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Priority: Normal
TO: Rosalind Kan at FAIPM1
CC: John Miller
Subject: Chitina Wayside

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As we discussed on 1/21/97, title problems continue to cause concern with regard to the project schedule. Lin Taylor of NPS called to say that their (contracted) title report vests the 50' wide mystery strip in the Copper Valley Trading Co., Inc. This concurs with our evaluation and the title report submitted by Hem.

The names Copper Valley Trading Co, and Copper Valley Investment Corp. are named in the chain of title of a large portion of the Chitina townsite and adjoining properties. During the Chitina East project in the 70's, DOT in fact acquired a portion of the 50' strip from the Copper Valley Trading Co. Unfortunately, acquiring another portion of the strip will not be so easy this time.

A check with the Dept. of Commerce revealed that the Copper Valley Trading Co. was involuntarily dissolved by the state on December 5, 1977. At that time the state required annual filings, payment of license and franchise tax. If filings and taxes were not submitted, the state would revoke the corporate charter.

The current statutes (AS 38.95.200) say that real property of a defunct corporation, for which no distribution of assets has been instituted within four years after the organization becomes defunct, escheats to the state. But before this land becomes state property, the state (Dept. of Revenue) must file an action in superior court to get a judgement in our favor. If DOT wanted the property, we could acquire it from DOR for fair market value. They in turn must hold that money for 7 years in case there is a claim against the property.

Our AGO says that this situation does not preclude condemnation, in fact that may be the most expedient thing to do. If we go that route, we must go all the way. That is, unless NPS is going to condemn the property themselves, we must first open up a phase III, get authority to appraise and acquire, appraise the property, then turn it over to the AGO for condemnation.

Also, since John Athens does not feel optimistic about the pending AGO opinion regarding the McCarthy road, he suggests that the condemnation also include the area we might lose if the opinion states that the right of way is only 50' each side of centerline.

All in all, this does not appear to be the optimum part of Alaska for fast track projects.

As I mentioned, Lin Taylor was under the impression that you would not want to go forward with this project if it involved condemnation. At this point there does not appear to be any way around condemnation.

JohnB.

Copper Valley Investment Corp.
Involuntary Dissolution Oct 29, 79

Copper Valley Trading Co. Inc.
Involuntary Dissolution Dec. 5, 1977

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Article 5. Survey and Improvement of State Land.

Section

150. Survey of state land

160. Improvements on state land

Sec. 38.95.150. Survey of state land. A professional land surveyor registered to practice under AS 08.48 shall certify the location and monumentation of boundaries and the platting and subdivision of state land. This section does not apply to surveys, monumentation, platting or subdivision performed by the federal government. (§ 1 ch 85 SLA 1981)

Sec. 38.95.160. Improvements on state land. (a) The location and design of a publicly financed improvement on state land that costs more than \$100,000 shall be supervised by a professional registered to practice under AS 08.48. A lease, easement, right-of-way, or other similar agreement that permits the use and improvement of state land under this section shall be documented by a recorded plat.

(b) In this section

(1) "publicly financed improvement" means an improvement financed with state or federal money that is constructed by the state or an instrumentality of the state and includes, but is not limited to, onshore or offshore oil drilling or pumping operations, roads, bridges, pipelines, seismic lines, logging and mining operations, dams, buildings and electric power transmission lines;

(2) "state land" does not include land owned by the Board of Regents of the University of Alaska. (§ 1 ch 85 SLA 1981; am § 77 ch 152 SLA 1984)

Article 6. Real Property Escheated to State.

Section

200. Real property subject to escheat

210. Enforcement of rights by department

220. Judgment of escheat

230. Management of escheated real property by department

240. Time within which to claim escheated real property

Section

250. Proceeds of sale or redemption

260. Disposition of sale proceeds seven years after the judgment of escheat

270. Definition

Sec. 38.95.200. Real property subject to escheat. (a) Real property in an intestate estate for which no taker can be found and real property devised by will for which no devisee, heir, or other claimant can be found escheats to the state.

(b) Real property of a defunct organization or corporation, for which no proceeding for distribution has been instituted within four years after the organization becomes defunct, escheats to the state. (§ 12 ch 133 SLA 1986)

Collateral references. — 27 Am. Jur. 2d, Escheat,

§ 5 to 9, 20 et seq.

80A C.J.S., Escheat, §§ 3, 6 et seq.

Sec. 38.95.210. Enforcement of rights by department. (a) When the Department of Natural Resources is informed or has reason to believe that real property has escheated to the state, the department shall bring an action in superior court to establish whether the property has escheated to the state.

(b) The department may maintain an action to recover the possession of escheated property, or for the enforcement of the state's right to the property. (§ 12 ch 133 SLA 1986)

Sec. 38.95.220. Judgment of escheat. (a) If the superior court determines that the real property has escheated to the state, the superior court shall issue a judgment of escheat.

(b) A court order approving settlement of an estate that distributes real property to the state is a judgment of escheat. (§ 12 ch 133 SLA 1986)

Sec. 38.95.230. Management of escheated real property by department. (a) After a judgment of escheat under AS 38.95.220, the department may sell, lease, exchange, assign, or otherwise manage real property that has escheated to the state. In determining the proper disposition of escheated real property the department shall, within two years after the judgment of escheat under AS 38.95.220, make a written finding that it is in the best interests of the state either to

(1) obtain an appraisal of the fair market value of the real property and sell, lease, exchange, assign, or otherwise manage the property, including retention in state management; or

(2) retain the real property in state management without obtaining an appraisal.

(b) The appraised value of property handled under (a)(1) of this section, or the selling price from a sale under AS 38.05.055 if it is lower, less the expenses of sale or appraisal, is the established value of the property for purposes of redemption by an heir or other taker under AS 38.95.240(c).

(c) Seven years after the judgment of escheat, real property that has not been otherwise disposed of by the department becomes general state land for classification, disposal, and use. (§ 12 ch 133 SLA 1986)

Sec. 38.95.240. Time within which to claim escheated real property. (a) Within seven years after a judgment of escheat under AS 38.95.220, a person who is not a party to the escheat proceeding may bring an action in the superior court to prove the person's claim to the real property. If the plaintiff establishes the claim and establishes that the plaintiff had no knowledge of the prior escheat proceeding, the court shall award the plaintiff the property if it has been managed under AS 38.95.230(a)(2), or the appraised value of the property under AS 38.95.230(b) if the property has been managed under AS 38.95.230(a)(1).

(b) If it is determined that the plaintiff is entitled to the property, the department shall deliver the property to the plaintiff. The rents, profits, interest, or dividends that accrue to the state during its possession of the property are the property of the state and may not be recovered.

(c) If it is determined that the plaintiff is entitled to the appraised value of property that has been disposed of under AS 38.95.230(a)(1), at the department's discretion it may offer to the plaintiff land owned by the state and available for disposal that is of comparable value to the appraised value under AS 38.95.230(a)(1). If the department does not offer land of comparable value, or if the plaintiff refuses the department's offer, the plaintiff is entitled to the established value of the property under AS 38.95.230(b).

(d) The time limitation of seven years does not apply to a minor or an incapacitated person as defined by AS 13.26.005, but such a person must bring an action to prove the person's claim to the real property within one year after the incapacity ceases.

(e) This section does not prevent the state from transferring escheated real property to a person who provides proof satisfactory to the department that the person is the owner of the real property when the department determines the transfer to be appropriate. (§ 12 ch 133 SLA 1986)

Sec. 38.95.250. Proceeds of sale or redemption. (a) The department shall deposit the proceeds of real property sold under AS 38.95.230(a)(1) less the expenses of sale, including attorney fees and appraisal and publication costs in an escheated real property

trust account. The department shall maintain the proceeds in the account for a period of at least seven years after the date of the judgment of escheat. The department may use money in the trust account to pay claims made under AS 38.95.240.

(b) All money collected under (a) of this section not required to be kept in the escheated real property trust account shall be deposited in the general fund. (§ 12 ch 133 SLA 1986; am § 52 ch 36 SLA 1990)

Effect of amendments. — The 1990 amendment, effective May 12, 1990, added subsection (b).

Sec. 38.95.260. Disposition of sale proceeds seven years after the judgment of escheat. Seven years after the judgment of escheat, net proceeds from the sale of escheated real property may be transferred from the escheated real property trust account to the general fund and credited to the land disposal income account under AS 38.04.022, unless a person who was the owner or one of the owners of the property when the property escheated to the state has outstanding child support obligations, in which case the proportion of the net proceeds that is attributable to the ownership interest of the person shall be applied to the satisfaction of the child support obligations and the balance remaining after the satisfaction shall be credited to the land disposal income account. (§ 12 ch 133 SLA 1986)

Sec. 38.95.270. Definition. In AS 38.95.200 — 38.95.270, “department” means the Department of Natural Resources. (§ 12 ch 133 SLA 1986)