

Site Control & Title FAQ For Alaska

Presented By



This document has been compiled to assist persons that need information about land rights and survey work related to land rights. You can skim through and read any portion of the document. Each section stands (more or less) on its own. This document will be updated to improve clarity and as new title questions arise. The information here has been compiled from a variety of sources. While it is believed that all of the information presented is accurate, it is not a legal document. Specific land title and boundary situations should be addressed by a competent lands professional.

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FAQs

What is site control?

Site control means that you have obtained an enforceable right to use a parcel of land for the purpose of the project facility for the life of the project facility. This right must be formally given in writing. Verbal permission is not enough. The person might change his or her mind, the land may change hands, or the person may not even have the authority to give you such permission. Deeds, leases, or easements are the most common forms of written authorization to use land. This written permission must be available to the public; this means it needs to be recorded in the state recorder's office.

Why is site control important?

Site control is important because, without it, you literally may be wasting any money expended for a structure and could even be held liable for damage to the land by the person who owns the land. Additionally, in many cases, State and Federal agencies will not release grant funds unless site control is shown.

What are "Rights in Title"?

Land is said to have a "Bundle of Rights" associated with it. Examples of such rights are; the right to build a structure, the right to drive across, the right to drill for oil, the right to drill for water, the right to install utilities, etc. You may also hear these rights referred to as "interests". These rights can be transferred independently. For example; Person A, owning all of the rights to a parcel of land can grant a Neighbor B an access easement so that the neighbor has the right to drive across Person A's land. This doesn't give Neighbor B the right to build a structure or run a power line across Person A's land. It transfers a specific right - to do a specific thing - in a specific location - to a specific legal entity (person, corporation, government body, etc.).

Most land in Alaska has split surface and subsurface estates. Where Village Corporations own land, they typically own the surface estate and the Regional Corporation owns the sub-surface estate.

When the Federal Government transfers land they typically reserve (withhold) the rights for ownership of oil and gas. So, typically, the first documented transfer has already started to split up the rights in title.

These individual rights associated with land are the "Rights in Title".

How does a person determine who holds rights in title?

Title research. Title research is the process of locating and reviewing documents that transfer rights in title. There are a number of sources for these

documents (BLM, State Recorder's Office, etc.). The sequence and validity of the documents are critical to determining who currently holds which rights for which piece of land. This can be a complicated process. Individuals with substantial lands backgrounds make this determination. A title search is often ordered to assist in this effort.

What does a title search or title report do?

A title company typically performs a title search. It researches the public record (recorder's office, BLM, etc.) in an attempt to determine all persons having rights to a specific parcel of land. A title search follows the "Chain of Title". Determining ownership of rights can be a very complicated effort. A recorded deed doesn't necessarily mean that the person on the deed has any rights to the land. It is important that you acquire rights from the individuals that actually possess them. A title search helps you determine who actually possesses the rights. A title search is an important step in successfully obtaining site control.

Be careful, a title report does not reveal unrecorded interests in land. Section line easements, [Public Land Order](#) withdrawals of land, and other unrecorded interests won't show up in a title search but they may affect your ability to use land.

What laws control the rights associated with land?

Federal, State, local, and common law establish the rules associated with land rights. Common law, also know as "case law", is based on judicial precedent (the rulings of the courts). Local laws are subject to State laws and State laws are subject to Federal laws. All laws are subject to interpretation by the appropriate courts. "Indian Country" enjoys a sovereign to sovereign relationship with the Federal government. In 1998 the U.S. Supreme court ruled that the Metlakatla Indian Community is the only "Indian Country" in Alaska. ANCSA revoked the reservation status of all other reserved lands in the state. With the exception of the Metlakatla Indian Community, all lands in Alaska are clearly subject to State law. Restricted Native allotments are subject to additional laws and enjoy additional benefits.

How do I know if what I have for site control is adequate?

The site control requirements depend upon the nature of the project. For example, if a permanent building is to be constructed, generally, you should either obtain fee simple title to the land (by deed) or obtain a right to use the land for the life of the structure (in most cases 20 years is considered sufficient).

Before obtaining a deed, or other document, you should make sure that the person giving the deed actually owns the land. If the project were for the construction of linear facilities, such as utility lines, the acquisition of an easement would be sufficient for site control. For short-term uses, a permit or license could be considered adequate.

It is important that the boundaries of the property be identified and legally described so that structures are built on the right land. It is, therefore, necessary that the property boundaries be located and marked. Typically, this means that a Professional Land Surveyor will survey the land. In addition to obtaining the land or an interest therein you should, at the same time, insure that there is adequate access to the site. It may be necessary to obtain an easement across other property in order to assure legal access to the property being used. Owning the property is useless if you cannot get to it. You should check with a qualified lands professional to determine if site control is adequate.

We own all of the lands around here. Isn't that adequate site control?

No. One of the goals of site control is to protect the facility. To make sure that land issues don't affect the operation and maintenance of the facility. Separating the lands that are needed for the operation and maintenance of the facility from the rest of your lands by [easement](#) helps protect the facility. This protection is by:

1. Public notification that the land is being used.
 - a. Easements and other documents that transfer land rights are recorded in the State Recorder's Office. It is standard procedure for individuals and organizations developing lands to check the State Recorder's Office for existing land rights. Without recording the documents, it is very difficult to keep track of and know about land rights in a community.
 - b. The Recorder's Office keeps the easement on file and available forever!
 - c. Without recording the documents, it is very difficult to keep track of and know about land rights in a community. There are unfortunate situations throughout the state where:
 - i. houses were built over buried lines. When the line needs to be repaired, the community has to decide whether to move the house, tear down the house, end service to the houses on the line, or build a new line.
 - ii. the same lot was sold/given to more than one person (there's a lot in western Alaska that was accidentally sold by the City 3 times – each time it was sold the city didn't realize that it was already sold).

Recording the easement for item i and the first deed for item ii would have greatly reduced the chances of these problems occurring.

2. Permitting the removal of items that affect the operation and maintenance of the facility.
3. Preventing the accidental transfer of the rights required to operate and maintain the facility.
 - a. Other rights can be transferred, but the rights required for the facility can't be transferred without vacating the easement.

It is important to make certain that the facility can be operated and properly maintained. Site Control, through easements, is one essential part of making sure that this can happen.

All right, a competent lands person has determined that site control is adequate. How do I ensure that I am building/working on the land that I have site control for?

The only way to be certain that you are within the boundaries of the land that you have site control for is to have the boundaries recovered or staked in the field by a Professional Land Surveyor. It is also important to have the improvements you are constructing staked on the property to ensure that they are in the right place on the property.

Who is the Public?

The public is "all the people", the people as a whole, the community, state, or nation.

In the case of acceptance of a dedication to the public (such as with a public utility easement), only a legal public entity (incorporated city, borough, or the state) can accept a dedication.

What does legal public access mean?

Generally, Public Access means that all people have a right of access. Public Access has a body of case law that fleshes out the extents and limitations of Public Access rights. Generally, it means that ANY person has a right use the land defined as Public Access for lawful travel. Legal Public Access means that the rights are documented and the public is put on notice as to location, grantor, and extents or limitations of those rights. Public Notice is by recordation in the State Recorder's office. The access exists until an action is taken to remove it (i.e. vacation).

What is a Plat?

Generally, a plat is a drawing that shows boundaries.

The legal definition in Alaska is:

"plat" (per AS 40.15.900) - means a map or delineated representation of a tract or parcel of land showing the subdivision of land into lots, blocks, streets, or other divisions;

What is a Subdivision?

Generally, a subdivision divides land.

The legal definition in Alaska is:

"subdivision" (per AS 40.15.900) -

(A) means the division of a tract or parcel of land into two or more lots by the landowner or by the creation of public access, excluding common carrier and public utility access;

(B) does not include cadastral plats or cadastral control plats created by or on behalf of the United States Department of the Interior, Bureau of Land Management, regardless of whether these plats include easements or other public dedications;

Subdivisions are recorded in the State Recorder's Office. BLM has Townsite surveys and USS Surveys, these are subdivisions that may or may not be recorded in the State Recorder's Office.

What is a Deed?

A deed is a written instrument (document) that transfers rights from one party to another.

What is a Restricted Deed?

A deed which is issued to a Native Alaskan for allotments or Federal Townsite lots, which contains a provision that the land is inalienable except with the approval of the Secretary of the Interior. This means that any easements, permits, sales, leases, mortgages, gift deeds, or other transactions need to have the Bureau of Indian Affairs (BIA) approval to be valid. Any transactions without BIA approval are not legitimate. "Restricted" does not mean that the owner is restricted from doing what he or she wants with the property. It actually means that the federal government protects the property.

What is an Easement?

A non-possessory right to use another's land for a specific purpose.

Do I need a plat when I create an Easement?

If the easement creates public access that divides a tract or parcel of land into two or more lots, other than common carrier and public utility access, the easement is considered a subdivision per AS 40.15.900. All subdivisions are required to be approved by the platting authority before they can be recorded.

Sec. 40.15.010. Approval, filing, and recording of subdivisions.

Before the lots or tracts of any subdivision or dedication may be sold or offered for sale, the subdivision or dedication shall be approved by the authority having jurisdiction, as prescribed in this chapter and shall be filed and recorded in the office of the recorder. The recorder may not accept a subdivision or dedication for filing and recording unless it shows this approval.

How is an Easement terminated (vacated)?

There are a variety of ways that an easement can be vacated. There are formal vacation processes that are determined by the local platting authority (for much of Alaska this is the State of Alaska Dept. of Natural Resources). Public easements can also be created so that they vacate automatically if they are not used for a certain period of time (typically, a couple of years).

Are there other times when the project benefits from platting?

Yes, all transfers of land interests (this includes easements) require an offer (by the grantor) and acceptance (by the grantee). Public easements require acceptance by the public (this is the State of Alaska or a political subdivision of the State – city or borough). Where there is no city or borough, the Department of Natural Resources is a plat is often the only means of getting this acceptance. In cases where there the city or borough will accept a public dedication without a plat, it is beneficial to go through the platting process in order to get the easement recorded as a plat or “map of easement”.

An alternative to platting these easements is to create the easements by document and file a Record of Survey per 11 AAC 06.080. Record of Survey showing the easement and the corners supporting its position.

The goal is to provide easily recoverable recorded evidence of the easement’s position.

What is a Lease?

An agreement where the owner of real property gives another the right of possession for a specified period of time for a specified consideration (usually money). This is a temporary transfer of specific land rights.

Is a Lease an Adequate Form of Site Control?

Rarely. Leases have terms and conditions that must be met to be in effect. If any of these terms or conditions isn’t met, the ability to use the facility may be lost. Leases that have a periodic payment requirement (annual or monthly) do not ensure that the community will have control of the facility lands for the life of the facility. Site Control is for the life of the facility, not just the year that it is built.

Is a Lease a Subdivision?

Not always, if an entire parcel of land is leased there is no subdivision. However, if the lease is for less than the entire parcel then that divides the rights in land and creates a subdivision.

Does a Lease that creates a Subdivision require an Approved Plat?

Not in the Unorganized Borough. Leases are specifically exempted, by statute, from the requirement for Plat approval. Plats describing lease lands can be recorded without going through the Department of Natural Resources (DNR) Plat approval process.

AS 40.15.360. Applicability - The provisions of AS 40.15.300 - 40.15.380 do not apply to maps, site plans, or other graphic representations prepared for

(1) the purpose of **transferring a leasehold interest**; the extraction of natural resources; or solely for the issuance of licenses or permits; or not ...

Some Platting Authorities require some Leases to go through the Plat approval process. Check with the Platting Authority exercising authority in the area you are working in to determine local requirements.

If there is no Plat Approval process required for a Lease that is creating a Subdivision; do I need any kind of Plat?

A plat is not required but advised. It is in the leaseholders best interest to create and record a plat than unambiguously defines the land that is being leased. This is the primary method of letting everyone know what land you are leasing and that this land is obligated to you and unavailable to others (subject to the terms of the lease). This is called "Public Notice". It is an important step in protecting the lease lands.

What is the "Chain of Title"?

The "chain of title" is a history of the transfers of all of the ownerships & rights associated with a parcel of land. The chain of title typically begins with a Patent from the U.S.A. to another entity or individual. The next link in the chain will be a document that transfers all or part of the current owners rights to another entity or individual. Each of the documents that lead to the current owner(s) makes a link in the "chain of title".

What is a Record of Survey?

A Record of Survey is a drawing that shows the results of a field survey. Records of Survey are recorded in the State Recorder's Office. They function as evidence of boundaries and monumentation. Under some circumstances a Record of Survey is required by State law (see below). Property owners and surveyors often use a Record of Survey to consolidate and perpetuate boundary information that was obtained in the course of a field survey. Records of Survey cannot subdivide land.

AS 34.65.030. Records of survey.

After making a survey in conformity with the practice and definition of land surveying, a land surveyor shall record with the district recorder a record of the survey within 90 days if the survey discloses

- (1) material evidence or physical change that in whole or in part does not appear on a plat of record previously filed or recorded in the office of the district recorder or in the records of the Bureau of Land Management;
- (2) a material discrepancy with a plat of record previously filed or recorded in the office of the district recorder or in the records of the Bureau of Land Management; or
- (3) evidence that by reasonable analysis might result in alternate positions of boundaries from those of record.

What is a Record of Monument?

A Record of Monument is a document that is recorded in the State Recorder's Office. Monumentation is a very important component of identifying the location of a parcel boundary. Except in the most unusual of circumstances, courts hold the actual location of the monument as the best evidence of a boundary. When a monument is changed or destroyed State law requires a Record of Monument to be created and filed in the State Recorder's Office.

Sec. 34.65.040. Records of monument.

- (a) A land surveyor who in the course of a survey establishes, reestablishes, uses as control, or restores a monument to make it readily identifiable or reasonably durable shall record a monument record, unless the monument and its accessories are substantially as described in a monument record filed or recorded under this chapter or on a survey plat of record.
- (b) An agency whose activities will disturb or destroy a monument or its accessories shall have a land surveyor:
 - (1) record a monument record before the monument or its accessories are disturbed or destroyed;
 - (2) restore or replace the monument and its accessories after the activities have ceased; and
 - (3) record a new monument record after restoring or replacing the monument or its accessories.
- (c) A person who disturbs or destroys a monument shall record a notice of the disturbance or destruction in the office of the district recorder.
- (d) A land surveyor may record a monument record for any monument.

- (e) A land surveyor who is required to record a monument record under this section shall do so within 90 days of the completion of the survey or of the establishment, reestablishment, or rehabilitation of a monument.
- (f) A monument record shall be signed and sealed by the land surveyor responsible for the survey.

What are ANCSA 14(c) lands?

The Alaska Native Claims Settlement Act granted ANCSA Village Corporations land. This land was subject to a provision – 14(c) – that required the Corporation to convey land to others: (1) Individuals already using the land for certain purposes receive that land, (2) non-profit organizations already using the land receive that land, (3) Municipal Corporations, existing or future, receive no less than 1280 Acres for community needs including expansion, (4) Federal, State, or Municipal Corporation receive Airport lands. There is no time limitation on the completion of these conveyances.

What is a Map of Boundaries?

The Map of Boundaries identifies the lands that will be transferred under 14(c). The Village Corporation, the City, and the Bureau of Land Management sign the Map of Boundaries. It is an enforceable agreement. There is a one-year period after signing in which to contest the Map of Boundaries. The boundaries shown on this map are an approximation that will be finalized upon field survey and platting.

I've checked all the plats, USS Surveys, and documents at the Recorder's Office, are there any other ways that title can transfer?

Yes, there are a number of ways this can happen.

One common way is by law. An example of this is Public Land Orders. Many roads in Alaska are in Right-of-Way that is not created by any Plat, Subdivision, Dedication, or Deed. Public Land Orders (PLOs) are Orders from the US Government that affect land. PLOs often withdraw land from the Public Land System thereby making it unavailable for transfer out of Federal hands. In Alaska, PLOs withdrew a strip Right-of-Way along most existing roads between 1942 and 1958. PLOs are available at the Bureau of Land Management in the Public Room – they are a part of the Federal Register.

There are a number of other ways that others can hold rights. It is far beyond the scope of this document to identify these methods. Rights that are reserved or transferred by uncommon methods are often difficult to identify and locate on the ground. This is yet another example of why it is important to get a qualified lands professional involved early in a project.

Why should a document be recorded?

There are practical and legal reasons a document that conveys land rights should be recorded.

Recording a document ensures that a concerned person will be able to research and find the history of the rights conveyed by a document. This helps create the “chain of title”.

It also is a key component in protecting the rights of entities (individuals or organizations) holding “rights in title”.

Sec. 40.17.080. Effect of recording on title and rights; constructive notice.

- (a) Subject to (c) and (d) of this section, from the time a document is recorded in the records of the recording district in which land affected by it is located, the recorded document is constructive notice of the contents of the document to subsequent purchasers and holders of a security interest in the same property or a part of the property.

- (b) **A conveyance of real property** in the state, other than a lease for a term of less than one year, **is void as against a subsequent innocent purchaser** in good faith for valuable consideration of the property or a part of the property **whose conveyance is first recorded**. An unrecorded conveyance is valid as between the parties to it and as against one who has actual notice of it. In this subsection, "purchaser" includes a holder of a consensual interest in real property that secures payment or performance of an obligation.

Why does a Professional Land Surveyor always need to be involved in matters relating to site control?

First and foremost, it's the most efficient (read cost effective) way to ensure that lands issues don't inadvertently impact a project schedule or budget. Planning for, and addressing, land issues early in the project greatly reduces the chances of being blindsided by an issue that can delay or stop a project. Inadequate site control can even lead to the loss of a facility – nobody likes that.

Secondly, but equally important, Alaska Law requires a Professional Land Surveyor to be performing or directly supervising nearly all types of work related to boundaries and mapping. Each project that involves land has a boundary component. Even if you are working on a large parcel of land, you need to know where the boundaries are. If you don't know where the boundaries are, you can't be sure that you are on the right parcel of land. People often have one idea of where the boundaries are only to be surprised to find out that they are in different location.

Here are relevant Alaska Statutes that establish the requirement for PLS involvement:

AS Sec. 08.48.341

(7) "land surveyor" means a professional land surveyor;

(13) "**practice of land surveying**" means the teaching of land surveying courses at an institution of higher learning, or **any service or work** the adequate performance of which **involves the application of special knowledge** of the principles of mathematics, the related physical and applied sciences, and the relevant requirements of law **for adequate evidence of the act of measuring and locating land**, geodetic and cadastral surveys for the **location and monumentation of property boundaries**, for the platting and planning of land and subdivisions of land, including the topography, alignment, and grades for streets, and for the **preparation and perpetuation of maps, record plats**, field note records **and property descriptions** that represent these surveys;

Article 03. UNLAWFUL ACTS

AS Sec. 08.48.281. Prohibited practice.

(a) A person may not practice or offer to practice the profession of architecture, engineering, land surveying, or landscape architecture in the state, or use in connection with the person's name or otherwise assume or advertise a title or description tending to convey the impression that the person is an architect, an engineer, a land surveyor, or a landscape architect, unless the person has been registered under the provisions of this chapter or is a person to whom these provisions do not apply, or, in the case of a corporation, limited liability company, or limited liability partnership, unless it has been authorized under this chapter.