



Interpretative Bulletin 2009–03
Administration of Mineral Claims in the Traditional Territory of First Nations
with Final Agreements
(Umbrella Final Agreement)¹

Background

The Umbrella Final Agreement (UFA) is the general framework used by Yukon First Nations to negotiate with Government for a specific First Nation Final Agreement. The UFA was signed by Government of Canada, Government of Yukon, and the Council of Yukon Indians on behalf of member First Nations in 1993. Each specific Final Agreement that has been signed by a Yukon First Nation, Government of Canada, and Government of Yukon clarifies between the parties such issues as aboriginal rights, aboriginal title and interests in Settlement Land. The UFA and Final Agreements also deal with other aspects of First Nation rights.

Eleven of fourteen Yukon First Nations have signed Final Agreements. Each individual Final Agreement sets out the treaty rights specific to each First Nation.

Each Final Agreement sets out provisions with respect to use of lands and other resources in Yukon, including access to Settlement Land, and surface and sub-surface ownership. A Final Agreement creates three categories of "Settlement Land": Category A Settlement Land; Category B Settlement Land; and Fee-Simple Settlement Land. Ownership of each type of Settlement Land resides with the respective First Nation.

Definitions of Land Designations and Mineral Rights in the Final Agreements

The following is a paraphrase of some of the key definitions in the Final Agreements that relate to mineral rights. Note that reference should always be made to each specific Final Agreement for the exact wording of a definition if intending upon relying upon such definitions for legal purposes.

¹ <http://www.ainc-inac.gc.ca/al/ldc/ccl/fagr/ykn/ufaip/ufaip-eng.pdf>

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Category A Settlement Land: the First Nation has ownership of surface and sub-surface. The First Nation also retains aboriginal title to this category of Settlement Land.

Category B Settlement Land: the First Nation has ownership of surface, but does not have ownership of Mines and Minerals nor the Right to Work Mines and Minerals. Aboriginal title is retained by the First Nation in this category. The Government of Yukon retains administration and control of the sub-surface (i.e. mineral) lands.

Commissioners Land: formerly referred to as Crown land. Surface and sub-surface are wholly owned by Government. Commissioners Land in Yukon is open for mineral exploration and staking unless staking has been prohibited, or the land withdrawn, by an order-in-council for such purposes as parks and interim protected lands.

Existing Mineral Right: a mineral right that exists at the date the land in question became Settlement Land under a Final Agreement. This also includes any renewal or replacement of that specific existing mineral right.

Fee Simple Settlement Land: land owned by the First Nation in fee simple title. Aboriginal title is not retained by the First Nation.

New Mineral Right: any mineral right that is staked and recorded after a Final Agreement is in effect.

Traditional Territory: is the geographical area identified in each Final Agreement.

Provisions in the Final Agreements Regarding the Right to Access and Right to Work

Chapters 6 and 18 of each Final Agreement contain general provisions regarding access to and across settlement land.

The “Right to Work”, a defined term in the Final Agreements, is the right to enter on, use and occupy the land for the purpose of the working and extraction of minerals.

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Rights of Access to Settlement Land, when exercising sub-surface interests without consent of the First Nation, are subject to the following conditions as set out in the Final Agreements:

- 1) significant damage to the land or to improvements made on the land;
- 2) mischief committed on the land;
- 3) significant interference with the peaceful enjoyment of the land by First Nation;
- 4) fee or charge payable to the First Nation; or
- 5) compensation for damage other than for significant damage.

There are further exceptions to access depending on whether the Settlement Land in question is categorized under the Final Agreement as “Developed” or “Undeveloped”. For example, “Developed” Settlement Land is shown in the land chapter of each Final Agreement with a "D" in the Parcel identifier (i.e. S-103B/D means that the Parcel is Category B, Developed Settlement Land).

Existing Mineral Rights

A holder of an Existing Mineral Right has a right of access on all type of Settlement Land for the purpose of exercising that right, without the consent of the affected First Nation, provided that: the access is of a casual or insignificant nature; the route traveled is generally recognized and used; or the route is not altered significantly. The holder also has a right to use the Parcel of Settlement land without the First Nation’s consent, where this is provided by laws of general application for the purpose of exercising the Mineral Right.

New Mineral Rights

A holder of a New Mineral Right on Category B Settlement Land or Fee Simple Land has a right of access on that Settlement Land without consent of the affected First Nation and can use that parcel of Settlement Land provided that no heavy equipment, or methods more disruptive or damaging to the land than hand labour methods, are used.

If proposed activities exceed the above parameters, the holder of the New Mineral Right is still able to access the land for the purpose of exercising their right, but they must first obtain the consent of the First Nation or an order of the Yukon Surface Rights Board.

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Regulation of Existing Mineral Rights

On Category A Settlement Land

On Category A Settlement Land, the First Nations has ownership of Mines and Minerals, and the right to regulate with the exception of existing mineral rights that continue to be subject to Government administration.

If an Existing Mineral Right lapses (i.e. is not renewed) it cannot be re-staked under Yukon legislation (i.e. the *Placer Mining Act* (PMA) or the *Quartz Mining Act* (QMA) on Category A Settlement Land. Mineral exploration and development is regulated by the First Nation. This means that the First Nation is the government that issues title to minerals in these lands and will subsequently collect royalties relating to any mineral extraction from these lands.

On Category B and Fee Simple Settlement Land

If the Existing Mineral Right is located on Category B and Fee Simple Settlement Land, then mining activity is regulated as if the Settlement Land involved is Crown Land.

Regulation of New Mineral Rights

On Category A Settlement Land

Under the Final Agreements, each respective First Nation owns all minerals on its Category A Settlement Land. In this regard, no New Mineral Rights can be obtained through Yukon legislation i.e. the QMA or PMA on these lands. Rather First Nations are the responsible government that can issue title to minerals on these lands, and will subsequently collect royalties relating to any related mineral extraction.

Category B and Fee Simple Settlement Land

New Mineral Rights on Category B or Fee Simple Settlement Land are regulated pursuant to Yukon legislation (QMA and PMA). Government will administer both the acquisition of title to those minerals, and the regulation of related mining activities from exploration through production.

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