

NATURAL LEGACIES:

Your Education Guide to Conservation in BC

Subsurface Rights and Conservation Covenants in B.C.

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The law in British Columbia privileges access to subsurface minerals and makes it very difficult, if not impossible, to use a conservation covenant to protect surface land from petroleum or mineral exploration and production. The purpose of this document is to provide digestible legal information about the nexus between surface rights and subsurface title in British Columbia. The author reviewed the statutory regime, case law, law reform initiatives and government publications to arrive at the information presented here.

DISCLAIMER

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Oil and Gas Tenure and Conservation Covenants in BC

What is the difference between surface and subsurface rights?

Quite simply, surface rights refer to any right in land that is not a mining right. A person who owns surface rights is a person to whom the surface rights of land have been granted, sold, leased or located.¹ Mineral and petroleum rights relate to the resources located in, on or under a piece of land.

The Government of B.C. has granted subsurface rights to minerals and petroleum in British Columbia separately from surface rights since the 1890s. This means that most fee simple titles to property do not include the subsurface rights. Some small areas of the province that were colonized early, such as parts of Vancouver Island and the Fraser Valley still have linked surface and subsurface rights, but it is rare.² Subsurface oil and gas rights on Crown and fee simple land, some 99 plus percent of the province, are owned by the province and sold by auction to the highest bidder.³

Who owns Oil and Gas in BC?

Where subsurface oil and gas rights in BC have not been expressly granted to the surface owner they are owned by the provincial government and are sold by tenure auction. The province owns most subsurface oil and gas rights. Landowners can use the Petroleum Tenure Online website www.ptonline.gov.bc.ca to ascertain who owns the resources under their land.⁴

According to the Supreme Court decision in *Delgamuukw* aboriginal title is protected by s.35 of the *Constitution Act, 1982*.⁵ Oil and gas beneath land subject to aboriginal title has by definition not been surrendered to the Crown and remains the property of the relevant band. Therefore, one view is that if a particular area is found to be subject to aboriginal title, the land, or the subsurface rights, must first be surrendered to the Crown before being sold to a third party.⁶ As there are no proven aboriginal title claims as yet in Canada this situation has not yet specifically arisen.

¹ Lara McGuire and Jonquille Pak, "Understanding Mining Rights in Ontario" online: Canary Institute <http://www.canaryinstitute.ca/publications/Understanding_Mining_Rts.pdf>.cc

² "Petroleum and Natural Gas Rights in British Columbia" online: BC Ministry of Energy and Mines <<http://www.empr.gov.bc.ca/Titles/OGTitles/Documents/PNGrightsBC.pdf>>.

³ "Petroleum and Natural Gas Rights in British Columbia" online: BC Ministry of Energy and Mines <<http://www.empr.gov.bc.ca/Titles/OGTitles/Documents/PNGrightsBC.pdf>>.

⁴ "Petroleum Titles Online" online: Ministry of Energy <<https://www.ptonline.gov.bc.ca/defaultssl.htm>>.

⁵ "Resolving Aboriginal Claims – A Practical Guide to Canadian Experiences" online: Ministry of Aboriginal Affairs and Northern Development Canada <<http://www.aadnc-aandc.gc.ca/eng/1100100014174/1100100014179>>.

⁶ Brian Slattery, "The Nature of Aboriginal Title", in Owen Lippert ed., *Beyond the Nass Valley: National Implications of the Supreme Court's Delgamuukw Decision* (Vancouver: Fraser Institute, 2000), pages 17–18.

What rights come with ownership of oil and gas tenure?

Ownership of an oil and gas tenure confers rights to the exploration, development, and production of those resources.⁷ The entity, usually a corporation, holding the tenure has the right to:

- Apply to the Oil and Gas Commission for permits related to oil and gas extraction activities including pipeline and road construction;⁸
- Surface access for exploration, development, and production. This is acquired through an agreement with a private landowner, or a right of entry order from the Surface Rights Board;⁹
- Construction and operation of flow lines.¹⁰ Larger pipelines require expropriation in accordance with the *Expropriation Act*;¹¹

What rights to exclude access to subsurface oil and gas tenure come with surface ownership?

Preventing the holder of subsurface petroleum rights from accessing and extracting those resources is very difficult. If a surface access agreement (such as a lease) is not reached between the landowner and a petroleum tenure or licence holder the Surface Rights Board has the power to make right of entry orders awarding the rights holder with surface access.¹² This process is conducted through mediation or arbitration and may result in the subsurface rights holder paying rent, compensation, or both, for the access rights.¹³

Landowner consent for a land survey is not necessary, though it is recommended.¹⁴ Consent from the landowner must be obtained before access for the purposes of a seismic survey.¹⁵ If the land in question is part of the Agricultural Land Reserve the owner of subsurface resources must apply to the Agricultural Land Commission for a permit to use the land for non-farm use. The Agricultural

⁷ “Surface Rights in British Columbia” online: Oil and Gas Commission

<http://www.llbc.leg.bc.ca/public/pubdocs/bcdocs/373369/surface_rights.pdf>.

⁸ “Discussion paper on the tenure provisions of the *Petroleum and Natural Gas Act*” online: Ministry of Energy and Mines

<<http://www.empr.gov.bc.ca/Titles/OGTitles/OtherPublications/Documents/PNG%20Tenure%20Discussion%20Paper.pdf>>.

⁹ *Petroleum and Natural Gas Act*, RSBC 1996, c 361, ss 142, 159.

¹⁰ “Surface Rights in British Columbia” online: Oil and Gas Commission

<http://www.llbc.leg.bc.ca/public/pubdocs/bcdocs/373369/surface_rights.pdf>.

¹¹ *Oil and Gas Activities Act* SBC 2008 c 36, s 34.

¹² *Petroleum and Natural Gas Act*, RSBC 1996, c 361, s 159; “Oil and Gas Orders” online: Surface Rights Board of British Columbia <<http://www.surfacerightsboard.bc.ca/BoardDecisions/#2006>>.

¹³ “Oil and Gas Orders” online: Surface Rights Board of British Columbia

<<http://www.surfacerightsboard.bc.ca/BoardDecisions/#2006>>; “Information for Landowners” online: Ministry of Energy, Mines and Natural Gas <http://www.empr.gov.bc.ca/Titles/OGTitles/Documents/LON_Document.pdf>.

¹⁴ “Standard Surface Lease Agreement Q & A Companion Document online: Ministry of Energy, Mines and Natural Gas <http://www.farmersadvocate.ca/documents/BC_Standard_Surface_Lease_Agreement.pdf>.

¹⁵ “Standard Surface Lease Agreement Q & A Companion Document online: Ministry of Energy, Mines and Natural Gas <http://www.farmersadvocate.ca/documents/BC_Standard_Surface_Lease_Agreement.pdf>; *Petroleum and Natural Gas Act*, RSBC 1996, c 361, s 144; “Landowner’s Information Guide” online: Oil and Gas Commission of British Columbia, page 27 <<http://www.bcogc.ca/node/11032/download>>.

Land Commission recently delegated its decision making power to the Oil and Gas Commission in the Peace River Region.¹⁶

How does a new O&G tenure affect an existing conservation covenant?

A covenant created under s.219 of the *Land Title Act* will not prevent surface access for exploration and extraction of a subsurface resource even if the covenant is in place before the oil and gas tenure is acquired.¹⁷ According to the *Petroleum and Natural Gas Act* the Surface Rights Board has jurisdiction to issue a right of entry order as long as the purpose relates to oil and gas activities.¹⁸

If the subsurface rights are owned with the surface rights then it may be possible for a conservation covenant to be placed on them, but they must be owned rather than tenured as certain work requirements are attached to holding a tenure.¹⁹ Based on landowner feedback in the pre tenure sale stage the Ministry of Natural Gas Development *may* place specific conditions on the exploration and extraction of oil and gas on conservation covenanted land, but there is no legal guarantee.²⁰

The situation is much the same in Alberta where s. 21 of the *Environmental Protection and Enhancement Act* allows for conservation covenants but does not protect them from oil and gas activity.²¹

How does an existing O&G tenure affect the introduction of a covenant?

There does not appear to be anything preventing the placement of a conservation covenant on the surface of private land where the subsurface has already been tenured. However, as when subsurface oil and gas rights are tenured underneath an existing covenant, the new covenant will be unenforceable against exploration and extraction of the petroleum resource in question. Generally, if the proposed covenant is in a part of the province that is likely to see oil and gas activities (such as where tenure has already been sold) the parties must carefully assess the likelihood of oil and gas development on the covenant lands.²²

How does one acquire an oil and gas tenure?

Tenure to Oil and Gas resources can be acquired through an online bidding process found at <https://www.ptonline.gov.bc.ca/defaultssl.htm>. This is the same site where users can determine whether any other party owns the subsurface rights beneath their property using the BC

¹⁶ “Questions and Answers on the Delegation Agreement for Oil and Gas Uses in the Agricultural Land Reserve Peace River Regional District and Northern Rockies Regional Municipality” online: Agricultural Land Commission of British Columbia <[http://www.alc.gov.bc.ca/delegation/alc-ogc/ogc-alc-delegation-agreement-qa\[1\].pdf](http://www.alc.gov.bc.ca/delegation/alc-ogc/ogc-alc-delegation-agreement-qa[1].pdf)>.

¹⁷ *Petroleum and Natural Gas Act*, RSBC 1996, c 361, ss 142, 159; *Land Title Act*, RSBC 1996, c 250, s 219(10); *Greening Your Title: A Guide to Best Practices for Conservation Covenants*: 2nd ed, Hilyer & Atkins, 2005 at page 55, West Coast Environmental Law;

<<http://wcel.org/sites/default/files/publications/Greening%20Your%20Title.pdf>>.

¹⁸ *Petroleum and Natural Gas Act*, RSBC 1996, c 361, ss 142, 147, 159.

¹⁹ *Petroleum and Natural Gas Act*, RSBC 1996, c 361, s 43; BC Reg 95/2004, s 4.

²⁰ “Landowner’s Information Guide” online: Oil and Gas Commission of British Columbia, page 27

<<http://www.bcogc.ca/node/11032/download>>.

²¹ Jason Unger, "Legal Aspects of Conservation covenants" pages 1-6, online: Environmental Law Centre <http://www.ealt.ca/media/uploads/LegalAspectsOfConservationEasements_ELC.pdf>.

²² Jason Unger, "Legal Aspects of Conservation covenants" pages 1-6, online: Environmental Law Centre <http://www.ealt.ca/media/uploads/LegalAspectsOfConservationEasements_ELC.pdf>.

Assessment roll. This number can be found on the annual property tax notice, or online at <http://evaluatebc.bcassessment.ca/>.

On what types of land can tenure be acquired?

The provincial government can only sell tenure to the subsurface rights that it owns,²³ which is under most private property in BC and all Crown land.

It is not totally clear whether First Nations or the federal government own oil and gas under First Nation reserves, but it is clear that the province does not have title to the subsurface rights and cannot lease tenures on reserve or beneath treaty lands.²⁴ The same is true of other federal lands unless the subsurface rights have been given or sold to the province.

What possible ways exist to protect private property from oil and gas development?

British Columbia's laws privilege access to subsurface resources and make it very difficult to legally protect the surface if another party owns tenure to subsurface oil and gas. If subsurface rights could be purchased in their entirety, rather than as tenures it might be possible to buy and covenant them as well as the surface, however this option is typically not available.

Creating conservation covenants on land within the Agricultural Land Reserve is not an effective way to protect the surface from oil and gas activities. The Agricultural Land Commission can and does grant land within the reserve land for oil and gas uses. Furthermore, in the Peace Region the Agricultural Land Commission has delegated its decision-making capacity to the Oil and Gas Commission.²⁵

Public awareness may be an effective, though admittedly non-legal route to protecting covenanted land. If the area in question is well known and utilized by residents then development proposals by subsurface rights holders may engender political or regulatory backlash altering, slowing, or precluding them.

For more information on how to protect private property from oil and gas development see the Canadian Association of Energy and Pipeline Landowners Association (www.landownerassociation.ca), the Farmers' Advocacy Office (www.farmersadvocate.ca), West Coast Environmental Law (www.wcel.org), or contact a lawyer.

²³ Bruce Ziff, *Principles of Property Law*, 5th ed (Carswell 2010).

²⁴ "Oil and Gas" online: Assembly of First Nations <<http://www.bcafn.ca/toolkit/governance-bcafn-governance-tool-3.24.php>>.

²⁵ "Questions and Answers on the Delegation Agreement for Oil and Gas Uses in the Agricultural Land Reserve Peace River Regional District and Northern Rockies Regional Municipality" online: Agricultural Land Commission of British Columbia <[http://www.alc.gov.bc.ca/delegation/alc-ogc/ogc-alc-delegation-agreement-qa\[1\].pdf](http://www.alc.gov.bc.ca/delegation/alc-ogc/ogc-alc-delegation-agreement-qa[1].pdf)>.

Mineral Claims and Conservation Covenants in BC

What is the difference between surface and subsurface rights?

Quite simply, surface rights refer to any right in land that is not a mining right. A person who owns surface rights is a person to whom the surface rights of land have been granted, sold, leased or located.²⁶ Mineral and petroleum rights relate to the resources located in, on or under a piece of land.

The Government of B.C. has granted subsurface rights to minerals and petroleum in British Columbia separately from surface rights since the 1890s. This means that most fee simple titles to property do not include the subsurface rights. Some small areas of the province that were colonized early, such as parts of Vancouver Island and the Fraser Valley still have linked surface and subsurface rights, but it is rare.²⁷ Subsurface oil and gas rights on Crown and fee simple land, some 99 plus percent of the province, are owned by the province and sold by auction to the highest bidder.²⁸

Who owns subsurface minerals?

Very early on in the history of land sales in what is now British Columbia some freehold parcels came with attached subsurface mineral rights, these are quite rare but do exist.²⁹ A second regime where subsurface mineral rights were sold as “Crown granted 2 post claims” or Crown Grants existed until 1957, this form of tenure is less common, requires annual mineral tax payments and is not governed by the *Mineral Tenure Act*, but rather the *Mines Act*.³⁰

Any other mineral rights - those not attached to surface land or sold in Crown grants - are owned by the province and granted as claims, which are tenures, much like oil and gas tenures.³¹ In order to acquire a mineral claim you must have a valid free mining certificate.³²

²⁶ Lara McGuire and Jonquille Pak, “Understanding Mining Rights in Ontario” online: Canary Institute <http://www.canaryinstitute.ca/publications/Understanding_Mining_Rts.pdf>.cc

²⁷ “Petroleum and Natural Gas Rights in British Columbia” online: BC Ministry of Energy and Mines <<http://www.empr.gov.bc.ca/Titles/OGTitles/Documents/PNGrightsBC.pdf>>.

²⁸ “Petroleum and Natural Gas Rights in British Columbia” online: BC Ministry of Energy and Mines <<http://www.empr.gov.bc.ca/Titles/OGTitles/Documents/PNGrightsBC.pdf>>.

²⁹ “Mineral Titles Information Update” online: Ministry of Energy and Mines, page 2 <<http://www.empr.gov.bc.ca/Titles/MineralTitles/Notices/InformationUpdates/Documents/InfoUpdate7.pdf>>.

³⁰ “Mineral and Placer Rights in British Columbia” online: Ministry of Energy and Mines <<http://www.empr.gov.bc.ca/Titles/MineralTitles/mto/about/intro/Pages/MineralPlacerRights.aspx>>.

³¹ “Mineral Titles Information Update” online: Ministry of Energy and Mines, page 3 <<http://www.empr.gov.bc.ca/Titles/MineralTitles/Notices/InformationUpdates/Documents/InfoUpdate7.pdf>>.

³² *Mineral Tenure Act*, RSBC 1996, c 292, s 7.

According to the Supreme Court decision in *Delgamuukw* aboriginal title is protected by s.35 of the *Constitution Act, 1982*.³³ Minerals beneath land subject to aboriginal title have by definition not been surrendered to the Crown and remain the property of the relevant band. Therefore, one view is that if a particular area is found to be subject to aboriginal title, then the band owns the minerals and the rights to them must first be surrendered to the Crown before they may be sold to a third party.³⁴

Can surface landowners exclude miners?

WHAT IS A FREE MINER?

A free miner is a person or corporation who holds a free mining certificate.³⁵ These may be obtained for a fee of \$25.³⁶ A free mining certificate is required to purchase a mineral claim (subsurface rights) but free miners do not have to own the underlying mineral rights in order to have access rights for the purpose of exploration.³⁷

FREE MINERS WITHOUT MINERAL TENURE

Landowners have the power to exclude most people from their property, but this authority does not extend to free miners in most situations, even if the free miner does not own subsurface mineral title. Free miners without mineral tenure have rights to explore and search for minerals on most land. Exceptions to this general rule are:

- Land occupied by a building;
- The commonly used area around an inhabited house;
- Orchard land;
- Cultivated land;
- Protected heritage property;
- Land in a park.³⁸

To put it another way, an individual with a free mining certificate has permission to trespass for the purposes of exploration.³⁹

FREE MINERS WHO HOLD MINERAL TENURE

Landowners have even fewer rights of exclusion with respect to holders of mineral title. Free miners in BC who hold subsurface mineral rights are only prohibited from mining if:

- There is a mining prohibition in that area under the *Environment and Land Use Act*;
- The area is a designated park under the *Local Government Act*;
- The area is a designated park or ecological reserve under the *Protected Areas of British Columbia Act*;
- The area is an ecological reserve under the *Ecological Reserve Act*;

³³ "Resolving Aboriginal Claims – A Practical Guide to Canadian Experiences" online: Ministry of Aboriginal Affairs and Northern Development Canada <<http://www.aandc-aandc.gc.ca/eng/1100100014174/1100100014179>>.

³⁴ Brian Slattery, "The Nature of Aboriginal Title", in Owen Lippert ed., *Beyond the Nass Valley: National Implications of the Supreme Court's Delgamuukw Decision* (Vancouver: Fraser Institute, 2000), pages 17–18.

³⁵ *Mineral Tenure Act*, RSBC 1996, c 292, s 1.

³⁶ BC Reg 529/2004, schedule B.

³⁷ *Mineral Tenure Act*, RSBC 1996, c 292, s 11.

³⁸ *Mineral Tenure Act*, RSBC 1996, c 292, s 11(2).

³⁹ Kendyl Salcito "'War Brewing' Over Mining Rights in Rural British Columbia" online: The Tyee <<http://thetyee.ca/News/2006/06/14/MiningRights/>>.

- The area is a protected heritage property.⁴⁰

Covenants, easements, or other restrictions on land will not limit the access of mineral titleholders.⁴¹ Private land must fall into one of the above exceptions in order to ensure the ability to exclude mineral tenure holders.⁴² The Surface Rights Board, which also enforces access rights to private land in the oil and gas industry, is the administrative body in charge of mediating and arbitrating the rights of access to which a mineral titleholder is entitled. When making an arbitration decision or undertaking a mediation it may consider a range of factors including; whether the land is occupied, has a dwelling house, is an orchard, or is cultivated before making access and compensation orders.⁴³ Surface access orders may take into account a landowner's concerns about disruption, but ultimately the legal regime favours the granting of access.⁴⁴

HOLDERS OF CROWN GRANTS

Crown grants may specify the mineral rights conferred, or if silent, the rights included depend on what version of the *Mineral Act* was in force at the time of the grant.⁴⁵ If rights to access the granted minerals are not expressly described they will be implied.⁴⁶ This is a particularly complex area of law and a lawyer should be consulted in the event that a subsurface owner represents ownership of a Crown Granted 2 Post Claim.

What rights come with ownership of subsurface minerals?

Mineral claims include rights of access for the purposes of exploration and subsequent production.⁴⁷ The only land use designations that will preclude mining access for either exploration or production are:

- A mining prohibition under the *Environment and Land Use Act*;
- A park under the *Park Act* or a regional park under the *Local Government Act*;
- A park or ecological reserve under the *Protected Areas of BC Act*;
- An ecological reserve under the *Ecological Reserve Act*;
- A protected heritage property.⁴⁸

EXPLORATION

If a claim holder (owner of mineral tenure for a specific area) desires access for the purposes of collecting less than 1,000 tonnes of ore it will be granted if three items are obtained:

- A permit for mine exploration under the *Mines Act*;
- Written approval of the Chief Inspector of Mines for the issuance of a *Forest Practices Code* special use permit;

⁴⁰ *Mineral Tenure Act*, RSBC 1996, c 292, s 14(5).

⁴¹ *Mineral Tenure Act*, RSBC 1996, c 292, s 15(5)

⁴² *Mineral Tenure Act*, RSBC 1996, c 292, ss 15(5)(a), 11(2).

⁴³ *Mineral Tenure Act*, RSBC 1996, c 292, s 19.

⁴⁴ "Mining Orders" online: Surface Rights Board of British Columbia
<<http://www.surfacerightsboard.bc.ca/BoardDecisions/MiningAndMineralOrders.aspx>>.

⁴⁵ Ryan Howe, "Understanding Title Searches: Undersurface Rights" online: Business Law Blog
<<http://businesslawblog.ahbl.ca/2012/08/31/understanding-title-searches-undersurface-rights/>>.

⁴⁶ Ian Cassie, "Mineral Rights in British Columbia: An Overview" online: Fasken Martineau page 2
<http://www.fasken.com/files/Publication/c7329451-42c2-4879-b5fb-926be6029aa2/Presentation/PublicationAttachment/3ff4efb8-5379-4a24-9e09-b065c416d40a/WIC_MINERAL_RIGHTS_IN_BC.PDF>.

⁴⁷ *Mineral Tenure Act*, RSBC 1996, c 292, ss 11, 14.

⁴⁸ *Mineral Tenure Act*, RSBC 1996, c 292, s 14.

- A *Forest Practices Code* special use permit.

The Minister has discretion to refuse approval of the special use permit after considering possible access options.

PRODUCTION

If exploration is fruitful a claim holder may apply for a mine permit under the *Mines Act*.⁴⁹ In the event that expropriation of the land is necessary because it has a severe impact on the surface rights, compensation is determined under the *Expropriation Act*.

How does one determine who owns subsurface minerals?

Mineral tenure is known as a chattel interest and as such is not registered on title. In many cases it can be found using www.mtonline.gov.bc.ca but because of the complex history surrounding mineral grants a landowner who is unsure about ownership of subsurface minerals should consult a lawyer for certainty.

How does a new mineral claim affect an existing covenant?

Mineral rights holders are entitled to access, exploration, and extraction despite the existence of a conservation covenant. A recent example occurred on Pender Island in 2012 when a mineral claim was staked beneath several existing conservation covenants.⁵⁰ Once a claim has been staked the surface rights that accrue to the holder take precedence over an existing covenant.⁵¹

Compensation for “damage caused by entry, occupation or use” is payable to the owner of the surface land under the *Mineral Tenure Act*. The amount is determined by negotiation with the miner or through the Surface Rights Board.⁵² If private land is taken for the purposes of access to a mineral claim then compensation is paid by the tenure-holder according to the *Expropriation Act*.⁵³

How does an existing mineral claim affect the registration of a new covenant?

Covenants on surface land may be put in place despite the fact that someone other than the surface landowner has tenure to the mineral rights. However, the covenant will not alter the legal access rights for mineral tenure holders found in sections 11.1 and 14 of the *Mineral Tenure Act*.⁵⁴

How does one acquire a mineral claim?

⁴⁹ *Mines Act*, RSBC 1996, c 293, s 10.

⁵⁰ Jessica Clogg, “Modernizing BC’s Free Entry Mining Laws for a Vibrant, Sustainable Mining Sector” online: West Coast Environmental Law and Fair mining Collective <http://wcel.org/sites/default/files/publications/WCEL_Mining_report_web.pdf>.

⁵¹ *Mineral Tenure Act*, RSBC 1996, c 292, s 14(5).

⁵² *Beple v Western Industrial Clay Products*, 2004 BCCA 497; *Tilava Mining Corporation v Louise Eccles* (2006), online: Mediation and Arbitration Board, Surface Rights Board of British Columbia <<http://www.surfacerightsboard.bc.ca/Documents/OilAndGasOrders/A395.pdf>>; *Mining Right of Way Act*, RSBC 1996 c 294.

⁵³ *Mining Right of Way Act*, RSBC 1996 c 294, s 2.

⁵⁴ *Mineral Tenure Act*, RSBC 1996, c 292, s 14(5).

Mineral claims (which are a form of tenure) are now acquired online at www.mtonline.gob.bc.ca through the provincial mineral tenure system. Any resident or corporation that has obtained a free miner's certificate can stake a claim for a small fee.

On what types of land can mineral claims be made?

Mineral claims can be acquired underneath Provincial Crown land or private land even if it is within a First Nations' traditional territory. The province does not own the subsurface of either First Nation Reserves or First Nation treaty lands, therefore mineral claims cannot be purchased for these areas.⁵⁵

Possible ways of protecting private property from mineral development

Likely the most effective way to protect covenanted land from mineral development is to purchase the underlying mineral title. However, it is generally only possible to buy mineral claims, which are tenure ownership rather than outright ownership. In order to prevent the construction of access roads across the covenanted land it may be necessary to purchase nearby claims as well. An annual payment instead of exploration and development is required in order to retain the mineral claim.⁵⁶

⁵⁵ BC Reg 529/2004, s 4.

⁵⁶ BC Reg 529/2004, ss 10, 11.

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