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## West Coast Environmental Law

# Mining's Privileged Access to Land: A Free Entry Backgrounder

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### What is free entry?

The free entry system is the dominant means of granting mineral tenures in Canada today. It gives mining companies the exclusive right to Crown-owned mineral substances from the surface of their claim to an unlimited extension downwards. There are 3 primary rights associated with the law of free entry:

- the right of entry and access on virtually all lands;
- the right to locate and register a claim without consulting the Crown; and
- the right to acquire a mineral lease with no discretion on the part of the Crown.

### How does free entry work?

While each jurisdiction has individual legislated provisions, the basic operation of free entry is as follows:

1. A free miner obtains a licence to prospect; there are minimal requirements, such as being 18 years of age and paying a nominal sum (ie. \$25).
2. The free miner has access to any and all private and public lands, subject to minor exceptions (where land has been withdrawn, or statutory provision that prohibit exploration on buildings, dwelling houses, cemeteries, agricultural lands).
3. The free miner stakes claims on the land (provincial laws contain detailed requirements as to how staking occurs).
4. The free miner registers any claims and then maintains this priority by doing minimal assessment work annually (in some jurisdictions the miner can pay cash in lieu of doing work to maintain claims).
5. Basic exploration activity can occur; it is not always regulated. Minimal environmental laws may apply, but they often leave transient operations untouched.
6. If the miner finds a significant mineral deposit, a mineral lease is applied for. Under free entry, the government has no discretion to refuse a lease application, provided the basic information requirements are met.
7. Mineral leases are significant, it provides security of title and means mining company can invest in mine development. Whereas claims are usually valid from year to year, a lease is often valid for 20+ years.
8. More significant mine operations can begin. Depending on the jurisdiction, these operations may be subject to environmental assessment or permit requirements.

9. At the mine development phase, the miner will usually require surface rights. This may require compensation to be paid to a private landowner.
10. Conversely, if land is subsequently withdrawn (ie. for park creation) when mineral claims have been staked, the free miner may be entitled to compensation.

### What are some of the assumptions and implications of free entry?

- Mining is the first and best use of lands. While this may have been the policy view at one time, this is no longer the case. As experience with land use planning processes in BC have proven, there are numerous, legitimate competing interests for Crown and private lands.
- All Crown lands are open for staking and mineral exploration unless they are expressly excluded or withdrawn by statute. This limits the ability of government to undertake multi-use land resource planning, which often includes the designation of protected areas, and the balancing of other potential resource users, such as timber, oil and gas, and wilderness tourism operators.
- Mining prevails over private property interests. A free miner can enter onto private land and make a claim without giving notice to the surface landowner. Surface owners are only entitled to compensation and security for any loss or damage to the property. The free miner is also not legally obligated to consult and inform a surface owner of their plans even after written notice has been given. Often tensions arise between surface landowners and mineral claim holder, leading to expensive dispute resolution processes.
- Mining prevails over aboriginal land claims. The current system does not recognize or take into account aboriginal land claims. Current federal free entry laws do not require consultation with, or protection for First Nations. Nor does it provide them with a role in land resource decisions as required by *Delgamuukw*. In general, exploration activities and the nature of free entry have a disruptive effect on native land claims.
- Mineral tenures are appropriately granted on a first come first served basis. Time priority is the basis upon which tenures are obtained, which can result in staked claims overlapping, and conflicts between different exploration interests.
- Mineral potential is so valuable that it warrants leaving the staked area essentially unregulated and unusable for other resource interests. Once a claim is recorded or a lease obtained, the free miner can hold the claim for extended periods of time, and in some cases indefinitely, by performing and recording a minimal required amount of work on the land every year. Resource management and land use planning initiatives must work around mining claims, where the opposite is true for other natural resource industries.

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