

Attention Landowners

Knowing Your Surface Rights



Kenai Peninsula Well (photo by K. Hatch)

Most likely, if you own land in Alaska, the state of Alaska owns what lies beneath. These “subsurface rights” are dominant over your rights as a surface landowner and you cannot deny reasonable access to the state’s resources, which could include anything from precious metals to oil and gas. This means that you will not receive any royalties on natural gas extracted from your property and you may not be able to stop gas development activities on your land.

Alaska law does require that before any “operator,” (a company licensed to carry out oil and gas exploration and/or extraction), may enter your land, the operator must seek permission to enter private land and is required to make a “good faith effort” to negotiate a Surface Use Agreement. If you refuse to negotiate, the operator can still access the subsurface materials below your property, but must first post a surety bond with the state to cover potential damages. Operators are fiscally liable for “all damages sustained by the owner, by reason of entering upon the land.”(AS 38.05.130)

Various laws include standards for how and where gas development occurs, including standards for development on private property and near residences. Operators must adhere to regulations for many different activities, including facility siting. Under current Denali Borough Ordinance, for example,

- Drill pads must be located at least 500 feet from any recorded private property line.
- Compressor stations must be located at least 1500 feet from any recorded private property line.

At the same time exceptions often exist for these standards, and there can be flexibility in their application. For example, “[a] variance may be granted from the setback requirement if the operator obtains written consent of the landowner/landowners with the adjoining property line and has obtained approval from the Denali Borough Assembly following at least one public hearing.” [Ord. 08-07 § 2; Ord. 05-21 § 2.]

In some cases, state and borough regulations for gas development may vary, and landowners should be aware of these laws and any discrepancies between them. Additionally, landowners may find that current laws seem inadequate for ample protection of their surface property. For these reasons, if you are a surface landowner in an area with possible subsurface development, you should become familiar with the details of any proposed development on your land, consider consulting an attorney, and be prepared to negotiate a Surface Use Agreement that is as protective as possible of your rights.

State’s Rights (per AK Statute 38.05)	Operator’s Rights (as state lessee)	Landowner’s Rights
<ul style="list-style-type: none"> • Reservation of subsurface rights. • For the purpose of subsurface extraction, right to enter lands and make use of surface (including siting of infrastructure such as buildings, roads, pipelines, power lines, wells, etc). 	<ul style="list-style-type: none"> • Right to enter and use, “as is reasonably necessary” the surface for extraction of subsurface materials, including establishing infrastructure. 	<ul style="list-style-type: none"> • Right to notification by operator of proposed activities for your land (notification extends to all impacted parties within ½ mile). • Right to Surface Use Agreement with the operator. • Right to reimbursement for damages to your land resulting from subsurface material extraction (paid for by the operator).

If you are approached by a gas development company to negotiate a surface use agreement, consider the following before you sign.

Don't be in a hurry.

- Don't sign anything during the first meeting.
- Seek guidance from organizations that work with landowners, or an attorney if desired.
- Keep records of all communications with the operator (both written and oral).
- Before negotiating, brainstorm and document all of your concerns regarding the things that are important to you about your land - water, air, buildings, driveways, fences, vegetation, view-shed, tolerance for noise, and privacy.
- Talk to your neighbors.
- **Photo-Document Everything!**
Take pictures of your property Before-During-After all exploration and development activities on your land.

Know your rights.

- Be on guard for broad language or language that gives a wide breadth of rights to operators.
- Make sure that the agreement indemnifies you, the landowner and your associates, from any liabilities that may arise out of the operator's activities while on your land.
- Determine precisely what activities the Surface Use Agreement permits the operating company to do on your land, as well as when they can do them.
- Require that the operator notifies you of any changes in operations 30 days or so before such changes can occur.
- Outline the company's financial responsibility for damages, including specific standards by which to gauge damages (e.g. water level in well drops below a certain level, buildings suffer structural damage due to geophysical changes wrought by drilling).

Require that the Surface Use Agreement includes:

- A development plan, including a detailed map of proposed locations for wells, roads, pipelines, buildings, compressor stations, water disposal/discharge/storage, fences, parking, landscaping.
- Acceptable standards and a plan for monitoring:
 - Water use
 - Water quality (including baseline data provided by a consultant before any activities begin)
 - Storage & disposal of "produced water" & other waste
 - Noise level & permitted hours of operation
 - Air quality
 - Soil quality & presence of noxious weeds
 - Privacy
 - Construction & placement of gas-related infrastructure
 - Disturbance to your land, including traffic use, impacts to vegetation, disruption of normal activities.
- A development timeline, including a timeline for reclamation completion.
- Establish specific Standards for Reclamation, that are to YOUR satisfaction.

Record and report any breaches of your contract to the State of Alaska. Call Kevin Banks, Director of the Division of Oil and Gas at 907-269-8781.

For more information and to seek help: denalicitizens.org, gasdrillingmatsu.org, earthworksaction.org, <http://www.protectpropertyrights.org/>

For sample surface use agreements: <http://powderriverbasin.org/surface-and-damage-use-agreement-samples/>, gasdrillingmatsu.org/landownersguide.pdf

For ideas for Best Management Practices, see Ted Turner's Ranch: <http://www.powderriverbasin.org/cbm-legal-document-samples/>