłıchǵ communities can deal with land ownership, planning and administration, it is critical to understand the context of Tłıchǵ communities within the Tłıchǵ Land Claim and Self Government Agreement³ (the “Tłıchǵ Agreement”). After all, Tłıchǵ communities and their governments are “creatures” of the constitutionally protected Tłıchǵ Agreement.

The Tłıchǵ Agreement - Background

In August 1995, the federal government released the Inherent Right to Self-Government Policy that stated that self-government arrangements could be negotiated as part of comprehensive land claim agreements. The Dogrib land

³ *Land Claims and Self-Government Agreement* among the Tłıchǵ, the Government of the Northwest Territories and the Government of Canada, signed on August 25, 2003, and passed into law by the *Tłıchǵ Land Claims and Self-Government Act* S.C. 2005, c. 1.

claim negotiations were paused while a joint land claim and self-government mandate was sought. The Government of the Northwest Territories, recognizing that its involvement as a party to the negotiations was necessary to resolve questions around self-government, programs and services as well as other issues, formally joined Canada and the Dogrib First Nation at the negotiating table. This marked the first time that the GNWT was a signatory to a land claim agreement in the NWT.

In August, 1996 the Dogrib Framework Agreement was signed outlining the process, subject matters, scope and parameters for negotiation of a land claim and self-government agreement-in-principle (AIP) and a final agreement. A new mandate to negotiate a land claim and self-government AIP was approved in April 1997. An AIP was initiated by the three chief negotiators on August 9, 1999 in Gamètì.

The Dogrib Treaty 11 Council signed a final land claims AND self-government agreement in early 2004 and legislation to establish the Tłıchǵ Government has been given Royal Assent. August 4, 2005 was the “effective date” for the creation of the Tłıchǵ Government. Celebrations that day put the Tłıchǵ Government in place. There are over 3000 beneficiaries.

The Tłıchǵ Agreement – Self Government

The creation of self-government institutions – the most extensive provisions incorporated in a northern land claim agreement to date - is a large component of the Tłıchǵ Agreement. Under the Tłıchǵ Agreement, the four Indian Act bands (Dog Rib Rae band, Wha Ti First nation Band, Gamètì First Nation Band and the Dehchi Laot’i Band ceased to exist and were succeeded by the Tłıchǵ Government.

The Tłıchq Government has a wide range of law-making powers on Tłıchq lands (discussed below) and over Tłıchq Citizens. Laws enacted by the Tłıchq Government are called “Tłıchq Laws”.

Jurisdictions of the Tłıchq Government include:

- ✓ The structure of the Tłıchq Government and its internal management (7.4.1);
- ✓ The use, management administration and protection of Tłıchq lands and the resources found on and under those lands, including granting of interests in Tłıchq lands and land use plans (7.4.2);
- ✓ The protection of spiritual and cultural beliefs and practices of Tłıchq Citizens and the protection and promotion of the Tłıchq language and culture (7.4.4(a));
- ✓ The practice of Tłıchq traditional medicine, including certification (7.4.4(c));
- ✓ Social assistance, including social housing for Tłıchq Citizens on Tłıchq lands or in a Tłıchq Community (7.4.4(f));
- ✓ Child and family services for Tłıchq Citizens on Tłıchq lands or in a Tłıchq community (7.4.4(g));
- ✓ Education, except post-secondary, for Tłıchq Citizens in Tłıchq communities or on Tłıchq lands (7.4.4(j));
- ✓ Taxation of Tłıchq Citizens on Tłıchq lands or in a Tłıchq community (7.4.5)

This list is illustrative and not exhaustive. See chapter 7 of the Tłıchq Agreement for the full list of powers, conditions and limitations. However, suffice it to say that the Tłıchq Government has extensive law making capability in a number of subject areas that apply to Tłıchq Citizens and on Tłıchq lands.

Tłjchq laws will not displace federal or territorial laws – they operate concurrently. However, a Tłjchq law will, in the event of a conflict with a territorial law, prevail over the territorial law to the extent of the conflict.

The Tłjchq Government has not “drawn down” its lawmaking powers over every area in which can exercise jurisdiction. In fact, there is an Intergovernmental Services Agreement (ISA) in place between Canada, GNWT and the Tłjchq that provides a single delivery system for health, education and child and family services to Tłjchq Citizens and other persons in Tłjchq communities. The ISA will be in effect for 10 years.

Tłjchq Agreement - Tłjchq Government Structure

The Tłjchq Constitution sets out the structure of the Tłjchq Government. See figure 5-1 below for a diagram of that structure.

The Tłjchq Assembly is the law-making institution of the Tłjchq Government (the legislative branch). It is made up of

- a) The Grand Chief;
- b) The Chief of each Tłjchq Community; and
- c) At least two councillors from each Tłjchq Community

The main functions of the Tłjchq Assembly are set out at section 8.5 of the Tłjchq Constitution and include powers such as:

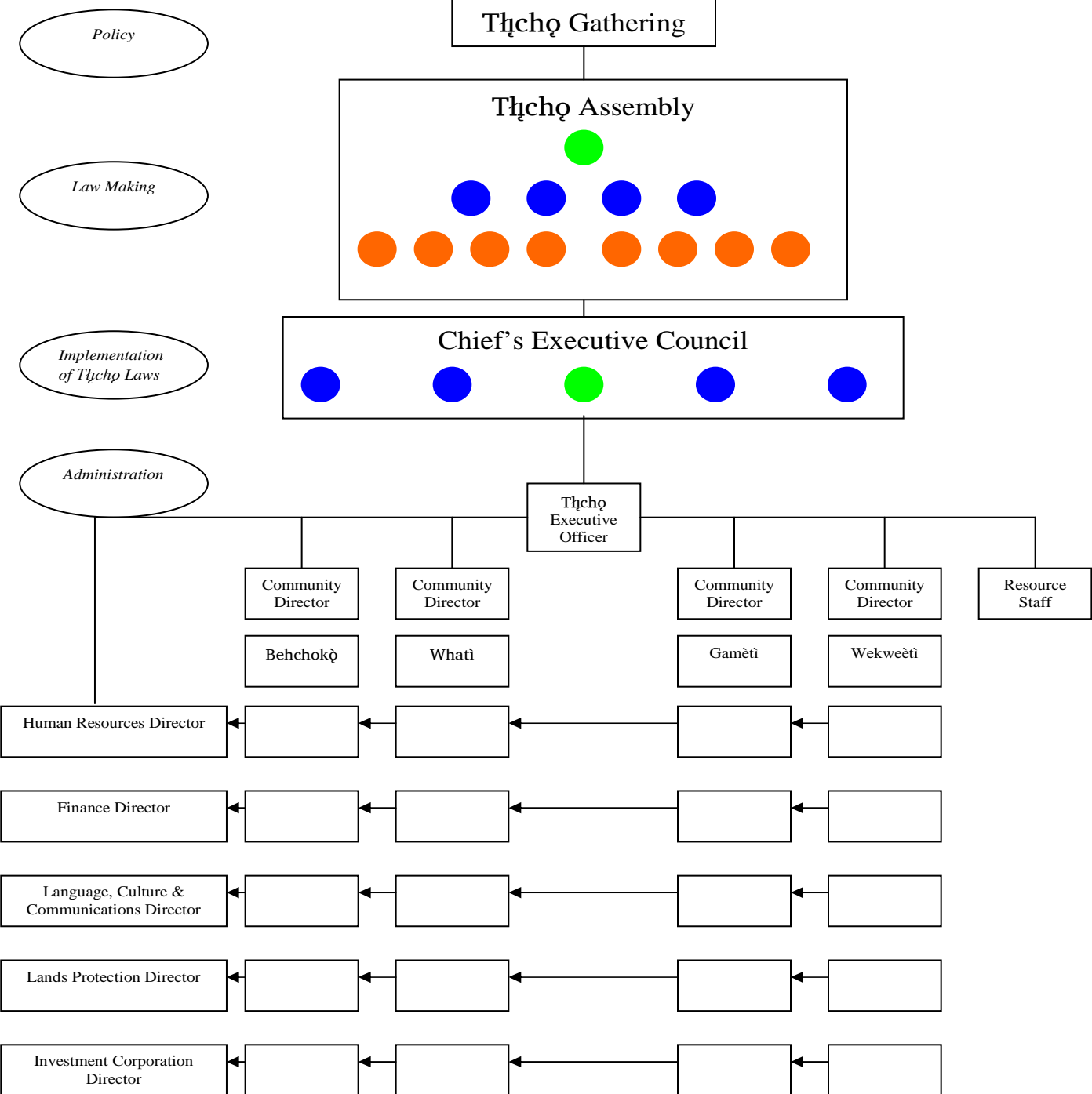
- ✓ Enacting and amending laws;
- ✓ Authorizing the expenditure of money;
- ✓ Appointment and tenure of officers;
- ✓ Acquire and hold real property; and
- ✓ Authorize individuals, entities and institutions to perform particular functions.

Again, this list is illustrative but not exhaustive.

The Chief's Executive Council (CEC) is made up of the Grand Chief and the 4 Tłıchǫ Community Chiefs. It is, roughly, the "Cabinet" of the Tłıchǫ Government, performing "executive branch" functions, like

- (a) taking direction from and reporting regularly to the Tłıchǫ Assembly;
- (b) arranging for the implementation of Tłıchǫ laws;
- (c) overseeing the management and administration of the affairs of the Tłıchǫ Assembly; (9.1(a), (b) and (c) of Tłıchǫ Constitution)

FIGURE 5-1: Tł̨chq Governance Structures

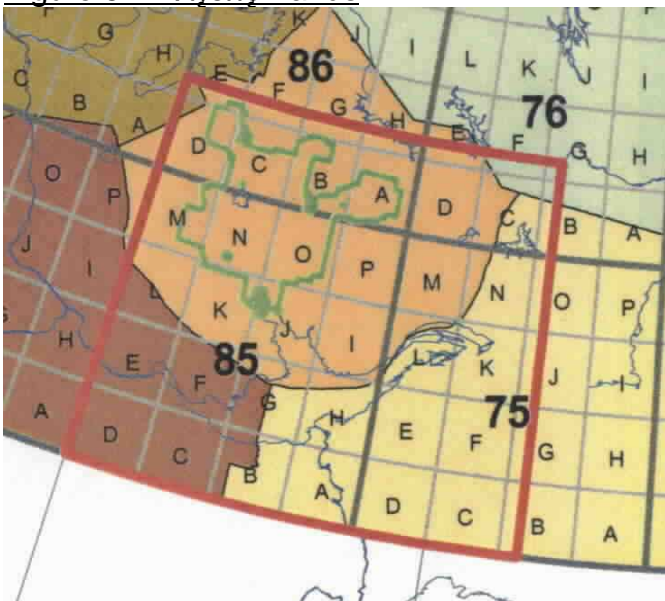


The Tłıchǫ Agreement – Tłıchǫ Lands

The “lands component” of the Tłıchǫ Agreement is largely established in Chapter 18 of the Tłıchǫ Agreement. The Tłıchǫ Government has title, subject to certain existing rights, to a single block of about 39,000 square kilometers of land, and the ownership is both surface AND subsurface (18.1.1). Tłıchǫ lands are held in the form of fee simple title (18.1.7) Tłıchǫ lands are adjacent to and surround the four Tłıchǫ communities.

This is different than the other NWT land claims. In those other land claims, the title to lands was not for a single block in both surface and subsurface. This has effects for community boundaries. Tłıchǫ Communities are surrounded by Tłıchǫ lands. Any changes to those boundaries must involve the adjacent landowner – the Tłıchǫ Government. Tłıchǫ lands are outlined in green in Figure 5-2:

Figure 5-2: Tłıchǫ Lands



As a fee simple owner, the Tłıchǫ Government can deal with interests in Tłıchǫ lands and act, subject to the Tłıchǫ Agreement, like an owner of lands. It can issue interests in land like leases and licenses. It will collect royalties from resource activity that may take place on Tłıchǫ lands. The Tłıchǫ Government can engage in land administration and land use planning.

One important limitation is that Tłıchǫ lands cannot be conveyed except to government (Canada or GNWT) or a Tłıchǫ Community government (18.1.9) and Tłıchǫ lands cannot be mortgaged, pledged or given as security (18.1.13). This is intended to respect the integrity of Tłıchǫ lands for future generations and to recognize the “collective” aspect of Tłıchǫ lands in the Tłıchǫ Government. As a result of the Tłıchǫ Agreement, the Tłıchǫ Government is a major landowner in the NWT and is charged with far more lands than does the GNWT itself. This will have import when the Tłıchǫ Government develops land administration policies and engages in future land use planning exercises.

Tłıchǫ Agreement - The Creation of Tłıchǫ Community Governments

A unique aspect of the Tłıchǫ Agreement is the creation of the “Tłıchǫ Community Governments”. Chapter 8 of the Tłıchǫ Agreement calls for the establishment of “Tłıchǫ Community Governments” for each of:

1. Behchoko;
2. Whatı;
3. Gamèti; and
4. Wekweèti. (8.1.1)

The Tłıchq Agreement calls for the Tłıchq Community Government to be established by territorial legislation – meaning that they are each “public” governments allowed to pass laws relating to “municipal” matters.

Consistency with the Tłıchq Agreement: The Tłıchq Agreement requires that the territorial legislation be consistent with the Tłıchq Agreement.

General Powers: In 8.4.1, the general powers of a Tłıchq Community Government are set out:

- (a) the operation and internal management of Tłıchq Community Government;
- (b) the borrowing of money by the Tłıchq community Government;
- (c) the administration and granting of interests in Tłıchq Community lands; and
- (d) the following interests in the Tłıchq Community:
 - (i) management, use and protection of lands, including land use planning;
 - (ii) public order, peace and safety,
 - (iii) housing for residents,
 - (iv) by-law enforcement,
 - (v) intoxicants,
 - (vi) local transportation,
 - (vii) business licensing and regulation,
 - (viii) gaming and other recreational contests; and
 - (ix) other matters of a local or private nature, including taxation. (8.4.1)

The territorial legislation establishing the 4 Tłıchq community governments is called the *Tłıchq Community Government Act* (SNWT 2004, Ch.7) (the “TCGA”). At its most general, the TCGA establishes the 4 Tłıchq Community Governments and this act is similar to the new *Hamlets Act* and the *Charter Communities Act*, with

additions to reflect consistency with the Tłıchq Agreement. Of note among these many additions is the election of the Chief and Council of a Tłıchq community government.

There is no “mayor” – Tłıchq Community Governments have “Chiefs”. The Chief of a Tłıchq Community must be a Tłıchq Citizen (TCGA, s. 10(3)). In addition, half the positions of councillor may only be filled by eligible candidates who are Tłıchq Citizens and the remaining positions may be filled by any eligible candidate. (TCGA, s. 10(4)).

Look back at figure 5-1 at page 57. It is of note in reviewing Figure 5-1 that The Tłıchq Assembly, with the exception of the Grand Chief, is made up of Chiefs and councillors already elected for the Tłıchq Communities. This is important to note as this link from the Tłıchq Constitution to the Tłıchq communities is a hallmark of the Tłıchq Agreement – the Chiefs of each Tłıchq Community Government have responsibilities and accountabilities under the territorial legislation to the responsible Minister, and are accountable under the Tłıchq Constitution for their actions as members of the Tłıchq Assembly and in the case of Chiefs, as part of the CEC. This creates a dual role for Chiefs and some councillors. Senior Administrative Officers are reminded of these dual functions as they deal with the Chief and Council of the given Tłıchq Community.

Amendment of the TCGA: The TCGA cannot be amended without the consent of the Tłıchq Government (8.1.4 – Tłıchq Agreement). There is also a procedure for the expansion of the boundary of a Tłıchq Community under the Tłıchq Agreement (8.7.1) and the Appendix to Chapter 8. Of note is that the consent of the Tłıchq Government is required where the expansion of the boundary would be into an area containing Tłıchq lands.

The power to delegate: The Council of Tłıchǫ Community Government may, by bylaw, authorize the delegation of any of the community government's powers to

- ✓ a public body or office established by a bylaw of that community government;
- ✓ the Tłıchǫ Government or a body or office established by a Tłıchǫ law;
- ✓ the Government of the Northwest Territories, including its departments, agencies and offices;
- ✓ the Government of Canada, including its departments, agencies and offices;
- ✓ a municipal corporation in Mōwhì Gogha Dè Nītaèè (NWT); or
- ✓ a public body established by an enactment of the Northwest Territories or Canada. (TCGA, s. 61(1))

However, a Tłıchǫ community government may not delegate the power to make bylaws. (TCGA, s. 61(2))

Tłıchǫ Agreement - Tłıchǫ Community Lands

Under Chapter 9 of the Tłıchǫ Agreement, with limited and listed exceptions (see the appendix to Chapter 9), the title to ALL lands in a Tłıchǫ community is vested in fee simple title to the Tłıchǫ Community Government (9.1.1). This title does not include title to mines and minerals. There are important limitations on the alienation of Tłıchǫ Community lands:

1. As a general rule, recognizing that the integrity of Tłıchǫ Community lands is maintained, such lands shall not be expropriated, and if done, the minimum interest shall be taken. (9.3.1); and
2. A Tłıchǫ Community Government cannot for the first 20 years after the effective date of the Tłıchǫ Agreement, convey the fee simple interest in Tłıchǫ

Community lands or grant an interest in lands for more than 99 years. After the 20 year limitation is up, it takes a majority voting in a referendum to change the general rule (9.3.6)

Leases: Tłjchq Community Governments, by operation of the Tłjchq Agreement, the powers and obligations of the lessor relating to leases listed in Part 2, Appendix to Chapter 9, are assumed by the appropriate Tłjchq community government. (9.1.12)

Tłjchq Community Governments also have the authority to introduce a scheme for property taxation on community lands if the council wishes to raise revenue in this manner.

Previous sections in this manual have noted “Tłjchq Community Government” specific issues relating to land administration and other planning issues, and here is a compilation of those issues:

- ✓ The legislation establishing the Tłjchq community governments establishes ownership of most lands in the name of the community government. Therefore Tłjchq community governments do not need to deal directly with MACA and the Commissioner’s office. However a Certificate of Title must still be created through the Land Titles Office.
- ✓ With the approval of the Tłjchq Agreement, Commissioner’s land has been transferred to the Tłjchq community governments.
- ✓ Tłjchq community governments must also survey and register their interests in land in the Land Titles Office.
- ✓ Tłjchq community councils must approve a land administration by-law before dealing in land. Tłjchq

community governments must ensure that similar land administration by-laws topics as described in section 2 of this manual are covered in their land administration by-laws.

- ✓ Tłıchǵ community governments develop their own rules for pricing parcels of land. These rules will be outlined in each community government's land administration by-law.
- ✓ Since the community government owns most of the land, it is not as important to have a zoning by-law to regulate development and issue permits. Instead development can be controlled through the land application process.
- ✓ In Tłıchǵ communities all land in the outlying areas of the community is under the authority of the Tłıchǵ community governments and therefore quarry management is the responsibility of the community government.
- ✓ The provisions of the *Planning Act* apply to all Tłıchǵ community governments including the requirement for plan approvals by the Minister of Municipal and Community Affairs.
- ✓ Tłıchǵ community governments are able to provide conditions in a lease that address the maximum amount of time that a lessee has to build on the land.
- ✓ In Tłıchǵ communities, council may borrow money for land development, or use its own funds. They may also consider entering into partnerships with local Development Corporations.

Section Summary:

The Tłıchǵ Agreement is the first comprehensive self-government and land claim agreement in the Northwest
*LAND MANAGEMENT FOR SENIOR ADMINISTRATIVE OFFICERS
WORKSHOP – PARTICIPANT'S MANUAL*

Territories. The Tłıchǫ Government is a government with law making powers and jurisdictions. The Tłıchǫ are also the largest private landowner in the Northwest Territories, with fee simple title, surface and subsurface, to over 39,000 sq. km. of land. Tłıchǫ communities have been created under their own territorial legislation and they have a special connection to the Tłıchǫ Agreement.

Tłıchǫ community governments own virtually all the lands within the community boundary, and have responsibility for land administration and planning for those lands. It should always be kept in mind that in order to understand Tłıchǫ community government powers and responsibilities, in addition to knowing the territorial legislation, it is important to understand the Tłıchǫ Agreement, especially Chapters 8 and 9.