

# Guide to Making an Application

to the Yukon Surface Rights Board



# FAQ

## What are surface rights?

Surface rights refer to the rights and/or interests associated with the surface of land which may include land ownership, lease hold interests, or other rights to access or use the surface of land.

## What are subsurface rights?

Subsurface rights refer to rights associated with resources below the surface of land such as minerals, oil, and gas.

## Do land owners have subsurface rights to their land?

Not usually. Most private landowners have “fee simple” title to their land which typically does not include the subsurface rights.

## Does First Nation settlement land include subsurface rights?

First Nations have both surface and subsurface rights on Category A Settlement Lands. On Category B Settlement Lands, they have only the surface rights; the subsurface rights on Category B lands are reserved to the Crown.

## Is an “attempt to negotiate”, in the Board’s application process, the same as “First Nation consultation” as defined in the Yukon Land Claim Agreements or Supreme Court of Canada decisions?

“Attempt to negotiate”, in the Yukon Surface Rights Board context, refers to the applicants attempts to resolve their disputes through negotiation before they apply to the Board for an order. Negotiation attempts must be documented and meet the minimum requirements outlined in the *Board’s Rules of Procedure*. Parties, to a dispute involving a First Nation, should ensure that adequate consultation and accommodation occurred during the regulatory and licensing processes. Attempting to negotiate, as part of the YSRB process, may offer an opportunity to address some issues relevant to the larger consultation process.

## Yukon Surface Rights Board

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# Guide to Making an Application

to the

Yukon Surface Rights Board

The purpose of this guide is to assist you in making an Application to the Yukon Surface Rights Board. Please refer to the *Yukon Surface Rights Board Act* and the Yukon Surface Rights Board *Rules of Procedure* for specific and additional information.

The Board's Application and hearing process are described in more detail in the *Yukon Surface Rights Board Act* (the Act) and the *Rules of Procedure* (the Rules) for the Board. Applicants and respondents are responsible for becoming familiar with these and other Board documents and forms.

Applications to the Board, as well as orders and decisions of the Board, become part of the Board's public record. However, a party may request information to be treated as confidential by the Board, as set out in [section 38](#) of the Rules.



## ! IMPORTANT

### Before submitting

Negotiations to resolve the dispute must be attempted prior to submitting the Application (see [subsection 26\(1\)](#) of the Act and [section 8](#) of the Rules).

### Question / assistance

If you have any questions or require assistance in completing your Application, contact the Board office; we will be happy to assist you (contact information located on last page).

### Complete application

It is the applicant's responsibility to include all relevant information and supporting documentation for an Application. The Yukon Surface Rights Board will not accept an incomplete Application.



For instruction on how to **submit** your form, refer to page 11 of this manual.

The Application form and the companion Application Guide are available at

[yukonsurfacerights.ca](http://yukonsurfacerights.ca)

# Part A

## Applicant

Ensure you fill out **all** applicable information in Part A.

### APPLICANT

Fill in the name of the person or organization that is making the Application. If the applicant is a government, First Nation, company or other organization, fill in its name; otherwise, fill in the name of the individual.

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#### Contact Person

If the applicant is not an individual, fill in the name and position of the person who is the contact person for the government, First Nation, company, or other organization making the Application.

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#### Physical address

Only fill if different from the mailing address.

### AUTHORIZED REPRESENTATIVE

If applicable, state the name of the lawyer or other person authorized to act on the applicant's behalf.

If no representative has been appointed, go to Part B of the Application form.

**Note:** An applicant may appoint a representative anytime, but the applicant must advise the Board and provide the Board with the authorized representative's name and contact information.



# Part B

## Respondent Party(s)

Ensure you fill out **all** applicable information in Part B.

### RESPONDENT

A respondent is any other [party to a dispute](#) as described in [section 29](#) of the *Act*, and may include other persons whose rights and/or interests may be affected by the Application.

### RESPONDENT PARTY

Fill in the name of the person or organization. If the respondent is a government, First Nation, company or other organization, fill in its name; otherwise, fill in the name of the individual respondent.

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#### Contact Person or Authorized Representative:

If the respondent is not an individual, fill in the name and position of the person who is the contact person for the government, First Nation, company or other organization. If applicable, state the name of the lawyer, agent, or other person authorized to act on the respondent's behalf.

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#### Physical address

Only fill if different from the mailing address

### ADDITIONAL RESPONDANTS

Be sure to identify and include all parties to the dispute. If there are more than two respondents, attach additional pages and number consecutively.

Indicate any additional page number on the form.

# Part C

## Particulars Of The Dispute

Ensure you fill out **all** applicable information in both sections of Part C.

### Part C – Section 1

#### JURISDICTION OF THE BOARD

Applicants should be aware that before considering accepting an Application, the Board must be satisfied it has the authority to hear the Application. An Application to the Board can be made only in the circumstances set out in legislation or, in some cases, in Yukon First Nation Final Agreements. It is important the applicant identify the authority under which they are applying to the Board.

The primary authority for the Board is set out in the *Yukon Surface Rights Board Act*. The Act was drafted to reflect the principles established in Chapter 8 of *Umbrella Final Agreement (UFA)*. The UFA is an agreement between the Government of Canada, the Council of Yukon First Nations, and the Government of the Yukon. It established the framework for comprehensive land claim agreements in the Yukon with Yukon First Nations. Additional responsibilities of the Board are set out in other laws and agreements including the *Quartz Mining Act* (Yukon), the *Placer Mining Act* (Yukon), the *Expropriation Act* (Canada), the *Radiocommunications Act* (Canada), and the individual Yukon First Nation Final Agreements.

#### Primary legislations

Starting on the next page (7) is a list of the primary legislation granting the Board jurisdiction to hear an Application. Each item in the list is accompanied by a brief explanation.

Applicants are strongly advised to consult the legislation or final agreement provisions relevant to their Application.

#### Indicate primary legislations that grant the Board jurisdiction to hear an Application.

Check off the box(es) and/or list the information in the spaces provided that correspond to the legislation or Yukon First Nation Final Agreement provision(s) under which you are making your Application.

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## Yukon Surface Rights Board Act (Canada)

### Part II – Settlement Lands

This part of the Act focuses on disputes involving Yukon First Nations Settlement Lands.

- s.42** Application by a person with a right of access, where that access is subject to the consent of the Yukon First Nation, to establish terms and conditions for the exercise of the right of access
- s.47** Application by a Yukon First Nation to establish additional terms and conditions for a right of access not subject to consent of the Yukon First Nation
- s.50** Application by a person or a Yukon First Nation to resolve a dispute concerning the interpretation, application or violation of:
  - a right of access not subject to consent of a Yukon First Nation, as described in [2\(1\)\(b\) or \(c\) of Schedule II](#) of the Act; or
  - a term or condition, with respect to a right or access, established by:
    - a Yukon First Nation with the agreement of the Minister; or
    - an order of the Board under [section 47](#) of the Act
- s.51** Application by Government or a Yukon First Nation respecting a permanent camp or structure established, or proposed to be established, by the First Nation within a waterfront right-of-way
- s.52** Application by a Yukon First Nation or a person holding a mineral right to set terms and conditions for exercising the Yukon First Nation's specified substances right and/ or the mineral right
- s.53** Application by Government or a Yukon First Nation relating to a quarry
- s.55** Application to fix compensation relating to the expropriation of a Yukon First Nation's settlement land
- s.60** Application by a Yukon First Nation to fix compensation relating to a Government reservation on settlement land
- s.63** Application by a Yukon First Nation or the Minister requesting that land to be designated as settlement land

### Part III – Mineral Rights Disputes on Non-Settlement Land

- s.65** Application by a person, other than Government, involving a right of access in relation to a mineral right on non-settlement land, for an order interpreting a provision of a law of the Legislature of Yukon identified in regulation pursuant to paragraph 78(f) of the *Yukon Surface Rights Board Act*

The following schedule of provisions of law are identified in the annexed [Regulations](#) pursuant to paragraph 78(f) of the *Yukon Surface Rights Board Act*.

- [Quartz Mining Act](#) section 12
- [Placer Mining Act](#) section 17, paragraph 48(c) and subsection 55(1)
- [Oil and Gas Act](#) subsection 69(1)
- [Coal Regulation](#) section 4 and subsection 17(1)

### General

- s.75** Application by a party to review an order of the Board due to a material change in facts or circumstances

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### Yukon First Nation Final Agreement

Enter name of the First Nation and list the applicable section(s) of the final agreement.

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### Radiocommunication Act (Canada)

- s.7 Application respecting compensation to be paid for the taking of possession of a radio station on settlement land

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### Expropriation Act (Canada)

- s.35.1 Application respecting the compensation payable for an expropriated interest in settlement land

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### Placer Mining Act (Yukon)

- s.18 Applications relating to a mining recorder's decision respecting security for loss or damage
- s.19 Applications respecting compensation to an owner or occupant of lands for loss or damage caused by a person mining those lands or locating, prospecting, or entering on those lands for mining purposes
- s.72 Applications respecting monetary compensation payable to the owner of land for damage they may sustain by the construction of a drain or tunnel

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### Quartz Mining Act (Yukon)

- s.16 Applications relating to a mining recorder's decision respecting security for loss or damage
- s.17 Applications respecting compensation to an owner or occupant of lands for loss or damage caused by a person mining those lands or locating, prospecting, or entering on those lands for mining purposes
- s.108 Application by the holder or lessee of a mineral claim respecting a dispute with the owner or occupant of the surface rights of the land, where the dispute relates to accessing or using the surface in order to work the minerals. This application may only be made with written permission of the Minister
  - Attach the written permission from the Minister.

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### Other Legislations

At the end of Part C, list any other legislation relevant to your Application.

If you need to to more additional Acts, attach additional pages and number consecutively.

Indicate any additional page number on the form.





## Part C – Section 2

### DESCRIPTION OF THE DISPUTE

This part of the Application allows you, the applicant, to explain the particulars of the dispute. **Do not include** a description of efforts to negotiate a resolution; you will describe these negotiations in Part D of the Application form.

When completing this section, you may wish to ask yourself the following questions:

**1. What [surface rights](#) are associated with the land in the dispute?**

You may wish to:

- Describe the type of [surface rights](#) associated with the land.
- State who holds the rights to the surface of the land. (Who has title to the surface of the land or has rights associated with the surface?).
- Describe the location of the parcel of land and, if possible, its legal description. If available, attach map(s) or other drawings depicting the land location and the surface right(s) associated with it.

**2. Does this dispute involve a [subsurface rights](#) holder?**

If yes, you may wish to:

- Describe the subsurface rights associated with the land.
- State who holds the subsurface rights of the land. (Who has title or rights to the subsurface of the land?).
- Describe the location of the parcel of land and, if possible, its legal description. If available, attach map(s) or other drawings depicting the land location and the subsurface right(s) associated with it.

**3. Does the dispute involve Yukon First Nation [Settlement Land](#)?**

If the dispute involves [Settlement Land](#), name the [First Nation\(s\)](#) whose Settlement Land is involved and state whether the Settlement Lands are [Category “A”](#), [Category “B”](#), or [Fee Simple Settlement Land](#). Also, if known, you may wish to state whether the Settlement Land has been designated as [Developed Settlement Land](#) or [Undeveloped Settlement Land](#). (If the Settlement Land has not been designated as developed, then, by default, it is designated as Undeveloped Settlement Land.)

**4. Does the dispute involve a right of access? If so, does the access involve Settlement Land and is the access subject to consent?**

If applicable, this question may help you determine the legislative jurisdiction relating to the dispute. First, determine whether or not there is a right of access issue. If so, determine whether or not the right of access involves Settlement Land. If the right of access involves Settlement Land, it may or may not be subject to consent. Refer to the [Act](#) and/or First Nation Settlement Agreement to determine whether the right of access is:

- A.** subject to consent of the Yukon First Nation concerned or an order of the Board as per [Schedule II section 1](#) of the *Yukon Surface Rights Board Act*  
or
- B.** not subject to consent of the Yukon First Nation concerned as per [Schedule II section 2](#) of the *Yukon Surface Rights Board Act*.

If applicable, please state where the Settlement Lands is located, which First Nation owns the land, whether or not the access is subject to consent, and whether the consent was requested and obtained or denied. If applicable, also state and describe whether there is an alternate route of access on Commissioner’s or Crown Land.

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### Additional Information and documents

Attach supporting documents, maps, certificates, etc. Please title additional pages and number them consecutively.

List your attached documents on the form.

## Part D Record of Negotiation Efforts

Ensure you fill out all applicable information in sections D.

No person may apply to the Board for an order unless the person has attempted to resolve **the matter in dispute** by negotiation (see [subsection 26\(1\)](#) of the Act). These attempts to negotiate must be documented in the Application (see [section 8](#) of the Rules).

The Chairperson of the Board will determine if the [record of negotiation](#) meets the requirements of the Act and the Rules.

### ATTEMPTS

State the date, time, location or mode (i.e., in-person, telephone, fax, email, etc.), duration, name of participants involved in each negotiation attempt and describe the issues attempted to be negotiated.

### ADDITIONAL ATTEMPTS

If additional attempts were made, attach additional pages and number consecutively.

Indicate any additional page number on the form.

## Part E Order Requested

Ensure you fill out all applicable information in sections E.

This part of the Application allows you, the applicant, to state what remedies you are seeking. Applicants are reminded that the Board can include in its orders only those remedies that it has the legal authority to include.

### ORDER FOR RELIEF

Be specific. For example, depending on the nature of the dispute, the Board may have jurisdiction to order terms and conditions relating to:

- the type of equipment that will be allowed on the surface of the land
- the route of access that must be taken when entering onto the surface of the land
- the times of access. For example, access might not be allowed during spring melt due to the potential damage that may result
- security to be given respecting a right of access
- the payment of compensation for the exercise of a right of access

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### Additional Space

If you need additional space, attach additional pages and number consecutively.

Indicate any additional page number on the form.

## Part F Signature

Ensure you fill out all applicable information in sections F.

Applicants should note that if an authorized representative has been appointed, all further contact in relation to the Application will be made with the identified representative.

### DECLARATION

Number all pages of the Application consecutively, including any attachments. In the space provided, print the total number of pages of your Application.

### Signature

By signing the Application, you are certifying that all information contained within the Application is correct to the best of your knowledge. You are also certifying that you are aware that the Application and Board orders and decisions in respect of the Application will become part of the Board's public record.

The *Access to Information Act* (Canada) and the *Privacy Act* (Canada) apply to the Yukon Surface Rights Board. These laws and the *Yukon Surface Rights Board Act* determine what information may become public and what may be protected as private. In addition, the Board, pursuant to [section 38](#) of the Rules, has established procedures for parties to identify and request information to be treated as confidential.



## Part G Certificate of Delivery of Notice

Ensure you fill out all applicable information in sections G.

Prior to the Board's acceptance of an Application and pursuant to [subsection 9\(1\)](#) of the Board's Rules, the applicant shall provide written notice to all parties to the dispute that the Application is being filed with the Board. The notice may be given by personal service, registered mail, or facsimile.

This section of the Application form allows you to certify that you complied with [subsection 9\(1\)](#) of the Rules. Failure to provide the required written notice may result in the rejection or delay of an Application.

### DECLARATION

Check the appropriate box(es) and state the time, mode, and date the notice was sent.

Attach a copy of the notice, if different from the completed Application. Label and number accordingly.

Indicate any additional page number on the form.

## SUBMITTING YOUR FORM



### In person

Yukon Surface Rights Board  
206–100 Main Street  
Whitehorse, Yukon



### By email

info@yukonsurfacerights.ca



### By registered mail

Yukon Surface Rights Board  
Box 31201  
Whitehorse, Yukon  
Y1A 5P7



### By facsimile

(866) 637-5091 (toll free)

It is the applicant's responsibility to include all relevant information and supporting documentation for an Application. The Yukon Surface Rights Board will not accept an incomplete Application.

## Yukon Surface Rights Board

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Whitehorse, YT  
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