



# **Developing a Resource Roads Regulation for Yukon**

**Proposal and Questions**

**May 2018**

# Overview

## What is the problem we are trying to address?

Access to Yukon's mineral, oil and gas and aggregate resources generally requires the development of new access roads, often managed by a land use permit issued by the Department of Energy, Mines and Resources. Many of these resource roads are typically built to be temporary, private, industry-use roads that provide access to resources but often end up as permanent public roads. This is largely due to regulatory instruments that are limited to regulating only the construction phase of these resource roads. Yukon's existing [Land Use Regulation](#), with its three-year permit time limit, cannot adequately regulate the entire lifecycle of a resource road from construction through closure and decommissioning.

## Our Proposal

The Government of Yukon has been working on developing a new Resource Road Regulation, under Yukon's lands legislation (acts) that will specifically regulate the construction, use, closure and decommissioning of resource roads so to address gaps and inadequacies in the existing regulation. A new Resource Road Regulation supports the government's priority to promote responsible resource development balanced with environmental management and demonstrable benefits for Yukon.

## Our Vision

The development and existence of a limited and controlled network of shared resource roads that:

- are responsibly managed in the public interest;
- respect asserted Aboriginal and treaty rights;
- meet the needs of the non-renewable resource industry;
- have a smaller environmental footprint than would otherwise be the case; and
- are decommissioned when no longer needed.

Our proposed regulatory approach builds on the [Resource Access Roads Framework \(2013\)](#) and aims to:

- regulate all phases of a resource road's life cycle — construction, operation, maintenance, modification, decommissioning, and closure — for both new and existing roads designated as "resource roads";
- promote cooperative use of resource roads through multi-user agreements, reducing the overall number of roads on the land and consequently reducing environmental impacts;
- clarify roles and responsibilities of both government and industry throughout the lifespan of a resource road;
- clarify the purpose of a resource road and prevent unintended public use; and
- allow some flexibility to change the designation of a resource road to a public road or the designation of a public road to a resource road if necessary.

## What is this engagement about?

This document outlines our proposed approach to modernize the regulation of resource roads in Yukon. We are inviting everyone — the resource industry, other governments, mandated boards and committees, non-government organizations, and individual members of the public — to review our proposal and let us know what you think. The public engagement will run for 60 days from May 25 to July 23, 2018.

## Background

The need to change the way Yukon resource roads are regulated came out of the work undertaken to establish a Yukon government wide policy on resource road management which became the [Resource Access Roads Framework](#). The Framework describes the application, principles, roles and responsibilities, policy parameters and processes that are to be used to manage resource access roads. It also states that “a successional permit or legally binding arrangement” is required to regulate resource access roads throughout the lifespan of the road.

### Resource Access Roads Framework:

- only applies to the resource extraction industries (mining and oil and gas);
- allows government to manage resource access roads in a way that ensures the greatest long-term benefit to Yukon;
- provides a process to determine whether additional public engagement and First Nation consultation is warranted for proposed resource road projects;
- establishes a fair process for sharing resource access roads by facilitating cost-sharing agreements between users to ensure all costs are shared equitably; and
- mitigates overall liability to government by addressing reclamation and decommissioning requirements.

In 2014, Yukon government conducted a First Nation consultation and public engagement. A number of groups, organizations, and members of the mining industry were invited to comment on the policy direction provided in a discussion paper. Our regulatory proposal, as outlined in this document, is built on the input we have received so far.

## How do I Participate?

We want to know your perspective on our proposed approach to regulating resource roads in Yukon. Please fill out the questionnaire online through Yukon government's [Public Engagements website](#). If you are unable to fill out the questionnaire online, you may print this document, fill in the questionnaire by hand, and submit it to us by mail, fax, email, or in person. You may reach us by:

### **Phone:**

Locally (Whitehorse) – (867) 667-3185 – Mike Draper  
Outside Whitehorse – 1-800-661-0408 ext. 3185

**Email:**

[ResourceRoadsRegulation@gov.yk.ca](mailto:ResourceRoadsRegulation@gov.yk.ca)

**Mail:**

Mike Draper, Sustainable Resources Legislation Advisor and Negotiator  
Sustainable Resources Division  
Energy, Mines and Resources  
Government of Yukon  
Box 2703/K-315  
Whitehorse, Yukon  
Y1A-2C6

**Fax:**

867-393-6340 Attn: Mike Draper — Resource Roads Regulation.

**In person:**

Contact Mike Draper to set up a meeting by phone (867-667-3185) or email [michael.draper@gov.yk.ca](mailto:michael.draper@gov.yk.ca).  
If you have any questions, please contact Mike Draper through any of the means listed above.

### How will my Input Make a Difference?

Your input will let us know whether we are proceeding in the right direction and will help us determine what will go into the new Resource Road Regulation.

### What about my Privacy?

We are seeking and collecting your input in order to inform us of what you think of our regulatory proposal, to summarize all the input we receive into a What we Heard document, and, ultimately, to help shape our new Resource Road Regulation.

The online questionnaire is designed to be confidential. We may include some of the anonymized comments we receive in post-public engagement reporting documents (such as a *What We Heard* document). The input you provide is protected pursuant to the *Access to Information and Protection of Privacy Act* and the *Statistics Act*.

### What's Next?

Once the public engagement phase has ended, we will compile and analyze all input received and post a summary on Yukon government's [Public Engagements website](#). The next phase will be the drafting and approval of the regulation which we expect to be completed in 2019.

## Relevant References

[Resource Access Roads Framework \(2013\)](#)

[Territorial Lands \(Yukon\) Act](#)

[Land Use Regulation](#)

[Highways Act](#)

# Proposed Regulatory Framework: Proposal and Questionnaire

## 1 Resource Roads vs. Public Roads

There is confusion regarding what the term “resource roads” means – whether it is meant to apply only to mining roads, or to other sectors such as forestry, tourism, and agriculture. There is also confusion over the fact that some resource roads have become public roads and are also regulated as “highways” under the *Highways Act*. Resource roads are usually constructed as temporary, private roads with the intent to be closed and decommissioned once the road is no longer required.

While it is the intent to close these roads once they’re no longer required to access resources, we may want to keep them open for other purposes, including turning some of them into public roads, if justified. It may also be necessary to return a road that has become a public road (over time) to its original resource road status in order to support one or more resource development projects. In either one of those situations, we would consult with First Nations and engage with stakeholders and the public to inform that decision.

### Proposed Approach

1. Define a ‘resource road’ as a temporary, non-public road (including an ice or winter road) that primarily provides access for industry users to mineral, coal, oil and gas, and aggregate resources, but may include temporary non-public roads that lead to other natural resources (as determined by the Minister).  
☐ Disagree   ☐ Neutral   ☐ Agree   ☐ Don’t Know
2. Allow for the transfer of an existing road (under the *Highways Act*) to a resource road under the Resource Roads Regulation when required.  
☐ Disagree   ☐ Neutral   ☐ Agree   ☐ Don’t Know
3. Any decision to change a resource road to a public road or to change a public road to an existing resource road will need to be preceded by a formal public review.  
☐ Disagree   ☐ Neutral   ☐ Agree   ☐ Don’t Know

Comments

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## 2 Controlling Access

Under the current regulatory regime, there is no effective way to prevent the public from operating a vehicle on a resource road, even when gated. The eventual increase of public users on what is supposed to be an industrial-use road causes incremental environmental impacts, safety hazards and liability problems for the companies involved. At the same time, there could be a legitimate need for certain individuals or groups with existing rights to continue to use a resource road (e.g., First Nation, owner of a cabin, etc.).

### Proposed Approach

Access to resource road use will be limited to permitted users only and these permits will set out terms and conditions on how resource roads are to be used. Permit conditions may range from a permit holder having exclusive use to allowing other designated, authorized users to share the road.

☐ Disagree   ☐ Neutral   ☐ Agree   ☐ Don't Know

Comments

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### 3 Managing Shared Use of Resource Roads

It is best to minimize the total number of resource roads that need to be built while maximizing the use of those resource roads by authorized resource industry users. Cooperative use of a road by resource developers reduces the environmental and cumulative impacts of resource developments.

There could also be others who need to use a resource road for the purpose of accessing their existing rights or property. The challenge is figuring out the best way to share that resource road and ensure it can be used responsibly. These roads are developed for the purpose of industry use and are usually built and paid for by a single industry proponent. There are issues around fairness, responsibility, accountability, liability, cost-sharing, and enforcement that need to be addressed.

#### Proposed Approach

1. Enable the development of multi-use agreements between resource road users.  
☐ Disagree   ☐ Neutral   ☐ Agree   ☐ Don't Know
2. Permitted road users will be able to establish agreements on shared use but if that is not possible, the regulator will be authorized to set terms and conditions for shared use.  
☐ Disagree   ☐ Neutral   ☐ Agree   ☐ Don't Know
3. An access management plan will be required to obtain a resource road permit.  
☐ Disagree   ☐ Neutral   ☐ Agree   ☐ Don't Know

Comments

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#### 4 Who is Responsible for a Resource Road?

There may be a need to transfer the responsibility for a resource road from the original user/builder to another resource company or other entity. For example, if the original builder goes bankrupt and government wants the road to be available to other resource users.

##### Proposed Approach

1. Allow a permit to be assigned to another proponent/operator/owner.  
☐ Disagree   ☐ Neutral   ☐ Agree   ☐ Don't Know
2. Responsibility for the resource road can be transferred to another entity, if required.  
☐ Disagree   ☐ Neutral   ☐ Agree   ☐ Don't Know

Comments

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## 5 Road Standards

There are currently no formal standards for resource roads, which means that there is no consistency in how resource roads are constructed, used, maintained and decommissioned. This has resulted in varying levels of road construction standards and safety and environmental issues. Terms and conditions are currently used in land use permits but these are ad hoc and only focus on managing and mitigating environmental-type impacts (during construction), not on design or safety matters.

### Proposed Approach

Road standards shall be developed for all phases of resource road development — from construction through decommissioning.

☐ Disagree   ☐ Neutral   ☐ Agree   ☐ Don't Know

Comments

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## 6 Closure and Decommissioning of Resource Roads and Security

The current *Land Use Regulation* does not provide the necessary tools to effectively regulate and enforce the closure and decommissioning of resource roads, which are intended to be temporary roads. Financial security is limited to 1970's costs of \$100,000, which is insufficient to cover today's costs of addressing environmental damage and road closure and decommissioning. The *Land Use Regulation* also has limited restoration provisions that do not apply beyond the three-year life of a permit.

### Proposed Approach

1. A closure and decommissioning plan will be required to obtain a resource road permit.  
☐ Disagree   ☐ Neutral   ☐ Agree   ☐ Don't Know
2. Allow for progressive closure/reclamation requirements.  
☐ Disagree   ☐ Neutral   ☐ Agree   ☐ Don't Know
3. Security will be a requirement to obtain a permit and will need to be sufficient to cover the full cost of decommissioning and potential environmental damage.  
☐ Disagree   ☐ Neutral   ☐ Agree   ☐ Don't Know

Comments

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## 7 How will the Permitting Work?

Under the current *Land Use Regulation*, resource roads are only regulated for the construction phase, through a limited three-year maximum land use permit. In some situations, in order to cover the remaining lifespan of the road, the regulator has to issue a new replacement permit every three years to ensure the use of the road can continue to be regulated with the limited management tools available. This is a limiting and ineffective way to regulate the long-term use of a resource road.

### Proposed Approach

1. The resource road permit will be linked to the duration of the resource extraction project(s).  
☐ Disagree   ☐ Neutral   ☐ Agree   ☐ Don't Know
2. Permit terms and conditions can be scoped to address mitigation for environmental and socio-economic impacts (pursuant to the *Territorial Lands (Yukon) Act*).  
☐ Disagree   ☐ Neutral   ☐ Agree   ☐ Don't Know
3. Permit terms and conditions will be consistent with approved land and resource management plans.  
☐ Disagree   ☐ Neutral   ☐ Agree   ☐ Don't Know

Comments

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## 8 Compliance and Enforcement

The current land use permitting regime does not provide sufficient compliance and enforcement tools for use of a resource road during the three-year limit of the land use permit and no tools after the expiry of the permit. It also does not provide any modern compliance and enforcement tools such as ticketing. Means to address violations under the *Territorial Lands (Yukon) Act* are limited to a maximum summary conviction fines, weak trespassing measures, and through the courts.

### Proposed Approach

1. Include additional compliance and enforcement tools – prohibitions, offences and penalties, pursuant to the *Territorial Lands (Yukon) Act* and *Lands Act* (which set limits on allowable enforcement tools).

☐ Disagree ☐ Neutral ☐ Agree ☐ Don't Know

2. Tickets will be issued for offenses via the *Summary Convictions Regulation*.

☐ Disagree ☐ Neutral ☐ Agree ☐ Don't Know

3. Permits can be amended, suspended or cancelled.

☐ Disagree ☐ Neutral ☐ Agree ☐ Don't Know

Comments

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## 9 Fees – Land and Road

Under the existing Land Use Regulation, resource road proponents are charged a:

Service Fee: This is a fee for a land use permit. The current service fee is \$150 for permit application and \$50 for the assignment of a permit.

Land use Fee: This is a fee for the use of the land on which their road will be constructed and used. The current land use fee is set at \$50 for two hectares or less and an additional \$50 per hectare for each additional hectare above two.

Any new resource road regulation must include provisions for fees in order to authorize the charging of fees.

### Proposed Approach

Adopt the same fees for the Resource Roads Regulation as in the existing *Land Use Regulation*, with the fees prorated for the life of the permit.

☐ Disagree   ☐ Neutral   ☐ Agree   ☐ Don't Know

Comments

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## 10 How Will the Resource Roads Regulation work with other Legislation?

When establishing a new regulatory regime, it is important to determine how it will work with other regulatory regimes. We also need to ensure that new legislation does not conflict with existing legislation or lead to unintended consequences such as unnecessary duplication or overlap. In addition, we need to figure out how projects with existing permits will transition to the new regulatory regime.

### Proposed Approach

1. The Resource Road Regulation will replace the *Land Use Regulation* and the *Mining Land Use Regulations* for the management of resource roads.  
☐ Disagree   ☐ Neutral   ☐ Agree   ☐ Don't Know
2. A resource road permitted under the existing *Land Use Regulation* will be subject to the new regulation after its land use permit expires.  
☐ Disagree   ☐ Neutral   ☐ Agree   ☐ Don't Know
3. A road that is designated as a "resource road" under the regulation will not be subject to the *Highways Act*.  
☐ Disagree   ☐ Neutral   ☐ Agree   ☐ Don't Know

Comments

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## Comments

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☐ Yes

☐ No

- ☐ Federal government
- ☐ Territorial government
- ☐ First Nation
- ☐ Municipal
- ☐ Non-government organization
- ☐ Business/corporation
- ☐ Other

☐ Yes

☐ No

Which community? \_\_\_\_\_

**Please provide your input to us by July 23, 2018.**

**Thank you for participating in this public engagement!**