



Severed Mineral Rights and Surface Waivers in Renewable Energy and Data Center Development

Documenting Mineral Risk for Project Sales, Financings, and Title Insurance Review

By Eugene Lerman

In renewable energy and data center development, the party signing the lease, easement, option, or purchase agreement may not control all rights that affect the project site. In many markets, ownership of the minerals beneath the property has been severed from ownership of the surface estate. As a result, mineral owners, mineral lessees, or operators may retain rights to access or use portions of the surface to develop the mineral estate.

For projects that depend on long-term use of the surface, severed mineral rights matter. They can affect title insurance, project sale and financing diligence, site layout, and overall project viability.

Many experienced developers order mineral ownership reports during land agreement negotiations or shortly after site-control documents are signed. But the report is only the starting point. The developer still needs to determine which interests matter, what the title company will require, whether surface waivers or accommodation agreements should be pursued, and how any remaining risk will be explained to buyers, financing parties, and title companies.

If that work is still open when the project is moving toward a sale or financing, mineral risk can become a



closing issue.

This article focuses on what should happen after mineral issues are identified. It explains why severed mineral rights matter, how surface waivers and accommodation agreements are used, and how developers can create a project file that buyers, financing parties, and title companies can review.

Why Severed Mineral Rights Matter

Renewable energy and data center projects are often located on large rural tracts. In many regions, it is common to find that the mineral estate has been severed from the surface estate. This may have happened because a prior owner sold the surface while retaining the minerals, or because mineral rights were separately conveyed at some point in the chain of title.

The result is that a developer may obtain rights from the surface owner while other parties still hold mineral rights that affect the project.

The practical risk varies by jurisdiction, mineral ownership structure, mineral activity, title insurance requirements, and project footprint. Some severed mineral interests present limited practical concerns. Others require careful diligence and mitigation before the project can satisfy the requirements of buyers, financing parties, and title companies.

Mineral Risk Depends on the Project Footprint

Mineral risk should be evaluated in light of the specific project type and physical footprint. Wind, solar, battery storage, and data center projects can present different mineral-risk profiles even when located on land with a similar mineral ownership history.

Wind projects cover large areas, but the facilities footprint is relatively small in comparison. Turbines, transmission lines, roads, and related facilities occupy limited portions of the surface. As a result, wind projects generally have flexibility to coexist with mineral activity, including existing or future surface uses. Even so, mineral-risk analysis may still be necessary depending on the jurisdiction, facility locations, mineral activity, title company requirements, and the project's sale or financing context.

Solar projects have a more intensive surface use. A solar project requires a contiguous, fenced project area with extensive panel coverage and related infrastructure. Because solar facilities occupy a larger



contiguous surface area, mineral activity can create more conflicts with operations, and solar projects with severed mineral rights require more work to address mineral risk than wind projects.

Battery storage projects present a different surface use. Some storage sites may not require mineral surface waivers, depending on the project footprint, title company requirements, mineral ownership structure, and likelihood of future mineral development. Other sites may require closer analysis depending on project-specific circumstances.

Data centers require separate attention because certain data center owners, financing parties, or end users may have different mineral-risk mitigation requirements than for solar or battery storage projects. In some cases, the intended owner or end user may require ownership of the mineral estate in fee, or a mitigation package tailored to its acquisition, financing, or site-selection criteria.

The same severed mineral fact pattern may therefore have different implications depending on the project type, the density of surface use, and the requirements of the intended owner.

From Mineral Ownership Report to Mitigation Package

A mineral ownership report identifies severed mineral interests that may affect a surface project. Once delivered, the report should become the starting point for the project's review of mineral risk, not the end of the analysis.

In reviewing the report, the developer and its counsel should determine which mineral interests matter for the project footprint and requested title coverage, which parties may need to be contacted, whether existing mineral lessees or operators must be addressed, and what form of waiver, accommodation agreement, or drill-site set-aside may be acceptable. The project file should then show what was found, what was done, which documents were obtained, what the title company required, and what risk remains.

That documentation matters because mineral curative work often involves development teams, land agents, outside counsel, title companies, and multiple rounds of outreach and coordination. If the file later depends on memory or scattered email updates, it can be difficult to show which interests were addressed and which remain open.

The project team should also verify signed waivers before treating them as complete. That review should confirm that the waiver was actually received and is the correct version, that the correct parties signed, that any required notarial or recording formalities were satisfied, and that the waiver corresponds to the mineral interests identified in the mineral ownership report. Without that verification, waiver status can become difficult to support when buyers or financing parties are asked to rely on it.



Timing matters because mineral ownership report review, title underwriting, mineral-owner outreach, waiver negotiation, and documentation of remaining risk each take time. Early in the life of the project, the development team has more flexibility to evaluate the mineral picture and decide how to respond. It may be able to evaluate the need for surface waivers or accommodation agreements, coordinate with title underwriters, engage landmen, account for mineral-development risk in the site plan, consider drill-site set-aside areas where appropriate, evaluate alternative parcels, or determine whether the site remains commercially viable before substantial development capital has been committed.

Later, the available solutions narrow. The project footprint may be fixed. Permitting submissions may be underway. Project assumptions may have been communicated to buyers and financing parties. Sale or financing deadlines may be approaching. At that stage, the same mineral work may still need to be completed, but with less flexibility and greater closing pressure.

Surface Waivers and Accommodation Agreements

Surface waivers are often the most direct way to mitigate mineral risk. A surface waiver generally seeks to limit or eliminate the mineral interest holder's right to use the surface of the project land for mineral development. Where properly obtained and recorded, waivers can provide important support for project sale, financing, title insurance, and operations.

In practice, waivers can be difficult to obtain. Some parties may be difficult to locate, slow to respond, or uncertain about what they are being asked to sign. Others may view the waiver request as an opportunity to seek compensation that is disproportionate to the project's development budget or the risk being addressed.

Waiver strategy should be informed early by the mineral ownership report and the project specifications. The developer should involve the title company and experienced counsel early in the process so that the developer can understand what the title company will require before spending months pursuing signatures that may not be necessary to satisfy underwriting or buyer requirements.

In some situations, a full surface waiver is not achievable. The parties may instead negotiate an accommodation agreement, surface use agreement, limited surrender of surface rights, or similar arrangement. These agreements may designate areas where mineral development can occur, restrict activities within the project footprint, establish access routes, require directional drilling, address notice and coordination, protect subsurface support, and otherwise attempt to reconcile mineral development rights with the surface project.



Across these structures, what matters is whether the project file supports the mineral-risk position that buyers, financing parties, and title companies are being asked to accept. The project file should be able to show which mineral interests were identified, which parties were contacted, which waivers or accommodations were obtained, whether those documents were properly executed and recorded, and any interests for which waivers or accommodation agreements have not been obtained. Incomplete records, missing executed documents, outdated ownership information, or uncertainty about which interests were actually covered by waivers or accommodation agreements raise diligence questions and weaken confidence in the broader site-control package.

When Surface Waivers and Accommodation Agreements Are Not Achievable

In some projects, developers cannot obtain surface waivers or accommodation agreements from every mineral interest holder. That does not always mean the project cannot proceed. But it does mean the remaining risk needs to be evaluated and explained to the parties who will be asked to rely on the project's site-control package.

The practical analysis should focus on whether the interests not addressed by waivers or agreements create material project risk. That analysis often turns on the waiver coverage achieved, the nature of any unaddressed interests, the likelihood of future development, the availability of directional drilling or drill-site set-asides, and the title company's willingness to provide the requested coverage.

In some cases, designated drill-site areas or set-asides are part of the project's response to mineral risk. A set-aside, even without the sign-off of all mineral interest holders, helps demonstrate that mineral development can occur without disturbing the project footprint, but it does not by itself create a contractual obligation binding all mineral owners or operators to use that area. It helps support the project's position with buyers, financing parties, and title underwriters, but the project file should be clear about what the set-aside does and what mineral interests remain unaddressed by waivers or agreements.

That distinction is important in transaction diligence. A buyer, financing party, or title company may be comfortable with an approach that leaves some residual mineral risk, but only if the remaining risk is clearly understood and documented. Uncertainty is often more problematic than a known, evaluated risk that has been addressed through clear analysis and documentation. Buyers and financing parties can work with residual risk. What is harder to work with is a file that leaves them guessing.



Mineral Coverage and Title Insurance

Mineral coverage is often central to the mineral-risk mitigation strategy. In general terms, mineral title endorsements may provide coverage against certain loss or damage resulting from the future exercise of existing rights to use the surface for the extraction or development of minerals or other subsurface substances. The specific coverage and availability vary by jurisdiction, policy type, project status, and underwriting requirements.

For renewable energy projects, endorsement analysis is important because project improvements may not fit neatly into traditional real estate categories. Energy-project endorsements may be relevant for electricity facilities and severable improvements associated with energy projects, while other mineral endorsements may address certain mineral and subsurface substance risks for improvements or land under development.

In Texas and other jurisdictions, state-specific forms and rules may apply. In some jurisdictions, mineral coverage may be limited or unavailable in particular forms. For that reason, mineral coverage strategy should be coordinated early with the applicable title company and knowledgeable counsel rather than assumed.

That coordination should begin after the mineral ownership report and preliminary title materials have been reviewed. Title underwriters need time to evaluate the mineral ownership structure, project footprint, existing waivers, unaddressed interests, active mineral leases, proposed set-asides, and requested coverage.

The title company's position also affects how the developer approaches waiver outreach and residual-risk documentation. If the title company requires certain waivers or accommodation agreements before issuing requested coverage, those items should be prioritized early. If the title company is willing to provide coverage based on a different underwriting approach, the project file should still document the basis for that position so the record can be reviewed by buyers and financing parties.

Data Center Projects May Require a Different Mineral Strategy

Data centers may involve a different mineral-risk analysis because certain data center operators require ownership of the mineral estate in fee, or waivers, agreements, title coverage, or other protections that satisfy their site-selection or acquisition criteria.

For that reason, developers and site-control teams should discuss mineral ownership expectations with the potential data center owner early in the process. Where commercially available and consistent with the



project's acquisition strategy, acquiring the mineral estate in fee may preserve flexibility and help the site satisfy the requirements of a broader set of potential data center operators.

Where mineral acquisition is not feasible, the project team should evaluate whether surface waivers, accommodation agreements, set-asides, title coverage, or other protections will be sufficient for the specific intended owner.

That analysis should be done before the site is too advanced. If the mineral strategy is inconsistent with the expectations of the intended owner, end user, financing party, or title insurer, the issue can become difficult to solve once the site has been selected, diligence expectations have been set, and transaction timelines are approaching.

Mineral Risk Across Multiple Projects

For developers working across multiple projects, mineral issues should be handled consistently because the same diligence questions often appear across project sale and financing transactions.

A developer working on solar, storage, wind, transmission, or data center projects across multiple jurisdictions will regularly encounter mineral issues. If each project team handles those issues differently, the developer can end up with unreliable diligence records, inconsistent waiver standards, and uneven title practices. That inconsistency can affect project sales, financings, and the developer's ability to move projects through diligence efficiently across multiple projects.

A consistent process should make clear how mineral ownership reports are reviewed, when title underwriting is engaged, how waivers are structured, when mineral-owner outreach begins, and how remaining risk is documented for sale, financing, and title insurance review. It should also maintain a reliable record of executed waivers, interests for which waivers or accommodation agreements have not been obtained, title-company communications, and any assumptions that remain open. Across multiple projects, that consistency makes buyer, financing-party, and title-company diligence easier. It can also reduce repeat questions about waiver status, title-company requirements, and residual mineral risk.

A Note on Our Practice

Mineral issues in renewable energy and data center projects often involve real estate diligence, title insurance, and project sale and financing review. The legal issue is only part of the analysis. The project



team also needs to understand what buyers, financing parties, and title companies expect to see when they review the site-control documents.

In our practice, we regularly assist renewable energy and infrastructure project developers with site-control diligence, title review, title curative strategy, mineral-risk mitigation, surface waivers, accommodation agreements, and title insurance coordination. The perspective we gain through that work is often particularly valuable when a project has severed mineral interests, incomplete waiver records, title underwriting questions, multiple project parcels, or a compressed project sale or financing timeline.

Conclusion

Severed mineral rights can materially affect renewable energy and data center projects, but the practical significance of those rights depends on more than identifying the severance. The project team needs a supportable mineral-risk position that connects the mineral ownership report, title-company coordination, waiver outreach, executed waivers or accommodation agreements, any drill-site set-asides, and the treatment of any interests for which waivers or accommodation agreements have not been obtained.

That position should be documented in a way that buyers, financing parties, and title companies can review and rely on. For individual projects, that reduces late-stage questions in project sales, financings, and title insurance review. For developers working across multiple projects, consistent mineral-risk records make future diligence easier and reduce avoidable questions about title coordination, waiver status, or remaining mineral risk.

If you are evaluating severed mineral rights, mineral ownership reports, surface waivers, accommodation agreements, mineral coverage, or title issues in connection with renewable energy or data center development, [we would be happy to discuss.](#)

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