

MEMORANDUM

State of Alaska

Department of Transportation & Public Facilities

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TO: File

DATE: November 13, 1996

FILE NO:

TELEPHONE NO: 451-5126

FROM: John F. Bennett
ROW Engineer
Northern Region

SUBJECT: Chitina Wayside
TEA-0850(21)/66674
Right of Way

This project will require the acquisition of lots 5, 6 & 7 of Block "B" of the Chitina Townsite and a portion of the 50 foot wide "no mans land" between the southerly boundary of Block "B" and the northerly right of way of the McCarthy road.

The title in the project vicinity is unclear due to the long history, questionable conveyances and the ambiguous intent of the highway right of way grants. The property in question is about 400 feet east of what can be considered the junction of the Copper River highway, the Edgerton highway and the McCarthy road. The Copper River highway and the McCarthy road follow an alignment that generally coincides with the abandoned Copper River and Northwestern Railroad centerline.

Chitina Townsite

The chain of title for the Chitina Townsite from patent to 1948 is relatively straightforward. The townsite consists of US Surveys No. 596, 597, 702 & 264 all of which were patented to the Katalla Company in 1916. These interests were conveyed to the Alaska Development and Mineral Company in January of 1919 and then on to the Kennecott Copper Corporation in December of 1946. In September of 1919 the plat of the Chitina was executed and recorded.

The most significant cloud on the Chitina title occurred when the Kennecott Company quitclaimed much of the same property to two parties. On 9/28/48, a QCD was issued to O.A. Nelson (recorded 10/23/48) for the majority of the lots within Blocks 1-41. On 11/17/58 Kennecott quitclaimed to Gordon N. Hizey (recorded 5/18/59) its non-mineral interest in US Surveys No. 596, 597, 702 & 264. An August 1966 letter from Kennecott to the Dept. of Highways states "*The conflict between the quitclaim grants to O.A. Nelson and Gordon N. Hizey was more than apparent. Our file indicates that late in 1959, successors in interest to O.A. Nelson retained legal counsel to arrange for the removal of the cloud on their title create by the quitclaim to Hizey.*"

Area South of Block "B" (no mans land)

Earling N. Hem

The 11/17/58 QCD from Kennecott to Hizey included all of the 4 U.S. Surveys which constituted the Chitina Townsite and did not reference previous conveyances to O.A. Nelson.

In December of 1971, the Department of Highways acquired a portion of the 50' "no mans land" south of Block 9 and south of Lots 2 & 3 of Block A from Gordon N. Hizey for the Chitina East project (S-0850(6) - parcels 1 & 3.). The right of way plans for this project show the existing highway right of way for the McCarthy road as being coincident with the mainline railroad right of way of 100 feet on each side of centerline. These acquired areas were not a part of the conveyances from Kennecott to O.A. Nelson. DOT made no claim to the 50' strip at this time and obtained a warranty deed from Hizey for the parcels in December of 1971.

Hizey conveyed all of his interest in the Chitina properties to Earling N. Hem on March 9, 1992 (Bk 37/ P 940 Chitina 1/20/93).

As Hem's interest would have been subject to the prior O.A. Nelson, Copper Valley Trading Co. and its successors, I do not see that he has a valid claim to this strip of land.

Copper Valley Trading Co. & Successors in Interest

The initial 9/28/48 conveyance between Kennecott and Nelson did not include this area. It was conveyed to Nelson by QCD on 2/21/1951 (Bk 1/P 149 Deeds). One of the conveyed parcels was described as "*Beginning at the S.E. Corner of Lot 7, Block B, Survey A.S. 596, Town of Chitina, Territory of Alaska; Thence South, 100.0 feet; Thence West, 216.0 feet; Thence North, 100.0 feet; Thence East, 216.0 feet along the south border of Block B, to the point of beginning.*"

O.A. Nelson died in June of 1962. On June 11 of 1963, Richard L. Nelson and Alma Nelson (Executrix of the O.A. Nelson estate) quitclaimed properties including the above described 100.0' by 216.0' parcel to the Copper Valley Trading Co. (Bk2/P60 Chitina 7/25/63).

Several lots within Block "A" and a portion of the land south of Block "A" was acquired from the Copper Valley Trading Co. by the Department as a part of the Chitina East highway project.

State of Alaska, Dept. of Transportation

Since statehood, the State of Alaska has operated under the belief that the McCarthy road right of way was based upon the intact transfer of the original 200 foot wide railroad right of way. An August 25, 1993 IBLA decision (IBLA 89-614) contested this and stated that the title for the railroad right of way had merged with the fee when it was relinquished to the federal government in 1945. It further stated that the McCarthy road right of way could only have been based upon subsequent Public Land Orders which only provided 100 foot wide easements for such "local" roads constructed or maintained by the Alaska Road Commission. The State's position regarding the McCarthy road right of way is currently the subject of a yet to be released AGO opinion.

As stated above, DOT&PF conceded that it had no interest in the 50' strip by its actions in the Chitina East project. A 11/13/74 letter from the Department to Hizey counters this by stating that although Hizey may have title to the property, it is subject to a highway easement by virtue of the railroad relinquishment and subsequent transfer of the right of way to the State of Alaska.

Even if the AGO opinion states that the State received all of the interests relinquished by the CR&NW Railroad, it is possible that we would have a difficult time defending an interest in this 50' strip. The

question goes to how this 50' strip was set aside for the Chitina Terminal. The 1945 relinquishment of railroad interests to the federal government specified those *"rights-of-way, terminal and station grounds, by reason of the approval by the Department of the Interior or the acceptance for filing by the General Land Office, of maps filed under the Act of May 14, 1898 (30 Stat. 409), for railroad purposes in Alaska"*. The centerline of the railroad generally conforms to the south boundary of US Survey No. 596.

According to BLM land status records, the CR&NW RR submitted application A 288 on 12/11/08 for the right of way for the proposed railroad. This application along with the location maps secured a right to which all following land entries would be subject. The mainline right of way through Chitina is identified on the *"Map of Amended Definite Location of the Copper River & Northwestern Railway - Wood Canon to Mouth of Kotsina River"* filed with the U.S. Land Office on April 4, 1910 and approved by the Department of Interior on February 21, 1914. As both the original and amended filing for right of way preceded the 7/13/12 entry date leading to the patent of the U.S. Surveys which made up the Chitina Townsite, the U.S. Surveys were taken subject to the railroad right of way established under the Act of May 14, 1898.

The 1945 relinquishment of the railroad right of way only specified the 2/21/14 map of the 200' wide mainline right of way at Chitina and made no reference to a map of a Chitina terminal or station grounds. Therefore, one could argue that the 50' strip between the northerly mainline right of way and the south boundary of Block "B" was neither established by the Act of May 14, 1898 nor relinquished to the federal government in 1945.

The Department also could not claim the Chitina station grounds or mainline right of way by virtue of dedication to the public on the 1919 plat of the Chitina Townsite. First, the limits of the Townsite are specifically described not to include the mainline right of way or the additional 50' strip. The plat dedication clearly establishes public highways along the streets, avenues and alleys shown on the plat, however, it also clearly excepts from the dedication the right of the public or state to cross or use the Copper River Railroad right of way.

Conclusion

It does not appear that Hem or the State can claim title to the 50' strip south of Block "B". As of June 11, 1963, title to the 50' strip was vested in the Copper Valley Trading Co. After that date there appears to have been several transactions which may have clouded that title. This tract may also have been subject to quiet title actions involving the interests of the Copper Valley Trading Co.. A review of these cases should be a part of any updating of title for this property.

Out Hou
Log Hou

FORTH

THIRD

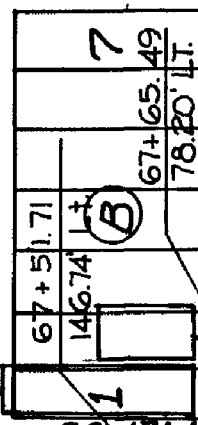
CHITINA

SECOND

FIRST

PI = 66 x 43.29
D = 90.00
T = 20.00 L x
L = 286.48
R = 450.00
R = 286.48

Store

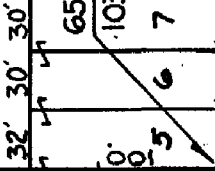


Liquor Store

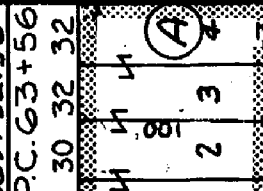
164' Lt.

PC 63+56.81

0 30 32 32 32' 30' 30'



103.10' Lt.



51, 325, 96.5

COR 1 USS 702
COR 2 USS 696

42.62
46' RT

Sta. 70+12.25
100' Rt.

R/W & Existing R/W

OUTHOUSE

OTD R.R. Bldg

House

75+00
X 48' CSP

+25
X 64' CSP

837