

Interpretative Bulletin 2007-02:
Quartz Mining Claims/Leases, Production Licenses and Surface Leases
(Various Sections of the *Quartz Mining Act*, *Territorial Lands (Yukon) Act* and *Lands Act*)

BACKGROUND:

In an effort to offer clarification on the relationship between the various authorizations and land tenures, provided by government, within the mineral development and production sector, the Minerals Branch and Lands Branch of the Department of Energy, Mines and Resources have developed the following as a guide to the rights issued pursuant to the *Quartz Mining Act*, the *Territorial Lands (Yukon) Act* and the *Lands Act*.

QUARTZ MINING ACT

In the Yukon, the authority to stake and record mining claims, relating to quartz minerals (excluding placer and coal), in addition to the application for the exploration, development and extraction of minerals is contained within the *Quartz Mining Act*. The QMA, through the recording of mining claims and issuance of leases and licenses, provides the legislative authority to permit or authorize **all** components of mining development and production.

A mining claim provides exclusive rights to the holder of the claim for the mines and minerals located within the area of that claim. The QMA also confirms that a claim holder has the following rights in relation to the minerals contained within the claim:

- *the right to enter on and use and occupy the surface for the efficient and miner-like operation of mines and minerals; and*
- *the right to commercially produce a mineral and benefit from the sale of the mineral.*

A Quartz mining lease provides to the holder of the lease the ability to hold claims for a longer period of time (21 years with renewal clause) than a claim, which must be renewed on an annual basis.

All work undertaken on the surface of claims and leases is regulated through the *Quartz Mining Land Use Regulation* which has been made under the QMA.

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A Quartz Mining License (QML) issued under the QMA provides to the holder of the license the authority to undertake the activities listed in the license in relation to the development and production of minerals. Without this license, a person is not legally authorized to engage in development and production of a mine or minerals.

The QMA **does not** provide any mining claim holder or holder of mining lease (Quartz mining lease) or a license (QML) with exclusive right to use the surface of the land and it does not convey any tenure in the surface of the land.

Note: Sections 79 (1), (2), (4) and Section 119 of the QMA do provide for the opportunity to lease the surface of a mineral claim or portions of a mineral claim subject to the authority of the Minister. Specific mechanics of these provisions are being reviewed.

TERRITORIAL LANDS (YUKON) ACT (TLYA) AND LANDS ACT (LA)

The authority to dispose of land and to use land in the Yukon is provided through the *Territorial Lands (Yukon) Act (TLYA*” and the *Lands Act (LA)*.

Where land is disposed of and fee simple title granted, the purchaser of the land obtains exclusive rights to the surface and the right to control access to the surface. Where land is leased pursuant to the statutes, the lease may also convey an exclusive right to use the surface of the land and to control access to that land.

The TLYA and LA specifically state that “*all mines and minerals, whether solid, liquid or gaseous, found to exist in, under or on lands disposed of pursuant to these statutes, together with the right to work the mines and minerals, are reserved from every grant of land.*”

The TLYA and LA require rental fees to be paid on all leases. The rental is based on a number of factors relating to current market values for the class of land (i.e. industrial for mining) along with location, accessibility, size of property, etc).

Generally, surface leases are not used to regulate mining development. Such regulation comes through the terms and conditions of either a mining land use approval (exploration) or a license (development and production) issued under the QMA.

However, in some instances, the holder of a production license may request a surface lease to ensure exclusive use of the surface of the land for the mine operation and to control access to all or part of the operation.

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QUESTIONS AND ANSWERS:

Do I need a surface lease to occupy the surface if I am holding valid claims, a quartz lease or a license issued under the QMA and wish to engage in mining activity?

No, there is no legal requirement to obtain a surface lease (issued pursuant to the QMA, the TLYA or the LA) to undertake activities on the surface of the land relating to mineral exploration, development or production. However, a person holding a mineral claim, a lease or a license is not authorized to use the surface for any purpose other than mining activity.

A person undertaking mining activity on the surface of the land must do so in accordance with the QMA. This also includes ensuring compliance with the following regulations which are set out in accordance to the level of activity being undertaken:

- (a) the operating conditions for Class 1 exploration programs that are set out in the *Quartz Mining Land Use Regulation*;
- (b) the terms and conditions of a mining land use approval issued for a Class 2, 3, or 4 exploration programs issued pursuant to the *Regulation*; or
- (c) the terms and conditions of a license issued pursuant to the QMA for development and production of minerals.

However, a company may decide to apply for or obtain surface tenure through a lease. Consideration of a variety of factors including the following may be appropriate:

- need for control of surface use of the area (exclusive possession);
- need for another legal mechanism (aside from provisions in the QMA) to register financial agreements (mortgages, liens, or other encumbrances);
- financial issues or tenure issues surrounding other infrastructure to be located on site.

I am the holder of quartz claims, a quartz mining lease or a license for development and production. Can I control the surface use by others?

The holder of a quartz claim, mining lease or license does not have exclusive possession of the surface or exclusive right to use the surface of the land. The holder of such claims and leases does have the right to access the lands for the purpose of exploring for minerals and to use the surface for mining activities (exploration, development, and production).

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The surface of the land may be disposed of to a third party by the Lands Branch under the authority of the TLYA or LA. However, there will be consideration of the rights held by any affected claim holder before a decision is made by the Lands Branch to dispose of the surface of the lands for a different purpose. Where a license has been issued, it is likely that the use of the land for mining purposes would preclude other surface activities and thus it would be very unlikely that a surface interest would be granted to a third party in this situation.

Areas of negotiation when considering a surface disposition with a claim or lease holder would include security, timing of work and the type of access required. The type of agreement will depend upon the nature of mineral work occurring and the type of surface disposition being considered. However, there are no barriers or preventions in place to have the surface rights and the mineral rights to be held by different parties. Disputes regarding surface use and mineral rights can be brought forward to the Surface Rights Board for resolution.

Can a financial agreement be registered in respect of a mining claim or lease?

Yes, there are provisions in the QMA (Section 97) that enables the registration of financial agreements against mineral claims and leases. The Mining Recorder maintains a public registry that records all mineral claims and leases and any interests registered against those claims and leases.

Can a financial agreement be registered against a surface lease?

Yes, there are provisions in the TLYA and LA that enable the registration of mortgages, liens and other types of encumbrances or agreements on a land disposition. The Branch maintains a public registry of all registered interests.

Are mineral claims/ quartz leases subject to property assessment and tax?

The *Assessment and Taxation Act* provides the Yukon Government with the ability to tax mining claims where improvements (structures, machinery and equipment, etc.) have been made to the surface of the claim. Vacant mining claims are exempt from property assessment and taxation.

Are developments authorized under the QMA subject to property assessment and tax?

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Yes, the current policy states that as soon as a mine is brought into production, the provisions of the *Assessments and Taxation Act* will require an assessment and appropriate taxation of the property which the mine, mill, machinery and equipment is located. The land valuation is not tied directly to the mining claims or production license. The land area valued would consider lease and or legal description, the areas containing structures, machinery/equipment and surface use as it relates to operation of the mine. Where a company holds both a production license and a surface lease, Property Assessments will ensure coordination of assessment for tax purposes and tax collection.

Are surface leases subject to property assessment and tax?

Yes, as soon as a surface lease is executed (signed by both parties) the appropriate tax office is advised of the interest and the leasehold interest is added to the property assessment roll and taxed at the appropriate rate. The tax assessment will reflect all land and buildings identified in the assessment.

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