



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 remains incomplete when a project approaches sale or financing, the developer may have to



resolve mineral issues before closing.

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 more investigation, waivers, or other protections before a buyer, financing party, or title company will accept the risk.

Mineral Risk Depends on the Project Footprint

Mineral risk should be evaluated in light of the project type and physical footprint. Wind, solar, battery storage, and data center projects can face different risks from mineral development even 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, the developer may still need to evaluate mineral rights based on the jurisdiction, facility locations, mineral activity, and the requirements of the title company or prospective buyer or lender.

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 some owners, financing parties, or end users require different protections against mineral development than those typically obtained 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 specific waivers, agreements, or title coverage as a condition to acquiring or financing the site.

The same severed mineral interests may therefore create different concerns depending on the project type, the density of surface use, and the requirements of the intended owner.

Acting on the Mineral Ownership Report

A mineral ownership report identifies severed mineral interests that may affect a surface project. The developer and its counsel then need to review those interests, determine which could interfere with the project, and decide what steps to take.

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, the developer may



be unable to confirm which interests are covered when a buyer or financing party asks to review the waivers.

Reviewing the mineral ownership report, obtaining title underwriting decisions, contacting mineral owners, negotiating waivers, and documenting remaining risk each take time. Early in development, the team has more flexibility to assess those risks 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 in the site plan, consider drill site set asides where appropriate, evaluate alternative parcels, or determine whether the site remains commercially viable before substantial development capital has been committed.

Later, there may be fewer practical options. The project footprint may be fixed. Permitting submissions may be underway. Buyers and financing parties may already be relying on assumptions about the site. Sale or financing deadlines may be approaching. The developer may still need to complete the same mineral work, but with less time to obtain signatures or change the project layout.

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.

The mineral ownership report and project specifications should guide which waivers the developer pursues. The developer should involve the title company and experienced counsel early enough to understand the underwriting requirements before spending months pursuing signatures. Buyer requirements should also be considered, since a buyer may require waivers beyond those needed for the requested title coverage.

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.

For any of these agreements, the project file should 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 which interests remain unaddressed. Buyers, financing parties, and title companies need that information to evaluate the risk they are being asked to accept. Missing executed documents, outdated ownership information, or uncertainty about which interests are covered can lead to additional diligence requests and make it difficult to determine whether the project has the protections it needs.

When Surface Waivers and Accommodation Agreements Are Not Achievable

On some projects, developers cannot obtain surface waivers or accommodation agreements from every mineral interest holder. The project may still be able to proceed, depending on the interests involved and the protections available. The developer needs to evaluate the remaining risk and explain it to the parties who will rely on the project's land rights.

The review should focus on whether the interests not addressed by waivers or agreements could materially interfere with the project. Relevant factors include which interests are covered by waivers, the nature of the unaddressed interests, the likelihood of future mineral 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, developers designate drill site areas or set asides to allow for mineral development outside the project footprint. Even without agreement from all mineral interest holders, a set aside can help demonstrate that mineral development and the project could coexist. It does not, however, bind mineral owners or operators who have not agreed to use that area. Buyers, financing parties, and title underwriters may take the designated area into account, but the project file should explain what it provides and which interests remain unaddressed by waivers or agreements.

That distinction matters when a project is sold or financed. A buyer, financing party, or title company may accept some remaining mineral risk if it understands the interests involved, the likelihood of interference, and the protections available. The file should provide the documents and analysis needed to make that assessment. Where an interest remains unaddressed, it should be identified as such rather than left for the next reviewer to discover or infer from incomplete records.



Mineral Coverage and Title Insurance

Title insurance is often an important part of addressing mineral risk. 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 requirements also affect which mineral owners the developer contacts and how it documents remaining risk. If the title company requires certain waivers or accommodation agreements before issuing the requested coverage, the developer should prioritize obtaining them. If the title company will issue coverage on another basis, the project file should explain that basis and retain the relevant underwriting correspondence so buyers and financing parties can review it.

Data Center Projects May Require a Different Mineral Strategy

Data center developers may need to address mineral rights differently because some operators require ownership of the mineral estate in fee. Others may accept waivers, agreements, title coverage, or other protections that meet their criteria for acquiring or selecting a site.



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.

These discussions should take place before the developer commits substantial time and capital to the site. If the intended owner, end user, financing party, or title insurer requires protections the developer cannot obtain, it may be difficult to resolve the issue after site selection, particularly if a sale or financing deadline is 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 records, inconsistent waiver terms, and different approaches to title coverage. Buyers and financing parties may then have to reconstruct the work on each project, delaying review and generating questions that a consistent process could have answered.

A consistent process should make clear how mineral ownership reports are reviewed, when the title underwriter is consulted, how waivers are structured, when mineral owners are contacted, and how remaining risk is documented. 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 unresolved assumptions. Using the same approach across projects makes the records easier to review and compare. It also helps the developer respond to questions about waiver status, underwriting requirements, and remaining risk without repeating the same research.

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 project team needs to evaluate the mineral rights and understand what buyers, financing parties, and title companies will require. The documents and analysis should allow those parties to see which interests have been addressed and what remains unresolved.

In our practice, we regularly assist renewable energy and infrastructure project developers with site control diligence, title review, title curative work, mineral issues, surface waivers, accommodation agreements, and title insurance coordination. That work includes reviewing severed mineral interests, reviewing, drafting, and negotiating waivers, addressing title underwriting questions, and coordinating documents across multiple project parcels. When a sale or financing deadline is approaching, we help identify what remains outstanding and the steps needed to address it.

Conclusion

Severed mineral rights can materially affect renewable energy and data center projects. Identifying the severance is the first step. The developer then needs to determine which interests could interfere with the project, obtain the waivers or agreements it can, and evaluate the remaining risk. The project file should connect that analysis to the mineral ownership report, title company requirements, executed documents, any drill site set asides, and interests that remain unaddressed.

Buyers, financing parties, and title companies should be able to review that file and understand what has been done and what remains open. Keeping the records current helps the developer answer questions before they delay a sale, financing, or title insurance review. Across multiple projects, a consistent approach also makes it easier to track missing waivers, follow up with title underwriters, and avoid repeating work already completed.

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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