

WHAT IS SITE CONTROL?



**...and why is it important in
planning and building community
projects?**

State of Alaska
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Acknowledgments

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The purpose of this publication is to explain:

- ✓ What “site control” is.
- ✓ Why it is important.
- ✓ What kind of site control is needed.
- ✓ How to get site control.

This publication will list sources for additional information in Appendix A (page 12) and technical assistance in Appendix B (page 14).

The following pages will answer a series of the most commonly asked questions concerning site control:

- ✓ Would you build your own home on property that belongs to another person?
- ✓ What happens if a public building is constructed on privately owned land?
- ✓ What is site control?
- ✓ Why is site control important?
- ✓ How do I know if what I have for site control is adequate?
- ✓ How much land is necessary?
- ✓ How is the land described?
- ✓ How do I go about obtaining site control?

The following checklist is provided; followed by more specific information:

- ✓ How is title or other interest obtained in order to gain site control?
- ✓ What other factors should be considered when obtaining site control?
- ✓ After I have obtained site control is there anything else that needs to be done?

What is Site Control?

Would you build your own home on property that belongs to another person?

The obvious answer to that question is, of course, NO!

Unless you have secured a written interest in the land from the landowner. The same should hold true for the construction of community purpose projects. Unfortunately, there are many cases in Alaska where community development projects have been built on private property without permission from the landowner.



Ownership of land is one of the most basic things to consider when planning a community project. Too often, ownership of land is overlooked or not dealt with until the construction phase of a project. It should be an important part of the initial planning phase. This will avoid delays or serious legal problems caused by the construction of facilities on private property without authorization.

What happens if a public building is constructed on privately owned land?

Generally, the building becomes the property of the landowner. The landowner has the right to say who can come on the property, how the property can be used, and even if the building can be used. The landowner could demand the removal of the building or could demand compensation for the use of the building. In other words, if you put a structure on land that you don't have a legal right to use, you essentially have "given" that structure to the landowner. You need to obtain **site control** before a parcel of land is used.



What is site control?

Site control means you have obtained an enforceable right to use a parcel of land. This right must be formally (or legally) 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. A deed, lease or easement are the most common forms of written authorization to use land.



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 in the documentation of the project.



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

The site control requirements depend on the nature of the project. For example, if a permanent building is to be constructed, you should either obtain title to the land by deed or obtain a right to use the land for the life of the structure. It is recommended that no less than a 20 year lease interest be obtained for buildings and facilities.



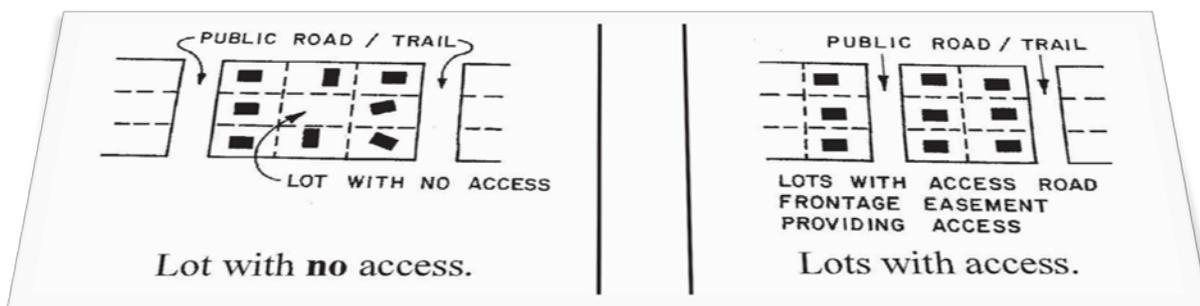
Before obtaining a deed, lease or other document, you should make sure the person giving the deed actually owns the land. See information about determining land ownership on page 6.

If the project is 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, recommended that the property be surveyed if you are obtaining title to the land by deed or if you are obtaining a long term lease.

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.



What is Site Control?

The following definitions are provide to help explain the different ways that interests may be obtained.

Quitclaim Deed: a legal document used to convey title to property wherein the owner transfers any title, interest or claim to the property he or she may (or may not) have. The owner is saying in effect, "If I have an interest in this parcel, I convey it to you." There is no guarantee of title to the person receiving the land.

Warranty Deed: a legal document used to convey title to property wherein the owner guarantees (or warrants) that he or she does legally own land being conveyed.

Lease: a contract used to grant the right to possession of property for a specified period of time. Ownership is not transferred. A lease can be for any amount of time, for any amount of money, and can be made subject to conditions.

Easement: an easement is a right of use that is granted for a specific purpose. An easement may be granted in a separate agreement or as part of a deed. An easement may be granted for such things as roads and utility lines. The land owner retains ownership of the land underneath the easement. The person receiving the easement may use the easement only for the use specified.

Permit or License: a document which gives a person the permission to do something. A permit or license is normally short term, may be subject to conditions and may be revoked.



How much land is necessary?

Land requirements are unique for each project. In determining how much land is necessary, you may need to consider the following questions. Is the area large enough to allow a well or septic tank if they are planned? How much parking is needed for the kind of vehicles used in the community? How close does the building need to be to other buildings for utility purposes? How wide should a utility easement be? (Minimum width is 10 feet.) What width should roads be? (May vary from 40 to 100 feet, depending upon the type of use.)

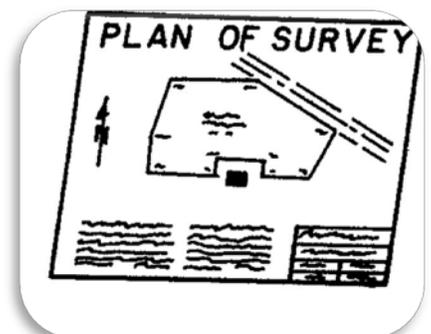


How is the land described?

It is necessary to accurately describe the land in the lease, deed or easement documents. This “legal description” is extremely important because it must accurately identify the land that is being used. If a parcel of land is incorrectly described, the lease, deed or easement is defective.

A recorded survey plat is the preferred method of describing land. Surveys identify the boundaries of parcels of land. Alternatively, a written metes and bounds description referenced to an accurate map may be acceptable in some cases. Technical advice should be sought from a surveyor or land manager in preparing legal descriptions. When you seek technical advice, you can speed

up the process by sending a suitable map (such as an aerial photograph with a north pointing arrow and scale) marked with the project area. It will also help matters to send a description of the site in terms of length and width and distance to a nearby existing feature that will exist for a long time. However, it may be necessary to consult a professional land surveyor. See Appendix A for more information on where you may obtain land records and maps that will help you identify the land you need described.



How do I go about obtaining site control?

The following checklist is provided, followed by more specific information.

Checklist for Site Control

- Determine how much land is needed for the project.
- Decide the location (site) of the project.
- Determine who owns the land.
- Make sure there are no conflicts of record. (No one else claims to own the land.)
- Decide what type of interest you need (title, lease, easement...).
- Determine how to obtain the land (or interest in it): purchase, lease, 14(c)(3) reconveyance, eminent domain, donation.
- Negotiate with the owner of the land.
- Obtain the transfer document from the owner.
- Make sure the transfer documents are properly executed and legal binding (obtain legal advice if necessary).
- Record the transfer document in the proper recording office (see Appendix B).

After determining how much land is needed and where the project should be located, the next thing to do is to determine who legally owns the land. This is often not an easy task in rural Alaska. The land situation in rural Alaska is continuously changing due to the implementation of the Alaska Native Claims Settlement Act (ANCSA) and other Alaska land laws. Accordingly, much land that was, in the past, considered “public” land is now in private ownership. You must make sure that the landowner has a valid document that shows his or her ownership of the property and that no one else is also claiming ownership.



The Bureau of Land Management (BLM) and the State of Alaska, Department of Natural Resources (DNR) each maintain land status records. The land record system of the Federal government only furnishes information about Federal ownership of land and claimants to Federal lands. Status of conveyances to Native village corporations under ANCSA appears on the Federal records. BLM has land information offices in Anchorage and Fairbanks. DNR maintains a complete record of all actions affecting the ownership of State land. The State land status records show only State actions on State land. See Appendix A – Sources of Information (page 12), for more specific information. If the land has been transferred from the Federal or State government to another party, the conveyance document should be on record at the appropriate District Recorder’s office. The Recorder’s Office maintains a complete record of recorded instruments which have been issued since patent from the United States government down to and including the document held by the current owner of record. When a title document is recorded, the information is indexed by tract (location). The ownership can be determined by checking the location index. The document is also indexed by grantor (seller) and by grantee (buyer). Recording Office addresses are listed in Appendix B on page 14.



If the site to be used is on land conveyed to a village corporation pursuant to the Alaska Native Claims Settlement Act (ANCSA), the regional corporation (in most cases) owns the subsurface estate. Section 14(f) ANCSA lists the exclusions where the regional corporation does not own the subsurface estate. Section 14(f) also states that the regional corporation’s rights to the subsurface estate within the boundaries of any native village shall be subject to the consent of the village corporation.

What is Site Control?

If the land to be used is located in a federal townsite, it will be necessary to contact the federal townsite Trustee to determine the land status. Additionally, the State Municipal Lands Trustee holds title to certain land in many unincorporated communities. See Appendix A

– Sources of Information on page 12.

Determining land ownership can be a very difficult task. In some cases, it may be necessary to hire a title researcher to determine land ownership. While determining land ownership, you should make sure there are no conflicts of record. See Appendix A – Sources of Information on page 12.

Once it has been determined who owns the parcel, the next thing is to determine how to obtain an adequate interest in the land. Generally, for permanent structures, it is necessary to either obtain title (deed) to the land or a lease that is of sufficient term to cover the estimated life of the structure. It may be necessary to obtain help from an attorney in determining what type of interest is most appropriate to obtain. Then, the last step is to negotiate with the owner and obtain the proper transfer document.

It is important to remember that the documents which are signed to affect a transfer in interest in land must be legally binding. Chapter 15, Title 34, of the Alaska Statutes contains information about the legal requirements for conveyances. For example:

- ✓ The deed (or other document) must contain a proper legal description and must name the parties.
- ✓ The transfer document must be in the correct legal format with statement of consideration (payment).
- ✓ It must contain words of conveyance.
- ✓ It must have the necessary signatures with proper acknowledgments (notarized by a public notary or postmaster).
- ✓ Especially when dealing with corporations, it must be determined that the signers have the authority to sign and to commit the organization to the agreement.
- ✓ The final step is to have the document recorded.

NOTE: You should consider seeking legal advice to make sure all the documents are legally binding.

How is title or other interest obtained in order to gain site control?

Purchase: Simply buy the property from the owner.

Lease: If the owner does not want to sell the property, he or she may be willing to enter into a long term lease.

14(c)(3) Reconveyance: If the proposed site for a community project is on land conveyed to a village corporation pursuant to the Alaska Native Claims Settlement Act (ANCSA), the site may be subject to reconveyance under the terms of Section 14(c)(3) of ANCSA. Most ANCSA village corporations have a responsibility to reconvey certain land for community use and expansion under this provision of law.



Eminent Domain: This power is limited to those communities that are an incorporated municipality. Eminent domain is the least desirable method of obtaining title. It is the power to take private property for public use in a municipality. Fair compensation must be paid to the owner of the property taken. Court proceedings are necessary to invoke eminent domain.

Donation: A donation is a transfer of title to property without any payment.

What other factors should be considered when obtaining site control?

You should also be aware of other potential land conflicts which may not be readily apparent. For example, there are Native allotment applications pending in the State, some have not been surveyed on the ground. You must take extra precautions to insure that your site does not conflict with a Native allotment claim. Native allotment applications appear on the Federal land status records. Also, if you are in a area where there has been mining, you should be aware of the potential for conflict with mining claims that may be of record. The appropriate Federal and State land records should be checked to make sure there are no conflicts of record.

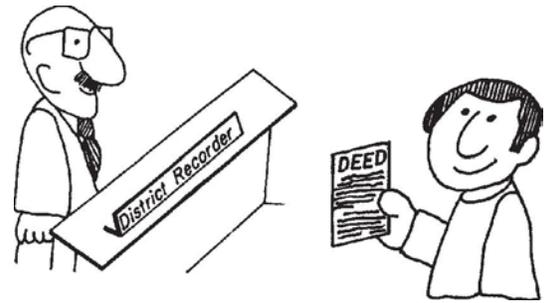
Additionally, individuals and businesses that occupied village corporation land prior to December 18, 1971, are entitled to a claim under Section 14(c)(1) and (2) of ANCSA. You should make sure your site does not conflict with a potential 14(c)(1) and (2) claim.

If the site is located within a federal townsite, you may contact the federal townsite Trustee to determine to whom the townsite land has been conveyed. The State Municipal Lands Trustee may need to be contacted if the land to be used is in an unincorporated ANCSA village. The Municipal Lands Trustee holds title to community land in some of the unincorporated ANCSA villages.

Any use or removal of subsurface resources, including gravel, requires permission from the subsurface owner.



After I have obtained site control is there anything else that needs to be done?



Yes. The document (deed, lease, easement, etc.)

must be recorded in the appropriate District Recording Office. By State law, priority is given to the **first recorded** property interest.

For example, assume Person A was issued a deed January 15, 2003, and Person B was issued a deed for the same property February 18, 2003. However, Person A did not record their deed. Person B did record their deed. Person B would have the priority interest because their deed was the first deed recorded.

This is true even though Person A received the first deed. By failing to record the deed, Person A could lose their interest in the property. ***It is very important the deed or other document be recorded as soon as possible.***

A document must meet certain standards before it will be accepted for recording. For example, the document must be properly acknowledged and witnessed. The document must also contain the mailing address of the buyer (or grantee). The recording requirements are set out in Article 3, Chapter 15, Title 34 of the Alaska Statutes.

Final word: BE CAREFUL!



Good intentions are not enough when it comes to site control. Land status in Alaska is often complicated and is continuously changing. You should not use a parcel of land until you have determined for certain who the landowner is and have obtained a sufficient interest from the landowner authorizing your use of the land.

Appendix A -Sources of Information

Federal Public Lands Records

Bureau of Land Management

Alaska State Office

Public Information Center
222 West 7th Avenue, #13
Anchorage, AK 99513-7599
<http://sdms.ak.blm.gov/sdms/>
Phone: (907) 271-5960

Bureau of Land Management

Townsite Trustee

Alaska State Office
222 West 7th Avenue, #13
Anchorage, AK 99513-7599
Phone: (907) 271-5606

Bureau of Land Management

ANCSA 14(c) Surveying

Division of Cadastral Surveying
222 West 7th Avenue, #13
Anchorage, AK 99513-7599
Contact: Al Breitzman
Phone: (907) 271-5606

Bureau of Indian Affairs

Alaska Title Service Center

1675 "C" Street, Suite 261
Anchorage, AK 99501
Contact: Scott Houk
Phone: (907) 271-4026

State Public Lands Records

Alaska Department of Natural Resources

Public Information Center
550 W. 7th Avenue, Suite 1200
Anchorage, AK 99501-3510
Phone (907) 269-8400
<http://dnr.alaska.gov/homepage/onlineservices.htm>

Alaska Dept. of Transportation & Public Facilities

Central Region
Right of Way Branch
4111 Aviation Drive
Anchorage, AK 99502
Road Right of Way Airport Property Plans
[http://dnr.alaska.gov/homepage/
onlineservices.htm](http://dnr.alaska.gov/homepage/onlineservices.htm)

Alaska Dept. of Education

801 West 10th Avenue
Juneau, AK 99801
School site documents (State owned)
Contact Kimberly Andrews
Phone (907) 465-2890

Other Land Records

Alaska Department of Community & Economic Development

550 W. 7th Avenue, Suite 1640
Anchorage, AK 99501-3510

<http://www.commerce.state.ak.us/dca/profiles/profiles/profile-maps.htm>

Municipal Trust Land Records

Phone: (907) 269-4527

Community Profiles

Phone: (907) 269-4546

U.S. Federal Aviation Administration Real Property Management

222 West 7th Avenue
Anchorage, AK 99513-7599
FAA Facility Land Records
Phone: (907) 271-5933

Alaska Dept. of Environmental Conservation

Village Safe Water

555 Cordova Street
Anchorage, AK 99501
Sewer and Water Facility Land Records
Phone: (907) 269-7502

AT&T Alascom

210 East Bluff Drive
Anchorage, AK 99501-1100
Long Distance Telephone Site Records
Contact: Jim Wickes – Real Estate
Phone: (907) 264-7343

GCI

2550 Denali Street, Suite 1000
Anchorage, AK 99503
Long Distance Telephone Site Records
Phone: (907) 274-3114

Alaska Army National Guard

P.O. Box 5-549
Joint Base Elmendorf Richardson
Anchorage, AK 99505
Armory Site Land Records
Contact: Malcolm Brown
Phone: (907) 428-6786

Alaska Native Tribal Health Consortium Dept. of Environmental Health & Engineering

3925 Tudor Centre Drive
Anchorage, AK 99508-5997
Sewer and Water Facility Land Records
Phone: (907) 729-3500

Alaska Village Electric Cooperative (AVEC)

4831 Eagle Street
Anchorage, AK 99503-7497
Engineering Drafting
Phone: (907) 561-1818

Aerometric S.C.I

2014 Merrill Field Drive
Anchorage, AK 99501
Aerial Photography
Phone: (907) 272-4495
Fax: (907) 274-3265

What is Site Control?

Rec. Dist	Address	Phone
Juneau Haines Skagway	Physical location: 400 Willoughby, 3rd Floor Juneau, AK 99801 Po Box 111013 Juneau, AK 99811-1013	(907) 465-3449 / 465-2514
Ketchikan	415 Main St., Room 310	(907) 225-3142 /
Wrangell Petersburg	Ketchikan, AK 99901	225-3143
Sitka	210-C Lake Street Sitka, AK 99835	(907) 747-3275
Kotzebue Fairbanks Mt. McKinley Manley Hot Springs Barrow Nenana Nulato Rampart Ft. Gibbon Cape Nome	1648 S. Cushman St., #201 Fairbanks, AK 99701-6206	(907) 452-3521
Anchorage	550 West 7th Avenue, Suite 1200	(907) 269-8871 /
Aleutian Islands Cordova Bristol Bay Kvichak Iliamna	Anchorage, AK 99501-3564	269-8876
Kenai	110 Trading Bay Rd. #190 Kenai, AK 99611	(907) 283-3118

Rec. Dist	Address	Phone
Kodiak Chitina	204 Mission Rd., Room 110 Kodiak, AK 99615 *Box 86, Glennallen, AK 99588 (Phys. Location) AHTNA Bldg., Mile 115 Richardson Hwy., Glennallen, AK 99588	(907) 486-9432 (907) 822-3405
Homer	195 E. Bunnell Ave., Suite A Homer, AK 99603	(907) 235-8136
Palmer Talkeetna	1800 Glenn Highway, Suite #7 Palmer, AK 99645	(907) 745-3080 / 745-2028
Seldovia	195 E. Bunnell Ave., Suite A Homer, AK 99603	(907) 235-8136
Seward	*Box 1929, Seward, AK 99664 (Phys. Location) 5th & Adams Room 208, Seward, AK 99664	(907) 224-3075
Valdez	*Box 2023 Valdez, AK 99686 (Phys. Location) 213 Meals Avenue, Suite 30, Valdez, AK 99686	(907) 835-3153
Bethel Kuskokwim	*Box 426, Bethel, AK 99559 (Phys. Location) 311 Willow St. Bethel, AK 99559	(907) 543-3391

* Mailing Address



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DEPARTMENT OF
COMMERCE,
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AND ECONOMIC
DEVELOPMENT

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