

Surface Use Agreements

The Firm represents surface owners and users to ensure compatible development of underlying minerals, whether or not severed from the surface estate. We understand the unique interests and requirements of both surface and mineral developers and owners. The Firm utilizes our understanding to help our clients effectively utilize all available statutory, regulatory, and contractual mechanisms to minimize effects of mineral development on the available uses and value of the surface estate. Through negotiation of surface use agreements that define notice, location, and operational requirements, we have helped provide certainty for clients regarding the potential impacts of oil and gas operations or mineral development on their properties.

Additionally, we counsel clients about how to manage the risks and liabilities associated with development of the subsurface estate and help clients to obtain favorable land use permitting conditions, cleanup standards, and indemnification assurances. These protections have allowed property owners to preserve the integrity of surface uses such as residential and commercial uses, livestock grazing or hay production, energy production, and wildlife habitat and open space while accommodating the rights and interests of the mineral developer.

Representative Experience

- Represented a master developer in negotiating a surface use agreement to protect a 20,000-acre master planned community with thriving retail centers, recreation facilities, community events, parks and trails, and up to 10,000 homes. Firm attorneys:
 - Drafted and assisted in negotiating a surface use agreement that respected the underlying estate's right of reasonable access and assured through oversight and planning requirements that oil and gas development sites would be operated, maintained, and reclaimed to reduce adverse impacts on quality of life and property values for adjacent community residents.
 - Identified regulatory protections and opportunities to enhance those protections through supplemental contractual obligations.
 - Drafted and helped negotiate the form of related access easements to be granted by the master developer.
 - Prepared a checklist to help monitor whether subsequent subsurface development is in compliance with secured commitments.
- Represented a solar developer in evaluating surface use rights associated with severed oil and gas interests under various existing surface use agreements within the proposed project footprint.
- Represented the master developer of a golf course community in negotiating surface use agreements for multiple well, directional drilling wellsites. The agreements included joint planning obligations, well-site traffic management, screening, landscaping, noise and light control requirements, among other protections and coordination obligations to protect adjacent property owners.
- Represented the owner of a large ranch in Routt County, Colorado, in negotiating a surface use agreement to cover oil and gas development of the severed mineral estate. The firm drafted a detailed agreement specifying where drillings pads, utilities, and access roads were to be located; requiring clustering of wells to minimize their footprint; mandating directional and horizontal drilling to minimize surface disruption and ensure that subsurface development was compatible with the preservation of open space and wildlife habitat; as well as creating a conservation easement on the property. These commitments helped reduce the impact of the oil and gas development, protecting the important wildlife and agricultural resources on the property.



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- Represented a developer of a permitted wind farm that included a wind-powered electrical generating facility, related improvements and machinery, wind turbine generators, and electrical transmission and communication lines in negotiating a compatible development agreement. Firm attorneys:
 - Counseled the wind farm operator prior to development of the respective property interests to create a framework within which future development activities by both the mineral and wind developer could occur.
 - Assisted in negotiating permit conditions with the local land use authority that protected both mineral and wind uses.
 - Drafted the compatible development agreement that included provisions to protect generating facilities directly, through operational limitations on oil and gas drilling activities, and through use of a buffer zone around the facilities in which certain seismic and other activities were prohibited.
- Represent a mineral interest owner in monitoring and intervening in land use approval proceedings where proposed surface development may affect surface access for mineral development and negotiating associated surface use agreements.