



Energy, Mines and Resources
Lands Branch

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WATER LOT LEASE

Land Application Policy

OBJECTIVE

To allow for land tenure for structures placed in or on a Yukon lake or river, *e.g.* typically docks or breakwaters, that will be permanently fixed to the land.

PURPOSE

This policy is intended to provide clear direction regarding the review of applications for water lot leases to secure access to land for structures / docks located below the Ordinary High Water Mark (OHWM) and permanently fixed to the land.

The purpose of the policy is to:

- ✓ Ensure community interests are protected with respect to the management and disposition of public land;
- ✓ Meet development standards as defined in the *Subdivision Act and Regulations*, planning schemes (See Definitions), other regulatory authorities, and resource management plans and policies.

Information is also provided on authorizations required for placing a floating dock on a Yukon lake or river (see Definitions).

DEFINITIONS

Note: Where there is a difference between definitions in this policy and definitions within an applicable act or regulation, the definition in the act or regulation prevails.

Water Lot Lease

A water lot lease allows attachment of a permanent structure or dock to crown lands, which includes both the foreshore and bed of a lake or river. The water lot lease provides authority to prevent public (not government) use or trespass of the structure only. Water lot leases do not prevent the public from using any portion of the foreshore (30.48 metre reserve above the Ordinary High Water Mark, OHWM) or any portion of the lake or river.

A water lot lease is tied by terms and conditions in the lease document to the upland property *i.e.* leased or titled lot, and cannot be assigned without written permission of the Yukon. Water lot leases attached to trapping or big game outfitting land tenures are subject to the lessee being the registered holder of the concession.

Fisheries and Oceans Canada, Pacific Region / Yukon Transboundary River Area (DFO)

DFO is responsible for the protection of fish and fish habitat. The department is responsible for reviewing water lot lease applications for potential impact on fish and fish habitat. Where there is potential impact on fisheries values, a fisheries authorization may be required. DFO coordinates with the Department of Environment, Yukon Government, on the review of water lot lease applications related to fisheries.

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Department of Environment, Environmental Programs Branch (YG)

The department reviews applications for potential impacts to wildlife, habitat, water quality and water use, including shoreline erosion control and docks. The Water Resources section monitors and inspects both non-licensed water users and those that have obtained water licenses issued by the Yukon Water Board.

A dock requires a water license if the installation involves the removal or placement of more than 100 m³ of material; the proposed use or deposit has a potential for significant adverse environmental effects (*e.g.* hydrological impacts, deposit of waste, etc); the dock will interfere with existing rights of other water users or waste depositors; or the structure significantly changes the cross-sectional area at the point of placement of the dock.

Planning Scheme

A regional plan; sub-regional plan; district plan; community plan; local area plan; or land use policies and regulations made under the *Area Development Act*, the *Highways Act*, the *Lands Act* or the *Territorial Lands (Yukon) Act*. Also includes Special Management Area plans created to fulfill obligations under First Nation Final Agreements; Habitat Protection Areas under the *Wildlife Act*; and Parks under the *Parks Act*.

Navigable Waters Protection Division, Pacific Region, Transport Canada

The Navigable Waters Protection Division, Pacific Region is responsible for ensuring that any permanent or temporary structure placed in or on a navigable water way (most lakes and rivers) does not impede or obstruct boat traffic or constitutes a hazard to navigation.

Permanent Dock

A dock that is affixed to the bed of the water body or foreshore through pilings; rock filled wood cribs; concrete; or other structure.

Floating Dock

A dock that is not permanently affixed to either the bed of the water body or the foreshore (land). Floating docks are often tethered to trees or rocks, or have an anchor that is removable. Most floating docks are seasonal and are pulled out of the water body after the summer season.

While applications are not required to authorize placing floating structures on Yukon lakes or rivers, people should contact Navigable Waters Protection Division, Pacific Region, Transport Canada and DFO Pacific Region / Yukon prior to placing a floating dock to ensure compliance with their regulatory requirements (See Definitions).

Cumulative Effects

Changes of an environmental, social, or economic nature caused by the combination of past, existing, proposed, and reasonably foreseeable future development.

Grouping of Applications

If more than one application (of any type) exists in an area and have not yet received decisions, or if there are particular sensitivities in an area, applications may be grouped together in order to consider social, economic and environmental information and to ensure that consistent information is considered in each application.

Pre-planning Process

A process coordinated by the Lands Branch, Yukon Government to assess an area for its suitability for development, which may involve input from the departments of Environment, Highways and Public Works, and Community Services, and any other department with responsibilities or interests in the area. A pre-planning process may consider social, economic, and environmental information in areas experiencing heightened interest, such as where multiple applications are received; where multiple sensitivities are identified through a land application review; where planning is occurring or anticipated; or where consultation with other governments, such as First Nations, is advisable. A pre-planning process may result in Lands Branch closing off an area to applications, or deferring or denying applications pending more comprehensive review.

PRINCIPLES

Land use must comply with existing and proposed planning schemes (see Definitions).

Water lots are only authorized in amounts reasonably necessary to satisfy the purpose for which the land is needed.

Land within the 30.48 metre reserve from the Ordinary High Water Mark (OHWM) is not normally sold in order to protect ecological and scenic values and to facilitate public use and access of Yukon's lakes and rivers.

POLICY PARAMETERS

A. Form of Tenure

1. Tenure may be provided under a ten (10) year term and will normally coincide with the term of the upland tenure.
2. Conditions:
 - ✓ Legal survey by a Canada Lands Surveyor may be required. Subdivision approval is required prior to survey. Survey costs and arrangements are the responsibility of the applicant.
 - ✓ A permanent dock or structure must be constructed within one year.
 - ✓ Development must meet existing planning schemes.
 - ✓ Applicants must obtain and show written proof of third party liability insurance for a minimum of \$2-million.

B. Cost of Land

- ✓ Fees will be charged at 10% of market value per annum.
- ✓ All development costs are the responsibility of the applicant.

C. Area of Tenure

- ✓ The area of the lease will not exceed the waterfront width of the associated upland tenure and will normally be limited to the area required to accommodate proposed permanent structures.

- ✓ As a general rule, water lot leases will not extend more than 30.48 metres beyond the Ordinary High Water Mark (OHWM) in order to minimize potential hazards and impact on scenic values.

D. Site Criteria

1. Applications may be considered if they:
 - ✓ Are located in the foreshore of properties leased or titled to the applicant.
 - ✓ Are suitable for their intended purpose.
 - ✓ Comply with existing or proposed planning schemes.
 - a) Local area plans (where they exist) are the primary screen for the review of applications. Docks must comply with any existing municipal zoning or area development regulations.
 - ✓ Are not located in areas identified in Section 4, below.
2. The interests of adjacent land owners will be considered in the review of water lot lease applications.
3. Applications within municipal boundaries may be subject to municipal policies.
4. Applications will not be considered if:
 - ✓ The area is identified as an exclusion zone, such as key habitat areas, through preliminary screening processes;
 - ✓ The applicant does not own the upland parcel or have a Yukon government lease on it.

E. Resource Management Criteria

1. The Department of Fisheries and Oceans, Pacific Region reviews applications for potential impact on anadromous fish and fish habitat. A fisheries authorization may be required (See Definitions, Department of Fisheries and Oceans, Pacific Region).
2. The Department of Environment, Environmental Programs Branch reviews applications for potential hydrological impacts (e.g. erosion), and deposit of waste into water bodies. A water licence may be required. (See definitions, Department of Environment, Environmental Programs Branch)
3. Unique or representative landscape features, environmentally sensitive areas, shorelines and archaeological sites are normally retained for public use rather than alienated for private use.
4. Applications are reviewed to ensure that proposed structures will not impede or obstruct boat traffic or constitute a hazard to navigation (see Definitions, Navigable Waters Protection Division, Pacific Region, Transport Canada).
5. Sites needed to accommodate public access and use of land or water resources are normally retained for public use rather than alienated for private use.

6. Applications under this policy will comply with existing and proposed planning schemes and resource management plans *e.g.* forestry, wildlife where applicable.
7. Applications are reviewed to ensure that the needs of other public and commercial resource users are considered in an equitable manner.

ELIGIBILITY

- ✓ Any individual nineteen (19) years of age or older.
- ✓ Must be holder of a Yukon government lease or title to upland property above the area applied for.

APPLICATION REVIEW PROCEDURES

Applications for lot enlargements will be reviewed as required under the *Yukon Environmental and Socio-economic Assessment Act (YESAA) and Regulations* or under the Yukon government land review process. The Yukon government land application review process is outlined in the document "Guide to the Spot Land Application Process."

AUTHORITIES

Acts / Regulations

Yukon Lands Act / Regulations
Territorial Lands (Yukon) Act / Regulations
Subdivision Act / Regulations
Area Development Act / Regulations
Municipal Act / Regulations
Building Standards Act / Regulations
Public Health and Safety Act
Public Health Regulations
YESAA / Regulations
Wildlife Act / Regulations
Waters Act / Regulations
Navigable Waters Protection Act / Regulations
Fisheries Act / Regulations
Environment Act / Regulations

Policy

Land Value Appeal Policy