

Tools for managing mining in Yukon municipalities

Mining regulation within Yukon communities is complicated, in part due to overlapping territorial laws. The aim of this document is to clarify for municipal managers and decision-makers how the territory's mineral regulation system works, as well as their role in determining where and under which conditions mineral exploration and development may take place within municipal boundaries.

Members of local advisory councils for unincorporated communities may also find this information useful, as planning and zoning schemes can be developed by the Yukon government to similarly manage land uses within these community boundaries.

The *Quartz Mining Act*, *Placer Mining Act*, the *Area Development Act* and the *Municipal Act* are all Yukon laws. One does not supersede the other. Any obligations and rights issued through any of these pieces of legislation must respect the jurisdiction of the others.

How mineral tenure is granted

Mineral tenure is granted in the Yukon under the “free entry” system. This allows a prospector to enter on to public lands to prospect for minerals, and to acquire the right to these minerals.

Under the *Quartz Mining Act*, a prospector can stake a quartz claim within the boundaries of any municipality or unincorporated Yukon community.

Under the *Placer Mining Act*, new placer claims are not allowed within municipal boundaries, although legacy placer claims may exist within municipal boundaries. Placer mining is also allowed within unincorporated communities.

The holder of a mineral claim has the right to enter onto the claim for the purpose of prospecting and exploring for minerals.

The Yukon's mining laws include some exemptions where staking may not occur. That includes in the yard of a dwelling, on agricultural land under cultivation, or within cemeteries, burial grounds or church property.

The Government of Yukon may also issue prohibition of entry orders to restrict mineral staking in an area. These orders may, but usually do not, prohibit activities on existing mineral claims. Staking bans currently exist within much of the City of Whitehorse, all of Dawson City, across some First Nations Category B lands, and in some other areas.

Municipalities do not have the ability to restrict where mineral staking occurs.

How mineral exploration and mine development is regulated

The Yukon government is the territory's main mining regulator. It makes decisions about mineral rights, exploration, mine development and operation as well as clean-up and closure. The Yukon Water Board also regulates mines when their operations have impacts on water.

The Yukon's mining laws set out four classes of mining exploration land use, which are based on increasing levels of activity. All four levels require authorization to be carried out, following consultation with First Nations. The development and production of a quartz mine requires a quartz mining licence, also following consultation with First Nations.

Any activity beyond a Class 1 threshold, including development and production, requires an assessment under the Yukon Environmental and Socio-economic Assessment Act before the relevant authorization can be issued. That assessment process provides an opportunity for interested parties to provide information or their opinions about a proposed project, and may result in recommended conditions being applied to a mining land use authorization or quartz mining licence.

Mineral exploration and development on First Nations land

On Category A Settlement Land, a Yukon First Nation owns the surface and subsurface rights, including mineral rights. Mineral exploration and mining activity related to claims staked under First Nation legislation would be governed by the First Nation. In the case of encumbering rights associated with claims that pre-existed the settlement agreements, activities on claims continue to fall under the territorial mining acts, as well as being subject to any applicable First Nation legislative requirements.

Category B Settlement Land provides a Yukon First Nation with ownership of the land surface rights only. Subsurface rights are held by the Crown, and new staking, exploration, and development activities are governed by the Yukon government. Mineral exploration and mining activities would also be subject to any legislative requirements set out in First Nation legislation.

Chapters 6 and 18 of the Umbrella Final Agreement describe these general provisions and provide further information regarding access to and use of settlement land.

The role of municipalities in regulating mineral exploration and development

Municipalities do not have the ability to restrict where mineral staking occurs, but they may influence where and how mineral exploration and development occur through their planning and bylaw processes. These tools are best viewed as measures to help avoid conflicts, rather than as measures to resolve conflicts once they occur.

The Yukon government is responsible for planning and land use regulation in unincorporated communities through the *Area Development Act*. Local advisory councils can advise the government of planning and zoning needs within their areas.

This guide provides general information only. Legal advice specific to the facts in a particular situation should be sought prior to making decisions that could affect rights associated with mineral claims.

Below are examples how planning and zoning can guide where and what kind of developments and land uses are allowed.

Official community plans

Official community plans provide broad guidance for land use and development within municipal boundaries. These plans can be used to regulate where and under which conditions mineral exploration and development is allowed. Local area plans developed by the Yukon government may play a similar role for land use decisions in unincorporated communities.

Municipalities may use an official community plan to designate areas to allow for specific types of land use. For example, a municipality may designate protected or natural areas, preventing land uses such as mining from disturbing ecologically sensitive areas. They may also designate areas for uses such as mineral exploration and mine development.

If mineral exploration or development is proposed in an area where an official community plan does not allow such uses, a proponent could request a municipality to amend their official community plan to allow these uses. Any amendments to an official community plan must be made with the procedure and approvals process used for the adoption of the official community plan, providing opportunities for public engagement and input to decision-makers.

While it isn't a requirement under the *Municipal Act*, municipalities may want to inform mineral claim-holders affected by changes to plans or zoning.

Zoning bylaws

A zoning bylaw regulates land development and use within a municipality. It must conform with official community plans. Zoning can be used in a variety of ways to regulate mineral exploration and development.

In unincorporated communities, mineral exploration and mining activities may be guided by the policies of local area plans and zoning regulations made pursuant to the *Area Development Act*.

Zoning can be used to require buffers or visual barriers, restrictions on hours of operation, or restrictions on activities that may generate noise, dust, or result in other impacts on nearby properties.

Zoning can also be used to consider mineral exploration and mining as a conditional use. Conditional uses may be permitted once they have been evaluated for possible impacts on surrounding land uses, and could include a public consultation process. This could provide a municipality with the flexibility to apply conditions on a development permit, to address any concerns that come forward or deny an application if the impacts to neighbouring properties cannot be adequately addressed. A proposed project application may need to be modified if it is determined not to meet the conditions of the zoning in its current form.

If the existing zoning does not permit exploration or mine development, and the proposed uses are not in contradiction of the official community plan policies in that area, a request can be made to the municipality to amend their zoning .

Municipalities could also use their zoning bylaw to define allowed levels of mineral exploration activities and set thresholds for when a development permit would be required. They could also identify areas where mineral exploration or mine development is allowed as either a principal or conditional use. This could allow for small-scale mineral exploration up to a threshold of activity. Beyond that limit, the operator would need to receive a development permit from the municipality, on top of Yukon government authorizations.

This approach provides claim holders with reasonable access to work their claims, while providing municipal decision-makers with the ability to undertake a more thorough analysis of any proposals for more intensive activities. Where proponents are seeking to go beyond the permitted thresholds in a zone, the proponent may be able to apply for a rezoning of the area, triggering a public engagement and council decision-making process.

Direct control districts are another approach to zoning and planning that allows municipalities to exercise control over development in an area, rather than establishing

common rules. The council of a municipality may designate direct control districts in its official community plan. These districts are another tool that can be used to set an operation's duration and hours of operation for work, restrictions on the kind of work and equipment used, mitigation measures for noise, dust and other issues, and requirements for development agreements between project proponents and the municipality. Direct control districts could also be used to allow mineral extraction activities for a specified period of time, and then allow for other land uses afterward.

Contractual agreements

Municipalities may enter into a contractual agreement with a proponent to allow proposed uses in exchange for certain terms and conditions being met to achieve long-term planning objectives. This approach has been used in Yukon communities where mineral staking and development activities have been proposed in areas identified for future residential growth. Agreements were structured to allow mineral exploration and development to go forward and residential development afterwards.

Development agreements can specify the length of time that mineral exploration and mining activities may be permitted, requirements for reclamation, provisions for security deposits to encourage work being completed in a timely manner, impact benefit agreements to ensure local benefits, and other measures to mitigate issues raised during a public consultation process.

How to find out more

If you have questions about the different types of mineral exploration and development activities in the Yukon and how they're regulated, we encourage you to visit:

yukon.ca/en/learn-about-mining-regulations-yukon

If you have questions about mining regulation, please reach out to the Mineral Resources Branch at mining@yukon.ca or 867-334-6594.

If you have questions about the tools described here, please contact the Land Planning Branch at land.planning@yukon.ca or 867-667-3515.