

Rights and Interests - Regulations and Restrictions  
In the Cadastral Data Content Standard  
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A review of the content and background  
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## **Background Concepts**

Rights and interests describe the nature of landownership. In the U.S. the rule of thumb is that if a right, interest, limitation to rights is in the chain of title, or is conveyed or passed between owners, then it is considered a right or interest. Regulations and restrictions include things like land use controls, zoning, and other limitations on use that are placed by a public agency but are not part of the chain of title.

Rights and interests will typically be expressed as estates, easements, or restrictive covenants. In some cases the specific right or interest being conveyed or owned is expressly stated, such as a right to a specific mineral, to oil and gas, for ditches and canals, or for conservation and preservation. If the limitation on the use of the land is defined, implemented, and enforced through local ordinance, state regulation, or other statute, it is a regulation with a typical example being zoning ordinances.

The distinction between rights and interests and regulations and restrictions is not always clear. For example, federal land agencies may grant grazing easements through a permitting process that have specific limitations on the type of animal that can be grazed and the time periods for grazing. In most cases, unless the grazing right is conveyed for permanent ownership, an agency granted grazing right is considered a regulated use.

Some subtle distinctions to consider in classifying rights and interests, which may determine in the attributes, mapping, and other management needs include the following.

- Is the right and interest being passed as a title conveyance or is it “time restricted” as a lease or leasehold interest? What are the time, renewal or performance requirements associated with the leasehold interest?
- What are the rights and interest being granted or leased? Is it the full rights (fee simple), limited by estate (surface or subsurface), or limited by a stated right, interest or activity, such as mineral only, timber harvest, hunting, conservation management, water management, etc.
- Are the rights and interests conveyed or reserved? In some cases the owner grants the right and in other cases an owner reserves or retains a right.

- What is the land description or how is the spatial extent of the right and interest described? Is the land description adequate and does it coincide with the existing land descriptions or does this create new boundaries?
- Who are the parties to the transactions and what are their roles in the transaction? Grantor/grantee, lessor/lessee, mortgagor/mortgagee, lien holder, administrator, and manager to name a few. How does the participant's role in the transaction affect their interests and rights? Do the participants have a full right or interest or are the rights and interests fractionated, or divided among multiple parties?
- Is the limitation on use a regulation and restriction or is it a right and interest? Typical regulations and restrictions are not managed the same as rights and interests since they are typically subject to ordinance, statute, or regulatory authority and can be changed or appealed. Regulations and restrictions typically limit use, often have a permit requirement, and are enforced by a government agency.

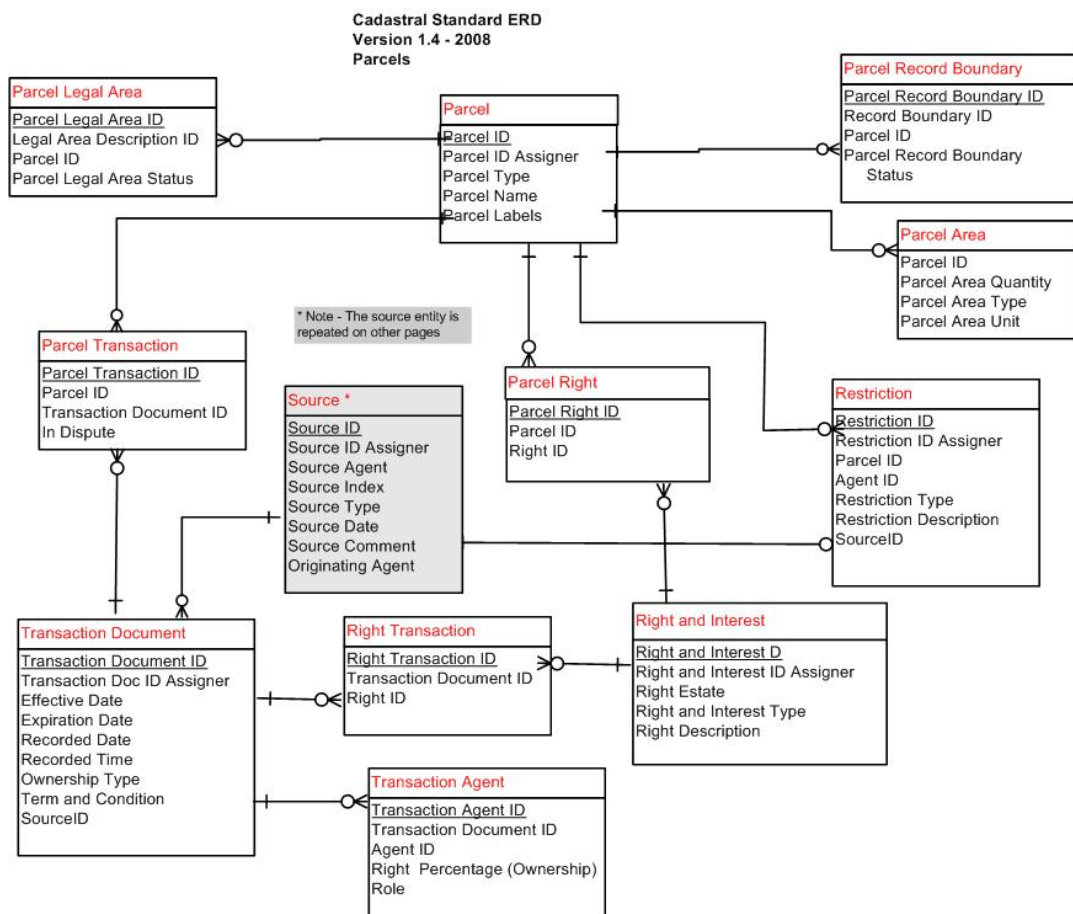
The important thing to remember is to not get caught in a semantic battle of terms. Instead, examine the spatial relationships and nature of the conveyance of the right, interest, or regulation being tracked and determine what information about any conveyance could be used in future decision making and would appropriately be captured in a database. As examples, in terms of spatial relationships, rights and interests are typically mapped at the parcel level and have a specific legal description that defines the right and interest area. Regulations may apply to a group of parcels, a specified zone, or an area defined by a natural phenomenon, such as a floodplain or bird nesting area. In terms of the nature of the conveyance, a right and interest typically involves at least two parties, a grantor and grantee, thus indicating a passage of right and interest from one to another even if this passing is implied, such as a prescriptive easement. Regulations typically have one agency or organization that imposes or allows a use. The one agency or organization defines and enforces the limitation or allowance.

Many local or state government parcel-based information systems consider only the fee-surface ownership or presume that parcels are full-surface ownership. In many of these cases, surface ownership has been the focus with specific attention on the lands subject to real estate tax. In the US, very few local government land records systems have attempted to identify and map separated rights such as mineral rights, partial interest, leasehold rights, grazing or hunting rights, or the full breadth of easements and for good reason. Most local government applications are founded on the real estate tax system, and the time and energy to support the mapping and maintenance of the breadth of rights and interests is out of scope and beyond the resources of a local government. For most local governments, rights and interests are tracked by linking to document imaging systems maintained by Registers of Deeds or their equivalent.

The reality of landownership in the United States is that rights and interests can be disconnected from the primary or fee simple surface ownership and can be conveyed or passed on to another. There are some significant examples of land records systems that track and manage separated rights in the United States. Land records systems built and maintained by Indian tribes pay particular attention to the chain of title, separated rights, and fractional interests. Federal land management agencies, such as the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS), administer and manage all rights and interests in public lands and track many separated rights and fractional interests. Large private landowners such as paper companies, timber companies, large agricultural operations, and conservation organizations may also track specific interests and separated rights depending on their business and mission requirements.

### Cadastral Data Content Standard - Rights and Interests

Developing a data model that describes the elements and relations for rights and interest is fairly involved. The figure below describes a normalized view of the Subcommittee’s efforts to describe the content and dependencies of the components for rights and interests and regulations and restrictions.



In the Cadastral Data Content Standard the basis of the spatial extent of the rights and interest is based on the Parcel feature. There is an attribute for the parcel type that is used to indicate if the spatial extent is a tax parcels, an ownership parcels, a partial interest, such as an encumbrance, or a limited right or interest. The parcel is used as a general term for the spatial extent of any cadastral element and is qualified by the parcel type. The elements for the spatial components are described in other elements of the standard.

In the Cadastral Data Content Standard the description and modeling of the rights and interests is document centric. This means that the description and characterization of the rights and interests begins with the legal document that described, defined, or conveyed the rights. Since one transaction can involve multiple parcels and multiple documents (transaction documents) the many-to-many relationship is resolved with the “intersecting entity” called Parcel Transaction.

The essential data about the transaction document are listed in the diagram. These were the elements about the document itself that were determined to be critical at the time the standard was developed. Another attribute, called document type, has been included in several implementations as an added important element. The following are the definitions from the standard.

#### **TRANSACTION DOCUMENT**

The Transaction Document is the record of the transfer of rights in land. Transactions documents are often recorded in instruments, but it is not a requirement in the most parts of the United States that transactions be written. Both parties in the transfer of rights must be legal parties who are capable of both delivering and receiving the rights being passed.

#### **Transaction Document ID**

The Transaction Document ID is a primary key that identifies each record in the Transaction Document entity.

#### **Transaction Document ID Assigner**

This is a designation for the agency, organization or jurisdiction that assigns and maintains the primary key. If possible, this designation should follow known naming standards, such as the Federal Information Processing System (FIPS) codes for jurisdictions.

#### **Effective Date**

The Effective Date is the date the Transaction Document becomes effective such as the date of approval.

#### **Expiration Date**

This is the date the Transaction Document expires.

#### **Recorded Date**

The Recorded Date is the calendar date shown on the Transaction Document at the time of recording or the filing date for documents that are filed. This is primarily important for states with race-notice or race requirements for land title document recording.

**Recorded Time**

The Recorded Time is the clock time interval shown on the Transaction Document. This is primarily important for states with race-notice or race requirements for land title document recording.

**Ownership Type**

The Ownership Type describes the characteristics by which the rights are held as described in the Transaction Document. Appendix 2 contains the informative appendix for the domain for Ownership Type.

Suggested Domain Values: Fee Simple Ownership, General Tenancy, Joint Tenancy, Life Estate, Tenancy in Common, Tenancy by the Entirety, Tenancy in Partnership, Tenancy from Period to Period, Tenant at Will, Timeshare Ownership, Owner after Life Estate, Undivided Interest, With Remainder

**Term and Condition**

Term and Condition contains the descriptions of any limitations or attachments to a Transaction Document such as a restrictive covenant or other limitation or stipulation.

**Source ID**

The Source ID is a foreign key that points to a record in the Source entity, where information on the Source can be found.

Just as one transaction document can affect many parcels, a transaction document can define, affect, and influence many rights and interests. The intersecting feature between the rights and interests and the transaction document is used to resolve the many rights and many documents relationships. The rights and interests definition and attributes contained in the Cadastral Data Content Standard are as listed below.

**RIGHT AND INTEREST**

This Entity describes the specific rights and interests that are related to a parcel. Rights and interests are benefits or enjoyments in real property that can be conveyed, passed, or otherwise allocated to another for economic remuneration. Rights and interests can be below ground, such as mineral rights, fee simple ownership on the surface, an easement for hunting or grazing or an above ground right such as transferable development right (TDR). A Right and Interest is separable and can be conveyed, either permanently or temporarily such as in a lease and is in the chain of title. The right and interest is distinguishable from a restriction, which is a limitation placed by a governing body and is not in the chain of title.

**Right and Interest ID**

The Separated Right ID is the primary key, which identifies each record in the Right and Interest entity.

**Right and Interest ID Assigner**

This is a designation for the agency, organization or jurisdiction that assigns and maintains the primary key. If possible, this designation should follow known naming standards, such as the Federal Information Processing System (FIPS) codes for jurisdictions.

**Right Estate**

The Right Estate indicates whether the right is for a subsurface, surface, or above surface estate.

Suggested Domain Values: Subsurface, Surface, Above Surface

## **Right and Interest Type**

This is the type or category of the right and interest and it usually describes how the right and interest is held and an indication of the estate. The items in the suggested domain of values are explained below.

Suggested Domain Values: Separated Right, Encumbrance, Tribal Interest

### **Separated Right**

The separated rights are rights and interests in land ownership that can be disconnected from the primary or fee simple surface ownership. For example, mineral and oil rights are often separated from the surface ownership. Separated rights are represented as overlapping non-continuous polygons. The separated rights are modeled similarly to encumbrances. Some of the idiosyncrasies of separated rights are:

- There are often future estates and leases associated with minerals. In these cases the mineral rights may be separated from the surface for a period of time.
- The mineral rights can be divided according to the mineral. For example, fossil fuels, oil and gas, sulfite minerals and surface quarry rock are often considered as distinct separated rights.
- The apex rule for minerals that are found as defined veins and are claimed under the 1872 mining claims act provides for extralateral rights. This means that who ever claims the surface expression of a veined mineral deposit has the rights to the mineral deposit even though it may pass under the land of adjoiningers.

### **Tribal Interest**

1990, Native American Graves Protection and Repatriation Act (NAGPRA): This act assigns ownership and control of Native American cultural items, human remains, and associated funerary objects to Native Americans. It also establishes requirements for the treatment of Native American human remains and sacred or cultural objects found on Federal land. This act further provides for the protection, inventory, and repatriation of Native American cultural items, human remains, and associated funerary objects. Requires museums that receive public funds to consult with Native Americans. Native Americans have the power to decide what happens to museum collections of human remains, grave goods, and sacred items. When these items are inadvertently discovered, cease activity, make a reasonable effort to protect the items, and notify the appropriate Indian tribe(s) and/or Native Hawaiian organization(s).

US Title 25, Chapter 32, Native American Graves Protection And Repatriation

Each Federal agency or museum which has possession or control over holdings or collections of Native American unassociated funerary objects, sacred objects, or objects of cultural patrimony shall provide a written summary of such objects based upon available information held by such agency or museum. The summary shall describe the scope of the collection, kinds of objects included, reference to geographical location, means and period of acquisition and cultural affiliation, where readily ascertainable.

### **Encumbrance**

Encumbrances are limitations on the rights and use of the land. Easements are a common encumbrance but there are many others such as grazing rights, fishing rights, development rights, and floodplains. Legally an encumbrance is a right or interest in the land of another that may diminish its value but does not prevent its sale.

*Any right to, or interest in, land which may subsist the fee [ownership] by another to the diminution of its value, but consistent with the passing of the fee [ownership] by conveyance. A claim, lien, charge, or liability attached to and binding real property; as examples a mortgage, judgment lien, mechanics' lien, lease, security interest, easement*

*or right of way. If the liability relates to a particular asset, the asset is encumbered.*  
(Black, 1991)

Most encumbrances run with the land (consistent with the passing of the fee by conveyance). That is, they are tied to the land and will persist from owner to owner. Others exist at the pleasure of the owner, such as leases. Typically leases and similar encumbrances have an effective date and expiration date.

### **Right Description**

This attribute describes more specifically the right or interest that is being defined.

Suggested Domain of Values: Oil, Gas, Oil and Gas, Coal, (a specific mineral), Right of Way, Ingress/Egress, Grazing, Hunting, Transferable Development Right or any other individually articulated right.

The transaction agent describes the names or participants in then documents. The role that a participant or agent has in the document also describes what rights and interests are conveyed or assigned to the participant. One document can have multiple participants with many roles. The full many-to-many relationship that could exist between participants and transaction documents is not fully modeled in the Cadastral Data Content Standard. Instead it was simplified to recognize the many participants that could be in a document or action. The Transaction Agent elements in the Cadastral Data Content Standard are listed below.

### **TRANSACTION AGENT**

The Transaction Agent is any participant or party identified in a land record document or instrument.

### **Transaction Agent ID**

The Transaction Agent ID is a primary key that identifies each record in the Transaction Agent entity.

### **Agent ID**

The Agent ID is a foreign key, which points to a record in the Agent entity, where information on the Agent can be found.

### **Transaction Document ID**

The Transaction Document ID is a foreign key, which points to a record the Transaction Document entity where information on the Transaction Document can be found.

### **Right Percentage (Ownership)**

(Formerly the Ownership Percentage) The Right Percentage expresses the proportion of the Transferred Rights that are attached to the listed Agent. This could also be the Ownership percentage.

### **Role**

The Role is the capacity or function of the Agent in the Parcel Transaction.

Suggested Domain Values: Grantor, Grantee, Leaser, Lessee, Trustee, Mortgager, Mortgagee, Owner of Record, Recipient, Lender, Lendee

## **Cadastral Data Content Standard - Regulations and Restrictions**

The regulations and restrictions are those limitations in the use of land imposed by a governing or regulating agency. The Cadastral Data Content Standard provides a one-to-many relationship between parcels and restrictions meaning that one parcel can have many restrictions. From a regulation and restriction perspective it could be that one restriction, say a zoning ordinance classification, could apply to many parcels and may be defined as a separate geometry with ties to parcels and other boundaries. The restriction feature is not fully modeled or described in the Cadastral Data Content Standard; instead the content standard acknowledges that parcel use and ability to enjoy the rights on the land could be limited by one or more regulations or restrictions.

### **RESTRICTION**

Restriction captures information related to administrative, judicial, or other limitations or permissions for the use and enjoyment of land by the land right holder. These are not transferred rights, although succeeding owners may agree to the same restriction on a Parcel.

### **Restriction ID**

The Restriction ID is a primary key, which identifies each record in the Restriction entity.

### **Restriction ID Assigner**

This is a designation for the agency, organization or jurisdiction that assigns and maintains the primary key. If possible, this designation should follow known naming standards, such as the Federal Information Processing System (FIPS) codes for jurisdictions.

### **Parcel ID**

The Parcel ID is a foreign key, which points to a record in the Parcel entity, where information on the Parcel can be found.

### **Restriction Type**

The Restriction Type indicates the category, source, or location of the Restriction.

### **Restriction Description**

The Regulation Restriction Description describes the Restriction on the Parcel.

### **Source ID**

The Source ID is a foreign key that points to a record in the Source entity, where information on the Source can be found.