

SURFACE AND SUBSURFACE RIGHTS MANAGEMENT

The purpose of this fact sheet is to provide information relating to surface and subsurface rights and interests and explain how these interests can be managed by government.

Note: This information sheet is not legal advice and should not be relied upon for legal purposes. It is intended to summarize certain aspects of territorial legislation related to surface and subsurface rights and, as such, does not attempt to present all aspect of the Acts and Regulations. The document may be amended from time to time. For complete information the reader must refer to the Acts and Regulations named in this fact sheet.

Who oversees surface and subsurface rights?

Subsurface

In Yukon, mining claims are issued under the authority of the *Quartz Mining Act (QMA)* and the *Placer Mining Act (PMA)*. These acts provide the authority to stake and record mineral claims and to issue authorizations, leases and licenses for exploration, development and extraction of minerals. The Mineral Resources Branch (MRB) issues all rights, permits and licenses relating to any interest in minerals.

Surface

Surface interests authorized by the Yukon government are issued through the authority of the *Territorial Lands Yukon Act (TLYA)* and the *Lands Act (LA)* and the *Land Titles Act*. These acts provide the authority to sell, lease, or provide easements, titles lots, etc for Yukon lands. All dispositions of lands through these acts specifically exclude all rights to mines and minerals from sale or lease or title. The Land Management Branch (LMB) provides access to land based on different land use classifications (i.e. trapping, residential, commercial, and industrial).

What are surface rights?

Surface rights refer to the rights and/or interests associated with the surface of the land which may include:

- fee simple title (private land);
- rights of those with an interest in the surface of the land via a lease, license or title;
- rights of holders of easements, rights of ways or other forms of tenure allowing use of surface land for a particular purpose for a set time period;
- rights specifically to holders of mineral claims through surface leases through the QMA.

Other acts and regulations (*Wildlife Act, Wilderness Tourism Licensing Act*) provide land users with access to land (i.e. trappers and other commercial and non-commercial users of land); however, these concessions or licenses do not grant any exclusivity or tenure to property to concession holders. To gain a land interest, the concession holder must apply to the Land Management Branch. A public review will determine if an interest will be granted.

A land use permit may authorize the use of the surface, but does not grant any right to the surface or any interest in land.

What are subsurface rights?

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

What about sand and gravel and other near surface materials?

Sand, gravel, topsoil and other like materials are considered part of the surface of the land and are regulated in Yukon through the *TLYA* and *LA Quarry Regulations*. Private land holders own these materials within their property limits. Within each municipality the extraction of these resources are regulated through zoning.

How do surface and subsurface rights interact?

Surface and subsurface rights in Yukon can and do coexist without issues. The existence of either a mining claim or a surface interest does not preclude the issuance of the other right.

Both the Land Management Branch (LMB) and the Minerals Resources Branch, through the registration and recording of interests, ensure that a thorough review of existing or overlapping rights is completed and that any holder of rights are contacted when there may be a conflict.

How are conflicting tenures mitigated?

Recording of a mining claim- Mining Recorders will confirm surface and subsurface tenure upon receipt of an application for a mineral claim. Where there appears to be an overlap, they will advise the claim locator of their obligation to contact the surface holder to determine if there is a need or requirement for security to mitigate potential effects before any work takes place. If there is no surface tenure and the ground is open for staking, the Mining Recorder will issue the grant.

If there is surface tenure, how is Security Determined?

The amount of security is determined by the Mining Recorder, who may consult with both the property owner or occupant and the person(s) working the claim in order to determine the adequate amount of security to be deposited. The amount of security must be reasonable and should reflect the proposed scope of the planned mining activity.

Persons undertaking mining activity on lands owned or lawfully occupied by another person are legally required to fully compensate the owner or occupant of the land for any loss or damage caused by the mining activity. If there is a dispute about this, the amount of compensation may be determined by the [Yukon Surface Rights Board](#).

Security is determined based upon the type of mining activities planned and the related anticipated loss or damage that may occur. Where a claimholder indicates to the Mining Recorder that they intend to undertake mining activity on all or part of a claim, the amount of security to be provided will be determined accordingly. If no mining activity is planned, a security agreement is signed by the person who owns the claim and the Mining Recorder. This agreement requires the person to provide notice to the Mining Recorder if at any time in the future he or she plans on undertaking mining activity on the owned or occupied property.

The security is not returned until the mining activity and any required site reclamation is completed. Adequate documentation to verify compliance must be submitted to the Mining Recorder.

Issuance of a surface land interest

The Land Management Branch is responsible for surface land interests and before issuing authorizations, will confirm both surface and subsurface ownership to determine any overlaps. If a mineral claim or claims are in place, the Land Management Branch will advise the mineral claim owner directly of the surface interest application and request comments. Before a decision is made on the disposition, consideration of the rights held by an affected claim holder along with any existing development plans will be examined.

Often, the parties will establish an agreement on surface and subsurface rights. Areas of negotiation between parties can include security, notification of and timing of work and type of access. The type of agreement will depend upon the nature of work and type of surface use proposed. Where there is an existing operation (through an active mining land use authorization or production license) it is unlikely that the Land Management Branch would authorize a third party sale or lease for a different and potentially conflicting land use.

When there are disputes, the [Yukon Surface Rights Board](#), whose primary role is to resolve access disputes between those owning or having an interest in land (surface rights holders) and those with access rights to the land, may be engaged to resolve the issue.

Are there restrictions to where mining claims can be granted?

In Yukon, the *QMA* and *PMA* allows people to stake mineral claims areas such as public land, private land and First Nations Category B and Fee Simple settlement lands.

However, the mining acts do contain prohibitions to areas available for staking.

Staking cannot occur:

- On First Nation Category “A” Settlement land
- Within the Curtilage (yard) of a dwelling house *
- Any land valuable for water-power purposes
- Territorial and National Parks
- Within cemeteries, burial grounds or other church property
- On lands withdrawn for the settlement of land claims
- On agricultural land currently under active cultivation
- On any land removed from staking by Order in Council
- within incorporated municipalities for new claims under the *Placer Mining Act* ** only

*The yard surrounding a residence or dwelling house which is reserved for or used by the occupants for their enjoyment or work.

** There are existing placer claims within some municipalities. These claims pre-date the creation or expansion of the municipal boundary. As long as the claims are in good standing, they can remain in effect. If the claims lapse, they cannot be re-staked or granted.

Does owning a mineral claim give you the right to work on the claim?

Staking and recording of a claim, while ensuring that the mineral title is secure, does not automatically authorize or grant the holder to undertake activities that are considered to have an environmental effect or require mitigation. Minor activities such as those classified as Class 1 under the Mining Land Use

Regulations do not require any authorization. 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.

On claims that are granted, any work (above Class 1 thresholds) that requires a permit will also require an assessment under the Yukon Environmental and Socio-economic Assessment Act (*YESAA*). The *YESAA* process provides an opportunity for interested parties to provide input into a proposed project.

Do most land owners have subsurface rights to their land?

No, in Yukon, both the *TLYA* and the *LA* specifically exclude the rights to minerals from any disposition or grant of land. Most private landowners hold fee simple title to their land which does not include the subsurface rights. Surface rights holders can only hold the subsurface rights to their land if they hold a mineral claim for that ground or if they have an old 'crown grant' that issued these rights at the turn of the century.

Do mining claim holders have surface rights to their lands?

No, in Yukon, claims and leases granted through the *QMA* or *PMA* do not include the exclusive right to the surface of the land and does not convey any tenure in the surface rights of the land. There are sections in the *TLA*, the *LA* and the *QMA* (Section 79) that provide the ability for claim holders to apply for surface tenure. These types of surface applications would be subject to all the requirements of regular surface applications. Claim holders do 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).

Does First Nation settlement land include subsurface rights?

First Nations have both surface and subsurface rights on Category A Settlement Lands. On Category B and Fee Simple Settlement Lands, they have the surface rights; the subsurface rights on these lands belong to Yukon and are administered by Yukon. Mineral Resources Branch has developed an interpretive bulletin to further explain the relationship between claims and settlement lands. This is available on the Energy Mines & Resources web site: [Claims and Settlement Lands Bulletin](#)

Management of Mining Claims within Municipal Boundaries

Can people stake mining claims in municipal boundaries?

Under the *Quartz Mining Act*, an individual who meets the requirements of the act and does not stake in an area prohibited by the act, can stake a quartz claim within any municipal boundary in Yukon.

Under the *Placer Mining Act*, no individual can stake a placer claim on lands within a municipal boundary. There are existing claims that were staked prior to either the creation of the municipality or that existed before an expansion of municipal boundaries. This prohibition in claim staking under the *Placer Mining Act* does not apply to unincorporated communities (i.e. Carcross or Ross River).

Do the rights issued under the mining acts have precedence over the planning and zoning of a municipal government?

No, the *Quartz Mining Act*, *Placer Mining Act* and the *Municipal Act* are all Yukon law. Any obligations and rights issued through any of these pieces of legislation must respect the jurisdiction of other Yukon legislation.

How is mineral activity within municipal and community boundaries regulated?

The Yukon government is responsible for regulating mineral title; rights and mining land use activities whether the claim is located within or outside of a municipality or a community boundary.

Within all Yukon municipalities, all land use activities are subject to municipal zoning regulations, development regulations and land use planning through Official Community Plans. Municipal officials are responsible for managing activities under purview of their jurisdiction.

In unincorporated communities, government relies upon Local Advisory Council's, community associations and the Department of Community Services to provide appropriate input into land use activities. Local Area Plans and zoning regulations also provide guidance on both current and future land use in these communities.

While unincorporated and incorporated (municipal) communities may not regulate mineral exploration or mining activity, they do play a role in:

- the review of projects; providing appropriate land use recommendations based on the current planning and zoning;
- identifying where and when other permits may be required resulting from the project; and,

- issuance of required permits when required (development permits, building permits, etc.)

Even though a mining land use permit may not be required due to the low level of work being undertaken, there may be a requirement for those activities to be permitted by either the municipal or local zoning authority.

What about a mine development?

Any advanced mine development application would be subject to an assessment through YESAA and require both a quartz production license (*QMA*) or a placer mining permit and a water use license (*Waters Act*). This type of development would also be subject to applicable planning and zoning.