

Northern Economic Futures: Challenges and Opportunities

Research Report

Yukon First Nations Settlement Land Development

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Abstract: As part of modern treaties in the Yukon, self-governing Yukon First Nations each hold title to significant amounts of “Settlement Land.” Modernization of the Yukon Government’s Land Titles Act in 2016 made it possible for subsidiary title, including leasehold interests on Settlement Land, to be entered on the Yukon Government’s land titles registry without extinguishing Indigenous rights and title. The Land Titles Act changes also mean that development on Settlement Land is now “bankable,” as lending institutions have gained the authority to seize a leasehold land title in case a mortgage defaults. Modernization of the Yukon’s land titles statute was a first step in unlocking the potential of Settlement Lands for the benefit of Yukon First Nations citizens and beneficiaries, and encouraging economic development throughout the Yukon. In addition to describing how the Yukon’s land titles statute was modernized, this article identifies next steps in realizing the economic development potential, including a discussion of potential benefits and remaining challenges for projects related to leasehold developments on Settlement Land. The article concludes by highlighting examples of early leasehold development successes.

L'avenir économique du Nord: les défis et les opportunités

Rapport de recherche

Développement des terres de règlement des Premières Nations du Yukon

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Résumé: Dans le cadre des traités modernes au Yukon, chacune des Premières Nations autonomes détient des titres de « terres de règlement ». La modernisation de la Loi sur les titres de biens-fonds du gouvernement du Yukon en 2016 a permis que les titres subsidiaires, y compris les intérêts à bail sur les terres de règlement, soient inscrits au registre des titres fonciers du Yukon sans porter atteinte aux droits et titres autochtones. Ces changements ont aussi rendu le développement immobilier sur ces terres « bancable », puisque les institutions prêteuses peuvent désormais saisir le titre des terres à bail en cas de défaut de paiement hypothécaire. La modernisation des lois sur les titres fonciers au Yukon a constitué une première étape pour libérer le potentiel des terres de règlement, au bénéfice des citoyens des Premières Nations du Yukon et des bénéficiaires, et pour encourager le développement économique dans tout le territoire. En plus de décrire cette modernisation, cet article identifie les prochaines étapes pour concrétiser ce potentiel économique, en discutant des bénéfices possibles et des défis restants pour les projets de développement sur les terres à bail. L'article conclut en mettant en lumière des exemples de succès issus des premiers projets de développement sur ces terres.

Introduction

Between 1995 and 2006, eleven Yukon First Nations signed modern treaties with the governments of Canada and the Yukon. Each of the eleven treaties is comprised of a self-government agreement and a constitutionally-protected final agreement.¹ Following from the treaties, self-governing First Nations each hold title to significant amounts of Settlement Lands² within and outside of the Yukon's eight incorporated municipalities.³ As defined in the treaties, there are three types of Settlement Land: "Category A" Settlement Land, on which the First Nation holds title to both surface and sub-surface rights; "Category B" Settlement Land, where the First Nation holds title to only the surface rights; and fee simple Settlement Land. In aggregate, the eleven self-governing Yukon First Nations own a total of 31,468 square kilometres of Settlement Lands.

Prior to 2016, it was not possible to register any form of subsidiary title (such as a leasehold interest) on the Yukon Government's land titles registry; only fee simple land could be registered. Since Settlement Lands may not be sold, and the conversion of a parcel of Settlement Land to fee simple title would extinguish Aboriginal rights and title⁴ with respect to that parcel, economic development activity that would require the leasing of Settlement Land was effectively stalled.

With the passage of a new Land Titles Act in July 2016,⁵ the Yukon entered a new era of land development. The modernized land titles statute has updated Yukon's land titles system, and has allowed First Nations to issue long-term leases to third-parties while also retaining Aboriginal rights and title on Settlement Land.

Modernization of the Yukon's land titles statute was a first step in unlocking the potential of Settlement Lands for the benefit of Yukon First Nations citizens and beneficiaries, and encouraging economic development throughout the Yukon. This article presents the results of a scoping analysis that outlines some of the next steps in realizing that land and economic development potential.

The scoping analysis sets out parameters and options for Settlement Land development and is intended to serve as a reference point for continued collaborative discussions among the federal and Yukon governments, Yukon First Nations, and municipalities. The analysis was informed by a review of available documents and legislation and a series of semi-structured interviews. Interviews were conducted with key stakeholders representing the Yukon Government, self-governing First Nations, incorporated municipalities, and the private sector.

The Importance of Land Titles Registration in Settlement Land Development

Self-governing First Nations throughout the Yukon have signalled an interest in realizing the economic potential of their Settlement Lands through a variety of land development initiatives. Such economic potential has existed since ownership of Settlement Lands was recognized, which was on the implementation dates of the Final Agreements for each self-governing First Nation (between 1995 and 2006).⁶ The modernization of the Yukon's original Land Titles Act (enacted in 1898) and reissued as the Land Titles Act, 2015 (hereinafter Land Titles Act) has removed a long-standing barrier to the development of Settlement Land: the inability of lending institutions (i.e., banks) to register a mortgage against a parcel of Settlement Land with sufficient certainty of their "exclusive possession" in the case of a mortgage default.

Understanding why such a situation has constituted a barrier to the development of Settlement Land requires a bit of unpacking, specifically the terms lending institutions, mortgage, sufficient certainty, exclusive possession, and default.

The types of lending institutions that can issue mortgages in Canada include chartered banks, trust companies, credit unions, and mortgage brokers. In the Yukon, the "big five" chartered banks—Bank of Montreal, Scotiabank, Canadian Imperial Bank of Commerce, TD Canada Trust, and Royal Bank of Canada—are the most familiar lending institutions that issue mortgages. (For the sake of simplicity, the term "bank" is used in the remainder of this article to refer to all types of all lending institutions that issue mortgages.)

A mortgage is a contract that lending institutions use to loan a lump sum of money to a borrower. The full amount of money is to be paid back over a fixed period of time through a scheduled set of payments at an agreed-upon rate of interest. Individuals and businesses negotiate mortgages to be able to make large-value purchases such as houses and commercial shops without having the cash on hand to pay the full amount of the purchase price up front. For example, a family wishing to purchase a house priced at \$500,000, with a down payment of \$50,000, would require a mortgage for \$450,000.

Through the mortgage contract, banks position themselves so they can recover the money loaned in case a borrower cannot make loan repayments as scheduled. The mortgage contract requires the borrower to agree that ownership (or, title) of the borrower's property automatically transfers to the lending institution when payments are missed. Missed payments bring the mortgage into default, at which point in time the banks may foreclose on the mortgage and transfer

title to themselves. The transfer of title gives the banks exclusive possession of the parcel of land, allowing them to sell it or somehow make use of it to recover the outstanding amount of the loan.

In Canada, only the federal and provincial governments enjoy absolute ownership of land.⁷ For individuals (as well as for corporations and trusts), the closest thing to absolute ownership of land is ownership in fee simple. When land is owned in fee simple, the individual's rights to the land are subject only to restrictions imposed by a government for the greater good of all citizens (such as expropriation of land for a new highway).

Subsidiary interests in land include leasehold estates and life estates. Under a leasehold estate, an individual is granted ownership for a specified number of years. Under a life estate, an individual is granted ownership for only as long as they are alive.

Whether title to the land is held in fee simple or in the form of a leasehold estate or a life estate, only one individual can be granted exclusive possession of the same parcel of land at a given point in time. Thus, for the purposes of this article, the term exclusive possession is used in recognition of the fact that only the Crown can enjoy absolute ownership (i.e., absolute possession) of land, and that the rights of exclusive possession can be delegated through leasehold or life estate arrangements.

As noted earlier, any bank issuing a mortgage will first establish that it can readily acquire exclusive possession of a parcel of land in the event of mortgage default. Keeping track of who holds title, or the right of exclusive possession, for a parcel of land is the *raison d'être* for a land titles registry, which is a centralized, government-administered repository for land titles. This allows for quick and efficient verification of the real and true owner of a parcel of land. The land titles registry is also used to record any charges on title, including easements, mortgages, and leases.

The Yukon's Land Titles Registry is enabled through the Land Titles Act. Like land title registries in all other Canadian jurisdictions, the Yukon has a Torrens type of registry. First devised by Robert Torrens in Australia in 1858, Torrens land title registries guarantee the actual state of land ownership.⁸

Thus, not only does the Yukon Land Titles Office have custody of the original copies of land titles documents for all parcels of land located in the Yukon, the Yukon Government guarantees the accuracy of the register through a form of insurance. Should an inaccuracy in the Land Titles Registry be identified, the Yukon Government's Assurance Fund may be accessed to compensate any person who suffers loss as a result. As of March 2024, the Yukon Government's Assurance Fund had a balance of \$6.9 million.⁹

In addition to guaranteeing and insuring the accuracy of the land titles register (known as the insurance principle), the Yukon land titles system embodies the two other principles found in all Torrens-type registry systems. Under the mirror principle, titles listed on the Yukon Land Titles Registry are considered to be a perfect reflection of the state of title. Under the curtain principle, a purchaser need not investigate the history of past dealings with the land, or search behind the title as depicted on the register.

Taken together, the three Torrens principles—insurance, mirror, and curtain—form the doctrine of indefeasibility of title. A land titles registry system that features indefeasibility of title provides, without a doubt, sufficient certainty for lending institutions that the title (whether in fee simple or leasehold), can be readily transferred to them if there is a mortgage default.

Note that mortgages are merely one type of contract used to make loans. Banks may make loans secured by personal property (e.g., car loans) or unsecured loans for which no collateral at all is required. The willingness of banks to make unsecured loans and loans secured by personal property diminishes, however, as the dollar value of the loan increases. In addition, the interest rates charged by banks for unsecured loans and loans secured by personal property are higher than for mortgages. As a result, mortgages are the debt instrument of choice for both lenders and borrowers for big-ticket items like houses.

Leases, too, are merely contracts. While a lease can grant exclusive possession of a parcel of land to a tenant, it is not necessary for the lease to be listed on a land titles registry to be legally enforceable. However, banks do require that subsidiary leasehold title be entered on a land titles registry so that they can have sufficient certainty of exclusive possession in the event of mortgage default.

When a parcel of land is owned in fee simple, the transfer of title from the borrower to the bank is straightforward since the mechanics of title transfer are already spelled out in the mortgage contract. In the event of default, the bank (or other lending institution) simply serves notice to the land titles office that the requirements for title transfer have been triggered and title is transferred to the bank.

Title Registration of Settlement Land in the Yukon

Before the passage of the new Yukon's Land Titles Act in 2016, only one type of title for physical parcels of land could be posted on the Yukon's Land Titles Registry: fee simple title.¹⁰ And while the previous Act did allow for certificates of title for both leasehold and life estate interests, no such certificates were ever issued for a parcel of land, where fee simple title had not already been issued.

So, unless the title for a parcel of land located on Settlement Land was first converted to fee simple, the title could not be registered. This left banks without enough certainty that exclusive possession of the land could readily be transferred to them if someone defaulted on their mortgage. As a result, banks were not inclined to issue mortgages for properties located on Settlement Land. The land titles registry situation before the passage of the new Yukon's Land Titles Act in 2016 is illustrated in Figure 1.

The conversion of Settlement Land to fee simple title did not pose a solution for Yukon First Nations looking to encourage economic development activity on Settlement Land. The final agreements for self-governing Yukon First Nations generally state in section 5.10 that:

Upon registration in the Land Titles Office of the fee simple title in that Parcel of Settlement Land, each Yukon First Nation ... shall be deemed to have ceded, released and surrendered to Her Majesty the Queen in Right of Canada all their aboriginal claims, rights, titles and interests, in and to the Parcels described hereunder and waters therein...¹¹

In other words, conversion of Settlement Land to fee simple title, and entry on the Land Titles Registry, would result in the irrevocable loss of Aboriginal rights and title with respect to that land.

The conundrum faced by Yukon First Nations in the development of parcels of Settlement Land can be summarized as the following: how to create sufficient certainty for lending institutions such that exclusive possession of a parcel of Settlement Land can readily be transferred in the event of mortgage default, without irrevocably ceding Aboriginal rights and title on that land?

A foundational element for solving the conundrum can be found in the modern treaties negotiated by Yukon First Nations. The Final Agreements each provide that the First Nation may establish a land registration system. As stated in the Umbrella Final Agreement, the template for each of the Yukon First Nations final agreements:

Subject to its Settlement Agreement, each Yukon First Nation, as owner of Settlement Land, may exercise powers of management in relation to its Settlement Land, including the establishment of a system to record interests in its Settlement Land.¹²

The revised Land Titles Act builds on the foundation provided in the final agreements and introduces an innovative solution to the conundrum. The new Act has expanded the list of certificates of title that can be issued by the Land

Titles Office and posted on the Yukon Land Titles Registry to include certificates for: Category A Settlement Land; Category B Settlement Land; and Fee Simple Settlement Land.

Two types of subsidiary title can also now be issued by the Land Titles Office and posted on the Land Titles Registry:

- Leasehold: subsidiary title issued for a leasehold interest when a primary title in the form of fee simple, Category A Settlement Land, or Category B Settlement Land has been issued by the Yukon Land Titles Office. A lease for a term of more than fifteen years with respect to title issued for fee simple, Category A, or Category B lands may serve as the basis of a leasehold title. The leasehold title may be in the form of a head lease against which subleases for smaller parcels of land may be negotiated; and,
- Life Estate: subsidiary title issued for a life estate interest when a primary title in the form of fee simple, Category A Settlement Land, or Category B Settlement Land has been issued by the Yukon Land Titles Office; a life estate issued with respect to a certificate of title issued for fee simple, Category A, or Category B lands may also serve as the basis of a leasehold title.

The land titles registry situation after the 2016 passage of the new Land Titles Act is illustrated in Figure 2.

Before 2016:

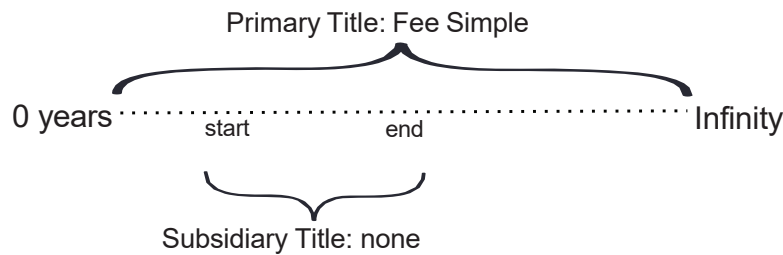


Figure 1. The Yukon land titles registry situation before 2016. Source: Author

After 2016:

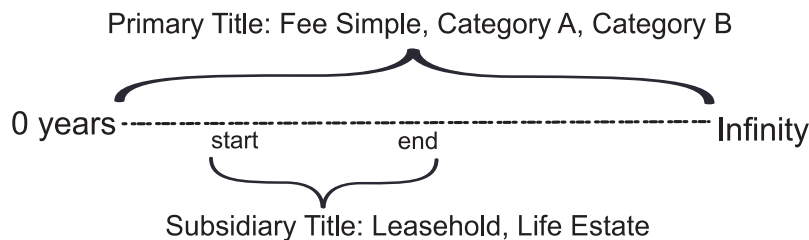


Figure 2. The Yukon land titles registry situation after 2016 and the passage of the new Land Titles Act, 2015. Source: Author.

Encumbrances, including mortgages, can be registered directly upon the leasehold or life estate title. This ability to register the mortgage against the subsidiary leasehold or life estate title is expected to provide banks with sufficient certainty that exclusive possession of the land can readily be transferred in the event of mortgage default.

A Yukon First Nations government may apply to the land titles registrar to have a parcel of fee simple, Category A, or Category B land withdrawn from the registry at the termination of a lease or life estate. Withdrawal from the titles registry requires that all encumbrances have been discharged (other than an encumbrance arising from legislation at the time of titling).

The Yukon Government considers it a risk that a Yukon First Nation might use its self-governance powers to frustrate a bank's ability to seize a leasehold land title in the event of a mortgage default. As a result, the Yukon government requires that before a First Nation can register title for Category A or Category B Settlement Land, the First Nation must amend its self-government agreement to limit the First Nation's ability to exercise its self-government powers with respect to the Land Titles Act.

The intent of the required amendment is illustrated in the 2017 amendment to the Kwanlin Dün First Nation's self-government agreement:

For greater certainty, a Kwanlin Dün First Nation law shall be inoperative with respect to any Parcel of Settlement Land or interest in a Parcel of Settlement Land that is registered in the Land Titles Office to the extent that it provides for any matter for which provision is made in the Land Titles Act, 2015 (Yukon).¹³

Following the Kwanlin Dün First Nation's lead, three other Yukon First Nations—Carcross/Tagish First Nation, Champagne and Aishihik First Nations, and the Kluane First Nation—enacted amendments to their self-government agreements in 2021 that enable registration of title for parcels of Category A or Category B Settlement Land on the Yukon's Land Title Registry.

In addition to amending its self-government agreement as required by the Yukon Government, the Kwanlin Dün First Nation passed its own Lands Act in 2020, which reflects the Settlement Land provisions contained in the new Yukon Land Titles Act.¹⁴ Regulations to accompany Kwanlin Dün's Lands Act were also enacted in 2020. The regulations set out the details for how leasehold interests in Settlement Land are to be created and registered at the Yukon Government's Land Titles Office.¹⁵

Other Approaches to Indigenous Land Title Systems

The approach to the registration of title for Yukon First Nations Settlement Lands that is embodied in the Yukon's new Land Titles Act is but one path to solving the development conundrum described above. Indeed, the report titled *Options for Land Registration and Survey Systems on Aboriginal Lands in Canada* prepared for the Legal Surveys Division of Geomatics Canada by Brian Ballantyne and James Dobbin in 2000,¹⁶ identifies thirteen specific models of land tenure, land registration, and survey systems for Indigenous lands in Canada:

- Model 1 - The Indian Act and Related Legislation
- Model 2 - Cree and Naskapi Lands in Quebec
- Model 3 - The Yukon Umbrella Agreement and Specific Agreements
- Model 4 - The Northwest Territories and Yukon Inuvialuit Settlement
- Model 5 - The Sechelt Self Government Agreement
- Model 6 - The Sahtu Dene and Métis and Gwich'in Comprehensive Land Claim Agreements and the Yukon Transboundary Agreement with the Gwich'in
- Model 7 - Section 53/60 First Nations
- Model 8 - The Alberta Metis Settlements Legislation
- Model 9 - The Nunavut Agreement
- Model 10 - The Nisga'a Agreement
- Model 11 - The First Nations Land Management Act
- Model 12 - The Dogrib Land Claim Agreement in Principle
- Model 13 - The Labrador Inuit Agreement in Principle

In summary, a variety of alternate approaches could potentially have been applied to allow banks and other lending institutions to register a mortgage against a parcel of land, with sufficient certainty of exclusive possession in the event of mortgage default.

Settlement Land Development Potential

Self-governing Yukon First Nations each hold title to significant amounts of Settlement Land within and outside of the Yukon’s eight incorporated municipalities (see Figure 3). In aggregate, the eleven self-governing First Nations own a total of 31,468 square kilometres of Settlement Lands. By way of comparison, Yukon’s largest city, Whitehorse, has a land area of 417 square kilometres.

The First Nations land selections were made on the basis of several strategic criteria including the potential for development in urban areas. For example, as noted in the Kwanlin Dün First Nation’s *Traditional Territory Land Vision* (2017), “...KDFN lands within the City of Whitehorse were selected primarily for their economic development potential and as such are well placed to generate income to KDFN through a range of potential uses.”¹⁷ Kwanlin Dün land selections within the municipal boundaries of Whitehorse (referred to as Community Lands) cover about 24 square kilometres (approximately 6% of the total land area of Whitehorse).

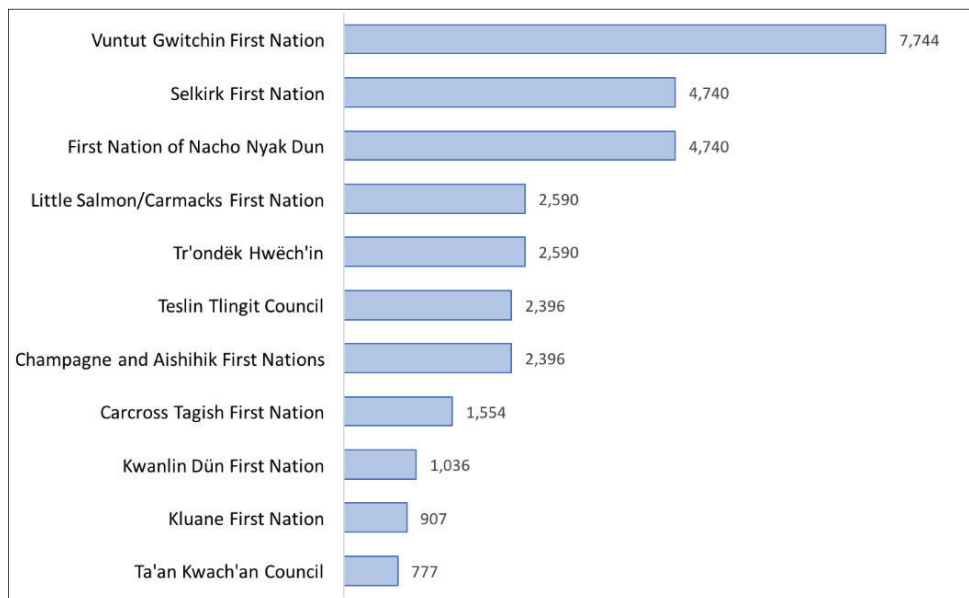


Figure 3. Allocation of Settlement Lands among self-governing Yukon First Nations, Category A and Category B combined (square kilometres). Source: Umbrella Final Agreement, Schedule A.

Benefits of Developing Settlement Land

A variety of benefits are expected to accompany the development of Settlement Land in the Yukon. Nine potential benefits were identified in the course of the scoping analysis and are described below.

Personal Income Tax Sharing Re-Allocation

Through the direct taxation powers of self-governing Yukon First Nations, 95% of the personal income tax revenues from individuals living on Settlement Land (both First Nations citizens and non-citizens), can be allocated to the First Nation owning that land. As Canada's income tax system is founded on a self-assessment approach, the diversion of personal income tax revenue to a First Nation requires that residents check two boxes on their T1 tax form. Increased availability of housing on Settlement Land, occupied by both citizens and non-citizens who check the required tax form boxes each tax year, will result in increased revenues for Yukon First Nations governments.

Property-Tax-Burden Shift

With direct taxation powers, self-governing Yukon First Nations could negotiate access to the property tax base in Yukon municipalities. To date, none have done so as it is not clear that the revenues raised would be sufficient to deliver municipal services at the level required. In the meantime, First Nations governments are obligated to remit property taxes to the municipalities within which Settlement Lands are located. Increased availability of housing and commercial development on Settlement Land will allow First Nations governments to shift their property tax burden to the leasehold owners of any properties located on Settlement Lands, should they choose to do so.

Improved Housing Allocation within First Nations Communities

Increasing the supply of market-based housing in Yukon communities will enable First Nations governments to better match different types of housing needs with housing availability. The delivery of housing services by First Nations governments has continued to reflect the pre-settlement allocation policies of the federal government, which focused largely on the supply of social housing.

Improved Housing Affordability

According to the 2021 Census, 13.1% of households in the Yukon were in core housing need on the basis of affordability, spending more than 30% of household income on shelter costs.¹⁸ New housing on Settlement Land could help improve housing affordability for all Yukoners if the increased supply of housing moderates the significant increases in housing prices experienced in the territory in recent years.

Opportunities for First Nations Development Corporations

Many Yukon First Nations development corporations are well-positioned to benefit from the construction of residential and commercial projects on Settlement Land, from earthworks to final construction. For example, the completion of a four-unit condominium development in downtown Whitehorse in 2020 demonstrated the capacity of Chu Nükwän LP—the Kwanlin Dün First Nation’s development corporation—to deliver turn-key housing to the Whitehorse housing market on leasehold Settlement Land.

Integration of the Resource Development Sector

In recent years, a significant number of mine workers have commuted to Yukon exploration and mining sites from locations throughout Western Canada. Having mine workers resident in the territory is favoured by mine operators for many reasons, not the least of which is reduced labour costs through avoiding airfare expenses. As such, potential continues to exist for the supply of leasehold housing for mine workers on Settlement Land.

Sharing Corporate Income Tax Revenue

With powers of direct taxation, Yukon First Nations governments could negotiate access to the Yukon corporate income tax base. If incorporated businesses can locate operations qualifying as permanent establishments on Settlement Land, corporate income tax revenues could also be shared with First Nations. Access to the corporate income tax base would require the re-establishment of the federal negotiating mandate and tri-partite negotiations among federal, territorial, and Yukon First Nations governments.

Improved Investment Climate

Improved certainty for leasehold transactions on Settlement Land will improve the overall investment climate in the Yukon, which could in turn lead to further investment and development opportunities both on and outside of Settlement Lands.

Future City of Whitehorse Residential Land Development

The City of Whitehorse's next large-scale residential land development project will need to be located a long distance from existing water and sewer infrastructure. With the associated infrastructure costs now in the hundreds of millions of dollars, rather than the tens of million dollars, any and all opportunities, including co-development of Settlement Lands within Whitehorse and near existing infrastructure, will likely be well received by the City of Whitehorse.

Synergies with Existing Housing Development Programs

In addition to the benefits from the development of Settlement Land described above, access to mortgage-favoured leasehold land opportunities can be combined with existing programs to rapidly expand the Yukon's housing supply. Some examples of territorial and federal programs that could potentially be leveraged include the following.

Yukon Housing Initiatives Fund

This territorial program provides funding for affordable rental housing projects across the Yukon through two streams: shovel-ready projects and project concepts. In Whitehorse, eligible projects must include a minimum of four affordable units. In Yukon communities outside of Whitehorse, eligible projects must include at least one affordable unit. Funding received through the Housing Initiatives Fund may be combined with other government funding programs. Community housing providers, First Nations governments and development corporations, municipalities, and private sector companies are all eligible to apply.¹⁹

Yukon Developer Build Loan Program

This territorial program provides low interest loans for short-term construction financing to Yukon developers who are building modest housing and are not eligible for financing from traditional lenders.²⁰

Federal Housing Accelerator Fund

This program from the Canadian Mortgage and Housing Corporation (CMHC) is designed to accelerate new housing supply through transformational change in land use planning and development approvals at the local government level. Funds can be used for investing in affordable housing, housing-related infrastructure, and community-related infrastructure that supports housing.²¹

National Indigenous Collaborative Housing Inc.

This is a national initiative that brings together Indigenous-led housing, homelessness, and housing-related service delivery organizations. Federal funding delivered through the initiative is intended to provide lasting solutions that address diverse housing inadequacies including homelessness for Indigenous Peoples living in urban, rural, and northern areas.²²

National Housing Co-Investment Fund

This program intends to support the construction, repair, and renewal of mixed-income, mixed-tenure, mixed-use affordable housing. The fund prioritizes projects that include partnering and co-investment by governments (including Indigenous governments), social enterprises, and private sector entities.²³

First Nations Market Housing Fund

This is a \$300 million credit enhancement fund and organization, First Nations-directed, created in 2008 to assist First Nations governments and individuals in Canada to obtain housing loans on a standard market basis from financial institutions. Five Yukon First Nations governments are qualified to participate in this fund, including Carcross Tagish First Nation, the Champagne and Aishihik First Nations, Kwanlin Dün First Nation, Teslin Tlingit Council, and Tr'ondëk Hwëch'in.

In summary, the potential benefits from the development of Settlement Land through access to mortgage-favoured leasehold land opportunities are numerous and extensive. In addition, several territorial and federal programs are already in place to facilitate housing construction and improvements on Settlement Land.

Remaining Challenges for Settlement Land Development

While many pieces in the puzzle of how to develop Settlement Land are now in place, this scoping analysis also identified several challenges. The challenges are described below.

Alignment of Settlement Land Development with Existing Planning Measures

The first challenge relates to the potential for discrepancies between the desired features of a given land development project and existing planning measures outlined in official community plans, subdivision bylaws, and zoning bylaws.

By way of example, Kwanlin Dün First Nation (KDFN) community lands are classified as being either Type 1, 2, or 3, with each type representing varying degrees of KDFN self-government authority for planning, zoning, and development.²⁴ On

Type 1 community lands, KDFN is able to exercise its self-government powers related to planning, zoning, and land development. On Type 2 community lands, KDFN is able to exercise planning, zoning, and land development powers that are consistent with designated land uses prescribed in the City of Whitehorse Official Community Plan.²⁵ On Type 3 community lands, KDFN is not able to exercise its planning, zoning, and land development powers.

Collaboration and good communication in the form of development agreements that speak clearly to the planning, zoning, and subdivision aspects of a project will be required to advance development projects in a timely manner. An example of such collaboration can be found in the February 2018 amendment to the City of Whitehorse Subdivision Control Bylaw. The Subdivision Control Bylaw generally requires that upon subdivision of a parcel of land, 10% of the land must be dedicated to public use (or that a payment in lieu be made). The February 2018 amendment exempts “First Nation subdivision applications that comprise Settlement Land” from the 10% public land use dedication (or payment in lieu), thereby preserving the integrity of the Settlement Land base of Whitehorse-area First Nations.²⁶

Values-Based Community Land Planning

Previous attempts at development projects on Settlement Land in the Yukon have illustrated the importance of involving the community in values-based planning in advance of initiating a development project. Values-based land planning can be used to decide the general allocation of community lands for residential use, economic development, and traditional activities. The Kwanlin Dün First Nation’s *Community Lands Plan* released in 2020 is an excellent example of what the output from a community land planning exercise can look like.²⁷

Optimal Lease Length

The length of the lease term represents a balance between the interests of the lessor (the land owner) and the lessee (the individual seeking exclusive possession of a parcel of land). From the perspective of the lessor, a shorter lease term is preferred. The longer the term of the lease, the longer the stretch of time for which land cannot be used for another purpose. And the longer the term of the lease, the greater the risk that the lease could be earning a lower rate of return than if the land was used for an alternate purpose.

From the perspective of the lessee, the longer the lease term the better. If the market views a lease term as too short, it will be difficult to transfer a lease or sell a building located on leased land. Also, most lending institutions will not offer mortgages for lease terms of less than five years, meaning that a twenty-five year lease is only marketable for the first twenty years of the lease.

Leasehold arrangements are still relatively unfamiliar in the Yukon, especially in the residential market. In light of the relative unfamiliarity with leasehold arrangements, the thinking around the table encountered during scoping analysis interviews suggests that a reasonable lease term for residential properties is 99 years—this period gives the greatest assurance to lessees that the leasehold property can be transferred within an individual’s lifetime. Current lease-length practice for leasehold commercial properties in the Yukon was reported to be thirty-five years.

Land Development Costs and Financing

Improved certainty for leasehold transactions on Settlement Land will help potential homeowners qualify for bank-issued mortgages. The financing of the infrastructure that needs to be installed in advance of residential and commercial building construction must also be considered in the land development equation.

The types of surface infrastructure costs to be paid and recovered as part of a land development project include:

- clearing, grubbing & grading;
- land remediation (for brownfield sites);
- roads (connectors & streets), sidewalks, traffic control & streetlights; and,
- landscaping, trails, parks & playgrounds.

The types of subsurface infrastructure costs include:

- water storage & distribution (reservoirs & force mains);
- wastewater collection & disposal, storm water diversion; and,
- electrical, telephone & cable.

Several types of planning costs must also be accounted for, including:

- geotechnical and heritage assessments
- zoning amendments and subdivision approvals
- environmental assessment
- planning and engineering
- project management and inspection
- development agreements
- feasibility studies
- legal survey.

Development costs (surface, subsurface, and planning) can be recovered at different paces, with the length of the development-cost recovery period determining the lease price. To illustrate, consider two “bookend” approaches based on a hypothetical lot development cost of \$150,000 for a single-family residential building lot in Whitehorse.

With full-term cost recovery, the lease price is the development cost divided by the number of years in the lease. At the hypothetical lot development cost of \$150,000, with a 125-year lease term, the lease price would work out to \$1,200 per year (\$150,000 divided by 125 years) and represents the preferred approach for potential lessees. The approach is not at all preferred by land developers, as it will take 125 years to recover the land development costs and the land developer will be required to somehow finance the development costs over 125 years.

With full prepayment, the entire cost of the lease is charged up front at the start of the lease. Using the hypothetical lot development cost of \$150,000, the leasehold price is \$150,000, due in full at the start of year one of the lease. With the full prepayment approach, the leaseholder holds exclusive possession of the leased land for 125 years (equivalent to more than four generations of families), a length of time similar in the abstract to holding fee simple title.

Full prepayment is the preferred approach for the land developer as it guarantees full and immediate payment of all land development costs. The land developer would incur no financing costs over the term of the lease and would be financially free to move on to the next development opportunity. In this example, the issuance of a 125-year lease is financially indistinguishable from the sale of a fee simple building lot.

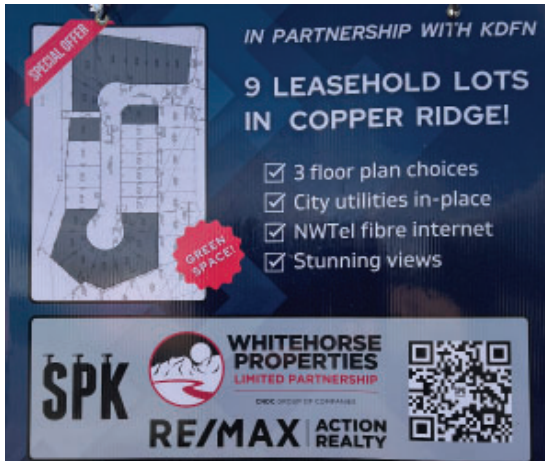
The full prepayment approach aligns with the reason why residential developers in Whitehorse prefer to build condominiums rather than apartment buildings. Development costs for condominiums are fully recovered at or near the time construction is completed. Development costs for apartment buildings are recovered through the payment of rent over a much longer time period, perhaps twenty or thirty years.

Conclusion and Early Successes

The new Yukon Land Titles Act has expanded the types of certificates of title that can be posted on the Yukon Land Titles Registry—now all categories of Settlement Land are included. The list for the types of subsidiary title has also been expanded to include leasehold interests. The legislative changes were a first step towards First Nations issuing long-term leases to third-party interests, while also retaining Aboriginal rights and title on Settlement Land.

As a result of the legislative changes, lending institutions can now register mortgages against parcels of Settlement Land, with sufficient certainty of exclusive possession in case a mortgage defaults. As a result, construction of buildings and facilities on Settlement Land has become “bankable,” as the lending institutions have gained the authority to seize a leasehold land title if the mortgage defaults.

Two examples of early successes of Yukon First Nations Settlement Land development are illustrated in Figures 4 and 5.



A. Copper Ridge West

Location: Undeveloped area in Phase 8 of the Copper Ridge Subdivision in Whitehorse

Settlement Land Notation: KDFN C112

Number of Leasehold Lots: 24 residential lots (Phase 1)

Developer: Chu Níikwän LP (Kwanlin Dün First Nation's development corporation)

Market Date: 2024

Figure 4. Example of successful development on Yukon First Nations Settlement Land. Copper Ridge West developed by Chu Níikwän LP.

Source: Author photo. <https://www.chuniikwan.ca/copper-ridge-west>



B. South Access Industrial Park

Location: Northeast corner at the intersection of the Alaska Highway and Robert Service Way in Whitehorse

Settlement Land Notation: KDFN C34

Number of Leasehold Lots: 6 commercial lots

Developer: Chu Níikwän LP (Kwanlin Dün First Nation's development corporation)

Market Date: 2022

Figure 5. Example of successful development on Yukon First Nations Settlement Land. South Access Industrial Park developed by Chu Níikwän LP.

Source: Author photo. <https://www.chuniikwan.ca/south-access>

The introduction of Yukon First Nation-specific legislation and regulations was a further step in realizing the potential of Settlement Lands for the benefit of citizens and beneficiaries, and also for encouraging economic development throughout the Yukon. Legislative changes have so far included amendments to the self-government agreements for four First Nations. Some Yukon First Nations have also passed land statutes and associated regulations designed to enable the development of Settlement Lands.

Nine potential benefits expected to accompany the development of Settlement Land in the Yukon were identified in this scoping report. Realization of many of the benefits identified is already underway through synergies with existing Yukon and federal housing development programs. So far in Whitehorse, the realization of the benefits is also the result of collaborative efforts between Yukon First Nations and federal, territorial, and municipal governments to overcome some of the remaining challenges for Settlement Land development also described in this report.

Notes

1. Government of Canada, Council for Yukon Indians, & the Government of the Yukon. *Umbrella final agreement between the Government of Canada, the Council for Yukon Indians and the Government of the Yukon* (Minister of Indian Affairs and Northern Development, 1993), <https://cyfn.ca/wp-content/uploads/2013/08/umbrella-final-agreement.pdf>. The eleven self-governing First Nations are the “First Nation of Nacho Nyak Dun in Mayo, the Champagne and Aishihik First Nations in Haines Junction, the Vuntut Gwitchin First Nation in Old Crow, the Teslin Tlingit Council in Teslin, the Little Salmon-Carmacks First Nation in Carmacks, the Selkirk First Nation in Pelly Crossing, the Kluane First Nation in Burwash Landing, the Ta’an Kwäch’än Council in Whitehorse, the Tr’ondek Hw’echin in Dawson City, the Kwanlin Dün First Nation in Whitehorse and the Carcross Tagish First Nation in Carcross.” See <https://www.cyfn.ca/agreements/first-nations-final-agreements/>. <https://understandingtreaties.ca/discover/yukon/>
2. For more background and context on the Yukon First Nations Settlement Lands, see Council of Yukon First Nations, “History of Land Claims,” 2025, <https://cyfn.ca/history/history-of-land-claims>; Mapping the Way. Yukon First Nation Self-Government, “Settlement Land and Traditional Territory,” February 7, 2022, <https://www.mappingtheway.ca/our-stories/settlement-land-and-traditional-territory>; <https://planyukon.ca/>.
3. The Yukon’s eight incorporated municipalities are Carmacks, Dawson City, Faro, Haines Junction, Mayo, Teslin, Watson Lake, and Whitehorse.

4. For more on Aboriginal rights and title see Canada. Justice Canada, “Aboriginal Rights: The Nature of Aboriginal Rights, last modified March 21, 2025, <https://www.justice.gc.ca/eng/csj-sjc/ijr-dja/35pedia-wiki35/p6.html>; First Nations & Indigenous Studies, UBC, “Indigenous Foundations: Aboriginal Title,” 2009, https://indigenousfoundations.arts.ubc.ca/aboriginal_title.
5. *Land Titles Act, 2015*, SY 2015, c 10. <https://canlii.ca/t/56cqp>.
6. See implementation dates for each agreement at Mapping the Way, Yukon First Nation Self-Government, “Our Agreements,” 2025, <https://www.mappingtheway.ca/our-agreements>.
7. Draws from Alberta Government, Service Alberta, *An Introduction to Alberta Land Titles*, 2015, <https://open.alberta.ca/publications/5649897>. Note that Canada’s three territories are constructs of federal legislation and as such do not hold the constitutional authority required to enjoy absolute ownership of land. Also see Land Title and Survey Authority of British Columbia, “Land Title Practice Manual,” 2025, <https://ltpm.ltsa.ca>; Royal Bank of Canada. *Mortgage – Residential (Fixed Rate) Land Titles Act (Nunavut)*. (Internal RBC guidance document, 2006), [https://www.rbcroyalbank.com/RBC:SU6YTKwWZA4AWaBkLv0/legalforms/download/3959\(03-17-2006\).pdf](https://www.rbcroyalbank.com/RBC:SU6YTKwWZA4AWaBkLv0/legalforms/download/3959(03-17-2006).pdf); Centre for Public Legal Education Alberta, “Land Titles—Canadian Legal FAQs,” <https://www.law-faqs.org/alberta-faqs/land-titles>.
8. For more background on the Torrens system, see Greg Taylor, *Law of the Land: The Advent of the Torrens System in Canada* (University of Toronto Press, 2008), <https://www.jstor.org/stable/10.3138/9781442688469>.
9. As stated in the Yukon Government’s Public Accounts for 2023–24 in Schedule 6 (Restricted Funds): <https://yukon.ca/sites/default/files/fn/fn-2023-24-public-accounts-schedule-6-schedule-restricted-funds.pdf>.
10. Certificates of title for condominium units could also be issued prior to the passage of the Yukon’s Land Titles Act, 2015. Our discussion here, however, is limited to types of title involving physical parcels of land.
11. For example, section 5.10 of the Kwanlin Dün First Nation Final Agreement. Kwanlin Dün First Nation, “Governance. Land Claims Agreements,” 2025, <https://www.kwanlindun.com/land-claims-agreements/>.
12. See Government of Canada, Council for Yukon Indians, & the Government of the Yukon, *Umbrella Final Agreement*, section 5.5.1.4.
13. See Kwanlin Dün First Nation final agreement, section 1 13.5.3.3. Kwanlin Dün First Nation, “Governance. Land Claims Agreements,” <https://www.kwanlindun.com/land-claims-agreements/>.
14. Kwanlin Dün First Nation Lands Act, <https://www.kwanlindun.com/wp-content/uploads/2020/06/KDFN-Lands-Act.pdf>.
15. Kwanlin Dün First Nation, “Heritage Lands and Resources: Land Management,” <https://www.kwanlindun.com/heritage-lands-and-resources/land-management/>.

16. Brian Ballantyne and James Dobbin, *Options for Land Registration and Survey Systems on Aboriginal Lands in Canada* (A Report Prepared for Legal Surveys Division of Geomatics Canada, January 2000), https://www.acls-aatc.ca/files/english/aboriginal/Ballantyne-Dobbin_report.pdf.
17. Kwanlin Dün First Nation, *Traditional Territory Land Vision* (June 2017, 25), https://kwanlindun.b-cdn.net/wp-content/uploads/2020/03/KDFN_Land_Vision_FINAL_June_2017.pdf.
18. *Housing, Census 2021, Highlights*, Yukon Bureau of Statistics (Government of Yukon, 5), <https://yukon.ca/sites/default/files/ybs/fin-housing-census-2021-revised.pdf>.
19. “Apply for Funding for Housing Initiatives,” Yukon Housing Corporation, last modified Jun 9, 2025, <https://yukon.ca/en/housing-initiatives-fund>.
20. “Apply for a Developer Loan to Build Affordable Housing,” Yukon Housing Corporation, last modified Dec 2, 2024, <https://yukon.ca/en/housing-and-property/funding-and-loans/apply-developer-loan-build-affordable-housing>.
21. “Housing Accelerator Fund,” Canadian Mortgage and Housing Corporation, last modified May 12, 2025, <https://www.cmhc-schl.gc.ca/professionals/project-funding-and-mortgage-financing/funding-programs/all-funding-programs/housing-accelerator-fund>.
22. National Indigenous Collaborative Housing Inc., <https://nichi.ca>.
23. National Housing Co-investment Fund, *Highlight Sheet: New Construction - Standard Stream*, Canadian Mortgage and Housing Corporation, <https://assets.cmhc-schl.gc.ca/sites/cmhc/nhs/co-investment-fund/nhs-co-invest-fund-highlight-sheet-en.pdf>.
24. As outlined in the Kwanlin Dün First Nation Community Lands Plan: Kwanlin Dün First Nation, *Kwanlin Dün First Nation Community Lands Plan: A Plan for KDFN Settlement Land in Whitehorse* (KDFN, 2020), 20, <https://www.kwanlindun.com/wp-content/uploads/2020/08/KDFN-Community-Lands-Plan-2020.pdf>.
25. City of Whitehorse Official Community Plan, available at https://www.whitehorse.ca/whitehorse_project/official-community-plan.
26. See the City of Whitehorse’s Subdivision Control Bylaw, available at: <https://www.whitehorse.ca/wp-content/uploads/2022/06/SubdivisionControlBylawupd.pdf>.
27. Kwanlin Dün First Nation Community Lands Plan.