

**Interpretative Bulletin 2007-01:**  
**Construction and Maintenance of Structures on Mineral Claims**  
(Section 48(1)(c) of *Placer Mining Act*, S.Y. 2003, c. 13)

**BACKGROUND:**

On December 16, 1998, Part II of the federal *Yukon Quartz Mining Act* and the federal *Yukon Placer Mining Act* (the “Federal Acts”) and associated regulations were enacted. Until that time, there was no applicable legislation dealing with reclamation of land-based disturbances on mineral claims.

The Yukon Territorial Water Board attempted to address some of the issues of reclamation pursuant to terms and conditions set in water licenses under the auspice of *super-added* responsibilities. Mining Inspections endeavored to gain reclamation compliance using the “three E” principal—educate, encourage, enforce - absent legislative enforcement options.

Amendments to Part II of the Federal Acts and regulations/operating conditions were spearheaded by the Yukon Mining Advisory Committee over a span of eight years. This committee was comprised of Canada, Government of Yukon, Council for Yukon Indians and other non-government organizations. The resulting product was a combination of negotiation and compromise among these parties.

**WHAT DOES THIS MEAN IN RESPECT TO “STRUCTURES” CONSTRUCTED AND MAINTAINED ON MINERAL CLAIMS?**

When Part II of the Federal Acts took effect, many terrestrial liabilities on mineral claims remained outstanding. The mining industry at that time was assured that historical ‘works’ would not be inherited by present day explorers as their own liability unless the area was opened up and re-worked. In the latter scenario, full reclamation/restoration of the relevant ‘work’ would be expected.

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In a post devolution context, paragraph 48(1)(c) of the territorial *Placer Mining Act* speaks to the “right of grantee” to constructing and maintaining “structures” on a mineral claims. That paragraph states:

- 48.(1) Every person who receives a grant of a claim, or the permission to record a claim within the period not exceeding six months authorized by this Part,
- (c) has the exclusive right to enter on their claim for the miner-like working of it and the construction and maintenance of structures, including a residence, that are required for the miner-like working of it, and

Prior to the *Placer Mining Land Use Regulations* (the “Regulation”) taking effect and based upon the wording of the Federal Acts, every grantee under the federal regime was allowed to construct a structure to be used as a residence on a mineral claim without having to justify the residence in the context of the level of mining operations undertaken on a mineral claim.

After the coming into force of the Regulation, mining activities were divided into classes related to the level and intensity of the mining operation undertaken by a proponent. Only Class 3 and Class 4 level operations provide an ancillary right to construct a structure with a foundation on a mineral claim. Moreover, under authorizations for all classes of operation, the proponent is required to remove all structures and restore the land upon completion of operations. More specifically, pursuant to Class 1 and Class 2, proponents must complete such removal and restoration within twelve months of the onset of the project.

Proponents who had structures existing on December 16<sup>th</sup>, 1998 on valid claims, which were not concomitant with on-site operations, were not expected by the federal government to remove those structures because construction preceded the coming into force of the more restrictive amendments.

For the purposes of the application of the current territorial mining legislation, structures constructed prior to December 16<sup>th</sup>, 1998 should be considered anomalies for the duration of the associated valid mineral claim. Upon lapse or invalidity of that mineral claim, reclamation of such non-compliant structures must take place in accordance with the current territorial mining legislation.

Mining Lands Section authorizes exploration and mining activities on mineral claims. It is not the intent of the territorial mining legislation to authorize construction of structures not in support of the level of mining operations undertaken on a mineral claim. The ancillary right to construct a structure (with or without a foundation) on a mineral claim, which may or may not be used as a residence, does not grant tenure to this structure nor the land it is constructed upon. Proponents should be cautioned against applying for a

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Class 3 authorization in order to attempt to justify an on-site structure with a foundation that is not commensurate with actual mining operations; such applications will be denied.

There have been questions from proponents regarding upgrades or improvements to structures existing prior to December 1998. These structures should be considered “existing non-conforming structures” and must remain “as is” and “where is”. They can be maintained but not improved upon.

The Oxford Dictionary tenth edition defines “maintain” as v. 1 “cause or enable (a condition or state of affairs) to continue--keep at the same level or rate. 2 keep (a building, machine, etc.) in good condition by checking or repairing it regularly”.

The Oxford Paperback Dictionary defines “improvement” as “an addition or alteration that improves something or adds value to it”.

Applying these definitions to structures on mineral claims clearly will aid in delineating what works are acceptable on “existing non-conforming structures”.

### **CONCRETE EXAMPLES:**

The above interpretation means that a party who has an existing non-compliant structure on their mineral claim may upkeep and make repairs to that structure, such as fixing a roof, replacing doors and windows, repairing fire damage that has affected only part of the structure, or inside decorating. It also means that additional structures and improvements that add value to the existing non-compliant structure, such as enlargements, additions, aluminium siding, etc., will not be allowed beyond what is allowed in relation to the level of operations undertaken.

In a case where structures are removed by circumstances beyond the control of the proponent, such as fire, earthquake, etc., the right to retain the non-compliant structure lapses because the structure no longer exists. There is no right to ‘re-construct’ the non-compliant structure as the right to continue the use of such a structure only continues with the physical existence of such structure. Any replacement of structures will be considered ‘new’ structures and would be properly subject to the applicable legislation.

### **CONCLUSION:**

The territorial *Placer Mining Act* gives sub-surface rights only and the *Placer Mining Land Use Regulation* regulates activities on mineral claims. Neither piece of legislation creates a tenure granting or conveyance regime in surface real property. To resolve any current conflicts with respect to parties attempting to secure tenure for structures on placer claims, other legal avenues must be pursued (i.e. surface leases from the relevant governing authority).

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