

KNOW YOUR PROPERTY RIGHTS!

*As oil & gas exploration pushes into populated areas,
property owners need to understand their legal rights*

BACKGROUND: Under Alaska law, surface and subsurface property ownership are separate rights (called “estates” in property law). This is the law of “split estate.” The surface estate is what we typically understand to be property ownership – i.e. the corners of your property and everything within them. The subsurface rights occur beneath the surface estate, and they’re often called mineral rights. Not many people in Alaska own both the surface and subsurface rights to their property, but if you do, you have considerable legal authority to determine if and how oil and gas will be developed on your land. However, if you only own the surface estate, anyone holding the subsurface estate has a legal right to access the mineral reserves under your property. Such access can include tree and ground clearing, road building, worker housing, pad construction and drill rig placement, among other things.

IF YOU OWN THE SUBSURFACE AND SURFACE ESTATES: You have the legal right to decide if development will occur on your land. If you chose to develop oil and gas on your property, you can negotiate with an oil and gas company for financial compensation, including but not limited to royalty shares, production revenues, etc. Subsurface estate (or “mineral right”) owners are also in a better position to negotiate for added protections on the surface estate such as the timing and placement of drilling equipment, through surface use agreements. And of course, you have a legal property right not to lease your mineral rights, and to prevent oil and gas development on your property.

IF YOU OWN ONLY THE SURFACE ESTATE: If you do not own the subsurface estate (“mineral rights”) under your property, your right to shape oil and gas development on your property is much more limited. In a 1999 challenge brought by a private property owner in the Mat-Su Valley over coal bed methane drilling, Unocal argued it need not receive the the surface estate owner’s consent prior to accessing the hydrocarbon resources below the landowner’s property, and that it should not have to pay damages for tree cutting and other “non-negligent” activities needed to access the minerals rights. Nonetheless, the Alaska Division of Oil & Gas requires oil and gas corporations to post a bond to cover potential harm to surface owners’ property, and interested property owners should contact ADOG for more information.

For more information on property rights, contact Inletkeeper or submit a request to the Division of Oil & Gas at: <http://dnr.alaska.gov/shared/emailforms/emailcontact.cfm?send=dog.permitting>

WATER RIGHTS ARE PROPERTY RIGHTS

If you have filed the appropriate paperwork with the State of Alaska, you have a legally protected right to appropriate and use surface or groundwaters for domestic and other uses. Importantly, if you have a secured water right, it’s superior to other potential water users in the area who apply for water rights later in time. Oil and gas operations can consume large volumes of water. If you have a water right, check with the Alaska Division of Mining, Land & Water to ensure your right is secured; if you have not filed the application for a water right and you rely on ground or surface water for domestic or other uses, consider filing an application. For more information, go to: <http://www.dnr.state.ak.us/mlw/water/wrfact.cfm>



Cook Inletkeeper is a member-supported nonprofit organization dedicated to protecting the Cook Inlet watershed and the life it sustains. Inletkeeper believes landowners have a legal property right to say if and how oil and gas will be developed on their land. For more information, contact us at: 907.235.4068 x22 or keeper@inletkeeper.org