

Common Ground: Landowners' rights under split estate laws

Alternatives to an SUA

Oil and gas operators are required to make contact with surface owners and to make good-faith efforts to negotiate surface use agreements. If an agreement cannot be reached and the operator demonstrates that a reasonable amount of time has passed since the initial contact, the Alaska Department of Natural Resources may initiate bond proceedings pursuant to AS 38.05.130.

Damage Bonds


Elements to be considered in determining the damage bond amount include:

- Current market value of the property;
- Potential duration of operations;
- Loss of use of the property;
- Potential cost of damage to existing surface; improvements, crops, and timber.

In addition, bond terms will include provisions to ensure that any bond with a potential duration of greater than two years is periodically reviewed to ensure it remains set at a sufficient amount.




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Oil and Gas Activity on Your Property?

Information for Alaska Land- owners

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Alaska Department of
**NATURAL
RESOURCES**
Division of Oil and Gas



Information for Alaska Landowners

What is a Split Estate?

Most privately owned lands in Alaska are subject to split estate laws. This means landowners whose properties are located in areas licensed or leased for oil or gas exploration or development may own surface rights, but not subsurface rights.

Surface vs. Subsurface Estates

There are two types of land interests or ownership: (1) the surface estate and (2) the subsurface, or mineral, estate. In many areas of the United States, an original owner may hold part or total interest in both the surface and subsurface estates. Surface and subsurface interests may become separated when the original owner retains the surface estate and sells or leases the subsurface estate, or vice-versa. Under United States common law, the subsurface estate is the dominant estate.

The Alaska Statehood Act granted the state 104 million acres to manage as an economic base. The act also gave Alaska the right to all minerals underlying the selections, and required that the state either retain mineral rights when conveying surface estates to private entities or return those rights to the federal government.

Due Regard

Under Alaska Statute 38.05.125, licensees of oil and gas interests can enter private surface estates for the purposes of exploration and development of the state's subsurface resources. The licensee, however, must give "due regard" to the surface owner regarding the activities to take place.

Protect Your Interests and Property

- Talk to the operators and representatives who contact you; and
- Establish a Surface Use Agreement.

What is a Surface Use Agreement?

A Surface Use Agreement, or SUA, is a contract between a surface owner and an oil or gas operator. It specifies the uses of the surface that will be required and the possible impacts that could result, based upon the features of the property and its subsurface resources.

In general, the SUA should identify the rights and responsibilities of each party, and detail which actions are allowable and which will constitute a breach of the agreement.

What Should the SUA Address?

- The specific location of the property;
- The location of oil and gas activities;
- Access to the site — when and how it will be provided;
- The standard operating practices that can be expected;
- Daily hours of operation;
- Types of activity and equipment;
- Practices that will be used to avoid or prevent surface impacts;



- How impacts that can't be avoided will be identified and corrected;
- How unexpected damages will be addressed, including a timeframe for corrective action;
- Requirements for operator bonding or insurance to cover damages, corrective action, and reclamation;
- The overall duration of the activity.

Additional Topics an SUA May Cover

- Water quality, including surface and well water;
- Disposal of produced water;
- Soils and erosion;
- Trash and litter;
- Noise limitations, such as volume and timing;
- Vegetation and revegetation;
- Well construction and leak detection;
- Roads;
- Pipelines, disposal wells, storage of equipment;
- Contact information for all parties.

