Province of British Columbia

Ministry of Energy, Mines and Petroleum Resources
MINERAL TITLES BRANCH

MEMORANDUM

PLEASE SHARE THIS MEMO WITH ALL RECORDING STAFF IN YOUR OFFICE

MEMO NO: 250

TO: ALL GOVERNMENT AGENTS
INFORMATION

DATE: August 1, 1995
FILE NO: 195-20

RE: A Guide to Surface and Subsurface Rights and Responsibilities in British Columbia

ISSUE:

I am please to provide you with the enclosed Information Letter No: 15 entitled "A Guide to Surface and Subsurface Rights and Responsibilities in British Columbia".

DESCRIPTION:

This document was initiated and prepared by Peter Lee, Gold Commissioner and Government Agent in Nelson, in recognition of the need for this information. I appreciate Peter's work in researching this material and producing this comprehensive information letter.

The information in this document is intended to serve as a guide to the granting of surface and subsurface rights as they relate to mineral titles under the Mineral Tenure Act. In the event of any discrepancy between the information contained in this letter and the present Mineral Tenure Act or future amendments to the same, the Act shall prevail.

CONTACTS:

A supply of Information Letter No. 15 will be sent to you once printed. If you have any questions, please contact:

Byron Hosking
Mineral Titles Branch
Vancouver
Telephone: 660-2672

Denis Lieutard
Director
Mineral Titles Branch

Enclosure

cc/Distribution List - INFORMATION
cc/Mineral Title Inspectors - INFORMATION
cc/Regional Managers - INFORMATION
cc/Fred Hermann - INFORMATION
cc/Mining Associations - INFORMATION

Mineral Titles

Province of
British Columbia
Ministry of Energy, Mines
and Petroleum Resources
MINERAL TITLES BRANCH

INFORMATION LETTER NO. 15

A GUIDE TO SURFACE AND SUBSURFACE RIGHTS AND RESPONSIBILITIES IN BRITISH COLUMBIA

INTRODUCTION

The purpose of this guide is to provide comprehensive information regarding the rights and responsibilities of tenure holders of surface and subsurface interests as they relate to the use of the surface for location, exploration, development and production of mineral and placer mineral resources.

The information herein can be used to provide a means for both parties to understand their legal rights and to begin the process of resolving any issues collectively to facilitate a working agreement which is mutually beneficial to both parties. Should a mutual agreement not be possible due to the circumstances, then this information should provide direction for the parties to determine the steps to be taken next.

It is however, important to note that this is not a legal document but rather an interpretation of subject legislation. Therefore, in the event of any conflict between this guide and the text of the law, the provisions of the statute will always apply. Please refer to the applicable Act(s) for specific provisions or requirements. Where the Act or the guide differ, the Act prevails.

Although landowners hold clear title to property, it should be understood that their Certificate of Title rarely includes what lies beneath the surface. The Government of British Columbia owns and may dispose of subsurface rights to most lands in the province. This fact may come as quite a surprise to landowners. The critical question asked most often is; **"How does the Crown protect and respect my interest as the owner of the surface?"**

Concurrently, the holder of subsurface rights expects the Crown to facilitate access to find minerals and develop them. It is a delicate balance involving three parties; the landowner, the mineral title holder, and the Crown, who must all work together to reach an agreement. The Crown does however, provide for the rights and interests of both surface and subsurface owners to prevent potential competing interests from compromising one another.

There are several different means by which a person can acquire mineral rights in B.C. and there are a number of different types of mineral and placer titles. Reference material is available at any Mineral Titles Branch or Government Agent office on the various methods of acquisition, and types of subsurface titles.

While modern day methods of acquiring mineral rights require the Free Miner to physically locate an area by staking, subsurface rights may also be held through a **Crown Granted Mineral Title** which provides for the acquisition of certain rights which are stated on the title and registered at the Land Titles Office. It is important to note that **Crown Granted Mineral Titles** are not within the jurisdiction of the **Mineral Tenure Act** and therefore, the provisions of the Act dealing with surface - subsurface matters do not apply. Civil and Common law principles would however, prevail.

If the recorded holder of mineral title wishes to work or remove minerals beneath land owned by a private citizen, that person must compensate the landowner for use of the surface. This guide will provide direction to both parties as to how to proceed.

Should the parties be unable to come to a mutual agreement, and after all else fails, a mediation and arbitration process is available to provide an independent decision to avoid the commencement of a civil action.

Finally, some commonly asked questions and the answers are contained at the back of the guide for the reader' s convenience. References for offices in your area who you may need to contact are also included.

THE RIGHTS AND RESPONSIBILITIES OF A PROPERTY TENURE HOLDER

Surface rights and subsurface rights are separate and distinct in British Columbia. The rights associated with private property are essentially those which were conveyed in the original Crown Grant when title was passed from the Crown to the original owner or grantee. Whether land is privately owned or is held through some other form of tenure, the right to the occupation of the surface was originally granted by the Crown, hence the term "Crown Granted". Unless otherwise excluded in the property title, the landowner is entitled to soil and the sand and gravel on the property.

In normal circumstances when granting title, the Crown reserves the right to the subsurface which may include the rights to coal, petroleum, natural gas and all minerals, both base and precious. The rights to these substances may be granted by the Crown separately under different legislation.

Property owners generally have an inalienable right to the surface of their land which provides the exclusive right to use the land as they wish, subject to any law governing land use (ie. Municipal Act for zoning) and those rights reserved or withheld by the Crown. Private property can be fenced or signs can be placed around the perimeter to inform other parties of the status of the property and of the owner's wishes with respect to access.

The land owner's rights are primarily contained in the **Land Act.** A person who disregards the rights of a landowner and enters private land without authority, may be in trespass, subject to the **Trespass Act.** A person who is exercising a right under the **Mineral Tenure Act** may however, be entitled to enter private lands in order to acquire subsurface rights.

It is important to note that, in most cases, a land owner is obliged to represent their rights to others independently, or through a solicitor or an appointed agent. This representation can take many forms and probably the most common is through the posting of signs to provide notice of the status of the land, and when communicating with another party.

In civil matters, policing authorities or government agencies have little or no jurisdiction to enforce the law, in the absence of a legal order.

A landowner in British Columbia has a secure or indefeasible title which means that it cannot be defeated, revoked or made void, subject to any existing conditions which are contained in the original Crown Grant.

THE RIGHTS AND RESPONSIBILITIES OF A MINERAL TENURE HOLDER

The administration of mineral titles in British Columbia is covered under the **Mineral Tenure Act** and is administered by the Mineral Titles Branch of the Ministry of Energy, Mines and Petroleum Resources. This statute governs the acquisition and maintenance of mineral titles in B.C.

The rights and responsibilities of persons involved in exploration, development and production of minerals are contained in the **Mineral Tenure Act**. Those exercising rights must have a lawful and legitimate mining intent.

To exercise a right under the **Mineral Tenure Act** and **Regulations** a person must first obtain a **Free Miner Certificate.** Only Free Miners can locate mineral or placer claims and acquire subsurface mineral rights.

The interest of a recorded holder of a mineral or placer claim issued pursuant to the **Mineral Tenure Act** is a chattel interest and therefore, cannot be registered as an interest in real property.

All mineral and placer claims are valid for one year after recording. The "anniversary date" is the annual occurrence of the date that the staking of the claim was completed. To maintain a claim the holder must, on or before the anniversary date of the claim either:
(a) perform, or have performed exploration and development work on that claim and record such work; or
(b) pay cash in lieu of work.

A Free Miner must record work done on a claim on or before the anniversary date of the claim. Only work done in the year immediately preceeding the anniversary date may be recorded. The Free Miner records this work by filing a Statement of Work/Cash Payment form with a Gold Commissioner or any Government Agent office. This document is kept on file at the Gold Commissioner's office for the mining division in which the mineral title is located.

Only work prescribed in the **Mineral Tenure Act** and **Regulations** is acceptable for recording. The necessary approvals and permits must be obtained and notice provided to the landowner before any mechanical disturbance of the surface of the ground is performed by, or on behalf of, the recorded holder.

Full details concerning the legal requirements for locating and maintaining mineral titles in British Columbia are available at any Mineral Titles Branch or Government Agent office.

PRIORITY OF RIGHTS

Should the use of the surface change to a category excluded from mining activity, subsequent to a mineral claim being acquired in the area, it is likely that the area would be excluded from mineral exploration if no active exploration is occurring or no significant activity is planned. For instance, if a home were constructed in an area previously open for mineral exploration under which an existing mineral claim is located, the claim area would then become subject to the "curtilage of a dwelling house" and would thus be exempt from right of entry or exploration and development. This situation could however, become the basis for a disagreement between the parties involved.

The Mediation and Arbitration Board has the authority to reduce the right of the mineral title holder when a surface title is granted subsequent to the mineral title. When a surface title is so granted a quit claim or release is requested from the recorded holder, and if not granted, the surface rights are only disposed of when the grantee has given an indemnity to the Crown.

The **Mineral Tenure Act** allows a recorded holder of a mineral title to use the surface of a claim or lease for the exploration and development or production of minerals and the business of mining. (see Section 11)

Although a mineral claim provides the right to the subsurface only, the **Mineral Tenure Act** addresses priority of rights. Section 14(1 & 2) states that where a land title or application for land title exists prior to the location of the claim, the land title holder has priority to the use of the surface. Section 14(3) establishes the priority of the right to the use of the surface by the holder of a mineral title, where the mineral title is located prior to a land disposition.

RIGHT OF ENTRY AND SURFACE USE OF LANDS BY THE FREE MINER

Section 9 of the **Mineral Tenure Act** describes land upon which a Free Miner may enter to acquire subsurface mineral rights. While most mineral exploration occurs on vacant Crown land, this definition also refers to certain private lands. Section 9(2)(b) deals with the right of entry to occupied lands. A Free Miner's right of entry does not extend to the following areas:

- land occupied by a building;
- the curtilage of a dwelling house;
- orchard land;
- land under cultivation;
- land lawfully occupied for mining purposes, except for the purposes of exploring for and locating of minerals or placer minerals as permitted by the **Mineral Tenure Act**;
- land in a park, except as permitted by the **Mineral Tenure Act**; or
- land in a recreation area, as defined in Section 19 of the **Mineral Tenure Act**, except as permitted by that section.

By rendering past judgements in cases requiring an interpretation of Section 9, the Courts have provided clarification in those situations where the surface is being used. Court precedent forms the operating Ministry policy with respect to the interpretation of Section 9 of the **Mineral Tenure Act.**

Therefore, "land occupied by a building" can be interpreted as the land directly beneath the land occupied by a structure permanently affixed to the ground.

The "curtilage of a dwelling house" is the area around a residence. This area has been considered by the courts and is interpreted as a 75 metre distance around a residence.

"Orchard land" and "land under cultivation" have also been reviewed in previous court cases and have been described as lands which are actually producing a crop and are therefore in a present state of being cultivated.

The **Mineral Tenure Act** deals with the right of entry on private land. Section 16(1) requires the recorded holder to first give notice to the owner of every surface area on which he intends to work, or to utilize a right of entry for that purpose in instances where exploration, development or production by mechanical means involves surface disturbance. This means that a Free Miner who intends to locate a mineral or placer claim on private land **may not be legally required** to serve notice on a property owner since the act of locating claims seldom involves the use of mechanical means. It is important to note that the recorded holder is not legally required to seek the owners consent, but rather to provide due notice of intent to occupy the surface **only** if a proposed work program is going to utilize mechanical equipment, which can be described as anything other than hand tools.

While a Free Miner or recorded holder of a mineral title is not legally obligated to consult and inform a surface owner of their plans, it is expected that they do so as a matter of good business conduct. The need to communicate with another interested party is normally identified by the Free Miner at the research stage of the mineral program. If for instance, a preliminary review of the area of interest reveals that a land tenure exists, the Free Miner should communicate with the property owner in order to ensure that the proposed mining program is viable and would not otherwise be frustrated through a potential dispute caused by failure to communicate.

The **Mining Right of Way Act** provides for the right of a Free Miner to use roads for the purpose of gaining access to a mineral title for the purpose of undertaking mineral exploration. This statute governs the acquisition of an interest in land required for the purpose of gaining access on or under ground to a mineral title.

Recorded holders of mineral and placer claims often need rights of way to construct and maintain mining facilities and to transport minerals or equipment and supplies into and from their mining property.

The **Mining Right of Way Act** also addresses the issues of ownership of facilities placed in a right of way, the industrial and non-industrial use of access roads, and the consent needed to connect a road built under the Act to a forest service road.

THE NOTICE OF WORK AND RECLAMATION APPROVAL PROCESS

Section 50 of the **Mineral Tenure Act** requires that all mineral exploration work proposed to be undertaken by mechanical means, shall be approved by the District Inspector of Mines, prior to commencement.

The District Inspector will review the proposed work and will set appropriate security to ensure proper reclamation of the land. A reclamation plan must take into account the present state of the land. As part of the approval process, the District Inspector will seek comment from any party, including the private land owner, who may be potentially affected by the proposed work program. After receiving this advise the exploration plan may be amended to ensure that concerns are responsibly addressed.

When the work program is approved a permit is issued, pursuant to Section 10 of the **Mines Act.** The Notice of Work and Reclamation document fully describes the work and reclamation plans and is available from the regional office of the Ministry of Energy, Mines and Petroleum Resources.

COMPENSATION FOR SURFACE DISTURBANCE

Surface owners are entitled to be compensated for surface disturbance caused by mining activity. Section 16(2) of the **Mineral Tenure Act** establishes the liability of a Free Miner or recorded holder or anyone acting by the authority of a recorded holder of a mineral title to provide compensation to the owner of a surface area. Such compensation is required for loss or damage caused by the entry, occupation or use of that area or right of way, by or on behalf of the Free Miner or recorded holder for location, exploration and development, or production of minerals or placer minerals.

The amount of compensation is normally determined by mutual agreement between the parties involved by making a reasonable assessment of the surface which has been disturbed after a reclamation program has been completed by the mining proponent.

Section 6(2) of the **Mining Right of Way Act** also provides for owners of roads and rights of way to be compensated by a person who is using the road to access a mineral title. The deemed owner of an access road may require a reasonable payment from that person in respect of the actual maintenance costs of the access road, and may also require a reasonable payment to reimburse the owner for actual capital costs incurred by the deemed owner to accommodate any special needs of the person who has taken the right.

REACHING A SETTLEMENT

Whether a person is a landowner or the recorded holder of a mineral title, the first step in the process of dealing with another interested party is to determine the facts. For example, a landowner may have found a claim post located on their land or, a prospector may want to acquire mineral rights in a particular area but is uncertain about the status of the surface. In either case, one needs to obtain information about the respective rights of the other party.

The following steps are therefore suggested:

1. **Determine the surface and/or subsurface status of the area.**
If a person is a landowner, they may have found physical evidence in the form of a post with a claim tag. Information on the claim tag including tag number, locator, recorded holder, and the claim name, can be used to search the title. This can be accomplished by visiting the Gold Commissioner or the local Government Agent office. Government Agents provide mineral titles services in the regions. A review of the mineral titles reference map should first be conducted to determine if a mineral title underlies the property.

If a search reveals that a mineral title partially or wholly underlies the property, a title search should be requested to verify if the title is in goodstanding and if so, the name and address of the recorded holder.

2. **Research the title.**
A landowner will want to determine if there are exploration and development programs which have been previously undertaken or are being proposed. To obtain information relating to previous mining activity contact the local Gold Commissioner office. The regional office of the Ministry of Energy, Mines and Petroleum Resources will have information regarding both current and proposed mining programs.

A prospector will want to check the status of the land prior to the location of a claim or commencement of an exploration and development program. Research will most likely require the review of a topographic or land map to determine district lot surveys and other relevant surface features. Information about ownership and surface rights to private land is available from the Land Titles office while the regional office of BC Lands is the source for information about the status of Crown lands.

3. **Communicate with the title holder.**
It is important for both parties to communicate with the other promptly in a business-like manner for the purpose of identifying mutual rights, responsibilities and expectations. Written correspondence, sent by registered mail, is recommended to maintain a record of communication. Provide a reasonable period of time for a reply, if requesting one; normally two weeks is appropriate and specify the date upon which a response is expected rather than an arbitrary period.

4. **Clarify expectations.**
It is quite normal and appropriate for a person to provide notice to another party of each other's rights, responsibilities and expectations, and the requirements of the law in so far as access and operations of property are concerned.

A recorded holder of a mineral or placer title should fully document all activities in respect to access and surface disturbance in order to be in an informed position when dealing with a landowner. Should a landowner seek compensation for surface disturbance, they will want to clearly describe what is considered to be disturbed and the amount of compensation requested.

Some of the factors which may be considered when determining the amount of compensation are:

- the damage to the land and in particular those instances which make reclamation and restoration difficult,
- the value of the land and the owner's loss of a right or a profit thereon,
- is the land used for agricultural production? then the adverse effects upon the farming operation, and
- nuisance, inconvenience, and disturbance (ie. noise, time devoted to negotiation, and other expenses to the landowner).

5. Reach a mutual agreement

If a mutual agreement can be reached, the next step is to develop a formal contract. It is recommended that an agreement be in writing in the form of a legal and binding contract that defines the purpose and the conditions placed on both the operator and the landowner. Any agreement should be written in plain language and clearly state expectations and obligations of both parties, amounts to be paid, and the dates for stated performance. When the content has been decided, both parties will want to endorse and date the agreement before a witness.

DISPUTE RESOLUTION/MEDIATION AND ARBITRATION

The **Mineral Tenure Act** and the **Mining Right of Way Act** both provide for either of the applicants to a dispute to apply to the local Gold Commissioner or Assistant to the Gold Commissioner to intervene and attempt to settle the issue. The role of the Gold Commissioner is one of consultation and of attempting to have both parties settle the matter in a business-like fashion by applying reasonable judgement and impartiality.

In order for the Gold Commissioner to become involved, there must be clear evidence that a dispute exists. In most cases, this means that the Gold Commissioner will require evidence that the parties have first attempted to resolve the issue between themselves. This can be demonstrated for example, through the failure of one of the parties to respond to a written request from the other party within a reasonable period of time.

While the Gold Commissioner's recommendation is not binding on the parties, their involvement in the dispute is required before it can be referred to the Mediation and Arbitration Board.

A request under Section 16 of the **Mineral Tenure Act** may be submitted by either the surface owner (which includes another person having an interest in the surface) or the mineral title holder. The Gold Commissioner will convene a meeting and attempt to develop grounds for agreement between the parties.

Where agreement cannot be reached by the parties in the hearing before the Gold Commissioner, the matter may be referred to the Mediation and Arbitration Board by an application submitted by one of the parties. Application forms are available at any Mineral Titles Branch or Government Agent office.

The **Mineral Tenure Act** provides a clearly defined legal means of resolving disputes between owners of the surface rights and holders of subsurface rights. The Mediation and Arbitration Board is established for this purpose and consists of a chairperson and other members appointed pursuant to the **Petroleum and Natural Gas Act.** It acts as a quasi-judicial body with the authority to render a legally binding order. The Board's decision can be appealed to the Supreme Court of B.C.

Section 16(3) of the **Mineral Tenure Act** sets out the authority of the Mediation and Arbitration Board to settle matters of dispute arising from rights acquired under the **Mineral Tenure Act** in respect of entry, taking of right of way, use or occupation, security and rent and compensation. Similarly, Section 6 of the **Mining Right of Way Act** provides for the authority of the Mediation and Arbitration Board to settle disputes arising from the use of access roads for mining purposes.

There are certain legal principles which apply to every dispute resolution process. Firstly, the authority hearing a dispute must be unbiased and the procedure for conducting a hearing must be fair. Both parties to a dispute must be given the opportunity to be heard and present their case, and to be informed of the other party's evidence. A decision can only be based on the evidence. Every party to a dispute is entitled to legal representation.

QUESTIONS AND ANSWERS

The following are the most commonly asked questions regarding surface and subsurface rights:

Q. Can someone stake a mineral claim on my property and cut my trees without my knowledge and consent?

A. Yes. A locator of a mineral claim is not legally required to seek the consent of a surface owner prior to entering the land. The locator is however, legally required to compensate the surface owner for surface disturbance and must provide notice prior to entry if their work involves mechanical means.

Q. As a landowner, am I entitled to place a gate on my private road to prevent entry and access by another party?

A. Yes. You are legally entitled to place a gate on your private property to control who enters your lands.

Q. I have found a claim post on my property. Can I legally remove it?

A. No. A claim post is a legal representation of a mineral or placer title. Section 58 of the **Mineral Tenure Act** prohibits the removal or defacement of a post.

Q. Is mining activity allowed in the area around and under my home?

A. No. Section 9 of the **Mineral Tenure Act** excludes residential areas from mining activity and means a 75 metre distance around a home which may not be subjected to mining activities.

Q. If there is damage done to my property caused by any type of mining activity, who pays and how is the amount determined?

A. Proposed mining programs require approval from the District Inspector of Mines prior to commencement. The District Inspector will request comment from all parties who may be potentially affected by the proposal. As a condition of approval the District Inspector may require the mining proponent to post a bond in favour of the Crown to ensure proper reclamation of the land. If, after approval is granted by the District Inspector, the parties cannot agree on compensation, a dispute resolution process is available by application by one of the parties.

Q. Does a settlement agreement need to be in writing?

A. Although oral agreements are binding, it is recommended that an agreement be in writing.

Q. How can I get my land reclaimed from mining activities which occurred many years ago?

A. Contact the regional office of the Ministry of Energy, Mines and Petroleum Resources who will assess the situation and take the steps necessary to resolve the problem.

REFERENCES

For Mineral Titles information contact a Gold Commissioner or a Government Agent office. For information regarding approval of mineral exploration and reclamation programs contact the regional office of the Ministry of Energy, Mines and Petroleum Resources.

To find the location of the office serving your community, contact Enquiry B.C. toll free at 1-800-663-7867 or the Mineral Titles Branch at 604-952-0542 (Victoria) or 604-660-2672 (Vancouver).

No. 15 – A GUIDE TO SURFACE AND SUBSURFACE RIGHTS AND RESPONSIBILITES IN BRITISH COLUMBIA

INTRODUCTION

The purpose of this guide is to provide comprehensive information regarding the rights and responsibilities of private surface owners and the holders of subsurface mineral titles as they relate to the use of the same surface for location, exploration, development and production of mineral and placer mineral resources. This guide deals with mineral and placer mineral rights only, and must not be taken as relating to other undersurface rights such as oil, natural gas, coal, or sand and gravel or Crown granted or freehold mineral rights.

Throughout this guide, the use of the term "mineral" refers to both mineral and placer minerals, and the term "mineral title" includes both mineral and placer, claims and leases. The rights with respect to the use of the surface are the same for a mineral title and a placer mineral title, whether issued by a claim or a lease.

The information herein can be used to provide a means for both parties to understand their legal rights and to begin the process of resolving any issues collectively to facilitate a working agreement which is mutually beneficial to both parties. Should a mutual agreement not be possible due to the circumstances, then this guide should provide direction for the parties to determine the steps to be taken next. A mediation and arbitration process is available to provide an independent decision to avoid the commencement of a civil action, and this process will be outlined. Finally, some commonly asked questions and the answers are contained at the back of this guide for the reader's convenience. References to offices in your area that you may need to contact are also included.

It is important to note that this guide is not a legal document but rather an interpretation of subject legislation. Therefore, in the event of any conflict between this guide and the text of the applicable Act, the provisions of the statute will always apply. Please refer to the applicable Acts as referenced throughout this guide for specific provisions or requirements.

UNDERSURFACE RIGHTS IN BRITISH COLUMBIA

Although landowners hold title to property, it should be understood that their Certificate of Title rarely includes what lies beneath the surface. The Government of British Columbia owns and may dispose of subsurface rights to most lands in the province. This fact may come as quite a surprise to landowners. The critical question asked most often is, "How does the government respect and protect my interest as the owner of the surface?".

Concurrently, the holder of subsurface mineral rights expects the government to facilitate access to find the minerals and develop them. It is a delicate balance involving three parties--the landowner, the mineral title holder, and the government--who must all work together to reach an agreement. The government does, however, provide for the rights and interests of both surface and subsurface owners to prevent potential competing interests from compromising one another.

There are three different means by which a person may hold mineral rights in B.C.: freehold, Crown granted mineral claim and located mineral title.

Freehold means that the mineral rights were granted as part of another tenure such as the surface or railway grant, and there are very few freehold mineral tenures.

A **Crown granted mineral claim** is a tenure administered under the Land Act that was originally a staked mineral claim which was subsequently surveyed and issued as a Crown granted tenure. The last Crown granted mineral claims were issued in 1957. A Crown granted mineral claim holds the mineral rights either as specified in the actual grant or as were defined as "mineral" in the existing Mineral Act in force at the time of issuance of the Crown grant. It is important to note that Crown granted mineral claims are not within the jurisdiction of the Mineral Tenure Act and therefore, the provisions of this Act dealing with surface - subsurface matters cannot be enforced where the undersurface mineral rights are held by a Crown granted mineral claim. However, they may be useful as suggestions, and civil and common law principles would prevail.

The only method of acquiring new mineral rights today requires the staking of the land under a claim, and this is by far the most prevalent form of title to minerals. There is a limit to the amount of mineral that can be produced from a claim, and title holders who wish to exceed the production limit must convert their claim to a lease. Reference material is available at any Titles Branch or Government Agent office on the various methods of claim and lease acquisition. This guide deals with the rights and responsibilities of the land owner and the subsurface mineral title holder where this subsurface right is granted by a mineral or placer claim or lease.

THE RIGHTS AND RESPONSIBILITIES OF A PROPERTY TENURE HOLDER

Surface rights and subsurface rights are separate and distinct in British Columbia. The rights associated with private property are essentially those which were conveyed in the original Crown grant when title was passed from the government to the original owner or grantee. Whether land is privately owned or is held through some other form of tenure, the right to the occupation of the surface was originally granted by the government on behalf of the Crown, hence the term "Crown Granted". Unless otherwise excluded in the property title, the landowner is entitled to soil and the sand and gravel on the property.

A landowner in British Columbia has a secure or indefeasible title which means that it cannot be defeated, revoked or made void, subject to any existing conditions which are contained in the original Crown grant. In normal circumstances when granting title, the government reserves the right to the subsurface which may include the rights to coal, petroleum, natural gas and all minerals, both base and precious. The rights to these substances may be granted by the government separately under different legislation.

Property owners generally have an inalienable right to the surface of their land which provides the exclusive right to use the land as they wish, subject to any law governing land use (i.e. Municipal Act for zoning) and those rights reserved or withheld by the government. The land owner's rights are primarily contained in the Land Act. It is important to note that, in most cases, a land owner is obliged to represent their rights to others independently, or through a solicitor or an appointed agent. This representation can take many forms and probably the most common is through the posting of signs or fencing to provide notice of the status of the land. A person who disregards the rights of a landowner and enters private land without authority, may be in trespass, subject to the Trespass Act. In civil matters, policing authorities or government agencies have little or no jurisdiction to enforce the law, in the absence of a legal order.

A free miner (or an employee) who is exercising a right under the Mineral Tenure Act, is entitled to enter private lands subject to the provisions of the Mineral Tenure Act without being in contravention of the Trespass Act.

THE RIGHTS AND RESPONSIBILITIES OF A MINERAL TENURE HOLDER

The administration of mineral titles in British Columbia, which here excludes Crown granted mineral rights, is covered under the Mineral Tenure Act and the Mineral Tenure Act Regulation administered by the Titles Division of the Ministry of Energy and Mines.

The rights and responsibilities of persons involved in the exploration for, development and production of minerals, including the acquisition and maintenance of mineral titles, are contained in the Mineral Tenure Act. Those exercising these rights must have a lawful and legitimate mining intent.

To exercise some rights under the Mineral Tenure Act a person, whether an individual or a corporation, must first obtain a Free Miner Certificate. Only individual free miners can physically locate (stake) mineral or placer claims, and an individual may locate claims as an agent for a corporate free miner.

The interest of a recorded holder of a mineral or placer claim issued pursuant to the Mineral Tenure Act is a chattel interest and therefore cannot be registered as an interest in real property. This explains why mineral titles do not appear on the title search issued by Land Titles. It is necessary to check the respective mineral titles map in the regional Gold Commissioner's office to ascertain the existence of a mineral title over specific ground.

All mineral and placer claims are valid for one year after recording. The "anniversary date" is the annual occurrence of the date that the staking of the claim was completed. To maintain a claim the holder must, on or before the due anniversary date of the claim, either:

(a) perform, or have performed, exploration and development work on that claim and record such work; or
(b) pay cash in lieu of work.

The title holder records this work by filing a Statement of Work/Cash Payment form with a Gold Commissioner or any Government Agent office. This document is kept on file at the Gold Commissioner's office for the mining division in which the mineral title is located.

Only work prescribed in the Mineral Tenure Act and the Mineral Tenure Act Regulation is acceptable for recording. The necessary approvals and permits under the Mines Act must be obtained, and notice provided to the landowner before any mechanical disturbance of the surface of the ground is performed by, or on behalf of, the recorded holder.

Full details concerning the legal requirements for locating and maintaining mineral titles in British Columbia are available at any Titles Division or Government Agent office.

RIGHT OF ENTRY AND SURFACE USE OF LANDS BY A FREE MINER

A free miner has the right under section 11(1) of the Mineral Tenure Act to enter upon all "mineral lands" in order to locate a claim, explore for, develop and produce minerals. "Mineral lands" are defined in section 1 of the Act as those lands where the mineral rights are reserved to the government. As previously noted, the right to the minerals on almost all privately-owned land is reserved to the government. Therefore, most private land is deemed to be "mineral land" and is available under the terms of section 11(1) of the Act.

However, section 11(2) of the Mineral Tenure Act stipulates that the afore-mentioned right of entry on mineral lands does **not** extend to land which is:

- occupied by a building;
- the curtilage of a dwelling house;
- orchard land;
- land under cultivation;
- land lawfully occupied for mining purposes, except for the purposes of exploring for and locating of minerals or placer minerals as permitted by the Mineral Tenure Act;
- protected heritage property, except as authorized by the local government or minister responsible for the protection of the protected heritage property;
- land in a park, except as permitted by section 21; or
- land in a recreation area, as defined in section 23, except as permitted by that section.

By rendering past judgements in cases requiring an interpretation of section 11, the Courts have provided clarification in those situations where the surface is being used. Court precedent forms the operating Ministry policy with respect to the interpretation of section 11(2) of the Mineral Tenure Act. Therefore, "land occupied by a building" can be interpreted as the land directly beneath the land occupied by a structure permanently affixed to the ground. The "curtilage of a dwelling house" is the area around a residence, considered by the courts and interpreted as a 75 metre distance around the residence. "Orchard land" and "land under cultivation" have also been reviewed in previous court cases and have been described as lands which are actually producing a crop and are therefore in a present state of being cultivated.

Aside from land covered by the afore-mentioned restrictions, a free miner is legally entitled to enter upon and locate a claim over private property without giving notice to the land owner. It is important to note that the free miner is not required to seek the owner's consent, although the Ministry recommends that a free miner inform a property owner of his or her intentions prior to entering upon the property to stake a claim or carry out any exploration or development work. Written notice to the property owner is only required by law prior to commencement of work which disturbs the surface by mechanical means (section 19(1) of the Mineral Tenure Act), and this provision will be discussed later in this guide.

While a free miner or recorded holder of a mineral title is not legally obligated to consult and inform a surface owner of their plans, it is recommended that they do so as a matter of good business conduct. The need to communicate with another interested party is normally identified by the free miner at the research stage of the mineral exploration program. If, for instance, a preliminary review of the area of interest reveals that a land tenure exists, the free miner should communicate with the property owner in order to ensure that the proposed exploration program is viable and would not otherwise be frustrated through a potential dispute caused by failure to communicate.

MINING RIGHT OF WAY ACT

Recorded holders of mineral and placer claims often need rights of way to construct and maintain mining facilities and to transport minerals or equipment and supplies into and from their mining property.

The Mining Right of Way Act provides for the right of a free miner to use existing roads whether on Crown land or private land for the purpose of gaining access to a mineral title. Where there is a deemed owner of such a road, this person may require a reasonable payment in respect of the actual maintenance costs of the access road.

The Mining Right of Way Act also provides a recorded mineral title holder with the legal right to take and use private land for the purpose of securing a right of way, whether across, over, under or through the land, without the consent of the land owner, subject to the provisions of the Expropriation Act.

The Mining Right of Way Act also addresses the issues of ownership of facilities placed in a right of way, the industrial and non-industrial use of access roads, and the consent needed to connect a road built under the Act to a forest service road.

PRIORITY OF RIGHTS

The Mineral Tenure Act in section 14 provides a recorded holder of a mineral title with the right to use the surface of the claim or lease for the exploration and development or production of minerals and all operations related to the business of mining.

Section 16 of the Mineral Tenure Act addresses the issue of priority of rights. Acquisition of the surface prior to the location of a claim over that land has priority over a claim subsequently located on that land. However, this does not allow the property owner to arbitrarily prohibit the mineral title holder from exploring or developing the mineral resource. Rather, it establishes that the priority of the surface tenure could influence a decision with respect to the use of the surface under section 19(4) and (5) of the Mineral Tenure Act.

In the case of a disposition of the surface of land over which there exists a valid mineral title, the rights of the recorded holder of the mineral title cannot be diminished except to the extent determined by order; for example, the Mediation and Arbitration Board has the authority to reduce the right of the mineral title holder when a surface title is granted subsequent to the mineral title. When a surface title is so granted, it is usual for the Lands Branch to require that the applicant obtain a quit claim or release from the recorded holder, and if not granted, the surface rights are only disposed of when the grantee has given an indemnity to the Crown.

Should the use of the surface change to one of the afore-mentioned categories which are excluded from a mining activity under section 11(2), subsequent to a mineral claim being acquired in the area, it is likely that the area would be excluded from mineral exploration if no active exploration is occurring or no significant activity is planned. Section 20 of the Mineral Tenure Act stipulates that a free miner or recorded holder of a mineral title must not obstruct or interfere with an operation or activity, or the construction or maintenance of a building, structure, improvement or work, on private land. For instance, if a home were constructed in an area previously open for mineral exploration under which an existing mineral claim is located, the claim area would then become subject to the "curtilage of a dwelling" restriction and would thus be exempt from right of entry for exploration and development. This situation could, however, become the basis for a disagreement between the parties involved, and the provisions of section 19 of the Mineral Tenure Act would apply (refer to "Reaching a Settlement" and "Dispute Resolution/Mediation and Arbitration" sections following).

THE NOTICE OF WORK AND RECLAMATION APPROVAL PROCESS

Section 55 of the Mineral Tenure Act requires that all work related to the exploration for, development or production of minerals or placer minerals on a claim or lease must be carried out in compliance with the Mines Act. A Notice of Work and Reclamation must be filed with the District Inspector of Mines for any work that requires this under section 10 of the Mines Act. No mechanical disturbance of the ground or any excavation can be carried out on a claim or lease without a valid Mines Act permit, and a Notice of Work. The Inspector will review the proposed work and reclamation, and if the Notice of Work contains activities which will impact on other resources, it will be referred to other government agencies, First Nations and any other interested parties for their comments. A permit will be issued upon approval of the work and reclamation program with terms and conditions that must be complied with. The inspector may require a security deposit to ensure proper reclamation of the land. Details regarding an application for a permit and the appropriate Notice of Work and Reclamation forms are available from the regional offices of the District Inspector of Mines, Mining & Minerals Division, Ministry of Energy and Mines.

If the proposed work involves the mechanical disturbance of privately-owned surface, section 19 of the Mineral Tenure Act requires that the mineral or placer title holder must serve written notice of the proposed work to the surface owner prior to commencement, and a copy of the written notice must, within 30 days of service, be provided to the regional Gold Commissioner and the District Inspector of Mines. Mineral and placer title holders are encouraged to advise the property owner prior to commencing any entry or work upon privately-owned land, but this is not required by law except in the case of disturbance of the surface by the use of mechanical equipment which can be described as anything other than hand tools. Upon receiving a notice from a mineral title holder, it is the responsibility of the property owner to contact the title holder with any concerns they may have with the proposed work. The mineral title holder is entitled to commence his proposed work if no response or concerns are received within a reasonable period of giving notice.

Private land owners have the right to negotiate their own agreement with the mineral title holder under section 19 of the Mineral Tenure Act. If the title holder and the land owner are unable to reach an agreement, either party may then apply to the regional Gold Commissioner under section 19(3) of the Mineral Tenure Act. This process is outlined below under the heading, "Security and Compensation".

SECURITY AND COMPENSATION

As part of the negotiated agreement between the property owner and the mineral or placer title holder, reasonable security may be required from the title holder, especially where surface disturbance of the property is intended. The two parties may mutually agree on any amount, but in cases where agreement cannot be reached the Gold Commissioner may be able to provide advice and guidance under the provision of section 19(3) of the Mineral Tenure Act.

Section 19(2) of the Mineral Tenure Act establishes the liability of a free miner or recorded holder or anyone acting by the authority of a recorded holder of a mineral title to provide compensation to the owner of a surface area if loss or damage to the property is caused by the entry, occupation or use of that area by or on behalf of the free miner or recorded holder for the location of a claim or the exploration and development or production of minerals or placer minerals from a claim or lease. The amount of compensation is normally determined by mutual agreement between the parties involved by assessing the extent of the damage or loss and making a reasonable determination of the value of the loss to the property owner. If the parties are unable to agree, application may be made to the Gold Commissioner under section 19(3).

Section 6(2) of the Mining Right of Way Act also provides for owners of roads and rights of way to be compensated by a person who is using the road or right of way across private land in order to access a mineral title. The deemed owner of an access road may require a reasonable payment from that person in respect of the actual maintenance costs of the access road, and may also require a reasonable payment to reimburse the owner for actual capital costs incurred by the deemed owner to accommodate any special needs of the person who has taken the right.

REACHING A SETTLEMENT

Whether a person is a landowner or the recorded holder of a mineral title, the first step in the process of dealing with another interested party is to determine the facts. For example, a landowner may have found a claim post located on their land, or, a prospector may want to acquire mineral rights in a particular area but is uncertain about the status of the surface. In either case, one needs to obtain information about the respective rights of the other party. The following steps are therefore suggested:

1. Determine the surface and/or subsurface status of the area.
A review of the mineral titles reference map in the office of the regional Gold Commissioner should first be conducted to determine if a mineral title underlies the property. If a search reveals that a mineral title partially or wholly underlies the property, a title search should be requested to verify if the title is in good standing and if so, the name and address of the recorded holder.

If a person is a landowner, they may have found physical evidence in the form of a post with a claim tag. Information on the claim tag including tag number, locator, recorded holder, and the claim name, can be used to search the title. This can be accomplished by visiting the Gold Commissioner or the local Government Agent office. Government Agents provide mineral titles services in the regions.

2. Research the title.
A landowner will want to determine if there are exploration and development programs which have been previously undertaken or are being proposed. To obtain information relating to an existing mineral title, including previously recorded work, contact the regional Gold Commissioner's office. The regional office of the Mining Operations Branch, Ministry of Energy and Mines, will have information regarding both current and proposed mining programs.

A prospector will want to check the status of the land prior to the location of a claim or commencement of an exploration and development program. Research will most likely require the review of a topographic or land map to determine district lot surveys and other relevant surface features. Information about ownership and surface rights to private land is available from the Land Titles office, while the regional office of Land and Water BC Inc. is the source for information about the status of Crown lands.

3. Communicate with the title holder.
It is important for both parties to communicate with the other promptly in a business-like manner for the purpose of identifying mutual rights, responsibilities and expectations. Written correspondence, sent by registered mail, is recommended to maintain a record of communication. Provide a reasonable period of time for a reply, if requesting one; normally two weeks is appropriate and specify the date upon which a response is expected rather than an arbitrary period.

4. Clarify expectations.
It is quite normal and appropriate for a person to provide notice to another party of each other's rights, responsibilities and expectations, and the requirements of the law in so far as access and operations on the property are concerned.

A recorded holder of a mineral or placer title should fully document all activities in respect to access and surface disturbance in order to be in an informed position when dealing with a landowner. Should a landowner seek compensation for surface damage or loss, they will need to clearly describe what is considered to have been damaged and the amount of compensation requested.

Some of the factors which may be considered when determining the amount of compensation are:

- the damage to the land and in particular those instances which make reclamation and restoration difficult;
- the value of the land and the owner's loss of a right or a profit thereon;
- the adverse effects upon a farming operation, if the land is used for agricultural production or livestock; and
- nuisance, inconvenience, and disturbance (i.e. noise, time devoted to negotiation, and other expenses to the landowner).

5. Reach a mutual agreement

If a mutual agreement can be reached, the next step is to develop a formal contract. It is recommended that an agreement be in writing in the form of a legal and binding contract that defines the purpose and the conditions placed on both the operator and the landowner. Any agreement should be written in plain language and clearly state expectations and obligations of both parties, amounts to be paid, and the dates for stated performance. When the content has been decided, both parties will want to endorse and date the agreement before a witness.

DISPUTE RESOLUTION/MEDIATION AND ARBITRATION

The Mineral Tenure Act and the Mining Right of Way Act both provide for either of the applicants in a dispute between a property owner and a mineral title holder to apply to the local Gold Commissioner to intervene and attempt to settle the issue. The role of the Gold Commissioner is one of consultation and of attempting to have both parties settle the matter in a business-like fashion by applying reasonable judgement and impartiality. While the Gold Commissioner's recommendation is not binding on the parties, his or her involvement in the dispute is required before it can be referred to the Mediation and Arbitration Board (section 19(4), Mineral Tenure Act), and cases exist where the Board has endorsed the recommendation of the Gold Commissioner and made it a binding order.

A request under section 19 of the Mineral Tenure Act may be submitted by either the surface owner (which includes another person having an interest in the surface) or the mineral title holder. In order for the Gold Commissioner to become involved, there must be clear evidence that a dispute exists. In all cases, this means that the Gold Commissioner will require evidence of the specific issues under dispute and that the parties have first attempted to resolve the issue between themselves but have been unable to do so.

The Gold Commissioner has a number of options available for the purpose of providing guidance and recommended solutions to the parties. A meeting might be convened as an attempt to develop grounds for agreement between the parties. The Gold Commissioner must prepare a written report outlining the efforts used to settle the issues in dispute and indicate any agreement reached or alternatively those items upon which settlement could not be reached, and provide each party with a copy.

Where agreement cannot be reached by the parties after the involvement of the Gold Commissioner, the matter may be referred to the Mediation and Arbitration Board by an application submitted by one of the parties; a copy of the Gold Commissioner's report must be included. Application forms are available from the Gold Commissioner's office.

The Mediation and Arbitration Board

The Mineral Tenure Act provides a clearly defined legal means of resolving disputes between an owner of the surface rights and a mineral title holder. The Mediation and Arbitration Board is established for this purpose and consists of a chairperson and other members appointed pursuant to the Petroleum and Natural Gas Act. It acts as a quasi-judicial body with the authority to render a legally binding order. The Board's decision can be appealed to the Supreme Court of B.C.

Section 19(4) of the Mineral Tenure Act sets out the authority of the Mediation and Arbitration Board to settle matters of dispute arising from rights acquired under the Mineral Tenure Act in respect of entry, taking of right of way, use or occupation, security and rent and compensation. Similarly, section 6 of the Mining Right of Way Act provides for the authority of the Mediation and Arbitration Board to settle disputes arising from the use of access roads for mining purposes.

There are certain legal principles which apply to every dispute resolution process. The authority hearing a dispute must be unbiased and the procedure for conducting a hearing must be fair. Both parties to a dispute must be given the opportunity to be heard and present their case, and to be informed of the other party's evidence. A decision can only be based on the evidence. Every party to a dispute is entitled to legal representation.

QUESTIONS AND ANSWERS

The following are the most commonly asked questions regarding surface and subsurface rights:

Q. Can someone stake a mineral claim on my property and cut my trees without my knowledge and consent?

A. Yes, assuming the provisions under section 11 of the Mineral Tenure Act provide him with the right of entry on that land. A free miner has the right to enter onto mineral lands, but this right of entry does not extend to land occupied by a building, the curtilage of a dwelling house, orchard land, or land under cultivation. If these exemptions do not apply, the locator may cut trees for posts and blaze trees along the claim lines. However, the locator is liable to compensate the land owner for any damage which could include the loss of trees that are cut down. Permission of the land owner prior to staking is not legally required, although free miners are advised to contact a property owner before staking and respect their requests concerning the cutting of trees for posts and the blazing of trees along location lines. Once the claim is recorded, the title holder cannot legally commence work involving surface disturbance by mechanical means without first giving notice to the property owner. Disputes or unresolved issues concerning property entry and damage can be resolved under section 19 of the Mineral Tenure Act.

Q. As a landowner, am I entitled to place a gate on my private road to prevent entry and access by another party?

A. Yes. You are legally entitled to place a gate on your private property to control who enters your lands. However, a free miner has the legal right to enter onto mineral lands, and the Mining Right of Way Act gives a mineral title holder the right to access his title over private property and use existing roads under certain conditions. Contact a Titles Branch office for more information.

Q. I have found a claim post on my property. Can I legally remove it?

A. No. A claim post is a legal monument identifying a mineral or placer title. Section 63 of the Mineral Tenure Act prohibits the removal or defacement of a post or tag.

Q. Is mining activity allowed in the area around and under my home?

A. No. Section 11 of the Mineral Tenure Act excludes residential areas from mining activity and means a 75 metre distance around a home which may not be subjected to mining activities.

Q. If there is damage done to my property caused by any type of mining activity, who pays and how is the amount determined?

A. Section 19(2) of the Mineral Tenure Act stipulates that a free miner or title holder is liable to compensate the surface owner for loss or damage caused by the entry, occupation or use of that area or right of way for location (staking a claim), exploration and development or production of minerals. This section also contains a legal procedure to determine compensation, and if the parties cannot agree on compensation, a dispute resolution process is available by application by one of the parties. Further, proposed mining programs may require approval from the District Inspector of Mines prior to commencement. As a condition of approval the District Inspector may require the mining proponent to post a bond in favour of the government to ensure proper reclamation of the land.

Q. Does a settlement agreement need to be in writing?

A. Although oral agreements are binding, it is recommended that an agreement be in writing.

Q. How can I get my land reclaimed from mining activities which occurred many years ago?

A. Contact the regional District Inspector of Mines office of the Ministry of Energy and Mines who will assess the situation and take the steps necessary to resolve the problem.

REFERENCES

For Mineral Titles information contact a Gold Commissioner or a Government Agent office.

For information regarding approval of mineral exploration and reclamation programs contact the regional District Inspector of Mines office of the Ministry of Energy and Mines.

To find the location of the office serving your community, contact Enquiry B.C. toll free at:
1-800-663-7867 or the Titles Division at (250) 952-0542 (Victoria) or (604) 660-2672 (Vancouver).

No. 7 – A Guide to Surface and Subsurface Rights and Responsibilities in British Columbia

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Energy, Mines and
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INTRODUCTION

The purpose of this guide is to provide comprehensive information regarding the rights and responsibilities of private surface owners and the holders of subsurface mineral titles as they relate to the use of the same surface for location, exploration, development and production of mineral and placer mineral resources. This guide deals with mineral and placer mineral rights only, and must not be taken as relating to other undersurface rights such as oil, natural gas, coal, or sand and gravel or Crown granted or freehold mineral rights.

Throughout this guide, the use of the term "mineral" refers to both mineral and placer minerals, and the term "mineral title" includes both mineral and placer, claims and leases. The rights with respect to the use of the surface are the same for a mineral title and a placer mineral title, whether issued by a claim or a lease.

The information herein can be used to provide a means for both parties to understand their legal rights and to begin the process of resolving any issues collectively to facilitate a working agreement which is mutually beneficial to both parties. Should a mutual agreement not be possible due to the circumstances, then this guide should provide direction for the parties to determine the steps to be taken next. A mediation and arbitration process is available to provide an independent decision to avoid the commencement of a civil action, and this process will be outlined. Finally, some commonly asked questions and the answers are contained at the back of this guide for the reader's convenience. References to offices in your area that you may need to contact are also included.

It is important to note that this guide is not a legal document but rather an explanation of existing provisions in the legislation. Therefore, in the event of any conflict between this guide and the text of the applicable Act, the provisions of the statute will always apply. Please refer to the applicable Acts as referenced throughout this guide for specific provisions or requirements.

UNDERSURFACE RIGHTS IN BRITISH COLUMBIA

Although landowners hold title to property, it should be understood that their Certificate of Title rarely includes what lies beneath the surface. In British Columbia as in the other Canadian provinces, private surface does not include mineral rights. The Government of British Columbia owns and may dispose of subsurface rights to most lands in the province. This fact may come as quite a surprise to landowners. The critical question asked most often is, "How does the government respect and protect my interest as the owner of the surface?".

Concurrently, the holder of subsurface mineral rights expects the government to facilitate access to find the minerals and develop them. It is a delicate balance involving three parties--the landowner, the mineral title holder, and the government--who must all work together to reach an agreement. The government does, however, provide for the rights and interests of both surface and subsurface owners to prevent potential competing interests from compromising one another.

There are three different means by which a person may hold mineral rights in B.C.: freehold, Crown granted mineral claim, and a mineral title.

Freehold means that the mineral rights were granted as part of another tenure such as the surface or railway grant, and there are very few freehold mineral tenures.

A **Crown granted mineral claim** is a tenure administered under the Land Act that was originally a staked mineral claim that was subsequently surveyed and issued as a Crown granted tenure. The last Crown granted mineral claims were issued in 1957. A Crown granted mineral claim holds the mineral rights either as specified in the actual grant or as were defined as "mineral" in the existing Mineral Act in force at the time of issuance of the Crown grant. The Crown grant is maintained by payment of an annual assessed mineral tax. All assessment work carried out on a crown grant is subject to the provisions of the *Mines Act* and related statutes as applicable. It is important to note that Crown granted mineral claims are not within the jurisdiction of the Mineral Tenure Act and therefore, the provisions of this Act dealing with surface - subsurface matters cannot be enforced where the undersurface mineral rights are held by a Crown granted mineral claim. However, they may be useful as suggestions, and civil and common law principles would prevail.

Mineral Title means a claim or lease acquired and maintained under the *Mineral Tenure Act* and these are by far the most prevalent form of title to minerals. The only method of acquiring new mineral rights today requires the registration of a cell claim over the land. A claim is the exploration and development tenure, and a recorded holder may convert a claim to a lease in order to carry out production. Information on the methods of claim and lease acquisition and maintenance may be viewed on the Mineral Titles Branch website. This guide deals with the rights and responsibilities of the land owner and the subsurface mineral title holder where this subsurface right is granted by a mineral or placer claim or lease.

THE RIGHTS AND RESPONSIBILITIES OF A PROPERTY TENURE HOLDER

Surface rights and subsurface rights are separate and distinct in British Columbia, as they generally are in other Canadian provinces. The rights associated with private property are essentially those which were conveyed in the original Crown grant when title was passed from the government to the original owner or grantee. Whether land is privately owned or is held through some other form of tenure, the right to the occupation of the surface was originally granted by the government on behalf of the Crown, hence the term "Crown granted". Unless otherwise excluded in the property title, the landowner is entitled to soil and the sand and gravel on the property.

A landowner in British Columbia has a secure or indefeasible title, which means that it cannot be defeated, revoked or made void, subject to any existing conditions which are contained in the original Crown grant. In normal circumstances when granting title, the government reserves the right to the subsurface which may include the rights to coal, petroleum, natural gas and all minerals, both base and precious. The rights to these substances may be granted by the government separately under different legislation.

Property owners generally have an inalienable right to the surface of their land which provides the exclusive right to use the land as they wish, subject to any law governing land use (i.e. Municipal Act for zoning) and those rights reserved or withheld by the government. The land owner's rights are primarily contained in the Land Act. It is important to note that, in most cases, a land owner is obliged to represent their rights to others independently, or through a solicitor or an appointed agent. This representation can take many forms and probably the most common is through the posting of signs or fencing to provide notice of the status of the land. A person who disregards the rights of a landowner and enters private land without authority, may be in trespass, subject to the Trespass Act. In civil matters, policing authorities or government agencies have little or no jurisdiction to enforce the law, in the absence of a legal order.

A free miner (or an employee) who is exercising a right under the Mineral Tenure Act, is entitled to enter private lands, provided those lands are "mineral lands" as defined in section 1 of the Act and are not subject to the restrictions in section 11(2) of the Act, without being in contravention of the Trespass Act.

THE RIGHTS AND RESPONSIBILITIES OF A MINERAL TENURE HOLDER

The administration of mineral titles in British Columbia, which here excludes Crown granted mineral rights, is covered under the Mineral Tenure Act and the Mineral Tenure Act Regulation administered by the Mineral Titles Branch of the Titles and Offshore Division of the Ministry of Energy, Mines and Petroleum Resources.

The rights and responsibilities of persons involved in the exploration for, development and production of minerals, including the acquisition and maintenance of mineral titles, are contained in the Mineral Tenure Act. Those exercising these rights must have a lawful and legitimate mining intent.

To exercise some rights under the Mineral Tenure Act a person, whether an individual or a corporation, must first obtain a Free Miner Certificate (FMC). Being a "free miner," or one who holds a valid FMC, carries both rights and responsibilities.

The interest of a recorded holder of a mineral or placer claim issued pursuant to the Mineral Tenure Act is a chattel interest and therefore cannot be registered as an interest in real property. This explains why mineral titles do not appear on the title search issued by Land Titles. It is necessary to check the Mineral Titles Online (MTO) map at www.mtonline.gov.bc.ca to ascertain the existence of a mineral title over specific ground.

All mineral and placer claims are valid for one year after recording; the "good to date" of a mineral title is the "expiry date" in MTO. To maintain a claim the holder must, on or before the expiry date of the claim, either:

(a) perform, or have performed, exploration and development work on that claim and register such work online; or
(b) register a payment instead of exploration and development work online.

Only work prescribed in the Mineral Tenure Act Regulation is acceptable for registration as assessment credit on a claim. The necessary approvals and permits under the Mines Act must be obtained, and notice provided to the landowner before any mechanical disturbance of the surface of the ground is performed by, or on behalf of, the recorded holder.

Full details concerning the legal requirements for locating and maintaining mineral titles in British Columbia may be viewed through the Mineral Titles Branch website.

RIGHT OF ENTRY AND SURFACE USE OF LANDS BY A FREE MINER

A free miner has the right under section 11(1) of the Mineral Tenure Act to enter upon all "mineral lands" in order to explore for, develop and produce minerals. "Mineral lands" are defined in section 1 of the Act as those lands where the mineral rights are reserved to the government. As previously noted, the right to the minerals on almost all privately-owned land is reserved to the government; therefore, most private land is deemed to be "mineral lands."

However, section 11(2) of the Mineral Tenure Act stipulates that the afore-mentioned right of entry on mineral lands does **not** extend to land which is:

- occupied by a building;
- the curtilage of a dwelling house;
- orchard land;
- land under cultivation;
- land lawfully occupied for mining purposes, except for the purposes of exploring for and locating of minerals or placer minerals as permitted by the Mineral Tenure Act;
- protected heritage property, except as authorized by the local government or minister responsible for the protection of the protected heritage property; or
- land in a park, except as permitted by section 21.

By rendering past judgements in cases requiring an interpretation of section 11, the Courts have provided clarification in those situations where the surface is being used. Court precedent forms the operating Ministry policy with respect to the interpretation of section 11(2) of the Mineral Tenure Act. Therefore, "land occupied by a building" can be interpreted as the land directly beneath the land occupied by a structure permanently affixed to the ground. The "curtilage of a dwelling house" is the area around a residence that is used by that residence or dwelling, considered by the courts and interpreted as generally being the 75 metre distance around the residence where the land is defined by gardens, lawns or other clear sign of use by that residence. "Orchard land" and "land under cultivation" have also been reviewed in previous court cases and have been described as lands which are actually producing a crop and are therefore in a present state of being cultivated.

Aside from land covered by the afore-mentioned restrictions, a free miner is legally entitled to enter upon private property without giving notice to the land owner. However, this right is subject to the applicable provisions in the Act, and these will be discussed further on in this guide. It is important to note that the free miner is not required to seek the owner's consent, although the Ministry recommends that a free miner inform a property owner of his or her intentions prior to entering upon the property to carry out any exploration or development work. Written notice to the property owner is only required by law prior to commencement of work which disturbs the surface by mechanical means (section 19(1) of the Mineral Tenure Act), and this provision will be discussed later in this guide.

While a free miner or recorded holder of a mineral title is not legally obligated to consult and inform a surface owner of their plans, it is recommended that they do so as a matter of good business conduct. The need to communicate with another interested party is normally identified by the free miner at the research stage of the mineral exploration program. If, for instance, a preliminary review of the area of interest reveals that a land tenure exists, the free miner should communicate with the property owner in order to ensure that the proposed exploration program is viable and would not otherwise be frustrated through a potential dispute caused by failure to communicate.

MINING RIGHT OF WAY ACT

Recorded holders of mineral and placer claims often need rights of way to construct and maintain mining facilities and to transport minerals or equipment and supplies into and from their mining property.

The Mining Right of Way Act provides for the right of a recorded holder to use existing roads whether on Crown land or private land for the purpose of gaining access to the mineral title. Where there is a deemed owner of such a road, this person may require a reasonable payment in respect of the actual maintenance costs of the access road.

The Mining Right of Way Act also provides a recorded mineral title holder with the legal right to take and use private land for the purpose of securing a right of way, whether across, over, under or through the land, without the consent of the land owner, subject to the provisions of the Expropriation Act.

The Mining Right of Way Act also addresses the issues of ownership of facilities placed in a right of way, the industrial and non-industrial use of access roads, and the consent needed to connect a road built under the Act to a forest service road.

It is important to understand that the above rights are not exclusive, in that they may be subject to other prior rights such as those of the property owner.

PRIORITY OF RIGHTS

The Mineral Tenure Act in section 14 provides a recorded holder of a mineral title with the right to use the surface of the claim or lease for the exploration and development or production of minerals and all operations related to the business of mining.

Section 16 of the Mineral Tenure Act addresses the issue of priority of rights. Acquisition of the surface prior to the location of a claim over that land has priority over a claim subsequently located on that land. However, this does not allow the property owner to arbitrarily prohibit the mineral title holder from exploring or developing the mineral resource. Rather, it establishes that the priority of the surface tenure could influence a decision with respect to the use of the surface under section 19(4) and (5) of the Mineral Tenure Act.

In the case of a disposition of the surface of land over which there exists a valid mineral title, the rights of the recorded holder of the mineral title cannot be diminished except to the extent determined by order; for example, the Mediation and Arbitration Board has the authority to reduce the right of the mineral title holder when a surface title is granted subsequent to the mineral title. When a surface title is so granted, it is usual for the Integrated Land Management Bureau to require that the applicant obtain a quit claim or release from the recorded holder, and if not granted, the surface rights are only disposed of when the grantee has given an indemnity to the Crown.

Should the use of the surface change to one of the afore-mentioned categories which are excluded from a mining activity under section 11(2), subsequent to a mineral claim being acquired in the area, it is likely that the area would be excluded from mineral exploration if no active exploration is occurring or no significant activity is planned. For instance, if a home were constructed in an area previously open for mineral exploration under which an existing mineral claim is located, the claim area would then become subject to the "curtilage of a dwelling" restriction and would thus be exempt from right of entry for exploration and development. This situation could, however, become the basis for a disagreement between the parties involved, and the provisions of section 19 of the Mineral Tenure Act would apply (refer to "Reaching a Settlement" and "Dispute Resolution/Mediation and Arbitration" sections following).

THE NOTICE OF WORK AND RECLAMATION APPROVAL PROCESS

Section 55 of the Mineral Tenure Act requires that all work related to the exploration for, development or production of minerals or placer minerals on a claim or lease must be carried out in compliance with the Mines Act. A Notice of Work and Reclamation must be filed with the regional Inspector of Mines for any work that requires this under section 10 of the Mines Act. No mechanical disturbance of the ground or any excavation can be carried out on a claim or lease without a valid Mines Act permit, and a Notice of Work. The Inspector will review the proposed work and reclamation, and if the Notice of Work contains activities which will impact on other resources, it will be referred to other government agencies, First Nations and any other interested parties for their comments. A permit will be issued upon approval of the work and reclamation program with terms and conditions that must be complied with. The inspector may require a security deposit to ensure proper reclamation of the land. Details regarding an application for a permit and the appropriate Notice of Work and Reclamation forms are available from the regional offices.

If the proposed work involves the mechanical disturbance of privately-owned surface, section 19 of the Mineral Tenure Act requires that the mineral or placer title holder must serve written notice of the proposed work to the surface owner prior to commencement, and a copy of the written notice must, within 30 days of service, be provided to the Chief Gold Commissioner and the regional Inspector of Mines. Mineral and placer title holders are encouraged to advise the property owner prior to commencing any entry or work upon privately-owned land. Upon receiving a notice from a mineral title holder, it is the responsibility of the property owner to contact the title holder with any concerns they may have with the proposed work. The mineral title holder may be issued permission to commence his proposed work if no response or concerns are received within a reasonable period of giving notice.

Private land owners have the right to negotiate their own agreement with the mineral title holder under section 19 of the Mineral Tenure Act. If the title holder and the land owner are unable to reach an agreement, either party may then apply to the Chief Gold Commissioner under section 19(3) of the Mineral Tenure Act. This process is outlined below under the heading, "Security and Compensation".

SECURITY AND COMPENSATION

As part of the negotiated agreement between the property owner and the mineral or placer title holder, reasonable security may be required from the title holder, especially where surface disturbance of the property is intended. The two parties may mutually agree on any amount, but in cases where agreement cannot be reached the Chief Gold Commissioner may be able to provide advice and guidance under the provision of section 19(3) of the Mineral Tenure Act.

Section 19(2) of the Mineral Tenure Act establishes the liability of a free miner or recorded holder or anyone acting by the authority of a recorded holder of a mineral title to provide compensation to the owner of a surface area if loss or damage to the property is caused by the entry, occupation or use of that area by or on behalf of the free miner or recorded holder for the exploration and development or production of minerals or placer minerals from a claim or lease. The amount of compensation is normally determined by mutual agreement between the parties involved by assessing the extent of the damage or loss and making a reasonable determination of the value of the loss to the property owner. If the parties are unable to agree, application may be made to the Chief Gold Commissioner under section 19(3).

Section 6(2) of the Mining Right of Way Act also provides for owners of roads and rights of way to be compensated by a person who is using the road or right of way across private land in order to access a mineral title. The deemed owner of an access road may require a reasonable payment from that person in respect of the actual maintenance costs of the access road, and may also require a reasonable payment to reimburse the owner for actual capital costs incurred by the deemed owner to accommodate any special needs of the person who has taken the right.

REACHING A SETTLEMENT

Whether a person is a landowner or the recorded holder of a mineral title, the first step in the process of dealing with another interested party is to determine the facts, and obtain information about the respective rights of the other party. The following steps are therefore suggested:

1. Determine the surface and/or subsurface status of the area.
A review of the mineral titles online map should first be conducted to determine if a mineral title underlies the property. If a search reveals that a mineral title partially or wholly underlies the property, a tenure search online will ascertain the name and address of the recorded holder.

2. Research the title.
A landowner will want to determine if there are exploration and development programs which have been previously undertaken or are being proposed. Information relating to previously registered work on an existing mineral title is available from the Mineral Titles Branch office in Vancouver. The regional office of the Mining Operations Branch, Ministry of Energy and Mines, will have information regarding both current and proposed mining programs.

A prospector will want to check the status of the land prior to the location of a claim or commencement of an exploration and development program. Research will most likely require the review of the survey parcels layer on the MTO map to determine district lot surveys. Information about ownership and surface rights to private land is available from the Land Titles office, while the regional office of the Integrated Land Management Bureau is the source for information about the status of Crown lands.

3. Communicate with the title holder.
It is important for both parties to communicate with the other promptly in a business-like manner for the purpose of identifying mutual rights, responsibilities and expectations. Written correspondence, sent by registered mail, is recommended to maintain a record of communication. Provide a reasonable period of time for a reply, if requesting one; normally two weeks is appropriate and specify the date upon which a response is expected rather than an arbitrary period.

4. Clarify expectations.
It is quite normal and appropriate for a person to provide notice to another party of each other's rights, responsibilities and expectations, and the requirements of the law in so far as access and operations on the property are concerned.

A recorded holder of a mineral or placer title should fully document all activities in respect to access and surface disturbance in order to be in an informed position when dealing with a landowner. Should a landowner seek compensation for surface damage or loss, they will need to clearly describe what is considered to have been damaged and the amount of compensation requested.

Some of the factors which may be considered when determining the amount of compensation are:

- the damage to the land and in particular those instances which make reclamation and restoration difficult;
- the value of the land and the owner's loss of a right or a profit thereon;
- the adverse effects upon a farming operation, if the land is used for agricultural production or livestock; and
- nuisance, inconvenience, and disturbance (i.e. noise, time devoted to negotiation, and other expenses to the landowner).

5. Reach a mutual agreement
If a mutual agreement can be reached, the next step is to develop a formal contract. It is recommended that an agreement be in writing in the form of a legal and binding contract that defines the purpose and the conditions placed on both the operator and the landowner. Any agreement should be written in plain language and clearly state expectations and obligations of both parties, amounts to be paid, and the dates for stated performance. When the content has been decided, both parties will want to endorse and date the agreement before a witness.

DISPUTE RESOLUTION/MEDIATION AND ARBITRATION

The Mineral Tenure Act and the Mining Right of Way Act both provide for either of the applicants in a dispute between a property owner and a mineral title holder to apply to the Chief Gold Commissioner for advice and suggestions for settlement. The role of the Chief Gold Commissioner is one of consultation and of attempting to have both parties settle the matter in a business-like fashion by applying reasonable judgement and impartiality. While the Commissioner's recommendation is not binding on the parties, his or her involvement in the dispute is required before it can be referred to the Mediation and Arbitration Board (section 19(4), Mineral Tenure Act), and cases exist where the Board has endorsed the recommendation of the Commissioner and made it a binding order.

A request under section 19 of the Mineral Tenure Act may be submitted by either the surface owner (which includes another person having a material interest in the surface) or the mineral title holder. In order for the Chief Gold Commissioner to become involved, there must be clear evidence that a dispute exists. In all cases, this means that the Commissioner will require evidence of the specific issues under dispute and that the parties have first attempted to resolve the issue between themselves but have been unable to do so.

The Chief Gold Commissioner has a number of options available for the purpose of providing guidance and recommended solutions to the parties. A meeting might be convened as an attempt to develop grounds for agreement between the parties. The Commissioner must prepare a written report outlining the efforts used to settle the issues in dispute and indicate any agreement reached or alternatively those items upon which settlement could not be reached, and provide each party with a copy.

Where agreement cannot be reached by the parties after the involvement of the Chief Gold Commissioner, the matter may be referred to the Mediation and Arbitration Board by an application submitted by one of the parties; a copy of the Commissioner's report must be included. Application forms are available online through the Mineral Titles Branch website.

The Mediation and Arbitration Board

The Mineral Tenure Act provides a clearly defined legal means of resolving disputes between an owner of the surface rights and a mineral title holder. The Mediation and Arbitration Board is established for this purpose and consists of a chairperson and other members appointed pursuant to the Petroleum and Natural Gas Act. It acts as a quasi-judicial body with the authority to render a legally binding order. The Board's decision can be appealed to the Supreme Court of B.C.

Section 19(4) of the Mineral Tenure Act sets out the authority of the Mediation and Arbitration Board to settle matters of dispute arising from rights acquired under the Mineral Tenure Act in respect of entry, taking of right of way, use or occupation, security and rent and compensation. Similarly, section 6 of the Mining Right of Way Act provides for the authority of the Mediation and Arbitration Board to settle disputes arising from the use of access roads for mining purposes.

There are certain legal principles which apply to every dispute resolution process. The authority hearing a dispute must be unbiased and the procedure for conducting a hearing must be fair. Both parties to a dispute must be given the opportunity to be heard and present their case, and to be informed of the other party's evidence. A decision can only be based on the evidence. Every party to a dispute is entitled to legal representation.

QUESTIONS AND ANSWERS

The following are the most commonly asked questions regarding surface and subsurface rights:

Q. Can someone acquire a mineral claim over my property without my knowledge and consent?

A. Yes, assuming the land is within the definition of "mineral lands" in section 1 of the Mineral Tenure Act. However, acquiring a mineral title does not equate to having the unfettered right to enter onto the land. The provisions under section 11 of the Mineral Tenure Act provide a recorded holder of a mineral title with the right of entry, but this right of entry does not extend to land occupied by a building, the curtilage of a dwelling house, orchard land, or land under cultivation. The recorded holder or his agent is liable to compensate the land owner for any loss or damage that occurs as a result of his entry or use of the land. Once the claim is registered, the title holder cannot legally commence work involving surface disturbance by mechanical means without first giving notice to the property owner. Disputes or unresolved issues concerning property entry and damage can be resolved under section 19 of the Mineral Tenure Act.

Q. As a landowner, am I entitled to place a gate on my private road to prevent entry and access by another party?

A. Yes. You are legally entitled to place a gate on your private property to control who enters your lands. However, a free miner has the legal right to enter onto mineral lands, and the Mining Right of Way Act gives a mineral title holder the right to access his title over private property and use existing roads. Nevertheless, these rights must take into account the rights of the land owner, and priority may be determined according to the provisions in the respective legislation. Contact a Mineral Titles Branch office for more information.

Q. I have found a claim post on my property. Can I legally remove it?

A. No. A claim post is a legal monument identifying a mineral or placer title that was located under the ground staking system prior to January 2005. Section 63 of the Mineral Tenure Act prohibits the removal or defacement of a post or tag.

Q. Is mining activity allowed in the area around and under my home?

A. No. Section 11 of the Mineral Tenure Act excludes residential areas where there are buildings or a dwelling house which may not be subjected to mining activities.

Q. If there is damage done to my property caused by any type of mining activity, who pays and how is the amount determined?

A. Section 19(2) of the Mineral Tenure Act stipulates that a free miner or title holder is liable to compensate the surface owner for loss or damage caused by the entry, occupation or use of that area or right of way for exploration and development or production of minerals. This section also contains a legal procedure to determine compensation, and if the parties cannot agree on compensation, a dispute resolution process is available by application by one of the parties. Further, proposed mining programs may require approval from the regional Inspector of Mines prior to commencement. As a condition of approval the Inspector may require the mining proponent to post a bond in favour of the government to ensure proper reclamation of the land.

Q. Does a settlement agreement need to be in writing?

A. Although oral agreements are binding, it is recommended that an agreement be in writing.

Q. How can I get my land reclaimed from mining activities which occurred many years ago?

A. Contact the regional Inspector of Mines office of the Ministry of Energy, Mines and Petroleum Resources who will assess the situation and take the steps necessary to resolve the problem.

REFERENCES

For Mineral Titles information contact either of the Mineral Titles Branch offices listed in the footer on page 1 of this guide.

For information regarding approval of mineral exploration and reclamation programs contact the regional Inspector of Mines office of the Ministry of Energy, Mines and Petroleum Resources. Their website is http://www.em.gov.bc.ca/subwebs/mining/Regional_Offices/default.htm

For the regional office of the Integrated Land Management Bureau, visit their website at http://ilmbwww.gov.bc.ca/

Information on some of the other rights that are not included in private surface title can be obtained from the following agencies:

COAL – administered by the Mineral Titles Branch, Titles and Offshore Division, Ministry of Energy, Mines and Petroleum Resources.

PETROLEUM AND NATURAL GAS – administered by the Oil and Gas Titles Branch, Titles and Offshore Division, Ministry of Energy, Mines and Petroleum Resources.

FOSSILS – Fossils of a scientific or cultural significance are protected under the *Heritage Conservation Act* administered by the Archaeology Branch, Ministry of Tourism, Sport and the Arts. In certain situations, extraction of fossils must be by permit issued from the regional office of the Integrated Land Management Bureau.

WATER RIGHTS – administered by the Integrated Land Management Bureau, a provincial Crown corporation.

TIMBER RIGHTS (a surface not subsurface right) – administered by the Resource Tenures and Engineering Branch, Ministry of Forests and Range.

BRITISH COLUMBIA
The Best Place on Earth

Mineral Titles Branch

Information Update

No. 7 – A Guide to Surface and Subsurface Rights and Responsibilities in British Columbia

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In the event of a discrepancy between this information and the provisions in the *Mineral Tenure Act* and Regulation, the provisions in the statute and regulations will apply.

Ministry of Energy, Mines and Petroleum Resources

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INTRODUCTION

The purpose of this guide is to provide comprehensive information regarding the rights and responsibilities of private surface owners and the holders of subsurface mineral titles as they relate to the use of the same surface for location, exploration, development and production of mineral and placer mineral resources. This guide deals with mineral and placer mineral rights only, and must not be taken as relating to other undersurface rights such as oil, natural gas, coal, or sand and gravel or Crown granted or freehold mineral rights.

Throughout this guide, the use of the term "mineral" refers to both mineral and placer minerals, and the term "mineral title" includes both mineral and placer, claims and leases. The rights with respect to the use of the surface are the same for a mineral title and a placer mineral title, whether issued by a claim or a lease.

The information herein can be used to provide a means for both parties to understand their legal rights and to begin the process of resolving any issues collectively to facilitate a working agreement which is mutually beneficial to both parties. Should a mutual agreement not be possible due to the circumstances, then this guide should provide direction for the parties to determine the steps to be taken next. A mediation and arbitration process is available to provide an independent decision to avoid the commencement of a civil action, and this process will be outlined. Finally, some commonly asked questions and the answers are contained at the back of this guide for the reader's convenience. References to offices in your area that you may need to contact are also included.

It is important to note that this guide is not a legal document but rather an explanation of existing provisions in the legislation. Therefore, in the event of any conflict between this guide and the text of the applicable Act, the provisions of the statute will always apply. Please refer to the applicable Acts as referenced throughout this guide for specific provisions or requirements.

UNDERSURFACE RIGHTS IN BRITISH COLUMBIA

Although landowners hold title to property, it should be understood that their Certificate of Title rarely includes what lies beneath the surface. In British Columbia as in the other Canadian provinces, private surface does not include mineral rights. The Government of British Columbia owns and may dispose of subsurface rights to most lands in the province. This fact may come as quite a surprise to landowners. The critical question asked most often is, "How does the government respect and protect my interest as the owner of the surface?"

Concurrently, the holder of subsurface mineral rights expects the government to facilitate access to find the minerals and develop them. It is a delicate balance involving three parties--the landowner, the mineral title holder, and the government--who must all work together to reach an agreement. The government does, however, provide for the rights and interests of both surface and subsurface owners to prevent potential competing interests from compromising one another.

There are three different means by which a person may hold mineral rights in B.C.: freehold, Crown granted mineral claim, and a mineral title.

Freehold means that the mineral rights were granted as part of another tenure such as the surface or railway grant, and there are very few freehold mineral tenures.

A **Crown granted mineral claim** is a tenure administered under the *Land Act* that was originally a staked mineral claim that was subsequently surveyed and issued as a Crown granted tenure. The last Crown granted mineral claims were issued in 1957. A Crown granted mineral claim holds the mineral rights either as specified in the actual grant or as were defined as "mineral" in the existing Mineral Act in force at the time of issuance of the Crown grant. The Crown grant is maintained by payment of an annual assessed mineral tax. All assessment work carried out on a crown grant is subject to the provisions of the *Mines Act* and related statutes as applicable. It is important to note that Crown granted mineral claims are not within the jurisdiction of the *Mineral Tenure Act* and therefore, the provisions of this Act dealing with surface - subsurface matters cannot be enforced where the undersurface mineral rights are held by a Crown granted mineral claim. However, they may be useful as suggestions and civil and common law principles would prevail.

Mineral Title means a claim or lease acquired and maintained under the *Mineral Tenure Act* and these are by far the most prevalent form of title to minerals. The only method of acquiring new mineral rights today requires the registration of a cell claim over the land. A claim is the exploration and development tenure, and a recorded holder may convert a claim to a lease in order to carry out production. Information on the methods of claim and lease acquisition and maintenance may be viewed on the Mineral Titles Branch website. This guide deals with the rights and responsibilities of the land owner and the subsurface mineral title holder where this subsurface right is granted by a mineral or placer claim or lease.

THE RIGHTS AND RESPONSIBILITIES OF A PROPERTY TENURE HOLDER

Surface rights and subsurface rights are separate and distinct in British Columbia, as they generally are in other Canadian provinces. The rights associated with private property are essentially those which were conveyed in the original Crown grant when title was passed from the government to the original owner or grantee. Whether land is privately owned or is held through some other form of tenure, the right to the occupation of the surface was originally granted by the government on behalf of the Crown, hence the term "Crown granted". Unless otherwise excluded in the property title, the landowner is entitled to soil and the sand and gravel on the property.

A landowner in British Columbia has a secure or indefeasible title, which means that it cannot be defeated, revoked or made void, subject to any existing conditions which are contained in the original Crown grant. In normal circumstances when granting title, the government reserves the right to the subsurface which may include the rights to coal, petroleum, natural gas and all minerals, both base and precious. The rights to these substances may be granted by the government separately under different legislation.

Property owners generally have an inalienable right to the surface of their land which provides the exclusive right to use the land as they wish, subject to any law governing land use (i.e. Municipal Act for zoning) and those rights reserved or withheld by the government. The land owner's rights are primarily contained in the *Land Act*. It is important to note that, in most cases, a land owner is obliged to represent their rights to others independently, or through a solicitor or an appointed agent. This representation can take many forms and probably the most common is through the posting of signs or fencing to provide notice of the status of the land. A person, who disregards the rights of a landowner and enters private land without authority, may be in trespass, subject to the Trespass Act. In civil matters, policing authorities or government agencies have little or no jurisdiction to enforce the law, in the absence of a legal order.

A free miner (or an employee) who is exercising a right under the *Mineral Tenure Act*, is entitled to enter private lands, provided those lands are "mineral lands" as defined in section 1 of the Act and are not subject to the restrictions in section 11(2) of the Act, without being in contravention of the *Trespass Act*.

THE RIGHTS AND RESPONSIBILITIES OF A MINERAL TENURE HOLDER

The administration of mineral titles in British Columbia, which here excludes Crown granted mineral rights, is covered under the *Mineral Tenure Act* and the *Mineral Tenure Act Regulation* administered by the Mineral Titles Branch of the Titles Division of the Ministry of Energy, Mines and Petroleum Resources.

The rights and responsibilities of persons involved in the exploration for, development and production of minerals, including the acquisition and maintenance of mineral titles, are contained in the *Mineral Tenure Act*. Those exercising these rights must have a lawful and legitimate mining intent.

To exercise some rights under the *Mineral Tenure Act,* a person, whether an individual or a corporation, must first obtain a Free Miner Certificate (FMC). Being a "free miner," or one who holds a valid FMC, carries both rights and responsibilities.

The interest of a recorded holder of a mineral or placer claim issued pursuant to the *Mineral Tenure Act* is a chattel interest and therefore cannot be registered as an interest in real property. This explains why mineral titles do not appear on the title search issued by Land Titles. It is necessary to check the Mineral Titles Online (MTO) map at https://www.mtonline.gov.bc.ca to ascertain the existence of a mineral title over specific ground.

All mineral and placer claims are valid for one year after recording; the "good to date" of a mineral title is the "expiry date" in MTO. To maintain a claim the holder must, on or before the expiry date of the claim, either:

(a) perform, or have performed, exploration and development work on that claim and register such work online; or
(b) register a payment instead of exploration and development work online.

Only work prescribed in the *Mineral Tenure Act Regulation* is acceptable for registration as assessment credit on a claim. The necessary approvals and permits under the *Mines Act* must be obtained, and notice provided to the landowner before any mechanical disturbance of the surface of the ground is performed by, or on behalf of, the recorded holder.

Full details concerning the legal requirements for acquiring and maintaining mineral titles in British Columbia may be viewed through the Mineral Titles Branch website.

RIGHT OF ENTRY AND SURFACE USE OF LANDS BY A FREE MINER

In March 2007 the Legislature approved amendments to Section 19 of the *Mineral Tenure Act* (Act) that require a person to notify landowners before entering private land for any mining activity. The Act amendments also extend the notice requirements to include holders of Land Act leases and provide

authority to make regulations that prescribe the timing and details of the notices. Additional changes to the *Mineral Tenure Act Regulation* (Regulation) allow costs related to serving notice to be used to satisfy work requirements for claims. The Act changes and amendments to the *Mineral Tenure Act Regulation* took effect June 2, 2008.

For details, please see Information Update No. 29B, 'Notice Requirements for Mining Activities on Private Land and Land Act Leases', on the Mineral Titles website.

A free miner has the right under section 11(1) of the Mineral Tenure Act to enter upon all "mineral lands" in order to explore for, develop and produce minerals. "Mineral lands" are defined in section 1 of the Act as those lands where the mineral rights are reserved to the government. As previously noted, the right to the minerals on almost all privately-owned land is reserved to the government; therefore, most private land is deemed to be "mineral lands."

However, section 11(2) of the *Mineral Tenure Act* stipulates that the afore-mentioned right of entry on mineral lands does **not** extend to land which is:

- occupied by a building;
- the curtilage of a dwelling house;
- orchard land;
- land under cultivation;
- land lawfully occupied for mining purposes, except for the purposes of exploring for and locating of minerals or placer minerals as permitted by the *Mineral Tenure Act*;
- protected heritage property, except as authorized by the local government or minister responsible for the protection of the protected heritage property; or
- land in a park, except as permitted by section 21.

By rendering past judgments in cases requiring an interpretation of section 11, the Courts have provided clarification in those situations where the surface is being used. Court precedent forms the operating Ministry policy with respect to the interpretation of section 11(2) of the *Mineral Tenure Act*. Therefore, "land occupied by a building" can be interpreted as the land directly beneath the land occupied by a structure permanently affixed to the ground. The "curtilage of a dwelling house" is the area around a residence that is used by that residence or dwelling, considered by the courts and interpreted as generally being the 75 metre distance around the residence where the land is defined by gardens, lawns or other clear sign of use by that residence. "Orchard land" and "land under cultivation" have also been reviewed in previous court cases and have been described as lands which are actually producing a crop and are therefore in a present state of being cultivated.

Aside from land covered by the afore-mentioned restrictions, a free miner is legally entitled to enter upon private property after serving notice to the landowner as per section 19 of the *Mineral Tenure Act*.

MINING RIGHT OF WAY ACT

Recorded holders of mineral and placer claims often need rights of way to construct and maintain mining facilities and to transport minerals or equipment and supplies into and from their mining property.

The *Mining Right of Way Act* provides for the right of a recorded holder to use existing roads whether on Crown land or private land for the purpose of gaining access to the mineral title. Where there is a deemed

owner of such a road, this person may require a reasonable payment in respect of the actual maintenance costs of the access road.

The *Mining Right of Way Act* also provides a recorded mineral title holder with the legal right to take and use private land for the purpose of securing a right of way, whether across, over, under or through the land, without the consent of the land owner, subject to the provisions of the *Expropriation Act*.

The *Mining Right of Way Act* also addresses the issues of ownership of facilities placed in a right of way, the industrial and non-industrial use of access roads, and the consent needed to connect a road built under the Act to a forest service road.

It is important to understand that the above rights are not exclusive, in that they may be subject to other prior rights such as those of the property owner.

PRIORITY OF RIGHTS

The *Mineral Tenure Act* in section 14 provides a recorded holder of a mineral title with the right to use the surface of the claim or lease for the exploration and development or production of minerals and all operations related to the business of mining.

Section 16 of the *Mineral Tenure Act* addresses the issue of priority of rights between surface and sub-surface holders. Acquisition of the surface, prior to the registration of a claim over the same land, has priority over a claim subsequently located on that land. However, this does not allow the property owner to arbitrarily prohibit the mineral title holder from exploring or developing the mineral resource. Rather, it establishes that the priority of the surface tenure could influence a decision with respect to the use of the surface under section 19(4) and (5) of the *Mineral Tenure Act*.

In the case of a disposition of the surface of land over which there exists a valid mineral title, the rights of the recorded holder of the mineral title cannot be diminished except to the extent determined by order; for example, the Mediation and Arbitration Board has the authority to reduce the right of the mineral title holder when a surface title is granted subsequent to the mineral title. When a surface title is so granted, it is usual for the Integrated Land Management Bureau to require that the applicant obtain a quit claim or release from the recorded holder, and if not granted, the surface rights are only disposed of when the grantee has given an indemnity to the Crown.

Should the use of the surface change to one of the afore-mentioned categories which are excluded from a mining activity under section 11(2), subsequent to a mineral claim being acquired in the area, it is likely that the area would be excluded from mineral exploration if no active exploration is occurring or no significant activity is planned. For instance, if a home were constructed in an area previously open for mineral exploration under which an existing mineral claim is located, the claim area would then become subject to the "curtilage of a dwelling" restriction and would thus be exempt from right of entry for exploration and development. This situation could, however, become the basis for a disagreement between the parties involved, and the provisions of section 19 of the *Mineral Tenure Act* would apply (refer to "Reaching a Settlement" and "Dispute Resolution/Mediation and Arbitration" sections following).

THE NOTICE OF WORK AND RECLAMATION APPROVAL PROCESS

All work related to the exploration for, development or production of minerals or placer minerals on a claim or lease must be carried out in compliance with the *Mines Act*. A Notice of Work and Reclamation must be filed with the regional Inspector of Mines for any work that requires this under section 10 of the *Mines Act*. No mechanical disturbance of the ground or any excavation can be carried out on a claim or lease without a valid *Mines Act* permit, and a Notice of Work. The Inspector will review the proposed work and reclamation, and if the Notice of Work contains activities which will impact on other resources, it will be referred to other government agencies, First Nations and any other interested parties for their comments. A permit will be issued upon approval of the work and reclamation program with terms and conditions that must be complied with. The inspector may require a security deposit to ensure proper reclamation of the land. Details regarding an application for a permit and the appropriate Notice of Work and Reclamation forms are available from the regional offices.

Section 19 notice requirements specify that a person must not begin a mining activity until eight days after giving notice to the owners of the surface area where the activity will take place. The notice must state when the activity will occur and include the names and addresses of the free miner or recorded holder and of the on-site person responsible for the operations. The notice must also describe the activity that will be conducted, state approximately how many people will be on site and include a map or written description of where the activity will take place. Notices may be mailed, e-mailed, sent by facsimile transmission or hand delivered to the owner.

If there are substantial changes to the activity described in the notice, or if the dates in which the work will occur changes by more than seven days, the person must give the landowner an amended notice. Work related to the amended notice may not begin until eight days after the amended notice has been given.

If the proposed work involves the mechanical disturbance of privately-owned surface, section 19 of the *Mineral Tenure Act* requires that the mineral or placer title holder must serve written notice of the proposed work to the surface owner prior to commencement.

Private land owners have the right to negotiate their own agreement with the mineral title holder under section 19 of the *Mineral Tenure Act*. If the title holder and the land owner are unable to reach an agreement, either party may then apply to the Chief Gold Commissioner under section 19(3) of the *Mineral Tenure Act*. This process is outlined below under the heading, "Security and Compensation".

SECURITY AND COMPENSATION

As part of the negotiated agreement between the property owner and the mineral or placer title holder, reasonable security may be required from the title holder, especially where surface disturbance of the property is intended. The two parties may mutually agree on any amount, but in cases where agreement cannot be reached the Chief Gold Commissioner may be able to provide advice and guidance under the provision of section 19(3) of the *Mineral Tenure Act*.

Section 19(2) of the *Mineral Tenure Act* establishes the liability of a free miner or recorded holder or anyone acting by the authority of a recorded holder of a mineral title to provide compensation to the owner of a surface area if loss or damage to the property is caused by the entry, occupation or use of that

area by or on behalf of the free miner or recorded holder for the exploration and development or production of minerals or placer minerals from a claim or lease. The amount of compensation is normally determined by mutual agreement between the parties involved by assessing the extent of the damage or loss and making a reasonable determination of the value of the loss to the property owner. If the parties are unable to agree, application may be made to the Chief Gold Commissioner under section 19(3).

Section 6(2) of the *Mining Right of Way Act* also provides for owners of roads and rights of way to be compensated by a person who is using the road or right of way across private land in order to access a mineral title. The deemed owner of an access road may require a reasonable payment from that person in respect of the actual maintenance costs of the access road, and may also require a reasonable payment to reimburse the owner for actual capital costs incurred by the deemed owner to accommodate any special needs of the person who has taken the right.

REACHING A SETTLEMENT

Whether a person is a landowner or the recorded holder of a mineral title, the first step in the process of dealing with another interested party is to determine the facts, and obtain information about the respective rights of the other party. The following steps are therefore suggested:

1. Determine the surface and/or subsurface status of the area.

A review of the mineral titles online map should first be conducted to determine if a mineral title underlies the property. If a search reveals that a mineral title partially or wholly underlies the property, a tenure search online will ascertain the name and address of the recorded holder.

2. Research the title.

A landowner will want to determine if there are exploration and development programs which have been previously undertaken or are being proposed. Information relating to previously registered work on an existing mineral title is available from the Mineral Titles Branch office in Vancouver. The regional office of the Mining Operations Branch, Ministry of Energy and Mines, will have information regarding both current and proposed mining programs.

A prospector will want to check the status of the land prior to the location of a claim or commencement of an exploration and development program. Landowner identification procedures have been documented and outlined on the Mineral Titles Branch website. The procedures walk the prospector through a step-by-step guide using Mineral Titles Online and the Integrated Land Resource Registry (ILRR).
In addition, the title-holder can run the "Tenure Overlap Report" through Mineral Titles Online to identify crown land lease owners. For more information and step-by-step instructions, review the MTO Help Guide available on our branch website.

Information about ownership and surface rights to private land is available from the Land Titles office, while the regional office of the Integrated Land Management Bureau is the source for information about the status of Crown lands

3. Communicate with the title holder.

It is important for each party to communicate with the other promptly in a business-like manner for the purpose of identifying mutual rights, responsibilities and expectations. Written correspondence, sent by registered mail, is recommended to maintain a record of communication. Provide a reasonable period of time for a reply, if requesting one; normally two weeks is appropriate and specify the date upon which a response is expected rather than an arbitrary period.

4. Clarify expectations.

It is quite normal and appropriate for a person to provide notice to another party of each other's rights, responsibilities and expectations, and the requirements of the law in so far as access and operations on the property are concerned.

A recorded holder of a mineral or placer title should fully document all activities in respect to access and surface disturbance in order to be in an informed position when dealing with a landowner. Should a landowner seek compensation for surface damage or loss, they will need to clearly describe what is considered to have been damaged and the amount of compensation requested.

Some of the factors which may be considered when determining the amount of compensation are:

- the damage to the land and in particular those instances which make reclamation and restoration difficult;
- the value of the land and the owner's loss of a right or a profit thereon;
- the adverse effects upon a farming operation, if the land is used for agricultural production or livestock; and
- nuisance, inconvenience, and disturbance (i.e. noise, time devoted to negotiation, and other expenses to the landowner).

5. Reach a mutual agreement

If a mutual agreement can be reached, the next step is to develop a formal contract. It is recommended that an agreement be in writing in the form of a legal and binding contract that defines the purpose and the conditions placed on both the operator and the landowner. Any agreement should be written in plain language and clearly state expectations and obligations of both parties, amounts to be paid, and the dates for stated performance. When the content has been decided, both parties will want to endorse and date the agreement before a witness.

DISPUTE RESOLUTION/MEDIATION AND ARBITRATION

The *Mineral Tenure Act* and the *Mining Right of Way Act* both provide for either of the applicants in a dispute between a property owner and a mineral title holder to apply to the Chief Gold Commissioner for advice and suggestions for settlement. The role of the Chief Gold Commissioner is one of consultation and of attempting to have both parties settle the matter in a business-like fashion by applying reasonable judgment and impartiality. While the Commissioner's recommendation is not binding on the parties, his or her involvement in the dispute is required before it can be referred to the Mediation and Arbitration Board (section 19(4), *Mineral Tenure Act*), and cases exist where the Board has endorsed the recommendation of the Commissioner and made it a binding order.

A request under section 19 of the *Mineral Tenure Act* may be submitted by either the surface owner (which includes another person having a material interest in the surface) or the mineral title holder. In order for the Chief Gold Commissioner to become involved, there must be clear evidence that a dispute exists. In all cases, this means that the Commissioner will require evidence of the specific issues under dispute and that the parties have attempted to resolve the issue amongst them first but have been unable to do so.

The Chief Gold Commissioner has a number of options available for the purpose of providing guidance and recommended solutions to the parties. A meeting might be convened as an attempt to develop grounds for agreement between the parties. The Commissioner must prepare a written report outlining the efforts used to settle the issues in dispute and indicate any agreement reached or alternatively those items upon which settlement could not be reached, and provide each party with a copy.

Where agreement cannot be reached by the parties after the involvement of the Chief Gold Commissioner, the matter may be referred to the Mediation and Arbitration Board by an application submitted by one of the parties; a copy of the Commissioner's report must be included. Application forms are available online through the Mineral Titles Branch website.

The Mediation and Arbitration Board

The *Mineral Tenure Act* provides a clearly defined legal means of resolving disputes between an owner of the surface rights and a mineral title holder. The Mediation and Arbitration Board is established for this purpose and consists of a chairperson and other members appointed pursuant to the Petroleum and Natural Gas Act. It acts as a quasi-judicial body with the authority to render a legally binding order. The Board's decision can be appealed to the Supreme Court of B.C.

Section 19(4) of the *Mineral Tenure Act* sets out the authority of the Mediation and Arbitration Board to settle matters of dispute arising from rights acquired under the *Mineral Tenure Act* in respect of entry, taking of right of way, use or occupation, security and rent and compensation. Similarly, section 6 of the *Mining Right of Way Act* provides for the authority of the Mediation and Arbitration Board to settle disputes arising from the use of access roads for mining purposes.

There are certain legal principles which apply to every dispute resolution process. The authority hearing a dispute must be unbiased and the procedure for conducting a hearing must be fair. Each party to a dispute must be given the opportunity to be heard and present their case, and to be informed of the other party's evidence. A decision can only be based on the evidence. Every party to a dispute is entitled to legal representation.

QUESTIONS AND ANSWERS

The following are the most commonly asked questions regarding surface and subsurface rights:

Q. Can someone acquire a mineral claim over my property without my knowledge and consent?

A. Yes, assuming the land is within the definition of "mineral lands" in section 1 of the *Mineral Tenure Act*. However, acquiring a mineral title does not equate to having the unfettered right to enter onto the land. The provisions under section 11 of the *Mineral Tenure Act* provide a recorded holder of a mineral title with the right of entry, but this right of entry does not extend to land occupied by a building, the curtilage of a dwelling house, orchard land, or land under cultivation. Section 19 of the *Mineral Tenure Act* requires a person to notify landowners before entering private land for any mining activity. The recorded holder or his agent is liable to compensate the land owner for any loss or damage that occurs as a result of his entry or use of the land. Once the claim is registered, the title holder cannot legally commence work involving surface disturbance by mechanical means without first giving notice to the property owner. Disputes or unresolved issues concerning property entry and damage can be resolved under section 19 of the *Mineral Tenure Act*.

Q. As a landowner, am I entitled to place a gate on my private road to prevent entry and access by another party?

A. Yes. You are legally entitled to place a gate on your private property to control who enters your land. However, a free miner has the legal right to enter onto mineral lands, after serving notice to the landowner, and the *Mining Right of Way Act* gives a mineral title holder the right to access his title over private property and use existing roads. Nevertheless, these rights must take into account the rights of the land owner, and priority may be determined according to the provisions in the respective legislation. Contact a Mineral Titles Branch office for more information.

Q. I have found a claim post on my property. Can I legally remove it?

A. No. Section 63 of the Mineral Tenure Act prohibits the removal or defacement of a post or tag.

Q. Is mining activity allowed in the area around and under my home?

A. No. Section 11 of the *Mineral Tenure Act* excludes residential areas where there are buildings or a dwelling house which may not be subjected to mining activities.

Q. If there is damage done to my property caused by any type of mining activity, who pays and how is the amount determined?

A. Section 19(2) of the *Mineral Tenure Act* stipulates that a free miner or title holder is liable to compensate the surface owner for loss or damage caused by the entry, occupation or use of that area or right of way for exploration and development or production of minerals. This section also contains a legal procedure to determine compensation, and if the parties cannot agree on compensation, a dispute resolution process is available by application by one of the parties. Further, proposed mining programs may require approval from the regional Inspector of Mines prior to commencement. As a condition of approval the Inspector may require the mining proponent to post a bond in favour of the government to ensure proper reclamation of the land.

Q. Does a settlement agreement need to be in writing?

A. Although oral agreements are binding, it is recommended that an agreement be in writing.

Q. How can I get my land reclaimed from mining activities which occurred many years ago?

A. Contact the regional Inspector of Mines office of the Ministry of Energy, Mines and Petroleum Resources who will assess the situation and take the steps necessary to resolve the problem.

REFERENCES

For Mineral Titles information contact the Mineral Titles Branch office.

For information regarding approval of mineral exploration and reclamation programs contact the regional Inspector of Mines office of the Ministry of Energy, Mines and Petroleum Resources. Their website is http://www.empr.gov.bc.ca/Mining/RegionalOffices/Pages/default.aspx

For the regional office of the Integrated Land Management Bureau, visit their website at http://ilmbwww.gov.bc.ca/

Information on some of the other rights that are not included in private surface title can be obtained from the following agencies:

COAL – administered by the Mineral Titles Branch, Titles Division, Ministry of Energy, Mines and Petroleum Resources.

PETROLEUM AND NATURAL GAS – administered by the Oil and Gas Titles Branch, Titles Division, Ministry of Energy, Mines and Petroleum Resources.

FOSSILS – Fossils of a scientific or cultural significance are protected under the *Heritage Conservation Act* administered by the Archaeology Branch, Ministry of Tourism, Sport and the Arts. In certain situations, extraction of fossils must be by permit issued from the regional office of the Integrated Land Management Bureau.

WATER RIGHTS – administered by the Water Stewardship Division of the Ministry of Environment.

TIMBER RIGHTS (a surface not subsurface right) – administered by the Resource Tenures and Engineering Branch, Ministry of Forests and Range.

No. 7 – A Guide to Surface and Subsurface Rights and Responsibilities in British Columbia

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INTRODUCTION

The purpose of this guide is to provide comprehensive information regarding the rights and responsibilities of private surface owners and the holders of subsurface mineral titles as they relate to the use of the same surface for location, exploration, development and production of mineral and placer mineral resources. This guide deals with mineral and placer mineral rights only, and must not be taken as relating to other undersurface rights such as oil, natural gas, coal, or sand and gravel or Crown granted or freehold mineral rights.

Throughout this guide, the use of the term "mineral" refers to both mineral and placer minerals, and the term "mineral title" includes both mineral and placer, claims and leases. The rights with respect to the use of the surface are the same for a mineral title and a placer mineral title, whether issued by a claim or a lease.

The information herein can be used to provide a means for both parties to understand their legal rights and to begin the process of resolving any issues collectively to facilitate a working agreement which is mutually beneficial to both parties. Should a mutual agreement not be possible due to the circumstances, then this guide should provide direction for the parties to determine the steps to be taken next. A mediation and arbitration process is available to provide an independent decision to avoid the commencement of a civil action, and this process will be outlined. Finally, some commonly asked questions and the answers are contained at the back of this guide for the reader's convenience. References to offices in your area that you may need to contact are also included.

It is important to note that this guide is not a legal document but rather an explanation of existing provisions in the legislation. Therefore, in the event of any conflict between this guide and the text of the applicable Act, the provisions of the statute will always apply. Please refer to the applicable Acts as referenced throughout this guide for specific provisions or requirements.

UNDERSURFACE RIGHTS IN BRITISH COLUMBIA

Although landowners hold title to property, it should be understood that their Certificate of Title rarely includes what lies beneath the surface. In British Columbia as in the other Canadian provinces, private surface does not include mineral rights. The Government of British Columbia owns and may dispose of subsurface rights to most lands in the province. This fact may come as quite a surprise to landowners. The critical question asked most often is, "How does the government respect and protect my interest as the owner of the surface?"

Concurrently, the holder of subsurface mineral rights expects the government to facilitate access to find the minerals and develop them. It is a delicate balance involving three parties--the landowner, the mineral title holder, and the government--who must all work together to reach an agreement. The government does, however, provide for the rights and interests of both surface and subsurface owners to prevent potential competing interests from compromising one another.

There are three different means by which a person may hold mineral rights in B.C.: freehold, Crown granted mineral claim, and a mineral title.

Freehold means that the mineral rights were granted as part of another tenure such as the surface or railway grant, and there are very few freehold mineral tenures.

A **Crown granted mineral claim** is a tenure administered under the *Land Act* that was originally a staked mineral claim that was subsequently surveyed and issued as a Crown granted tenure. The last Crown granted mineral claims were issued in 1957. A Crown granted mineral claim holds the mineral rights either as specified in the actual grant or as were defined as "mineral" in the existing Mineral Act in force at the time of issuance of the Crown grant. The Crown grant is maintained by payment of an annual assessed mineral tax. All assessment work carried out on a crown grant is subject to the provisions of the *Mines Act* and related statutes as applicable. It is important to note that Crown granted mineral claims are not within the jurisdiction of the *Mineral Tenure Act* and therefore, the provisions of this Act dealing with surface - subsurface matters cannot be enforced where the undersurface mineral rights are held by a Crown granted mineral claim. However, they may be useful as suggestions and civil and common law principles would prevail.

Mineral Title means a claim or lease acquired and maintained under the *Mineral Tenure Act* and these are by far the most prevalent form of title to minerals. The only method of acquiring new mineral rights today requires the registration of a cell claim over the land. A claim is the exploration and development tenure, and a recorded holder may convert a claim to a lease in order to carry out production. Information on the methods of claim and lease acquisition and maintenance may be viewed on the Mineral Titles Branch website. This guide deals with the rights and responsibilities of the land owner and the subsurface mineral title holder where this subsurface right is granted by a mineral or placer claim or lease.

THE RIGHTS AND RESPONSIBILITIES OF A PROPERTY TENURE HOLDER

Surface rights and subsurface rights are separate and distinct in British Columbia, as they generally are in other Canadian provinces. The rights associated with private property are essentially those which were conveyed in the original Crown grant when title was passed from the government to the original owner or grantee. Whether land is privately owned or is held through some other form of tenure, the right to the occupation of the surface was originally granted by the government on behalf of the Crown, hence the term "Crown granted". Unless otherwise excluded in the property title, the landowner is entitled to soil and the sand and gravel on the property.

A landowner in British Columbia has a secure or indefeasible title, which means that it cannot be defeated, revoked or made void, subject to any existing conditions which are contained in the original Crown grant. In normal circumstances when granting title, the government reserves the right to the subsurface which may include the rights to coal, petroleum, natural gas and all minerals, both base and precious. The rights to these substances may be granted by the government separately under different legislation.

Property owners generally have an inalienable right to the surface of their land which provides the exclusive right to use the land as they wish, subject to any law governing land use (i.e. Municipal Act for zoning) and those rights reserved or withheld by the government. The land owner's rights are primarily contained in the *Land Act*. It is important to note that, in most cases, a land owner is obliged to represent their rights to others independently, or through a solicitor or an appointed agent. This representation can take many forms and probably the most common is through the posting of signs or fencing to provide notice of the status of the land. A person, who disregards the rights of a landowner and enters private land without authority, may be in trespass, subject to the Trespass Act. In civil matters, policing authorities or government agencies have little or no jurisdiction to enforce the law, in the absence of a legal order.

A free miner (or an employee) who is exercising a right under the *Mineral Tenure Act*, is entitled to enter private lands, provided those lands are "mineral lands" as defined in section 1 of the Act and are not subject to the restrictions in section 11(2) of the Act, without being in contravention of the *Trespass Act*.

THE RIGHTS AND RESPONSIBILITIES OF A MINERAL TENURE HOLDER

The administration of mineral titles in British Columbia, which here excludes Crown granted mineral rights, is covered under the *Mineral Tenure Act* and the *Mineral Tenure Act Regulation* administered by the Mineral Titles Branch of the Titles Division of the Ministry of Energy, Mines and Petroleum Resources.

The rights and responsibilities of persons involved in the exploration for, development and production of minerals, including the acquisition and maintenance of mineral titles, are contained in the *Mineral Tenure Act*. Those exercising these rights must have a lawful and legitimate mining intent.

To exercise some rights under the *Mineral Tenure Act*, a person, whether an individual or a corporation, must first obtain a Free Miner Certificate (FMC). Being a "free miner," or one who holds a valid FMC, carries both rights and responsibilities.

The interest of a recorded holder of a mineral or placer claim issued pursuant to the *Mineral Tenure Act* is a chattel interest and therefore cannot be registered as an interest in real property. This explains why mineral titles do not appear on the title search issued by Land Titles. It is necessary to check the Mineral Titles Online (MTO) map at https://www.mtonline.gov.bc.ca to ascertain the existence of a mineral title over specific ground.

All mineral and placer claims are valid for one year after recording; the "good to date" of a mineral title is the "expiry date" in MTO. To maintain a claim the holder must, on or before the expiry date of the claim, either:

(a) perform, or have performed, exploration and development work on that claim and register such work online; or
(b) register a payment instead of exploration and development work online.

Only work prescribed in the *Mineral Tenure Act Regulation* is acceptable for registration as assessment credit on a claim. The necessary approvals and permits under the *Mines Act* must be obtained, and notice provided to the landowner before any mechanical disturbance of the surface of the ground is performed by, or on behalf of, the recorded holder.

Full details concerning the legal requirements for acquiring and maintaining mineral titles in British Columbia may be viewed through the Mineral Titles Branch website.

RIGHT OF ENTRY AND SURFACE USE OF LANDS BY A FREE MINER

In March 2007 the Legislature approved amendments to Section 19 of the *Mineral Tenure Act* (Act) that require a person to notify landowners before entering private land for any mining activity. The Act amendments also extend the notice requirements to include holders of Land Act leases and provide

authority to make regulations that prescribe the timing and details of the notices. Additional changes to the *Mineral Tenure Act Regulation* (Regulation) allow costs related to serving notice to be used to satisfy work requirements for claims. The Act changes and amendments to the *Mineral Tenure Act Regulation* took effect June 2, 2008.

For details, please see Information Update No. 29B, 'Notice Requirements for Mining Activities on Private Land and Land Act Leases', on the Mineral Titles website.

A free miner has the right under section 11(1) of the Mineral Tenure Act to enter upon all "mineral lands" in order to explore for, develop and produce minerals. "Mineral lands" are defined in section 1 of the Act as those lands where the mineral rights are reserved to the government. As previously noted, the right to the minerals on almost all privately-owned land is reserved to the government; therefore, most private land is deemed to be "mineral lands."

However, section 11(2) of the *Mineral Tenure Act* stipulates that the afore-mentioned right of entry on mineral lands does **not** extend to land which is:

- occupied by a building;
- the curtilage of a dwelling house;
- orchard land;
- land under cultivation;
- land lawfully occupied for mining purposes, except for the purposes of exploring for and locating of minerals or placer minerals as permitted by the *Mineral Tenure Act*;
- protected heritage property, except as authorized by the local government or minister responsible for the protection of the protected heritage property; or
- land in a park, except as permitted by section 21.

By rendering past judgments in cases requiring an interpretation of section 11, the Courts have provided clarification in those situations where the surface is being used. Court precedent forms the operating Ministry policy with respect to the interpretation of section 11(2) of the *Mineral Tenure Act*. Therefore, "land occupied by a building" can be interpreted as the land directly beneath the land occupied by a structure permanently affixed to the ground. The "curtilage of a dwelling house" is the area around a residence that is used by that residence or dwelling, considered by the courts and interpreted as generally being the 75 metre distance around the residence where the land is defined by gardens, lawns or other clear sign of use by that residence. "Orchard land" and "land under cultivation" have also been reviewed in previous court cases and have been described as lands which are actually producing a crop and are therefore in a present state of being cultivated.

Aside from land covered by the afore-mentioned restrictions, a free miner is legally entitled to enter upon private property after serving notice to the landowner as per section 19 of the *Mineral Tenure Act*.

MINING RIGHT OF WAY ACT

Recorded holders of mineral and placer claims often need rights of way to construct and maintain mining facilities and to transport minerals or equipment and supplies into and from their mining property.

The *Mining Right of Way Act* provides for the right of a recorded holder to use existing roads whether on Crown land or private land for the purpose of gaining access to the mineral title. Where there is a deemed

owner of such a road, this person may require a reasonable payment in respect of the actual maintenance costs of the access road.

The *Mining Right of Way Act* also provides a recorded mineral title holder with the legal right to take and use private land for the purpose of securing a right of way, whether across, over, under or through the land, without the consent of the land owner, subject to the provisions of the *Expropriation Act*.

The *Mining Right of Way Act* also addresses the issues of ownership of facilities placed in a right of way, the industrial and non-industrial use of access roads, and the consent needed to connect a road built under the Act to a forest service road.

It is important to understand that the above rights are not exclusive, in that they may be subject to other prior rights such as those of the property owner.

PRIORITY OF RIGHTS

The *Mineral Tenure Act* in section 14 provides a recorded holder of a mineral title with the right to use the surface of the claim or lease for the exploration and development or production of minerals and all operations related to the business of mining.

Section 16 of the *Mineral Tenure Act* addresses the issue of priority of rights between surface and sub-surface holders. Acquisition of the surface, prior to the registration of a claim over the same land, has priority over a claim subsequently located on that land. However, this does not allow the property owner to arbitrarily prohibit the mineral title holder from exploring or developing the mineral resource. Rather, it establishes that the priority of the surface tenure could influence a decision with respect to the use of the surface under section 19(4) and (5) of the *Mineral Tenure Act*.

In the case of a disposition of the surface of land over which there exists a valid mineral title, the rights of the recorded holder of the mineral title cannot be diminished except to the extent determined by order; for example, the Mediation and Arbitration Board has the authority to reduce the right of the mineral title holder when a surface title is granted subsequent to the mineral title. When a surface title is so granted, it is usual for the Integrated Land Management Bureau to require that the applicant obtain a quit claim or release from the recorded holder, and if not granted, the surface rights are only disposed of when the grantee has given an indemnity to the Crown.

Should the use of the surface change to one of the afore-mentioned categories which are excluded from a mining activity under section 11(2), subsequent to a mineral claim being acquired in the area, it is likely that the area would be excluded from mineral exploration if no active exploration is occurring or no significant activity is planned. For instance, if a home were constructed in an area previously open for mineral exploration under which an existing mineral claim is located, the claim area would then become subject to the "curtilage of a dwelling" restriction and would thus be exempt from right of entry for exploration and development. This situation could, however, become the basis for a disagreement between the parties involved, and the provisions of section 19 of the *Mineral Tenure Act* would apply (refer to "Reaching a Settlement" and "Dispute Resolution/Mediation and Arbitration" sections following).

THE NOTICE OF WORK AND RECLAMATION APPROVAL PROCESS

All work related to the exploration for, development or production of minerals or placer minerals on a claim or lease must be carried out in compliance with the *Mines Act*. A Notice of Work and Reclamation must be filed with the regional Inspector of Mines for any work that requires this under section 10 of the *Mines Act*. No mechanical disturbance of the ground or any excavation can be carried out on a claim or lease without a valid *Mines Act* permit, and a Notice of Work. The Inspector will review the proposed work and reclamation, and if the Notice of Work contains activities which will impact on other resources, it will be referred to other government agencies, First Nations and any other interested parties for their comments. A permit will be issued upon approval of the work and reclamation program with terms and conditions that must be complied with. The inspector may require a security deposit to ensure proper reclamation of the land. Details regarding an application for a permit and the appropriate Notice of Work and Reclamation forms are available from the regional offices.

Section 19 notice requirements specify that a person must not begin a mining activity until eight days after giving notice to the owners of the surface area where the activity will take place. The notice must state when the activity will occur and include the names and addresses of the free miner or recorded holder and of the on-site person responsible for the operations. The notice must also describe the activity that will be conducted, state approximately how many people will be on site and include a map or written description of where the activity will take place. Notices may be mailed, e-mailed, sent by facsimile transmission or hand delivered to the owner.

If there are substantial changes to the activity described in the notice, or if the dates in which the work will occur changes by more than seven days, the person must give the landowner an amended notice. Work related to the amended notice may not begin until eight days after the amended notice has been given.

If the proposed work involves the mechanical disturbance of privately-owned surface, section 19 of the *Mineral Tenure Act* requires that the mineral or placer title holder must serve written notice of the proposed work to the surface owner prior to commencement.

Private land owners have the right to negotiate their own agreement with the mineral title holder under section 19 of the *Mineral Tenure Act*. If the title holder and the land owner are unable to reach an agreement, either party may then apply to the Chief Gold Commissioner under section 19(3) of the *Mineral Tenure Act*. This process is outlined below under the heading, "Security and Compensation".

SECURITY AND COMPENSATION

As part of the negotiated agreement between the property owner and the mineral or placer title holder, reasonable security may be required from the title holder, especially where surface disturbance of the property is intended. The two parties may mutually agree on any amount, but in cases where agreement cannot be reached the Chief Gold Commissioner may be able to provide advice and guidance under the provision of section 19(3) of the *Mineral Tenure Act*.

Section 19(2) of the *Mineral Tenure Act* establishes the liability of a free miner or recorded holder or anyone acting by the authority of a recorded holder of a mineral title to provide compensation to the owner of a surface area if loss or damage to the property is caused by the entry, occupation or use of that

area by or on behalf of the free miner or recorded holder for the exploration and development or production of minerals or placer minerals from a claim or lease. The amount of compensation is normally determined by mutual agreement between the parties involved by assessing the extent of the damage or loss and making a reasonable determination of the value of the loss to the property owner. If the parties are unable to agree, application may be made to the Chief Gold Commissioner under section 19(3).

Section 6(2) of the *Mining Right of Way Act* also provides for owners of roads and rights of way to be compensated by a person who is using the road or right of way across private land in order to access a mineral title. The deemed owner of an access road may require a reasonable payment from that person in respect of the actual maintenance costs of the access road, and may also require a reasonable payment to reimburse the owner for actual capital costs incurred by the deemed owner to accommodate any special needs of the person who has taken the right.

REACHING A SETTLEMENT

Whether a person is a landowner or the recorded holder of a mineral title, the first step in the process of dealing with another interested party is to determine the facts, and obtain information about the respective rights of the other party. The following steps are therefore suggested:

1. Determine the surface and/or subsurface status of the area.

A review of the mineral titles online map should first be conducted to determine if a mineral title underlies the property. If a search reveals that a mineral title partially or wholly underlies the property, a tenure search online will ascertain the name and address of the recorded holder.

2. Research the title.

A landowner will want to determine if there are exploration and development programs which have been previously undertaken or are being proposed. Information relating to previously registered work on an existing mineral title is available from the Mineral Titles Branch office in Vancouver. The regional office of the Mining Operations Branch, Ministry of Energy and Mines, will have information regarding both current and proposed mining programs.

A prospector will want to check the status of the land prior to the location of a claim or commencement of an exploration and development program. Landowner identification procedures have been documented and outlined on the Mineral Titles Branch website. The procedures walk the prospector through a step-by-step guide using Mineral Titles Online and the Integrated Land Resource Registry (ILRR).
In addition, the title-holder can run the "Tenure Overlap Report" through Mineral Titles Online to identify crown land lease owners. For more information and step-by-step instructions, review the MTO Help Guide available on our branch website.

Information about ownership and surface rights to private land is available from the Land Titles office, while the regional office of the Integrated Land Management Bureau is the source for information about the status of Crown lands

3. Communicate with the title holder.

It is important for each party to communicate with the other promptly in a business-like manner for the purpose of identifying mutual rights, responsibilities and expectations. Written correspondence, sent by registered mail, is recommended to maintain a record of communication. Provide a reasonable period of time for a reply, if requesting one; normally two weeks is appropriate and specify the date upon which a response is expected rather than an arbitrary period.

4. Clarify expectations.

It is quite normal and appropriate for a person to provide notice to another party of each other's rights, responsibilities and expectations, and the requirements of the law in so far as access and operations on the property are concerned.

A recorded holder of a mineral or placer title should fully document all activities in respect to access and surface disturbance in order to be in an informed position when dealing with a landowner. Should a landowner seek compensation for surface damage or loss, they will need to clearly describe what is considered to have been damaged and the amount of compensation requested.

Some of the factors which may be considered when determining the amount of compensation are:

- the damage to the land and in particular those instances which make reclamation and restoration difficult;
- the value of the land and the owner's loss of a right or a profit thereon;
- the adverse effects upon a farming operation, if the land is used for agricultural production or livestock; and
- nuisance, inconvenience, and disturbance (i.e. noise, time devoted to negotiation, and other expenses to the landowner).

5. Reach a mutual agreement

If a mutual agreement can be reached, the next step is to develop a formal contract. It is recommended that an agreement be in writing in the form of a legal and binding contract that defines the purpose and the conditions placed on both the operator and the landowner. Any agreement should be written in plain language and clearly state expectations and obligations of both parties, amounts to be paid, and the dates for stated performance. When the content has been decided, both parties will want to endorse and date the agreement before a witness.

DISPUTE RESOLUTION/MEDIATION AND ARBITRATION

The *Mineral Tenure Act* and the *Mining Right of Way Act* both provide for either of the applicants in a dispute between a property owner and a mineral title holder to apply to the Chief Gold Commissioner for advice and suggestions for settlement. The role of the Chief Gold Commissioner is one of consultation and of attempting to have both parties settle the matter in a business-like fashion by applying reasonable judgment and impartiality. While the Commissioner's recommendation is not binding on the parties, his or her involvement in the dispute is required before it can be referred to the Mediation and Arbitration Board (section 19(4), *Mineral Tenure Act*), and cases exist where the Board has endorsed the recommendation of the Commissioner and made it a binding order.

A request under section 19 of the *Mineral Tenure Act* may be submitted by either the surface owner (which includes another person having a material interest in the surface) or the mineral title holder. In order for the Chief Gold Commissioner to become involved, there must be clear evidence that a dispute exists. In all cases, this means that the Commissioner will require evidence of the specific issues under dispute and that the parties have attempted to resolve the issue amongst themselves first but have been unable to do so.

The Chief Gold Commissioner has a number of options available for the purpose of providing guidance and recommended solutions to the parties. A meeting might be convened as an attempt to develop grounds for agreement between the parties. The Commissioner must prepare a written report outlining the efforts used to settle the issues in dispute and indicate any agreement reached or alternatively those items upon which settlement could not be reached, and provide each party with a copy.

Where agreement cannot be reached by the parties after the involvement of the Chief Gold Commissioner, the matter may be referred to the Mediation and Arbitration Board by an application submitted by one of the parties; a copy of the Commissioner's report must be included. Application forms are available online through the Mineral Titles Branch website.

The Mediation and Arbitration Board

The *Mineral Tenure Act* provides a clearly defined legal means of resolving disputes between an owner of the surface rights and a mineral title holder. The Mediation and Arbitration Board is established for this purpose and consists of a chairperson and other members appointed pursuant to the Petroleum and Natural Gas Act. It acts as a quasi-judicial body with the authority to render a legally binding order. The Board's decision can be appealed to the Supreme Court of B.C.

Section 19(4) of the *Mineral Tenure Act* sets out the authority of the Mediation and Arbitration Board to settle matters of dispute arising from rights acquired under the *Mineral Tenure Act* in respect of entry, taking of right of way, use or occupation, security and rent and compensation. Similarly, section 6 of the *Mining Right of Way Act* provides for the authority of the Mediation and Arbitration Board to settle disputes arising from the use of access roads for mining purposes.

There are certain legal principles which apply to every dispute resolution process. The authority hearing a dispute must be unbiased and the procedure for conducting a hearing must be fair. Each party to a dispute must be given the opportunity to be heard and present their case, and to be informed of the other party's evidence. A decision can only be based on the evidence. Every party to a dispute is entitled to legal representation.

QUESTIONS AND ANSWERS

The following are the most commonly asked questions regarding surface and subsurface rights:

Q. Can someone acquire a mineral claim over my property without my knowledge and consent?

A. Yes, assuming the land is within the definition of "mineral lands" in section 1 of the *Mineral Tenure Act*. However, acquiring a mineral title does not equate to having the unfettered right to enter onto the land. The provisions under section 11 of the *Mineral Tenure Act* provide a recorded holder of a mineral title with the right of entry, but this right of entry does not extend to land occupied by a building, the curtilage of a dwelling house, orchard land, or land under cultivation. Section 19 of the *Mineral Tenure Act* requires a person to notify landowners before entering private land for any mining activity. The recorded holder or his agent is liable to compensate the land owner for any loss or damage that occurs as a result of his entry or use of the land. Once the claim is registered, the title holder cannot legally commence work involving surface disturbance by mechanical means without first giving notice to the property owner. Disputes or unresolved issues concerning property entry and damage can be resolved under section 19 of the *Mineral Tenure Act*.

Q. As a landowner, am I entitled to place a gate on my private road to prevent entry and access by another party?

A. Yes. You are legally entitled to place a gate on your private property to control who enters your land. However, a free miner has the legal right to enter onto mineral lands, after serving notice to the landowner, and the *Mining Right of Way Act* gives a mineral title holder the right to access his title over private property and use existing roads. Nevertheless, these rights must take into account the rights of the land owner, and priority may be determined according to the provisions in the respective legislation. Contact a Mineral Titles Branch office for more information.

Q. I have found a claim post on my property. Can I legally remove it?

A. No. Section 63 of the Mineral Tenure Act prohibits the removal or defacement of a post or tag.

Q. Is mining activity allowed in the area around and under my home?

A. No. Section 11 of the *Mineral Tenure Act* excludes residential areas where there are buildings or a dwelling house which may not be subjected to mining activities.

Q. If there is damage done to my property caused by any type of mining activity, who pays and how is the amount determined?

A. Section 19(2) of the *Mineral Tenure Act* stipulates that a free miner or title holder is liable to compensate the surface owner for loss or damage caused by the entry, occupation or use of that area or right of way for exploration and development or production of minerals. This section also contains a legal procedure to determine compensation, and if the parties cannot agree on compensation, a dispute resolution process is available by application by one of the parties. Further, proposed mining programs may require approval from the regional Inspector of Mines prior to commencement. As a condition of approval the Inspector may require the mining proponent to post a bond in favour of the government to ensure proper reclamation of the land.

Q. Does a settlement agreement need to be in writing?

A. Although oral agreements are binding, it is recommended that an agreement be in writing.

Q. How can I get my land reclaimed from mining activities which occurred many years ago?

A. Contact the regional Inspector of Mines office of the Ministry of Energy and Mines who will assess the situation and take the steps necessary to resolve the problem.

REFERENCES

For Mineral Titles information contact the Mineral Titles Branch office.

For information regarding approval of mineral exploration and reclamation programs contact the regional Inspector of Mines office of the Ministry of Energy and Mines. Their website is http://www.empr.gov.bc.ca/Mining/RegionalOffices/Pages/default.aspx

For the regional office of the Integrated Land Management Bureau, visit their website at http://ilmbwww.gov.bc.ca/

Information on some of the other rights that are not included in private surface title can be obtained from the following agencies:

COAL – administered by the Mineral Titles Branch, Mines and Mineral Resources Division, Ministry of Energy and Mines.

PETROLEUM AND NATURAL GAS – administered by the Petroleum and Natural Gas Titles Branch, Titles and Corporate Relations Division, Ministry of Energy and Mines.

FOSSILS – Fossils of a scientific or cultural significance are protected under the *Heritage Conservation Act* administered by the Archaeology Branch, Ministry of Forests, Lands and Natural Resource Operations. Contact the Land Tenures Branch, Ministry of Forests, Lands and Natural Resource Operations for information concerning the extraction of fossils.

WATER RIGHTS – administered by the Water Stewardship Division of the Ministry of Environment.

TIMBER RIGHTS (a surface not subsurface right) – administered by the Forest Tenures Branch, Ministry of Forests, Lands and Natural Resource Operation.