

# Yukon

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August 6, 1987

## MEMORANDUM

TO: Rob McWilliam

FROM: Jim Bell

RE: Review of Loeks' Report: Competing Interest  
on Agricultural land

The report entitled "Competing Interest on Agricultural Land" contains three reports; "Phase I: Resource Conflicts: Defining the Issues Summary Report" (completed September 86), "Phase II: Policy Options to Resource Conflict Issues (completed April, 87) and "Phase III: Concluding Report (completed March, 87)". This review restricts itself to the Phase II and Concluding reports. Phase I defines the problem which, as Loeks' states, "are well known (Phase I p. 4)". The results of Phase I are also summarized in the Concluding Report.

The covering letter noted that the report was to be used as background for developing a range of policies as opposed to being adopted as policy in its present form. Discussion with Renewable Resource confirmed that the report will probably not go beyond its present form. The report is written as a discussion document and for this reason I do not think the Department should be taking any position on the report except to acknowledge the issues. A more appropriate time for the department to formulate a position would be when the issues are actually being addressed and at this stage it may wish to reference the report.

### PHASE II:

Phase II examines policy options to resolve resource conflict issues at three levels; strategic, resource management and farm management. The resource conflicts examined are trapping/agriculture, wildlife/agriculture, forestry/agriculture and mining/agriculture. I would summarize the findings as follows:

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Strategic Policy: In some circumstances, other resource values should limit the disposition of agriculturally suitable lands.

Resource Management: A public resource and land use planning process is required. The product of the process would be zones of land uses. The agricultural district or zone would primarily be a single use zone while other zones, ie forest zone, would allow and encourage multiple use.

Farm Management: Regulations for developing and running farms to mitigate impact on other resources are required. They should be encouraged through education and enforced through restrictive covenants, regulations and withholding of certain property rights (ie subdivision) at the time of disposition.

Phase II: Specific Comments

Trapping/Agricultural Conflicts:

This is the most substantial section and was drawn upon in developing the Trapper Compensation policy. Specific comments are as follows:

- On page 4 Loeks states that only 10 trap lines are currently effected by applications for agricultural applications. Not withstanding precedent for future compensation, this would suggest the problem is small and could be addressed on an individual basis.
- In discussing the "strategic" question (are there cases where trapping should take precedent over agriculture?) it is stated that the strongest case for favoring trapping is built "around social and cultural values and around equity considerations (page 10)". What is not stated is that the Yukon government has taken a "protrapping" stance in relation to the anti-trapping movement.
- Loeks deals at length with the issue of compensating trappers. The debate is whether the developer (in this case the farmer) or society pays assuming that the trapper should be compensated. Page 21 states that "the record in Canada has been to credit responsibility to the developer". My recollection is that only in the case of some megaprojects, ie Tumbler Ridge, have trappers been compensated. I do not believed that Trappers in B.C. who are displaced by agriculture or forestry are compensated. Loeks' view is reiterated in the conclusion; "Asking the developer to absorb the auxiliary costs of development is a well-established principle (page 33)". I suspect the agriculture

community may take some exception to this statement and point to mining as one example where legislation ensures that mining companies can explore without absorbing the cost of environmental damage. Another example are the numerous tax breaks and government programs that the industry enjoys. I think we as the department should support the principle while recognizing there are times when the auxiliary costs may be absorbed by society.

- Where trapper/agriculture conflicts are unavoidable three options for the farmer are suggested by Loeks. The farmer could choose to buy out the trapper, let the trapper continue or submit the conflict to a compensation board. The alternative and simplest solution, according to Loeks is for the government to buy out the impacted trappers. To support the latter view without conditions may set a dangerous precedent. If government compensates trappers, who have marginal rights to a public resource, should the government also compensate other users of public resources, such as subsistence hunters, when they are impacted by a development. It needs to be clarified why trappers have greater rights than other users of the land base.

#### Wildlife/Agricultural Conflicts

- With regards to the strategic question the report builds a case for the view that "in some circumstances, wildlife interests should limit disposition of agriculturally suitable lands". The agricultural community may argue that farming is compatible with wildlife and that only very small areas are effected. It seems to me that most Yukoners recognize that there are areas of critical habitat which must be protected from development. I believe the Department must accept this view if it does not wish to avoid alienating a sizable portion of the population.
- To accomplish this the report looks to Alaska and its land use planning process where land use maps have the force of law (page 43). Using Alaska as a model may cause concern in some development quarters and the Department should be weary of supporting any existing model. Yukon is unique and will have to develop or adapt a model to suit its own circumstances.
- In discussing resource management alternatives the reports focussed on impacts from fur farming and game ranching. This should be brought to the attention of the fur farming study steering committee.
- The report argues that "there is no reason from a planning perspective not to consider game ranching and

fur farming as agricultural pursuits". This statement may be disputed by the Fish and Wildlife Branch.

- The responsibility of the private farmer versus the public being responsible for minimizing wildlife impacts was discussed at length. The report seems to lean towards a position of shared responsibility between the farmer and society (page 54). However, it goes on to suggest that more than moral suasion is required to protect wildlife; "Yukon should consider some regulatory means of ensuring that compatible wildlife has a place on Yukon farmlands" (page 55). The agricultural community may object to this statement. The department should be concerned at the proposal for additional regulations but at the same time acknowledge that there are other interests that need protecting.

#### Forestry/Agriculture Conflicts:

- The report begins this section with the position that forest resources have been vastly underrated in the disposition of agricultural land (page 56-58). Loeks further notes the high overlap between Yukon's "very few high quality forest stands" and suitable farmland.
- As with the two previous sections this section suggests a public integrated planning process to ensure that all values, ie watershed protection, recreation, scenic qualities are accounted for.
- The report explores the issue of public access to leased lands for timber harvest and fuel wood collection (page 64). It suggests that for multiple-use to work several conditions must be met which include an enforced permit system with penalties for those who violate the rights of other users and are negligent, ie leaving gates open. This was an issue with the grazing policy. The report presents a good analysis of the issue.

#### Mining/Agriculture:

- Two points are made by the report on this issue. First, mining is the priority land use by legislation and second, there is seldom an overlap between mineral claims and agricultural applications since most applications are for land with substantial overburden. This issue may change with the grazing policy. For example if a cow falls into an exploration trench and dies who is responsible.

- A possible future conflict identified is for water rights between placer miners and farmers undertaking irrigation. The report concludes that the likelihood of this occurring is remote.

Phase III: Concluding Report

This report summarizes the first two reports and presents "a process for identifying and resolving resource conflicts in agricultural land disposition. To avoid duplication the following comments focus on the process component of the report.

- The major problem with the existing process, according to Loeks are:

It is a closed process --"there is no juncture at which the public collectively and as affected individuals can influence either the review of specific applications or the emerging pattern of land disposition" (page 6).

There is a policy vacuum. "In the absence of policy statements...No criteria exist for choosing between disposition alternatives (page 7)".

The current legislative/administrative arrangement is sub-optimal. "Without the authority to manage the rural land base, the Department of Renewable Resources has responsibility without the means of discharging it (page 8)".

There is a lack of social guidance. Loeks suggest agriculture disposition is influenced by conflicting values --the populist homesteaders view and the environmentalist view (page 10).

- To resolve the process problem Loeks suggests that "Land disposition should be embedded within the context of regional resource planning" which must have "broadly based, influential public involvement" (page 28-29). Information requirements to accomplish this are identified on page 15. This may meet with opposition from the agricultural community. However, there is movement towards this process at least to the extent of creating agricultural subdivisions or zones.
- To resolve the policy vacuum problem Loeks proposes development of policy for each of impacted resources discussed in the Phase II report. In summary there is a strong emphasis placed on (1) developing methods for valuing the importance of other resource values which do not have a strict market value, and (2)

incorporating these values into decision making process.

- To resolve the legislative/administrative problem Loeks recommends returning the responsibility for agricultural land disposition to Renewable Resources. That "RR might be expected to function as a fair broker...since as one agency it harbors responsibility for agricultural development as well as for most of the other potentially competing resources (page 9). Alternatively Loeks suggest giving RR a veto power in the review stage. There are two problems with this suggestion. First, the reason the process was transferred to lands was to ensure coordination between all land disposition processes and to ensure the Department promoting agriculture was not the same one responsible for the disposition of agricultural land. Second the review process is strictly a review process. It has no authority under the Territorial Lands Act to approve or veto applications for land. Although it does in practice.
  
- To resolve the social value problem, Loeks suggest "some process - possibly similar in concept to the Yukon 2000 - (which) can attempt to elicit informed public input on land management values and objectives. (page 13)". In discussing this issue the report refers to APAC as an example of an institution which reflects the value that agriculture is the highest use of the land --"no resource interest other than agriculture are represented on this advisory board". I suspect APAC might take exception to this statement.

#### A Suggested Land Disposition Process

- As previously mentioned, Loeks concludes that "land disposition should be embedded within the context of regional resource planning (page 28)". The key for Loeks is "influential public involvement". I doubt there will be much disagreement with this general sentiment. This raises the question of how does it relate to other government public processes such as Yukon 2000 the Select Steering Committee on Renewable Resources and potential public debate on the Conservation Strategy.
  
- The actual proposed process has six steps: pre-planning, inventory, resource allocation alternatives, resource conflict resolution process, draft land use plan and disposition of farm parcels. The process relies heavily on map overlays to identify and resolve conflicts and incompatibilities. "Where no conflicts exist, these maps form the core of a land-use

"zoning" map for the area, except where they conflict with well-established resource management or environmental policies (page 37)". Conflicts would be resolved in step 4. For this Loeks has develop series of criteria to screen out conflicts (page 40). As a starting point for discussion the model has merit. The problems with it;

- the limited information which can be transposed using an overlay system,
- the use a very mechanical process for a "soft" problem which would be more suited to a bargaining process,
- it ignores existing land use planning and makes no mention of how it would relate Northern Land use planning, and
- it is not clear if it will apply to to just Yukon Lands or will Federal and Band land s also be subject to it?

Jim Bell

cc. Rick McDougall