

August 14th, 2024

To: David Swinson, Manager
Energy, Mines and Resources, Government of Yukon
320-300 Main St. (3rd Floor Elijah Smith Building)
Whitehorse Yukon, Y1A 2B5

RE: New Public Lands Legislation Recommendations

The Canadian Parks and Wilderness Society - Yukon Chapter (CPAWS Yukon) advocates for Yukon's wild spaces, wildlife and their habitats while actively supporting Indigenous-led stewardship. As a conservation organization, we carry a responsibility to ground our actions within a commitment to reconciliation and recognize that the lands and waters we advocate for are also the Traditional Territories of Yukon First Nations, the Inuvialuit, and transboundary First Nations in British Columbia, the Northwest Territories, and Alaska.

CPAWS Yukon is grateful for the opportunity to address each of the key policy issues within the *New Public Lands Discussion Document*. We have previously submitted input in 2022 (letter also attached for reference). The new public lands legislation has the potential to better ensure the protection and conservation of Yukon land, waters and wildlife for future generations. It is our sincere belief that reciprocity and respect must underlie all public activities on public land, and that this requires sincere and thoughtful engagement with Yukon First Nations, braiding in their ways of knowing.

Please find our input below, organized according to the sections of the discussion document:

1. Vision
2. Managing activities on public land
3. Permits and tenure
4. Compliance, monitoring and enforcement
5. Land planning
6. Decision-making
7. Additional comments

We look forward to participating in the next stage of the legislation development. Thank you for leading this important work.

Sincerely, and on behalf of the CPAWS-Yukon team,

Stephanie Woods
Conservation Coordinator
swoods@cpawsyukon.org

Vision

In general, we support the proposed draft principles and acknowledge the collaborative efforts that have gone into this stage of the process between the Yukon government and Yukon First Nations, transboundary Indigenous governments, and the Council of Yukon First Nations. In our shared commitment to reconciliation, we believe that de-colonizing language is an important part of reconciliation and honouring equal collaboration with Yukon First Nations. This includes the use of language that is integrated with Traditional Knowledge and Indigenous planning concepts, as was done at the 2021 Land Relationship Planning Gathering hosted by the Yukon Land Use Planning Council¹.

Bringing forward from our 2022 input letter, this new legislation and the principles it is guided by is an opportunity to shift from the language of 'land management', or 'land use', to 'land relationship.' The former has roots steeped in colonialism, while the latter emphasizes the interconnected relationship humans have with the land that is not separate but a part of a larger entwined whole. Emphasis on 'relationship' vs 'use' or 'management' emphasizes a shared responsibility to treat the land with respect and reciprocity, ensuring its integrity for future generations.

Indigenous governments are best equipped to judge the adequacy of the draft principles, however, we are concerned that the principle to "ensure collaboration with and involvement of Indigenous governments" does not go far enough in furthering reconciliation, respecting Aboriginal and treaty rights, and respecting Indigenous agency. We encourage you to consider replacing the term "involvement," which is vague, with "meaningful participation." This term was used in the Supreme Court of Canada's decision on the Peel Watershed planning process to describe the appropriate standard of involvement for First Nations with Final Agreements in regard to land use planning and land management. While we recognize this term was targeted at First Nations with Final Agreements in the court decision, in the spirit of reconciliation it would be appropriate for the new legislation to apply the same standard to any affected Indigenous government. It's important to recognize their leadership and return power to First Nations as decision-makers in their traditional territory, expanding the vision from just collaboration and involvement to decision-making.

As a conservation organization, we are heartened to see "promote sustainability and the ecological health of the land" included as a principle. We also believe that cultural health and traditions are intertwined with land and should be recognized as a value for the legislation to uphold. We recommend adding this to the principles.

¹ <https://planyukon.ca/index.php/documents-and-downloads/yukon-land-use-planning-council/workshop-proceedings/lrp2021>. See also the 'How We Walk with the Land and Water' Indigenous Land Relationship Plan at <https://www.howwewalk.org/>.

Managing activities on public land

Permissive vs. prescriptive approach:

CPAWS Yukon supports the shift to a prescriptive approach for setting rules for activities on public lands. While acknowledging that the current permissive approach has advantages and freedoms, a prescriptive approach can put ecological and cultural protection at the forefront while better ensuring land is responsibly stewarded for future generations. In cases where it will provide better tools to manage impactful activities, a more prescriptive approach could better protect ecological and cultural values, provide appropriate tools for regulation and enforcement, and provide more opportunities to work in collaboration or co-management with Indigenous governments. At the same time, we can imagine that an overly prescriptive approach could leave gaps by failing to include certain activities and it could be unnecessarily burdensome for low-impact activities. We support finding an appropriate balance in the legislation that allows for a prescriptive approach for impactful activities (camping hot spots for example) with adaptability for activities that are rare and have little impact.

Regulatory tools:

We support the creation of standard legislative tools in collaboration with Indigenous governments such as zoning, reserves, monitoring and reporting as well as setting thresholds for activity limits. Zoning and reserves, aligned with land use plans, would support the protection of environmentally sensitive areas, biodiversity hotspots, species-at-risk habitats, headwaters or drinking waters, important wildlife areas, and cultural sites. To uphold zoning and reserves, the creation of monitoring and reporting tools that track activities on the land is an important part of this process. We understand that monitoring and reporting takes significant government capacity, and suggest tools that allow for prioritization and adaptability over time. For example, monitoring for new footpaths through species-at-risk plant populations and habitats could identify areas of overuse and support the necessary restriction of public access during plant growth and seed stage. The process of monitoring and reporting would help determine thresholds for the types of activities and how much can occur in these areas.

Camping and trail building activities:

Areas in the Yukon that are experiencing recreational pressure past the point of sustainability or showing respect for the land include:

- High-use, unmanaged lake and river campsites strewn with garbage and toilet paper
- Some of the camps that spring up around morel mushroom areas
- Busy hiking trails that overlap traditional harvesting areas or sensitive wildlife habitat, like sheep lambing grounds

Both a cumulative and consecutive day limit on camping would reduce pressure on the environment, for example, applying a consecutive days approach (i.e.: 14 days) up to a maximum of cumulative days per year (ie: 60 days). Creating designated areas will be important to define what counts as a “specific location,” otherwise people may move short distances to reset the count, resulting in a bigger footprint on the land. Sensitive ecosystems

need to be identified and likely would require lower limits to ensure camping does not harm the area. In sensitive areas, such as riparian areas, for example, we suggest further restriction (or banning) of camping. Including Indigenous ceremonies and gatherings must also be considered, as these may require longer stays.

Permits would help to ensure that trails built are longer-term, benefit the wider public, and consider the needs of wildlife and connected habitats. Additionally, trail building should be regulated to include where appropriate::

- Educational signage: especially where there are sensitive, rare, and culturally important areas
- Standards that are regulated for closure and reclamation/ecological restoration of trails
 - Ecological restoration could include for example: soil decompaction, native species augmentation specific to the ecosystem type, removal of invasive species and monitoring until plant establishment.
- Installation and maintenance of backcountry outhouses in sensitive areas
- Invasive species prevention measures: boot brush stations, signage, clean/drain/dry protocol for aquatic recreational areas

We recognize that trail building is an increasing issue in some parts of the Yukon that leads to ecological fragmentation and increased public access. Therefore, we support a more protective approach with the tools available to apply a permit process to trails larger than 1.5m and where needed for those less than 1.5m. We also recognize the constraints on staff capacity required for implementing such a process at a territorial and Indigenous government level. We suggest that the tool of using a permit process be included in the new legislation, but that the specifics are flexible and also incorporated into the land planning process in collaboration with Indigenous governments.

Off-road vehicles (ORV)

CPAWS Yukon recommends that sensitive habitats be off-limits to ORVs and automatically defined as restricted areas, such as wetlands. Additionally, as mentioned in our previous submission, we feel that there is an existing regulatory gap for snow machine use. While not an acute issue in most areas of the Yukon, there are certain areas, such as the wintering grounds of declining caribou herds, where concentrated snow machine use is a concern. The act should include a tool that can be applied to limit snow machine use in certain areas.

Other activities

The new legislation and the next phase of public consultation should identify the full range of activities that can take place on land so that the public can directly comment on each. For example: illegal cabin building, hay cutting, garbage dumping, etc.

Permits and tenure

CPAWS Yukon is supportive of shifting away from land sales and towards leasing or permitting approaches as a pathway to maintain the territory's public land base. Non-exclusive permits better encompass the spirit of public lands as being for all Yukoners. Applications for permits should be required to be consistent with land use plans, and subject to change once land use plans are developed or reclamation needs are assessed. Limiting the duration of permits to up to 2 years, as in the current legislation, would help with this. Reclamation requirements could include extensions of permits (as needed) instead of increasing the duration of land use permits across the board. Sales of public to private land should only be done when there is a comprehensive land use plan and in alignment with the Final Agreements. Failure to do this would restrict possible future protections, influence the creation of land management zones, and remove land from public access, potentially disconnecting wildlife habitats and removing access to Yukon residents and First Nations.

Lease lengths should be maintained at 30 years, with potential renewals as described. Renewals provide space for reassessment of current interests and goals of affected First Nations, and how land planning might affect the area. We also recommend the tool of shorter leases based on the type of land use, for example, if there is a possibility that the activities could have a high environmental impact or to re-evaluate if the activities are sustainable moving forward. Lease costs should be higher for riskier or more destructive development, as the land may need more support after the end of the lease or if additional reclamation is required.

We strongly recommend adding land reclamation to the new legislation as a part of the permits and lease agreements. Land reclamation planning at the time of application for the permit and lease agreement requires that applicants are aware of the impacts of their activities, while also allowing the government an opportunity to provide feedback and require certain standards before approval. This creates a higher standard for preservation, restoration and stewardship of the land over generations.

The legislation should include mechanisms for public review of projects, as well as mechanisms for review and collaborative decision-making with affected First Nations.

Public land identification for development:

CPAWS Yukon strongly advocates for methodical and thoughtful land use planning at a regional and local level to designate areas for housing and urban development. Where development occurs, we support high-density housing that minimizes habitat fragmentation and maintains biodiverse greenspaces to protect wildlife corridors. It is important to identify areas for concentrated development (residential, agricultural and other) instead of sparsely distributed lots to avoid sprawl and ecosystem fragmentation on a larger scale.

We support the new legislation to expand to include other groups beyond the Yukon government to be developers of public land with emphasis on First Nation development

corporations, municipalities and non-profit organizations. We approach with caution the allowance of private companies to develop public land.

Public land administrative processes:

We recognize that new mining legislation is coming, and there will be some overlap in terms of the administrative and permit requirements. However, where land use includes temporary developments, resource extraction, and reclamation, sufficient financial securities need to be mandatory to protect the future of the land and water.

Land reservations

CPAWS-Yukon strongly supports the new regime of land reservations for conservation purposes as outlined in the discussion document: *the reservation of public land by the Government of Yukon for future development or other public purposes such as reserving areas for conservation or recreation*. We see this as a potential new tool that would need to be applied collaboratively with Yukon First Nations. It could also support the creation of Indigenous-led protected areas (IPCAs) and/or co-management areas.

Compliance, monitoring and enforcement

Improving public and First Nation knowledge and involvement in compliance, monitoring, and enforcement:

Enabling the designation of Yukon First Nation officials as officers for conducting inspections, enforcement and monitoring aligns with much of the work that First Nations are doing, and gives force to key areas of this work. For example, our understanding is that it would allow evidence collected by a Yukon First Nation official to be admitted in court. We encourage a supportive approach that engages with First Nations to determine their specific interests. For example, officials may wish to have monitoring abilities but not peace officer responsibilities. If not already possible under the previous acts, we also suggest including the ability for officers to be accompanied by any other person the officer deems necessary to help them perform their functions under legislation.

Enforcement tools and penalties to encourage and improve compliance:

Consequences for unpaid fines should be substantial to deter bad behaviour. We suggest suspending licences and permits if a fine is not paid by a certain amount of time. This would include special consideration to reclamation work that might be required if a permit-holder could then abandon the area. Those who repeatedly fail to comply should face much higher penalties, and at some point be prevented from reapplying for the same permits and licenses, as they have proven to be unable to care for or respect the land.

Land planning

CPAWS Yukon believes that one of the best ways to steward the land and consider rights and values is through land planning, both local and regional. Recognizing that land use planning may be years away for parts of the Yukon, the new legislation can play an important role in maintaining ecological and conservation values, and limiting the permanent alienation of land before land planning arrives. The proposed establishment of effective tools to implement plans at all scales as well as the development of frameworks for all levels of planning, need to be done in consultation with Yukon First Nations, municipal governments, environmental organizations, and others. We urge the Yukon government to continue to have these discussions and develop these tools and frameworks in a collaborative process. At the same time, while these tools may be useful, they will need to be carefully designed so they don't supersede land planning.

We agree with the discussion document that tools are needed to give land use plans more authority under this new legislation while enabling the development of regulations to implement plans. We'd appreciate hearing more detail about this in the next phase of the legislation development around what the zoning, classification systems, thresholds as well as monitoring and reporting tools could look like. We'd also like to hear more about the processes and frameworks you are considering for local area planning in the new legislation and have the opportunity to provide input and feedback.

Tools proposed and if they will effectively help develop and implement land use plans:

As addressed throughout this letter, land planning must be a top priority in developing all parts of the legislation. If ongoing and future processes are not respected, the Yukon government risks losing the diverse values found on public land that would have otherwise been protected or supported in other ways by local First Nations and residents during land-use planning. It is crucial to delay development or limit large-scale projects in areas where land-use planning is ongoing or upcoming. We fully support implementing the proposed tool of *interim planning period protections* both during the planning processes and for regions that have yet to undergo planning. There must also be built-in safeguards to ensure that when plans are implemented, that the years of progress, public input, and First Nation collaboration are respected.

Secondly, we support the proposed tool of *grandfathering* (that allows pre-existing activities to continue even if they are not consistent with the new land use plan) only if agreed to by all parties of the land use plan. If agreed to, it could either be added to the plan or attached as an amendment.

Other thoughts about the approaches for land use planning:

- The legislation should provide planning tools for Yukon First Nations that have not signed final agreements
- We recommend that the legislation include tools for source water protection, such as exclusion of certain activities (e.g. agriculture, snow dumps, mining) that could impact

surface and groundwater. Source water protection legislation is found in other parts of Canada and this legislation could fill in gaps left by the territory not having its own

Decision-making

We acknowledge that the Yukon government is currently at stage three of eight in the development of the new legislation, and thus the discussion document is still at a high level. There is still, however, a vagueness for easy comment from the public. We've touched on this above and encourage the Yukon government to continue to get more specific by providing informative lists of activities that happen on the landscape, those that do and don't require permits and examples of the land use planning tools and frameworks being considered for development.

CPAWS Yukon would like to hear more about the projects the Minister could assign to government officials or departments. Generally, we support projects that include an environmental focus transferred to the Department of Environment as it creates efficiency and calls upon the specific experience of the department. We are also in support of where there are co-management opportunities or commitments with Yukon First Nations, to require equal and joint decision-making. We would like to hear more about the approaches that are mentioned to involve Indigenous governments in future decisions (consultation-based, joint decision-making and consent based). As described above, 'meaningful participation' of Yukon First Nations and opposed to 'involvement' may better support this relationship.

We support that regional land use plan recommendations, socio-economic and environmental considerations as well as public input be set in legislation. We support the ability of a party to appeal a decision, for example, if needed when a project doesn't align with what is outlined in a regional land use or local area plan.

A public registry of what is happening on public land in regards to permits, licenses, enforcement measures and other matters would support more transparency and awareness. It would be helpful if inspection reports, permits, and similar documents each have a unique URL that can be shared, rather than a cumbersome process of clicking through as is the case for the mining inspection reports. Failing to do so creates a barrier to the freedom of information and accessibility for those who care deeply about nearby lands and waters, but do not have a government background or the space to do so on their own time.

Additional input:

Healthy fish population and aquatic ecosystems:

Healthy fish populations are vital to the health of northern ecosystems and an irreplaceable cultural touchstone for many First Nations in Yukon and Alaska. Activities and practices on the land can have significant impacts on the surrounding water systems and species that live within

them. The legislation has the opportunity to support healthy fish populations as well as riparian areas that transition land and water.

From the current TYLA, we recommend the following:

- Expand on the 100-foot strip of public land back from the Ordinary High Water Mark on any navigable water to allow for wider buffer zones
- Reserve the bed of any body of water as public, not allowing private control
- Maintain the option of government to control fishing
- Maintain "no grant, lease, or other disposition of territorial lands conveys any exclusive right, privilege, property, or interest with respect to any lake, river, stream, or other body of water, within, bordering on, or passing through the lands"

Lastly, aquatic invasive species are on the move, and it is important that the Yukon has safeguards in place to prevent the introduction and spread of devastating species such as zebra and quagga mussels. Activities need to be regulated, such as the use of out-of-territory vessels and recreation gear coming into the territory without inspection. Preventive action, such as having mandatory inspections from spring to fall at territory entry locations (such as border crossing inspection stations), is key. This would involve collaboration with other governments such as federal (ie: Border Services) and Indigenous governments. It would be supportive to have tools in the legislation for responding in cases of such environmental emergencies in a proactive way.

New Minerals Legislation:

It is important that the development of this new legislation is done so in parallel and cohesively with other new legislation, such as the New Minerals Legislation.