

# TR'ONDĚK HWĚCH'IN VIEWS

*on the regulatory environment*

Presentation to the Dawson Regional Land Use Planning Commission

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# Context

- Yukon Government doesn't want Land Use Designations like TEA or PA that require the withdrawal of mineral rights or restrictions on kinds of activities
- Yukon Government argues that instead of limiting access, we should deal with conflicts through YESAB and the regulatory system
- **TH is not confident that YESAB and Yukon regulations can protect our rights and interests**
  - YESAB's role is limited, and northern regulatory changes may weaken it in the future
  - Some Yukon laws and regulations need major reform
  - TH questions Yukon's ability to fully enforce the laws it already has

# TH legislation overview

## ➤ ***Land and Resources Act (2004)***

- *Tenure and Land Use Regulations* enacted July 2013 to address Yukon Government refusal to address issues with miner access to Category B Settlement Land

## ➤ ***Fish and Wildlife Act (2009)***

- Working on regulations to manage Settlement Land harvesting by citizens, members of other First Nations and the public

## ➤ ***Oil and Gas Act (2013)***

- Placeholder legislation that triggers consultation when YG makes a disposition on traditional territory

# TH BMP for Heritage Resources (2011)

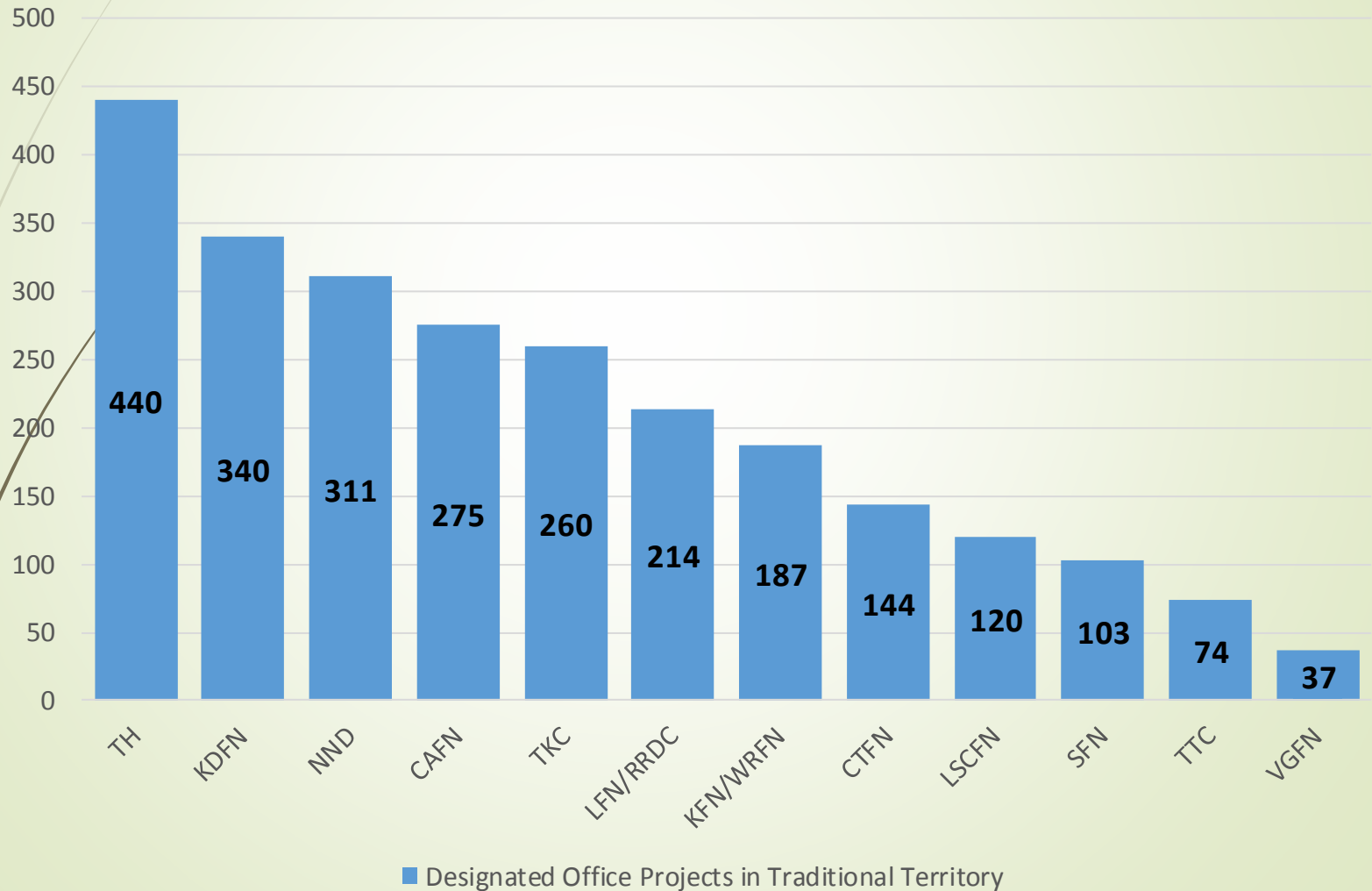
- Informs industry about TH and broad definition of First Nation heritage
- Includes standard mitigation tools to protect heritage resources on and off Settlement Land
- Part of a much broader approach to heritage management
  - First Nation heritage legislation
  - Heritage Stewardship Guide

# TH Mining Mandate (2011)

- Applies to activities off Settlement Land
- Sets out TH expectations for responsible mining
- Requires long-term benefits to TH citizens and community
- Requires Impact Benefit Agreements for 'significant' mining projects
  - Communication requirements
  - Education and training
  - Mitigation of socioeconomic effects
  - Environmental protection and monitoring
  - Financial benefits

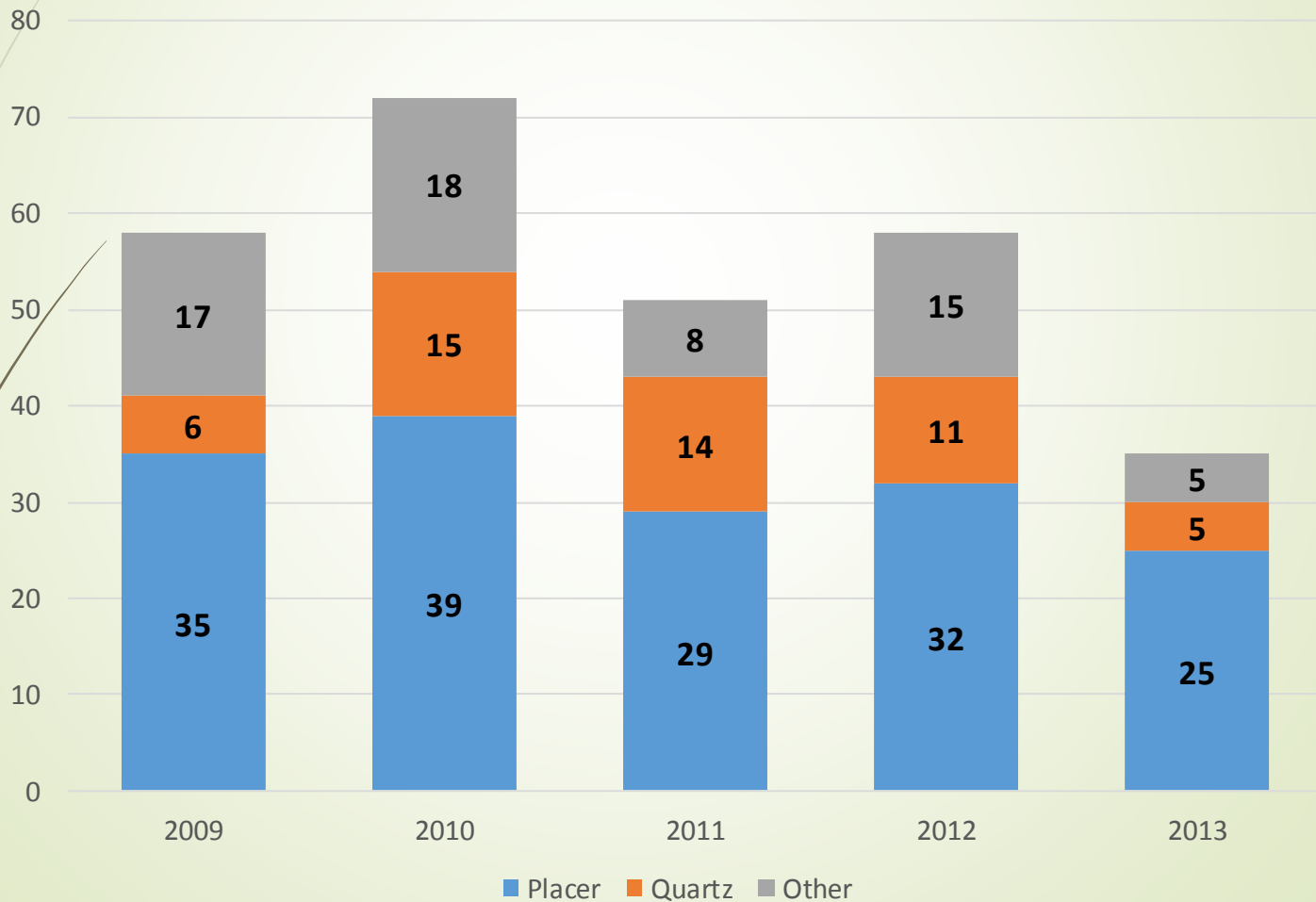
# YESAB project statistics

Designated Office Projects, November 2004-March 2014



# YESAB project statistics

## Dawson Designated Office Projects



# YESAB participation issues

## ➤ General concerns

- TH capacity and adequacy of funding
- YESAB's lack of attention to socioeconomic and cumulative effects; project focus
- Impacts of current regulatory system
- Changes to YESAA and regulations

## ➤ Mitigation tools

- Proponents consistently opposed recommendations for heritage work (HROAs)
- Regulators do not always incorporate accepted recommendations into permits
- No research into whether mitigations work

# Regulatory issues: Mining

- Mining acts outdated; regime inconsistent with Final Agreements
- Free entry stacked in favour of mining over other uses
  - Once a claim is granted, our ability to influence YESAB outcomes almost non-existent; “cascading rights”
  - Betsy Jackson (TKC): “Miners have more rights on our [Settlement] land than we do”
  - Creates incentive to demand more protection under LUP
- YFNs want modern legislation but YG and industry opposed
  - Mining amendments after *Ross River Dena Council* case very narrow
  - Industry lobbying weakened already-weak reforms

# Regulatory issues: Mining

- No notice of Class 1 activities on traditional territory
- Soft enforcement of regulations; miners have acted irresponsibly with no real consequences
- Inadequacy of security (\$100/claim for Settlement Land placer claims)
- Mining land use thresholds higher than thresholds under *Territorial Lands (Yukon) Act*
- Water Board decisions on treaty rights on 'quantity, quality and rate of flow'
  - Little attention to cumulative effects of water withdrawals
  - No standards for judging when rights affected

# Regulatory issues: Oil and gas

- ▶ TH is uncertain about the ability of Yukon's oil and gas regulator to handle significant development
- ▶ YG is building regulatory infrastructure for large-scale oil and gas without adequately engaging the public on what this will mean for Yukon
  - ▶ Hydraulic fracturing
  - ▶ Gas plant regulations
  - ▶ Converting diesel plants to use natural gas instead
- ▶ YG's new partnership with BC regulator is not reassuring
  - ▶ First Nations in northern BC are dealing with devastating consequences from oil and gas
  - ▶ Pollution and effects on caribou and other wildlife

# Regulatory issues: Renewables

- ▶ Tourism and trapping are low impact and not a concern
- ▶ Agriculture is not a significant use yet
  - ▶ TH is unhappy with unplanned nature of existing developments; spot land application process is not a substitute for planning
  - ▶ TH concerns relate to permanence of dispositions, removal of wildlife habitat and effect on uses that rely on intact habitat
- ▶ Renewable energy speculative
  - ▶ Final Agreement includes a North Fork flooding right, which YG has maintained

# Regulatory issues: Forestry

- ▶ Forestry raises most serious issues, but harvesting is still relatively low-volume compared to southern Yukon
- ▶ Regulatory system takes account of Final Agreements
- ▶ TH is working with YG to implement Dawson Forest Resources Management Plan (2013)
  - ▶ Implementation includes research into what level of harvest will be sustainable for Dawson region
  - ▶ Cooperation with YG will help to balance environmental concerns and access to timber