



Recommendations to Yukon Government for a New Public Lands Act to Replace and Modernize Existing Legislation

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Context

Yukon Government is pursuing a new Public Lands Act that will replace two existing pieces of legislation, the Lands Act and the Territorial Lands (Yukon) Act (TL(Y)A).

The existing legislation has primarily dealt with four major functions of government in its control of public lands (i.e. what are frequently called Crown lands):

1. Disposition (sale, lease) of public lands to private interests
2. Access by the public and by commercial interests on public lands
3. Uses of public lands by public and commercial interests
4. Securement of public lands for specific societal (i.e. non-commercial) purposes

Below we make recommendations for the new legislation related to each of these functions.

For all functions addressed below, the new legislation must explicitly recognize the *primacy* of land use designations and management intent/direction provided by Regional Land Use Planning (LUP; chapter 11 of the Umbrella Final Agreement) and other relevant chapters of the UFA, and ensure compliance with Free Prior and Informed Consent (FPIC) under the UN Declaration of the Rights of Indigenous Peoples (UNDRIP).

1. Disposition of public lands

Regarding the ways and conditions in which the government might sell or lease public lands to private interests, the following should be included in new legislation:

- Explicitly recognize the *primacy* of land use designations and management intent/direction provided by Regional Land Use Planning (LUP; chapter 11 of the UFA) and by Local Area Planning (LAP; currently mandated by the Area Development Act) when considering whether and how private land ownership or leasing of above-ground materials might go ahead (e.g., agricultural lands; residential lands; timber harvest plans; grazing leases).

- This will require reference to other legislation that is the proximate mechanism for such planning, sale and leasing – Area Development Act, Forest Resources Act (and FRMPs).
- The current Lands Act (Grazing regulation) has partial control on grazing leases (also regulated under the TL(Y)A), and this function needs to stay in the new Public Lands Act.
- Legislate the necessity of First Nation (FN) governments and Yukon Environment and Socio-economic Assessment Board (YESAB) reviews for all land sales and leases, including grazing leases, to:
 - Ensure compliance with Free Prior and Informed Consent (FPIC) under the UN Declaration of the Rights of Indigenous Peoples (UNDRIP).
 - Ensure compliance with Regional LUP and LAP direction.
 - Identify potential conflicts with competing land uses.
- Maintain a number of the existing limitations on what can be sold and leased:
 - TL(Y)A section 9. Maintain the limit of 160 acres for sale to private land holder, and the limit of 640 acres for lease.
 - TL(Y)A section 11. Maintain the 100-foot strip of public land back from the Ordinary High Water Mark on any navigable water, and include a definition of navigable water that includes ability to travel in any human-powered vessel.
 - TL(Y)A section 12. Reserve the bed of any body of water as public, not allowing private control (for fish and aquatic habitat conservation).
 - TL(Y)A section 13. Other reservations – maintain the option of government to control fishing.
 - TL(Y)A section 14. Maintain the prohibition of any right or privilege to water adjacent to private lands. Access to and use of water needs to be authorized by the Waters Act.
 - Territorial Lands Regulation 9 & Grazing Regulation (Lands Act) 8(2). Maintain the maximum length of lease at 30 years; do not increase it. AND Maintain the period of a new lease to three years (probation), with possibility of extension for another 27.
 - Grazing regulation 8(1). Maintain the explicit need to “maintain wildlife habitat” as part of the assessment of the capacity of the grazing lease.
- Change a number of existing allowances and limits:
 - TL(Y)A section 9, clause (c) – reduce the total acreage allowed for leasing to one person as hay lands to considerably less than 6,400 acres (which is about 26 km²) - consider 2,000 acres. AND remove any allowance for muskrat farming as a lease (also section 8).
 - TL(Y)A section 13, clause (a). Remove the right of the Commissioner (and any designated holder of sub-surface rights) to enter on private lands for staking or extraction of sub-surface resources.

- Territorial Lands Regulation 10(1)&(3). Maintain a minimum of 10% of appraised value for annual lease fees (other than grazing leases), and increase the minimum at least to \$1,500. 10(2) If this is still in effect, the grazing lease costs need to increase substantially – they should not be less than \$1,000 per annum.
- Territorial Lands Regulation 15. Remove the “right” of any resident citizen to cut hay from public lands. Hay cutting should only be from private or leased lands. Removal of hay from other public lands infringes on quality of range for numerous wildlife species.

2. Access to public lands by the public and commercial interests

When public lands are accessed by public and commercial interests, unless otherwise legislated and regulated the new legislation should:

- Implement a moratorium on all new trail building without a specific permit.
- For permitted new trails, maintain the current maximum trail width of 1.5 m along with no permitted cutting of trees.
- Identify and designate non-motorized zones.
- Maintain the current legislation and regulation regarding Off-Road Vehicle Management Areas (section 4 of TL(Y)A).
- Include provision for the designation of Resource Roads (private, commercially controlled, roadways to be maintained and managed by the commercial interests with no public access, and necessity for decommissioning) PLUS draft a Regulation to give power to the Resource Road option in the new Act.

3. Use of public lands by the public and by commercial interests

Most use of public lands by the public and commercial interests is addressed under #1 (Dispositions), except for what the public can do on the land. Other legislation, regulations, and permitting processes address what the public can do on the land, such as hunting, fishing, and cutting firewood. The new legislation should:

- Maintain the ability of citizens to temporarily camp on public land for recreational purposes (non-commercial), without a permit.

4. Securement of public lands for specific societal (i.e. non-commercial) purposes

The current legislation provides the opportunity for the Commissioner to set aside various parcels of land for specific purposes that enhance the public good. For example, the TL(Y)A (sections 4, 21(e)

21(j)) allows for the setting aside of parcels of land for protection of values including various that are wildlife related. This is the mechanism for the establishment of various Habitat Protection Areas (HPA). Similarly, the Lands Act (section 7) has been used to set aside areas so that they cannot be disposed to private interests or mineral exploration. These have included various blocks of land identified by FNs as Special Management Areas (SMA), plus some HPAs and Territorial Parks. The new Act needs to maintain this function and process.

We strongly recommend this general function of the Act be expanded to better enable protection of wildlife, rare species, and wildlife habitats. This purpose is already embedded in the existing legislation (both TL(Y)A and LA) but has not been applied as widely as it needs to be. Other legislation (notably Parks and Land Certainty Act (Parks and Ecological Reserves), Wildlife Act (Habitat Protection Areas)) at least partly rely on the legislation dealing with public lands as a mechanism for establishing new protected areas. These are relatively large-scale protected areas.

Yukon lacks a regulatory mechanism for protection of localised (small-scale) and high-value ecological and cultural sites. These include the spatially limited occurrences of sedentary species at risk (plants) and smaller but key (i.e. high value and limiting) habitats for numerous species (high fidelity raptor nests; bird nesting colonies; migratory bird migration stopover sites; mineral licks; open water in winter; wetlands of special importance; etc.). This legislation could also provide for protection of culturally valuable sites such as graves and camps. Existing types of protected areas are not flexible enough to deal with these small-scale sites.

This would require a specific section of the Act written to cover this kind of land securement. We recognize that it would not be reasonable to have an OiC written for each occurrence of a high value site (there are thousands of them). Instead, it would be necessary to write a section wherein the Act itself provided protection of high-value sites in a blanket approach by reference to a Regulation that specified an ongoing, updatable database of such sites that any land user would have to access and work with and that would be used in review of projects by YESAB. The mechanics of protection would be spatial buffers (i.e. limits on activities within a specified distance of a high-value site) and timing windows (i.e. limits on activities during specified periods of time). Spatial buffers and timing windows would be specific to the nature of the high-value site (e.g. seasonally used open water) and would need to be part of the publicly accessible database. The existing Wildlife Key Areas database in Environment Yukon could be considered a starting framework for this publicly accessible database. The legislation would need to explicitly set out a process for the regular review and updating of the database, as well as the resources to identify and map these high-value sites.