



Resource Roads Regulation What We Heard

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Background

The Government of Yukon is developing regulation to manage the construction, use, closure and decommissioning of resource roads. Currently, a land use permit issued under the Land Use Regulation is the regulatory tool available to manage resource roads off mineral claims.

Public engagement on a resource roads regulation began in 2018. An initial 60-day public engagement and consultation with Indigenous governments was completed in July 2018. During this first consultation and engagement process, input was sought from the public, conservation and industry stakeholders, and Indigenous governments. It included a two-day workshop with Yukon First Nations, transboundary Indigenous groups and industry. Ongoing discussions with these governments/groups continued to inform development of the regulation.

In the spring of 2023, we asked the public, Yukon First Nations, transboundary Indigenous groups, and stakeholders for feedback on the main elements of the draft resource roads regulation. From March 8 to May 8, we sought public feedback through an online survey. From March 8 to June 6, we engaged with industry stakeholders and consulted with Yukon First Nations and transboundary Indigenous groups. This report describes the results of this engagement.

What is a resource road?

A resource road is a road used for the purpose of accessing mines, minerals, oil and gas, quarries and renewable energy sources. These are not public roads.

Resource roads are different from forest resource roads. Forest resource roads are managed under the Forest Resources Act and regulations. Forest resource roads will not be affected by this resource road regulation.

Engagement process

Purpose

The intent of the engagement and consultation process was to seek feedback on key elements of the draft regulation and the management of resource roads overall. The engagement outlined and sought feedback on the four main themes of the proposed regulation.

How we engaged

We sought public feedback on the draft resource roads regulation from March 8, 2023 to May 8, 2023. The public engagement included a discussion document with background and key elements of the proposed resource roads regulation. People were asked to read the document and share their thoughts through an online survey on Yukon.ca. The engagement was promoted through print and digital advertising.

During this time, we sent letters to all Yukon First Nations and transboundary Indigenous groups inviting them to participate in the consultation. We also sent letters to 13 key stakeholders in industry, community and non-governmental organizations with invitations to participate. During the consultation with Indigenous governments, we provided the draft regulation for their consideration. We held one-on-one meetings with interested Indigenous governments and stakeholders from April 19 to June 8, 2023.

What we asked

We asked Yukoners to give their feedback on the main themes of the proposed resource roads regulation:

- Access management
- Enforcement capacity
- Financial security requirements
- Industry costs and liability

Who responded?

We received:

- 68 online questionnaire responses from the public
- 13 written submissions from stakeholders
- 13 written submissions from Yukon First Nations and transboundary Indigenous groups.

We held meetings with:

- The Successor Lands Legislation Working Group
- Yukon First Nations, including:
 - Champagne and Aishihik First Nations
 - Kwanlin Dün First Nation
 - Tr'ondëk Hwëch'in
 - Vuntut Gwitchin First Nation
- Stakeholders, including:
 - Carmacks and Teslin Renewable Resource Councils
 - Casino Mining Corporation
 - Yukon Chamber of Mines/Klondike Placer Miners' Association

- Yukon Environmental and Socio-economic Assessment Board
- Yukon Environmental and Socio-economic Assessment Act practitioners
- Yukon Fish and Wildlife Management Board
- Yukon Land Use Planning Council



What we heard

The public engagement and consultation focused on four main themes of the proposed regulation and feedback is similarly organized below. Within each theme, we've organized information received from:

- Public engagement survey responses;
- Consultation with Yukon First Nations and transboundary Indigenous groups; and
- Engagement with stakeholders.

Public engagement survey responses

Access management

Public engagement survey responses:

People view the roads leading into the hinterland as a valuable public asset for Yukoners. Most respondents were opposed to existing roads being automatically re-designated as resource roads. Some respondents were open to case-by-case road re-designations established after robust public input.

Most respondents to the public engagement survey stated that current permitting and access control were not sufficient to address concerns around road safety, liability, wildlife, and the environment. Further, most respondents are in favour of managed access that supports environmental integrity. Additional feedback on access management includes:

- Some respondents expressed that resource roads built with public funding, grants or subsidies should be open to the public and not the exclusive domain of private industry.
- A few expressed concern that allowing First Nations people, but not non-First Nations people, to use resource roads would cause confusion and perceived unfairness among Yukoners.
- A few expressed concerns that restricting public use of resource roads would lead to parallel access trails and increase the overall footprint on the land.

Enforcement capacity

Public engagement survey responses:

Many respondents thought enforcement would be a good tool for monitoring environmental integrity and infractions on resource roads. Most of these respondents stressed that it is important the Government of Yukon has the capacity to effectively enforce rules on resource roads. Several specific topics emerged from these responses:

- People expressed interest in ensuring there are sufficient Natural Resource Officers to effectively monitor and enforce compliance in a timely manner. They further stated there needs to be adequate enforcement tools to ensure compliance.
- Some respondents suggested collaboration with Yukon First Nations governments would enhance effective monitoring.
- Many respondents wanted clarity on the funding required for enforcement and whether these costs will come from the Government of Yukon or permit holders.
- Technology such as remote cameras that read license plates was suggested to assist with access enforcement.
- There was a subset of respondents who were opposed to the management framework of resource roads and saw enforcement as unnecessary.

Financial security requirements

Public engagement survey responses:

Most respondents who supported regulating resource roads also supported financial security requirements for resource roads. Specific topics that arose in responses under this theme were:

- Respondents stated that roads that are not public should not have their reclamation paid for by the public. Financial security needs to be adequate, adjusted for expected inflation over the lifetime of a project, and provided up front.
- People desired certainty that the Government of Yukon would collect adequate security should it be required for reclamation and closure of resource roads.

- People who opposed the regulation of resource roads, and those who self-identified as being in resource industries, were generally unsupportive of financial security requirements for resource roads.

Industry costs and liability

Public engagement survey responses:

Some respondents to the survey self-identified as being involved in various resource industries. Respondents self-identifying as industry members recognized the benefits of access controls; however, they were concerned about the associated costs and liability implications. Several specific topics emerged from these responses:

- Permit holders should be liable for their employees' and contractors' use of the road, but not other users authorized by the regulation nor the actions of unauthorized users. Road use should be at the users' own risk.
- The cost to meet engineering road standards would be challenging for some industries, such as the placer industry.
- Monitoring road use could require significant time and effort on the part of primary permit holders. It was recommended the Government of Yukon be responsible for monitoring road use.

Consultation with Yukon First Nations and transboundary Indigenous groups

Access management

Yukon First Nations and transboundary Indigenous groups:

Responses from Yukon First Nations and transboundary Indigenous groups generally supported regulating public access to resource roads. Most responses highlighted a concern that requiring Yukon First Nations citizens to have authorization to use a resource road may conflict with rights to carry out traditional activities granted under section 6.2.1 of Final Agreements. Several recommendations emerged from these responses:

- Yukon First Nations and transboundary Indigenous groups should be involved throughout the lifecycle of regulating resource roads, including issuing or extending permits. The United Nation Declaration on the Rights of Indigenous Peoples principle of free, prior, and informed consent should be incorporated within the resource road regulation. Further, resource roads should be permitted only if consistent with approved land use plans or drafts.
- Yukon First Nations and transboundary Indigenous groups' access to traditional activities should not be hindered by resource roads. Existing roads are used regularly by Yukon First Nations citizens and transboundary Indigenous groups in activities that exercise Aboriginal and Treaty Rights and access preferred harvest areas.
- Responses highlighted that obtaining authorizations should not be administratively burdensome and must protect personal information. It was suggested that access authorizations could be issued to groups instead of individuals. Further, employees of Yukon First Nations government and transboundary Indigenous groups should have access to carry out their employment obligations.

Enforcement capacity

Yukon First Nations and transboundary Indigenous groups:

Yukon First Nations and transboundary Indigenous groups highlighted the need for sufficient resourcing to enforce access restrictions. Co-management with Yukon First Nations governments and transboundary Indigenous groups was recommended to increase enforcement capacity.

Recommendations also included:

- Involve and consult Yukon First Nations governments and transboundary Indigenous groups in decisions to issue permits, including when there has been a prior termination of the permit and the permit is being re-issued.
- Notify Yukon First Nations governments and transboundary Indigenous groups of non-compliance and suspensions of resource road use within their respective traditional territories.

Financial security requirements

Yukon First Nations and Indigenous transboundary groups:

Yukon First Nations and transboundary Indigenous submissions consistently recommended that mandatory and fully costed financial security funds be provided by the company before resource road permits are issued. Specifically:

- Responses communicated that financial security needs to be sufficient to cover all reclamation costs.
- The Government of Yukon should only use financial security funds (cash or cash equivalents) for reclamation and restoration. Ongoing road maintenance is the permit holder's responsibility, and security funds should not be used for this purpose.

Industry costs and liability

Yukon First Nations and Indigenous transboundary groups:

Responses sought clarity on what mechanisms the Government of Yukon will have to hold expired or suspended industry permit holders accountable for outstanding requirements.

Additional recommendations from Yukon First Nations and transboundary Indigenous groups

During consultation, Yukon First Nations and transboundary Indigenous groups raised several topics significant to Yukon First Nations' self-governance that were not captured in the four themes outlined above. These topics are summarized below:

- There is need for collaborative decision-making between the Government of Yukon and Yukon First Nations and transboundary Indigenous groups on managing resource roads throughout their life span.
- Ensure that the regulation gives adequate recognition to transboundary Indigenous groups and the rights and authorities that they hold under land claims agreements.
- Government of Yukon should commit that the regulation, if finalized, will be subsequently amended to align with successor resource legislation, once developed. Alternatively, the resource road regulation should be co-developed as part of the currently ongoing Successor Resource Legislation process for a new public lands act.

- Clarify the sections of the regulation that relate to heritage assessment, including ensuring prevention of damage to heritage resources. Further, involve Yukon First Nations and transboundary Indigenous groups in heritage assessments for proposed resource roads and provide clarity around how companies or contracted third-party professionals may be considered as qualified to conduct heritage assessments.

Stakeholder submissions

In addition to public engagement, the Government of Yukon sought input from stakeholders affected by resource roads. We received written submissions from seven industry stakeholders and four non-governmental organizations (11 total).

Access management

Stakeholder submissions:

Stakeholders sought clarity on who is responsible for resource roads. Stakeholders also wanted certainty that resource roads would not be used for unpermitted reasons (such as hunting), regardless of whether the individual is permitted to use it for resource development.

Other feedback included:

- Stakeholders expressed concern regarding unmanned gates as access control measures. Further, they noted the risk of unmanned gates delaying emergency responders.
- Respondents felt access control measures should be adaptable to the situation and should allow for technological solutions such as remote cameras.
- It was suggested hunting adjacent to resource roads should be prohibited under the *Wildlife Act* and not rely on restricting access under the resource roads regulation.
- Controlling who has access to a resource road and ensuring that other users are notified is important for road user safety. Radio control of road traffic may be necessary where multiple users are on one resource road.

- Access control measures should not be a requirement for roads that do not connect to the public highway network. For example, roads that can only be accessed by water or air.
- Industry stakeholders raised questions about the responsibility to monitor, oversee and comply with operational plans falling completely to the primary permit holder. They suggested overseeing resource road use be the responsibility of the Government of Yukon not the primary permit holder.
- It was suggested access authorizations be extended to trap line concession holders.

Enforcement capacity

Stakeholder submissions:

Respondents highlighted the importance of adequate enforcement capacity within the Government of Yukon. There were a variety of suggestions to achieve adequate enforcement:

- It was suggested that Conservation Officers could be responsible for resource road enforcement in addition to Natural Resource Officers. It was also suggested that additional Natural Resource Officers and Conservation Officers may be required to meet enforcement needs.
- It was recommended to increase the range of enforcement tools available to correct non-compliance, particularly that which results in negative environmental impacts. The ability to issue Summary Convictions tickets for offences was mentioned as a necessary component for an effective enforcement regime. Further, there was interest in more information on the fines for infractions by non-permit holders and permit holders.

Financial security requirements

Stakeholder submissions:

Stakeholders support the use of security. Specifically:

- Financial security for resource roads should not overlap with financial security for the associated resource development activities to avoid conflict and increase administrative clarity. That said, it was recommended financial security determination processes for resource roads should align with those being developed for new mineral legislation.

- Financial security requirements were recommended to align with class of road and scale appropriately with the size of the resource road.
- Respondents questioned how multiple permittees would share security. A detailed shared-security approach for resource roads used by multiple permittees was recommended.
- Respondents raised that roads with multiple users may need to be built and maintained to a higher standard, which could incur a higher cost for the primary permit holder. Conservation groups recommended clarification on how multi-user permits and security would account for environmental impact, decommission and reclamation planning, and land use plans.
- Respondents inquired how existing roads might be re-designated as resource roads. They further asked how pre-existing disturbances and safety risks would be accounted for in setting financial security for a resource road.
- It was recommended the regulation outline an amendment process for when the primary permit holder no longer uses the road and security requirements are transferred to other road users.
- It was suggested that the economic impact of security costs to companies be considered, along with the impacts of not having security in the event a resource road is abandoned.
- In addition to the projected decommission and reclamation costs for a resource road, it was suggested that ongoing reclamation activities should be considered in determining financial security.
- Financial security should not be used for road maintenance, only for reclamation. Consider other sources of funding for emergency maintenance.

Industry costs and liability

Stakeholder submissions:

Conservation groups recommended that reclamation needs to be well-defined within the regulation and that permit holders must be responsible for decommissioning the roads after use. Industry stakeholders raised questions about their liability for third-party and unauthorized use of permitted resource roads. Comments on the subject included:

- Respondents expressed that treating a resource road as an extension of a workplace and the management of road traffic as an occupational health and safety measure would be unreasonable. Further, requiring liability insurance to cover unauthorized third-party road use would be a financial deterrent for mineral exploration and development in the territory.
- Respondents highlighted the difficulty and cost for permit holders to exercise control over other road users (authorized or not) or regulate traffic on a resource road.
- Submissions questioned how liability for cumulative environmental impacts would be determined and assigned in the event a road's use increases over time as others are granted permits for access.

Additional recommendations from stakeholders

Due to the subject matter involvement of stakeholders, they raised specific topics not otherwise captured in the four themes that arose from the public engagement. This section summarizes these comments:

- The regulations should reflect the goals of the Wetlands Stewardship Policy and adopt the mitigation hierarchy for any impacts to wetlands.
- The regulations should include maintenance of hydrology, biodiversity and carbon storage as design and construction elements in a manner like how safety is considered.
- Regulation must reflect the rights and responsibilities associated with heritage resources and sites as set out in First Nations Final Agreements.
- Mitigation, reclamation or rehabilitation does not work for heritage resources – impacts can only be prevented or avoided and need to be considered beforehand.
- Request for clarity on proposed road classes and standardized operational plans.
- Request for clarity on the process for transferring the primary permit and how access permits are handled when permit holders change.
- Request for clarity on definitions, particularly around reclamation and decommissioning.

- The regulation should defer to applicable land use plans, including plan requirements for reclamation standards.
- It was suggested forest resource roads should be included within the resource road regulation.
- Provide additional clarity around the role of the *Yukon Environmental and Socio-economic Assessment Act*, such as whether resource road access permits will require individual assessment or be considered in assessments under the Act.
- It was suggested to separate the term length of the road permit from the term of the resource use authorization, since some authorization terms are shorter than the project length.
- Respondents supported granting directors responsible for issuing a resource development authorization the authority to issue a pertinent resource road authorization. For example, the director responsible for issuing a mining land use approval would also have the authority to issue a resource road permit to a mine.
- It was suggested to have a tabletop scenario exercise with industry participants to simulate the resource road permitting process before the regulation is finalized and implemented.
- Clarity was requested for how mineral claim rights intersect with resource road land use. For example, whether it is possible to mine under an existing resource road.

Next Steps

The Government of Yukon appreciates the feedback that was shared on the management and regulation of resource roads in the territory. We will be reviewing this feedback with Yukon First Nations, transboundary Indigenous governments, and stakeholders. In this work, we will be considering amendments to the current draft regulation. We have committed to further review of the resource road regulation during the successor lands legislation process now underway. We are committed to the development of regulations which enable management of resource roads in a manner reflective of Yukoners' values.