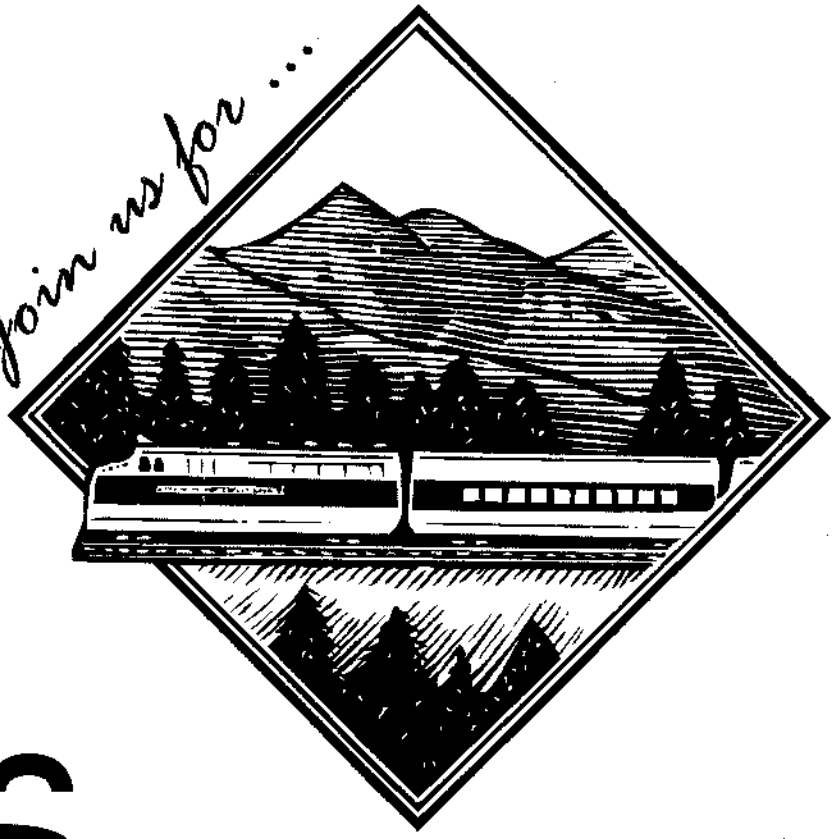
Join us for ...



ACCESS 2003

A two-day workshop sponsored by the Alaska Society of Professional Land Surveyors and the International Right-of-Way Association

March 13-15, 2003

Fairbanks Princess

Riverside Lodge

Access 2003 Agenda

Access 2003 is a two-day workshop designed for surveyors, land managers, lawyers, real estate professionals and anyone else interested in access issues throughout the state of Alaska. The workshop will focus on Alaska Railroad right-of-way issues and current concerns regarding RS 2477 rights-of-way and section line easements. Topics of interest to everyone are included!

IRWA

INTERNATIONAL RIGHT OF WAY ASSOCIATION

Thursday, March 13th

8:00 am - 5:00 pm

"RS 2477 and Section Line Easements"

A symposium presented by the International Right of Way Association.

Presented by a panel of well-known speakers, this symposium will focus on the following topics:

- History and uses of the RS 2477 statute
- The current federal, state and private perspectives regarding RS 2477
- History and uses of section line easements
- The current federal, state and private perspectives regarding section line easements
- Relevant existing and proposed access regulations and a discussion of relevant case law

Members of the panel will include Jay Sullivan and John Bennett, both of whom are experts in the field of public access in Alaska. Noted surveyor Walt Robillard will also participate in the discussion.

Plan to attend the North American Sled Dog Championships and the Fairbanks Ice Festival while you are in Fairbanks!

Friday, March 14th

8:00 am - 5:00 pm

"Alaska Railroad Right-of-Way Issues"

A symposium presented by the Alaska Society of Professional Land Surveyors.

Presented by a panel of speakers from BLM, ARR, ADNR, ADOT and moderated by Walt Robillard, this symposium will cover issues such as:

- Access across the ARR tracks
- Surveys and legal documents involved in the transfer of the railroad from the Federal government to the State of Alaska
- Provisions for the future extension of the railroad
- Public Land Order and RS 2477 conflicts
- Status of the old Tanana Valley Railroad right-of-way

Saturday, March 15th

7:30 am - 12 noon

ASPLS Annual Membership Breakfast Meeting

1:00 pm - 5:00 pm

ASPLS Board Meeting

Registration Form

Please register me for:

☐	RS 2477 and Section Line Easements	March 13	$150.00
	ASPLS or IR/WA Member Discounted Price:		$125.00
☐	Alaska Railroad Right-of-Way Issues	March 14	$150.00
	ASPLS or IR/WA Member Discounted Price:		$125.00
☐	Special Package - Both Seminars	March 13 & 14	$250.00
	ASPLS or IR/WA Member Discounted Price:		$200.00

Total Registration Fee: _____

To receive the membership discounts, please supply your membership number below.

Please send me information on joining:

☐ *Alaska Society of Professional Land Surveyors*

☐ *International Right-of-Way Association*

Name _____ **ASPLS or IR/WA Member No.** _____

Address _____

City, State, Zip _____

Phone _____ **E-mail (will be used for confirmation and program updates)** _____

Method of Payment

☐ Check—made payable to ***Alaska EventWorks***

☐ Purchase Order No. _____

A confirmation and final conference program will be sent to all paid registrants

Special Hotel Rate

The Fairbanks Princess Riverside Lodge is offering a special room rate of $55/night to all conference attendees. Please call 800-426-0500 (907-455-5014) to take advantage of this great rate!

Mail completed registration form to:

Doug Braddock
Alaska EventWorks
P.O. Box 81847
Fairbanks, Alaska 99708-1847

For more information phone:
907-479-4076
Fax: 907-479-4076
Email: landworks@gci.net

IRWA

INTERNATIONAL RIGHT OF WAY ASSOCIATION

Plan to attend the North American Sled Dog Championships and the Fairbanks Ice Festival while you are in Fairbanks!

ALASKA SOCIETY OF PROFESSIONAL LAND SURVEYORS

1960

Alaska EventWorks
Doug Braddock
P.O. Box 81847
Fairbanks, Alaska 99708

INTERNATIONAL RIGHT-OF-WAY ASSOCIATION
Arctic Trails Chapter 71
P.O. Box 75047, Fairbanks, Alaska 99707

February 10, 2003

Mr. John Bennett, Chief
Right of Way Section
Northern Region
Department of Transportation and
Public Facilities
2301 Peger Road
Fairbanks, AK 99709

Dear John:

Thank you for agreeing to present current information and views on section line easements and RS 2477 issues at the Access 2003 workshop on March 13th. By February 25, please provide a brief description of your section line easement and RS 2477 topics, so we can include them in the program for the day. My email, phone and fax number and mailing address are on the enclosed business card.

Please specify your audio-visual needs by checking off the appropriate items on the enclosed form. If you will be providing handouts, we need those in sufficient time to copy the information. Please provide me with both your audio-visual info and your handouts by March 1.

I've enclosed a flyer so you can see the full scope of the program, which is March 13-14 at the Princess Hotel and is co-sponsored by the Fairbanks chapters of the International Right of Way Association and the Alaska Society of Professional Land Surveyors.

RS 2477 issues are scheduled for the morning session, with Section Line Easements in the afternoon. Your talk on each subject should be about 20 minutes long, which will be followed by a brief question and answer period. It may be helpful for you to contact the other participants in the panel. To that end, I am including a list of your co-presenters, together with their phone numbers and email addresses.

Again, the Chapter and I appreciate your willingness to participate as a presenter in this forum. We look forward to seeing you at the workshop.

Sincerely,

Stan Leaphart
IRWA Chapter 71

John F. Bennett

From: "Stanley Leaphart" <stanley_leaphart@dot.state.ak.us>
To: "John F. Bennett" <johnf_bennett@dot.state.ak.us>; "Elizabeth Barry" <Elizabeth_Barry@law.state.ak.us>; "Jay Sullivan" <lfsi@chugach.net>; <mike_haskins@ak.blm.gov>; "Walt Robillard" <robw@mindspring.com>; "Joseph P Sullivan" <joe_sullivan@dnr.state.ak.us>; "Tina Cunning" <Tina_Cunning@fishgame.state.ak.us>
Sent: Wednesday, March 05, 2003 4:36 PM
Attach: Agenda.doc
Subject: RS 2477/Section Line Easement Workshop

Attached is a draft agenda for the March 13 Workshop on RS2477 Rights of Way and Section Line Easements. I have roughed-in topics for most of the panel members, but still need more detail to finalize the agenda. I know that in a panel of this type, there will be some overlap in presentations, but since each panel member will bring their own particular expertise and perspective, that should pose no problem. Please look the agenda over carefully and if you can, provide me with a 2 or 3 sentence summary of what you plan to cover in your presentation. Each panel member should have about 30 minutes for their segment- about 20 for the presentation and 10 minutes for questions. Also, if you need any audio visual equipment please let me know. And, if you will have any handouts, if you will get those to me, we can make the necessary copies.

Tina Cunning will be making a Power Point presentation that she uses for state agency staff and private group training/familiarization sessions throughout Alaska. Her presentation covers the fundamentals of RS2477, section line easements, ANCSA 17(b) easements, and navigable waters. I will e-mail an outline of Tina's presentation to each of you as soon as possible. This may be helpful in finalizing your presentation and focusing on more agency specific issues related to both topics. If any other panel member has an outline of their presentation, you may want to share that as well.

The workshop is shaping up quite well. There are currently over 81 people registered. Please- If you have any questions please give me a call or let me know via e-mail. My daytime phone is (907) 451-5412 and my home phone is 456-7316. Again, we appreciate each of you taking the time to participate in the workshop. I think it is going to be a very informative session.

Stan Leaphart

RS 2477 and Section Line Easements
March 13, 2003
Presented by Arctic Trails Chapter 71
International Right of Way Association
Draft Agenda

7:30-8:15 Registration

8:15-8:30 Welcome, Introductions, and "Housekeeping" details

RS 2477 PANEL PRESENTATIONS- 8:30- 12:00

P.J. Sullivan- Land Field Services. History and Background of RS2477 in Alaska

Tina Cunning- ADF&G. Relationship of RS2477 Rights of Way, Section Line Easements, and 17(b) Easements.

Mike Haskins- Bureau of Land Management- Current Federal Policies and Regulations.

John Bennett- DOT&PF-

10:15- 10:30 BREAK

Joe Sullivan- DNR- Department Adjudication Process and RS 2477 Case Studies

Elizabeth Barry- Dept. of Law- Recent Alaskan Court Cases

Walt Robillard- RS 2477 Issues- What's Happening in other States.

12:00- 1:00 LUNCH
Speaker: Walt Robillard- "Appalachian Trail Easements"

SECTION LINE EASEMENTS PANEL PRESENTATIONS- 1:00-4:30

P.J Sullivan- History and Background History of 17(b)

Elizabeth Barry- Dept. of Law- Legal Issues

John Bennett- DOT&PF Hist & Background

2:30- 2:45 BREAK

Mike Haskins- BLM- Federal Perspective(?)

Joe Sullivan- Dept. of Natural Resources- State regulations and Case studies.

Tina Cunning- ADF&G

Walt Robillard- Section Line Easements- Lower 48 Perspective(?)

4:30 Final Q & A- Wrap-up

ACCESS 2003 WORKSHOP
RS2477/SECTION LINE EASEMENTS
PANEL MEMBERS

Elizabeth Barry
Assistant Attorney General
Department of Law
1031 W. 4th Ave., Suite 200
Anchorage, AK 99501-1994
(907) 269-5100
Elizabeth_Barry@law.state.ak.us

Mr. John F. Bennett, Chief
Right of Way Section
Northern Region DOT&PF
2301 Peger Road
Fairbanks, AK 99709
(907) 451-5423
Johnf_bennett@dot.state.ak.us

Tina Cunning
ANILCA Program Coordinator
Alaska Department of Fish and Game
333 Raspberry Road
Anchorage, AK 99518
(907) 267-2248
tina_cunning@fishgame.state.ak.us

Mr. Mike Haskins
Bureau of Land Management
Alaska State Office
222 W 7th Ave. #13
Anchorage, AK 99513
(907) 271-3351
mike_haskins@ak.blm.gov

Mr. Walt Robillard
1601 Berkeley Lane NE
Atlanta, GA 30329
(404) 348-1602
robw@mindspring.com

Mr. Jay Sullivan
Land Field Service, Inc.
P.O. Box 221649
Anchorage, AK 99522
(907) 248-6740
lfsi@chugach.net

Mr. Joe Sullivan
Department of Natural Resources
Northern Region Office
3700 Airport Way
Fairbanks, AK 99709-4699
(907) 451-2719
joe_sullivan@dnr.state.ak.us

Audio Visual Needs
Access 2003 Forum
RS 2477/Section Line Easements
March 13, 2003

Blackboard ☐

Whiteboard ☐

Flip Chart ☐

Laser Pointer ☐

Overhead Projector ☐

Slide Projector ☐

Trays (note if your are bringing your own, or list the number you need) _____

TV/VCR ☐

Multi-Media Projector / Laptop Computer ☐

- If you are doing a PowerPoint presentation, please put it on a CD and provide it the day before the conference, so it can be loaded on a laptop.

Return to: Stan Leaphart
DOT&PF
2301 Peger Road
Fairbanks, AK 99709
907-451-5412
FAX 907-451-5411

Helpful RS 2477 Web Sites and Links

1. http://www.dnr.state.ak.us/mlw/trails/quads/index.html This link gives you DNR's quad map. You can click on a quad to get a listing of identified "qualified" trails in a quad. However, please be warned – this map is not complete and DNR has not corrected mistakes or updated it for some time.

2. https://nutmeg.state.ak.us/ixpress/dnr/case/lasmenu.dml This link allows you to access DNR LAS RS 2477 casefiles. Again, these are not complete or comprehensive, but it is one way to get information. In the File Type box, select "RST". In the File Number box, you must enter the RST number. Scroll down and click the Submit button to access information. If you do not know the RST number, you can look at a quad map in link number 1. This source is not complete, but it does show some of the identified RST's . You can also look online at the DNR RS2477 map and try to find a number that way. Failing this, you can call or visit DNR. There is no very good way to find the numbers on line, but some of them can be found. You are out of luck on so-called "hold" trails unless you either know the number or go in to DNR and search. DNR published an Access Atlas in 1995 or so. It is helpful, especially on "hold" trails, but it is not up to date.

3. http://www.dnr.state.ak.us/mlw/trails/f2477.htm This is the link to DNR's "official" RS 2477 site. Link #1 can be reached via this link.

4. http://www.ak.blm.gov/alis This is the link to BLM's online land information system (ALIS). You can research land withdrawal dates via this site. You can access Master Title Plats (MTPs) and Historical Indexes (HIs) online. You can research the withdrawal date of a particular land action, for example a mining claim or a homestead entry.

5. http://www.ak.blm.gov This is BLM Alaska's homepage. You can access ALIS and 17B easement information via this site.

6. http://www.ak.blm.gov/sec_17b/index.html This link gives you BLM's 17 B easement and easement review information. You can access this link indirectly via the main BLM Alaska website. Sometimes a 17 B easement exists "on top of" a preexisting 2477 easement; sometimes it does not.

7. http://www.dnr.state.ak.us/cgi-bin/lris/landrecords This link takes you to DNR's Land Records Information System page (LRIS). You can look up SPs (Status Plats) , State surveys, and some of the federal record information via this site. You can also click on the casefiles (LAS) link here and get to link #2 above.

8. http://www.dnr.state.ak.us/pic/maps.htm This link will take you to a DNR maps page. You can get to this link via the DNR homepage, http://www.dnr.state.ak.us. From the DNR homepage, click on DNR Maps, Plats, and Data to get to the first link. Then click on Public Maps. Under Topic, scroll down to Roads and Trails and click the Search button below. Notice that there are 1995 and 2001 dates for the RS 2477 maps. The 2001 version contains many more trails listed. There is a list of trail names with RST numbers on the 2001 Statewide map. This is the most current and comprehensive list of DNR's so-called "qualified" trails that I have been able to find on the web. It is a bit difficult to use because of the map format, but you can magnify some sections of the map to find information on identified RST's, trail names, and trail numbers if you don't have a full-size version available. The full size maps should be available for purchase at DNR.

9. http://wwwdggs.dnr.state.ak.us The DGGS site can be useful for RS 2477 research, especially if you are trying to document a "hold" file. Click on the "on-line publications" link to access early Territorial Department of Mines and later DGGS publications. Many of these publications were not included in DNR RS 2477 casefiles and will be helpful in documenting early access routes.

10. http://www4.law.cornell.edu/uscode/43/ch35.html Title 43 FLPMA site that includes links to SUBCHAPTER V Rights-of-Way and to Section 1769 "Existing right-of-way or right-of-way use unaffected..."

11. http://www.rs2477roads.com Utah Association of Counties (UAC) RS 2477 page. Contains some interesting background information, but not actively updated.

12. http://www.state.ak.us/local/akpages/FISH.GAME/habitat/geninfo/access/access_home.htm Fish and Game Habitat Access homepage. Contains some useful information about ANCSA and ANILCA.

13. http://www.dnr.state.ak.us/mlw/nav DNR's Navigability page with a link to the State of Alaska's official State Policy on Navigability http://www.dnr.state.ak.us/mlw/nav/nav_policy.htm .

14. http://www.dnr.state.ak.us/mlw/trails/11aac51.htm The newest version of DNR's public easement regulations and some commentary. This link can be reached by a more general DNR trails and easement link http://www.dnr.state.ak.us/mlw/trails/index.htm as can link #3 above.

Access 2003 Schedule

Sponsored by the Alaska Society of Professional Land Surveyors and the International Right-of-Way Association

	March 13th *RS 2477 and Section Line Easements* Edgewater Room	March 14th *Alaska Railroad Right-of-Way Issues* Edgewater Room	March 15th *ASPLS Meetings*	
7:30-8:15	**Registration**	**Registration**	7:30 - 12:00	Annual Membership Breakfast Meeting 7:30 - 12:00 **Copper Room**
8:15-8:30	**Welcome & Introductions**	**Welcome & Introductions**		
8:30-10:00	**RS 2477 History** Jay Sullivan, John Bennett, Mike Haskins, Tina Cumming	**Alaska Railroad History** Mike Fretwell, Orrin Frederick		
10:00-10:15	Break	Break		
10:15-12:00	**RS 2477 Present** Joe Sullivan, Walt Robillard, Elizabeth Barry	**Alaska Railroad Legal Perspectives** Jay Sullivan		
12:00-1:30	Lunch Walt Robillard "Appalachian Trail Easements" Edgewater Room	Lunch Jeannette James "Connections" Edgewater Room	12:00 - 1:00	Lunch on your own 12:00 - 1:00
1:30-3:00	**Section Line Easement History** Jay Sullivan, John Bennett, Elizabeth Barry, Tina Cumming	**Alaska Railroad State Perspectives** Phyllis Johnson	1:00 - 5:00	Board Meeting 1:00 - 5:00 **Copper Room**
3:00-3:15	Break	Break		
3:15-4:30	**Section Line Easement Present** Joe Sullivan, Walt Robillard, Mike Haskins, Tina Cumming	**Question and Answer Panel** All speakers & Walt Robillard		
4:30-5:00	**Wrap-up and Adjournment**	**Wrap-up and Adjournment**		
6:00-7:00		Alaska ACSM Icebreaker Marble Room		
7:00-9:00		Alaska ACSM Annual Membership Meeting Marble Room		

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

DESIGN & ENGINEERING SERVICES DIVISION, NORTHERN REGION

FRANK H. MURKOWSKI, GOVERNOR

2301 PEGER ROAD
FAIRBANKS, ALASKA 99709-5399
TELEPHONE: (907) 451-5423
TDD: (907) 451-2363
FAX: (907) 451-5411
1-800-475-2464

June 16, 2003

RE: Federal Section Line Easements
Effect of Township Plat Approval

Matanuska-Susitna Borough
350 East Dahlia
Palmer, Alaska 99645
Attn: Mr. Paul Hulbert, Chief of Platting

Dear Mr. Hulbert:

Back on June 6th, Jim Sharp asked me to contact you with regard to a federal section line easement question that you had posed. If I understand the question correctly, it involves a section line that is also the line between two townships. The approvals for each township plat occurred at separate times, many years apart. I don't believe I need to have the exact dates in hand to address your question, so I will pose a hypothetical scenario that should resemble the situation you are dealing with. The question is whether the half of the section line easement that resides in each township is established only when the respective township is approved, or whether the full section line easement is created when the township plat that initially established the section line is approved, assuming the other relevant criteria are met.

For our hypothetical section line easement we will state that the plat for the township to the south was approved in 1915, the plat for the township to the north was approved in 1960 and we are making the section line easement evaluation today. We are also speaking only of federal section line easements that are based on the RS 2477 grant as opposed to state section line easements. In order for a federal section line easement to be established, four criteria must be evaluated:

1. Is the offer of the grant in place? The offer of the grant is based on the Congressional Act of July 26, 1866 also known as Revised Statute 2477 (RS 2477 – "*The right-of-way for the construction of highways over public lands not reserved for public uses is hereby granted*"). The offer of the grant was in continuous effect from its initiation in 1866 to the date of its repeal by Title VII of the Federal Land Policy and Management Act in 1976 (FLPMA). So with regard to our hypothetical case, the answer is yes.

2. Is the acceptance of the grant in place? A grant requires both an offer and an acceptance. Although the offer of the section line easement was granted in 1866, the acceptance in Alaska was not made until April 6, 1923 when the Territorial Legislature enacted Chapter 19 SLA which provided that "*A tract of 4 rods wide between each section of land in the Territory of Alaska is hereby dedicated for use as public highway, the section line being the center of said highway.*" Our township to the south was approved in 1915, 8 years prior to

the acceptance of the grant. Therefore, the earliest date that a section line easement could attach would be on the date of grant acceptance, April 6, 1923.

3. Has the township plat that established the section line in question been approved? The 1969 Opinions of the Attorney General No. 7 regarding Section Line Dedications discuss the evaluation of section line easement criteria. Its conclusion that a right-of-way for use as a public highway attached to every section line in the state was subject to the section line having been surveyed. "*The public lands must be surveyed and section lines ascertained before there can be a complete dedication and acceptance of the federal offer.*" For our purposes, we will look to the date of approval of the township survey plat to determine when a particular section line is considered established. For our case, the section line in question was established in 1915.

4. Are the lands potentially subject to the SLE considered reserved? The SLE grant could only apply to unreserved public lands. As the lands potentially subject to the section line easement fall in two separate townships, we need to consider the land status both to the north and south of the section line. If the lands north of the section line were reserved prior to the 4/6/23 date of grant acceptance, no SLE could attach as the reserved status preceded the at least one of the three criteria needed to formulate the grant (offer, acceptance and survey).

As our township to the south was surveyed in 1915 and the lands were unreserved at the time of the 1923 grant acceptance, a 33-foot wide SLE clearly attached at that time to the south side of the section line. The issue in our hypothetical case is whether the SLE also attached at that same time to the north side of the line or whether it could not attach until the northerly township survey was approved in 1960. Presuming that the lands north and south of the section line were unreserved on the date of the grant offer in 1923, we would argue that the SLE attached on both sides at that time establishing a 66-foot wide easement. The purpose of the township survey approval is to determine the date upon which the public lands were surveyed and the section lines could be ascertained. The approval of the northerly township plat did not establish a new section line that did not previously exist between the north and south townships. It was established at the time of the township plat approval in 1915.

Hopefully I have addressed the question adequately. Please feel free to contact me at 907-451-5423 should you have any further questions.

Sincerely,

John F. Bennett, PLS
Chief, Right of Way
Northern Region

Cc: Jim Sharp, PLS, Central Region ROW

R Moose
31

MEMORANDUM

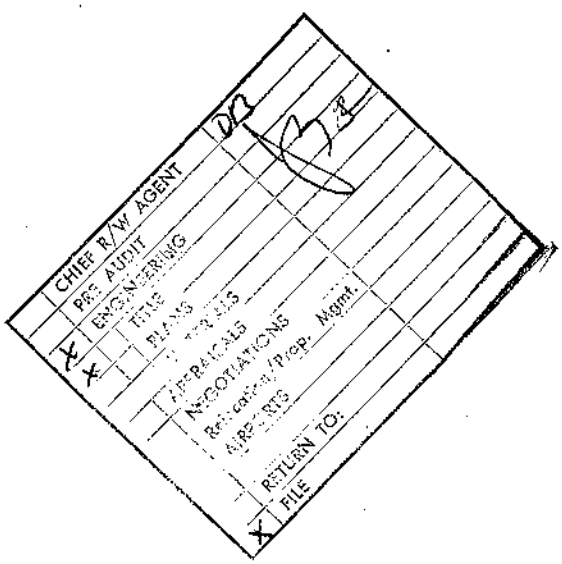
TO: John Miller
FROM: Paul R. Lyle
DATE: 9/16/91
REF: State v. Bullwinkle
Parcel 6 - Peger to College

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

Accompanying this memorandum is a copy of the superior court's decision confirming the state's R.S. 2477 section line easement for Peger Road where it crosses Mr. Bullwinkle's property. The court limited Mr. Bullwinkle to nominal compensation ($100) for the taking of the fee underlying the R.S. 2477 easement.

We now have six months from 9/9/91 to hold a master's hearing in this case to determine the just compensation due for the 0.947 acres DOT&PF condemned in 1986.

My thanks to John Bennett and Jim Ray for their help in gathering the facts necessary to support the motion for summary judgment. If you have any questions, please do not hesitate to call.



AGO (Lyle) DP

THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT

STATE OF ALASKA,

Plaintiff,

vs.

0.947 acres more or less; WALTER H. BULLWINKLE; FAIRBANKS NORTH STAR BOROUGH; and also all other persons or parties unknown claiming a right, title, estate, lien, or interest in the real estate described in the complaint in this action,

Defendants.

FILED in the Trial Courts
State of Alaska, Fourth District

SEP 09 1991

By _____ Deputy

Project No. RS-RRS-M-000S(52)
Parcel No. 6
Case No. 4FA-86-2479 Civil

ORDER CONFIRMING SECTION LINE EASEMENT AND NOMINAL DAMAGES

This matter comes before the court upon the motion of the state to confirm a section line easement and determine nominal damages. The court has considered the following:

1. Motion for Summary Judgment - Section Line Easement
2. Affidavit of John Bennett
3. Answer to Mr. Bennett's Affidavit (Opposition filed by Mr. Bullwinkle)
4. Reply to Opposition to Motion for Summary Judgment - Section Line Easement
5. Mr. Bullwinkle's Supplemental Opposition
6. Supplemental Reply to Motion for Summary Judgment - Section Line Easement

I certify that on 9-9-91 copies of this form were sent to: CLERK: J.D.

C+J AGO (Lyle) Bullwinkle (PROSE)

7. Reply to Supplemental Reply to Motion for Summary Judgment - Section Line Easement

8. Supplemental materials submitted by Mr. Bullwinkle at oral argument

The court heard oral argument on August 27, 1991. Having considered all the pleadings and arguments this court finds that no genuine issues of material fact exist and hereby grants summary judgment to the state.

This condemnation is a partial taking of 0.947 acres of property belonging to Mr. Bullwinkle. The land is a strip of property on the East side of Government Lot 10 bordering Peger Road. Peger Road is built on the section line between section 8 and 9 of Township One South (T1S), Range One West (R1W), Fairbanks Meridian. Mr. Bullwinkle contends that no section line easement for Peger Road exists and therefore the state must compensate him for the land underlying Peger Road.

Mr. Bullwinkle asserts that the Federal Land Policy Act of 1976 revoked the R.S. 2477 Easement for Peger Road. However, the R.S. 2477 section line easement survived pursuant to the Act's saving provision for existing rights of way. 43 U.S.C.A. § 1701. The section line easement in question was a valid existing right of way and was not revoked.

Mr. Bullwinkle asserts that actual road construction was required prior to his entry to perfect any R.S. 2477 easement. This court finds Girves v. Kenai Peninsula Borough, 536 P.2d 1221, 1224-27 (Alaska 1975) controlling. The Alaska

Supreme Court found that only a "positive act" was needed by a state or territory to establish R.S. 2477 easements and the legislative enactment 35 SLA 1953 (AS 19.10.010) constituted such an act. Actual construction is not required in Alaska. The legislative act is sufficient. Brice v. State, 669 P.2d 1311, 1314-15 (Alaska 1983). Mr. Bullwinkle argues that the Alaska Railroad Transfer Act of 1982 vacated the R.S. 2477 easement. The railroad easement was set forth in Mr. Bullwinkle's patent under the 1914 Alaska Railroad Act, 43 U.S.C.A. § 975, et seq. Any revocation by the 1982 Railroad Transfer Act applies only to railroad reservations and does not by its language or subsequent statutory or case law apply to R.S. 2477 easements.

Mr. Bullwinkle asserts that repeal of 19 SLA 1923 vacated R.S. 2477 easements. Brice v. State, 669 P.2d 1311, 1315-16 (Alaska 1983) is controlling. Brice held that the repeal of 19 SLA 1923 did not operate retroactively to vacate previously accepted grants of easements. Mr. Bullwinkle asserts that the Alaska Territorial Legislature had no authority to accept the R.S. 2477 grant from the Federal Government. Girves v. Kenai Peninsula Borough, 536 P.2d 1221 (Alaska 1975) is controlling. Girves expressly rejected Alaska Attorney General Opinion No. 11 (July 26, 1962), and found that the legislature did have authority to accept the R.S. 2477 grant.

Finally, Mr. Bullwinkle argues that federal court decisions and BLM's position should be controlling, not state

law. However, the general rule is applicable as set forth in United States v. Oklahoma Gas & Electric Co., 318 U.S. 206 (1943). The United States Supreme Court stated that "[a] conveyance by the United States of land which it owns... is to be construed, in the absence of any contrary indication of intention, according to the law of the state where the land lies." This rule of law was adopted by the Alaska Supreme Court in Fisher v. Golden Valley Elec. Ass'n., Inc., 658 P.2d 127, 130 (Alaska 1983). Therefore, this court finds state law controlling and confirms the section line easement.

The state asserts that $100.00 is a reasonable nominal compensation amount. There is no evidence of special value attaching to the fee underlying the highway easement on this property. There is no assertion or evidence by Mr. Bullwinkle that $100.00 is not a reasonable nominal amount of damages. Therefore, this court finds there is no genuine issue of material fact and determines $100.00 is a reasonable amount to be awarded for nominal damages for the easement. Therefore,

IT IS HEREBY ORDERED that

1. The existence of the section line easement for Peger Road is hereby confirmed.

2. Walter H. Bullwinkle is entitled to nominal compensation for the taking of the fee underlying the section line easement. $100.00 is a reasonable figure for nominal compensation.

3. The issue of compensation for the remaining 0.947 acres taken by the state is still to be decided.

DATED this 6 day of September, 1991, at Fairbanks, Alaska.

NIESJE J. STEINKRUGER
Superior Court Judge

WordPerfect Document: IBLA 81-580 Decided March 9, 1982

STATE OF *ALASKA*

IBLA 81-580 Decided March 9, 1982

Appeal from a decision of the Fairbanks District Office, Bureau of Land Management, declaring null and void ab initio material site right-of-way F-025893.

Affirmed in part, reversed in part.

1. Applications and Entries: Vested Rights -- Patents of Public Lands: Reservations -- Segregation -- Special Use Permits

Public land may be "appropriated" to a public project or purpose by a Federal or state agency if such appropriation is under authority of law and there is a physical devotion of the land to such use on the ground. Such an appropriation does not segregate or withdraw the land, but creates an easement which is protected, and any subsequent entry, claim, or location is subject thereto. Where a free-use material site permit with a fixed date of expiration is held by a state agency and the site is later included in a ***homestead*** entry application, after the
rights of the entryman are vested the free-use permit may not be converted to a material site right-of-way with an indefinite term, but the ***homestead*** entry remains subject to the permit
until it expires.

2. Applications and Entries: Vested Rights -- Patents of Public Lands: Reservations -- Rights-of-Way: Cancellation --
Rights-of-Way: Federal Highway Act -- Segregation

Where a state agency which for many years has operated a material site under a free-use permit has applied to BLM for a material site right-of-way pursuant to

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the Federal Highway Act, and has received permission from BLM to construct (operate) in advance of the grant, and the
Department of Commerce has certified that the right-of-way is in the public interest, and the application has been perfected by the application so that nothing remains to be done except the ministerial act of formally

issuing the right-of-way, which act is required by regulation at that stage, a ***homestead*** applicant who then files an application for land which includes part of the material site and who pays the fees incident to such application will be held to have acquired his vested right to the ***homestead*** land subject to the material site right-of-way issued thereafter, and the ***homestead*** patent issued several years later was properly encumbered by a reservation of the right-of-way.

3. Appeals -- Applications and Entries: Vested Rights -- Contests and Protests: Generally -- Patents of Public Lands: Reservations -- Rights-of-Way: Cancellation -- Rights-of-Way: Federal Highway Act -- Segregation

A ***homestead*** entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

4. Appeals -- Board of Land Appeals -- Patents of Public Land: Reservations -- Rights-of-Way: Federal Highway Act -- Rules of Practice: Appeals: Generally

Where a ***homestead*** patent is impressed with the reservation of a right-of-way for a material site which is held and operated by a state agency, the Department of the Interior retains its jurisdiction to determine whether the right-of-way has continuing efficacy or whether it should be canceled.

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APPEARANCES: Gary Foster, Esq., Assistant Attorney General, Fairbanks, ***Alaska***, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

The State of ***Alaska***, Department of Transportation and Public Facilities, appeals from a decision of the Fairbanks District Office, Bureau of Land Management (BLM), dated March 23, 1981, declaring null and void ab initio material site right-of-way F-025893. BLM's decision also vacated its earlier decisions of September 13, 1961, granting the right-of-way (ROW), and March 22, 1978, accepting the State's proof of use.

Although the lands to which ROW F-025893 attaches are presently owned by Kelln and James Weidner, these lands were formerly within the boundaries of two adjacent homesteads. 1/ Roughly one-half of the 13.77-acre material site was within the boundaries of ***homestead*** patent 1228323 issued on August 22, 1962, to Alver J. Partridge; the remaining half was within the boundaries of ***homestead*** patent 1230696, issued to John James Weidner on January 31, 1963. BLM's action declaring ROW F-025893 null and void ab initio was apparently occasioned by a letter from Kelln and James Weidner requesting this action. The Weidners allegedly purchased the Partridge ***homestead*** after it was patented to Partridge.

The facts causing BLM to take the action it did are best understood in the following chronological sequence:

1951 -- BLM issues free-use gravel permit FSN 08909 to the ***Alaska*** Road Commission under Act of July 31, 1947, 30 U.S.C. § 601 (1976).

1954 -- Free-use gravel permit extended for 5 years.

March 1959 -- Free-use gravel permit further extended to 1964.

November 1959 -- ◀ ***Homestead*** ▶ entry application F-024396 filed by Alver J. Partridge; receipt issued for fees paid by Partridge.

June 1960 -- ◀ ***Alaska*** ▶ Department of Public Works applies for a material site easement under the Act of November 9, 1921, and the Federal Aid Highway Act of August 27, 1958, 23 U.S.C. § 317 (1976).

July 1960 -- BLM grants advance permission to construct right-of-way to ◀ ***Alaska*** ▶ Department of Public Works.

August 1960 -- ◀ ***Homestead*** ▶ entry application F-026341 filed by John J. Weidner; receipt issued for fees paid by Weidner.

1/ The lands to which ROW F-025893 attaches are located in secs. 3 and 4, T. 11 S., R. 11 E., Fairbanks meridian, ◀ ***Alaska.*** ▶

February 1961 -- ◀ ***Notice*** ▶ of ◀ ***allowance*** ▶ of Partridge ◀ ***homestead*** ▶ entry issued.

September 1961 -- BLM grants ROW F-025893 for material site to ◀ ***Alaska*** ▶ Department of Public Works for project FAP 62-3, subject to all valid rights existing on the day of the grant.

December 1961 -- ◀ ***Notice*** ▶ of ◀ ***allowance*** ▶ of Weidner ◀ ***homestead*** ▶ entry issued.

1962 -- ◀ ***Homestead*** ▶ patent 1228323 issued to Partridge without any reservation of the land or resources relating to the material site.

1963 -- ◀ ***Homestead*** ▶ patent 1230696 issued to Weidner with reservation of a ROW for material site under 23 U.S.C. § 317 (1976).

1968 -- ◀ ***Alaska*** ▶ files proof of construction/use for ROW F-025893.

1978 -- BLM accepts proof of construction/use.

In its decision of March 23, 1981, BLM declared ROW F-025893 null and void ab initio because it had been granted without authority. This conclusion was based upon BLM's finding that the ◀ ***homestead*** ▶ entries of Partridge and Weidner had segregated the lands at issue, appropriated them for private use, and withdrawn them from subsequent entry or acquisition. In finding that the Weidner ◀ ***homestead*** ▶ entry segregated a portion of the lands at issue, BLM relied upon the doctrine of "relation back." This doctrine provides that upon the issuance of a patent or the allowance of an entry, the rights of an applicant are deemed to relate back to the date of the ◀ ***homestead*** ▶ application. Such doctrine is evoked only to protect the rights of an applicant and one in privity with him in order to preclude intervening rights of other claimants.

Albert A. Howe, 26 IBLA 386 (1976); White v. Roos, 55 L.D. 605 (1936). Thus, Weidner's entry was deemed to have been made in August 1960, prior to the grant of ROW F-025893 to the State.

On appeal, counsel for the State argues that BLM had authority to issue ROW F-025893 because it maintained continuing authority over the site by virtue of the segregative effect of the free-use gravel permits. The permits referred to by counsel predate even the earliest ◀ ***homestead*** ▶ application at issue by several months.

The effect of the BLM decision holding that the material site was null and void from its inception would be to deprive the State of an interest which it has long claimed and utilized, and to recognize that Weidner's title to both ◀ ***homestead*** ▶ tracts is, and has been, unencumbered by
any reservation pertaining to this apparently valuable material site. It would nullify the reservation in the Weidner patent, and perhaps support a claim by Weidner against the State for damages or inverse condemnation.

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An analysis of the foregoing chronology of events reveals several complex issues regarding the correctness of the legal premises upon which BLM decided the matter, as well as issues concerned with its jurisdictional authority to adjudicate the matter at all at this stage. The more salient of these issues are enumerated as follows:

1. Did the issuance of free-use gravel permit FSN 08909 to the ◀ ***Alaska*** ▶ Road Commission in 1951, and its subsequent renewal to 1964 (by which time the material site ROW was operative) have the effect of segregating the land involved from lawful entry and appropriation under the ◀ ***homestead*** ▶ law during 1959 and 1960 by Partridge and Weidner,
respectively?

2. If the answer to issue number 1 above is negative, did the filing by the ◀ ***Alaska*** ▶ Department of Public Works of its application for a material site ROW in June 1960, and the BLM decision granting advance permission to the State to proceed with construction, both being prior in time to Weidner's filing of his ◀ ***homestead*** ▶ application in August 1960, have the
effect of precluding Weidner from entering the land without the encumbrance?

3. If the answers to issue numbers 1 and 2 are both negative, what was the effect of the inclusion in Weidner's patent of the material site ROW? Did the reservation serve to create a dominant estate
notwithstanding the imperfection of the ROW prior to the entry of Weidner ?

4. If the answer to issue number 1 above is affirmative, what was the effect of issuing a patent to Partridge conveying the fee title to him without a reservation of the material site ROW?

5. What effect, if any, flows from Weidner's failure to timely protest or appeal the reservation of the ROW recited in his patent? Is his claim barred from administrative review under Departmental rules of practice, 43 CFR 4.411?; by a statute of limitations?; by laches?; by the doctrine of administrative finality?

6. Having conveyed the fee title to the Partridge ◀ ***homestead*** ▶ without
reserving the ROW, and having prior thereto granted the ROW to the State, does the Department have jurisdiction to adjudicate the disputed claims of superior entitlement between the State and Weidner in view of Germania Iron Co. v. United States, 165 U.S. 379 (1897)?

Ordinarily, we would address the jurisdictional and procedural issues first. However, for reasons which we trust will become apparent, we will proceed initially with a consideration of the substantive issues in their enumerated order.

[1] The historic view is that when the United States devotes federal land which is otherwise unappropriated at the time to a federal

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purpose, and actually utilizes the property through the physical construction or delineation of the intended use on the ground, that land and usage is preserved as against a subsequent entry, settlement, location, purchase, or other claim under the public land laws. For historical reference and for the foundation of the rule, see Wilcox v. Jackson, 13 U.S. (Pet.) 266 (1839), wherein certain lands improved by the Army at Fort Dearborn, Chicago (which had been abandoned by the Army but which were still in some use by the Indian agent), were held to be "appropriated" for federal use so as to defeat their acquisition by a preemption claimant.

A similar result was ordered and established as Departmental policy in a case in which the Forest Service had constructed telephone lines on federal land in a national forest. The First Assistant Secretary instructed the Commissioner of the General Land Office to the effect that if such construction had been accomplished under authority of law, and if there had been an actual physical action taken on the ground itself to manifest the appropriation of the land for devotion "to the public use," then an exception preserving such use should be included in the register's final certificate and in the patent when issued. Instructions, 44 L.D. 513 (1916).

Moreover, a number of cases have provided that where, pursuant to lawful authority, federal land is physically devoted to some public project or public purpose by an agency of a state government, the land involved is either segregated from private acquisition under the Public land laws or that one who subsequently acquires such land from the government takes it subject to a reservation or exception which preserves the governmental right to maintain and continue the public purpose use.

In a case very similar to the instant appeal, Southern Idaho Conference Association of Seventh Day Adventists v. United States, 418 F.2d 411 (9th Cir. 1969), BLM had issued a materials use permit to the State of Idaho for materials to be utilized in Federal Aid highways. The land was later patented -- with an appropriate reservation of the site -- as a desert land entry, and later conveyed to plaintiff. When the State continued its removals of sand and gravel from the site, plaintiff sought an injunction and the United States sued to quiet its title to its asserted interest in the site. The Court held, inter alia, that there need not have been an order or proclamation withdrawing from entry the land upon which the material site is located; that the entry by the desert land entryman was subject to the prior appropriation by the United States as a material source and site; and that the title conveyed by the patent remains subject to the material site until it is specifically canceled by the Secretary. Id. at 415.

The case of Schaub v. United States, 103 F. Supp. 873 (D. ◀ ***Alaska*** ▶ 1952
), aff'd, 207 F.2d 325 (9th Cir. 1953), is informative in this regard, although not controlling. Although the factual circumstances were very similar to those encountered in Southern Idaho Conference

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Association of Seventh Day Adventists v. United States, supra, and the Court reached the same result, the case may be distinguished on the basis that the special use permit for the material site in the Schaub case was created initially by the Regional Forester for the use of the Bureau of Public Roads pursuant to 48 U.S.C. § 341, now 16 U.S.C. § 497a (1976). That statute is limited to interests created under the authority of the Secretary of Agriculture on national forest lands in

◀ ***Alaska*** ▶, and it expressly provides that after such permits have been issued and so long as they continue in

effect, the lands therein described shall not be subject to location, entry, or appropriation under the public land laws or mining laws, or to disposition under the mineral leasing laws. 2/ The result, then, in Schaub, was foreordained by statute. However, the Court noted that a materials site ROW had also been issued for the site under 23 U.S.C. § 18, now 23 U.S.C. § 317 (1976), just as in the instant case. Nevertheless, the Court held that because the land was in the actual use and possession of the United States, which had already made an appropriation of the sand and gravel, "the pit was not open to relocation even in the absence of a special use permit or an order setting it aside." Id., 103 F. Supp. at 873 (emphasis added).

This Board has also previously addressed the issue with fairly consistent results. Our most noteworthy opinion in this context is State of ◀ *Alaska* ▶, 46 IBLA 12 (1980), a case which grew out of circumstances which are almost astonishingly parallel to those encountered in the case before us now. There we held expressly that although the free-use permit issued to the ◀ *Alaska* ▶ Road Commission did not segregate the land from further appropriation, the subsequent claims and entries of the homesteader were made subject to the free-use permit, citing the regulation of that time, 43 CFR 259.21(d), now redesignated 43 CFR 3621.2. 3/ That regulation provided, in part:

(d) A free-use permit may be issued to any Federal, State, or Territorial agency * * *. Such permits shall constitute a superior right to remove the materials and

2/ This broad, general, exclusion from entry, location, or disposition of the affected lands is peculiar to use permits issued by the Secretary of Agriculture within national forest lands in ◀ *Alaska* ▶ under this particular statute. We have held that other use permits and rights-of-way issued by the Department of Agriculture do not have this segregative effect in the absence of a similar statutory provision or a formal withdrawal, particularly with reference to mining locations. See, e.g., United States v. Williamson, 45 IBLA 264, 87 I.D. 34 (1980); United States v. McClarty, 17 IBLA 20, 81 I.D. 472 (1974); A. W. Schunk, 16 IBLA 191, 81 I.D. 401 (1974); Sol. Op., 67 I.D. 225 (1960); United States v. Crocker, 60 I.D. 285 (1949); 2 Lindley on Mines (3rd ed.) § 530; Eugene McCarthy, 14 L.D. 105 (1892).

3/ At the time of the Partridge entry, this regulation was found at 43 CFR 259.21(d). In 1960, this regulation was renumbered as 43 CFR 259.63.

will continue in full force and effect, in accordance with its terms and provisions, as against any subsequent claim to or entry of the lands.

But State of ◀ *Alaska* ▶, supra, held that although the entryman took his entry subject to the pre-existing free-use material site permit, the issuance of a material site ROW thereafter was unauthorized, and properly revoked later by BLM as being null and void from its inception. The rationale for this holding, implied but not articulated in the text, was that the free-use permit was for a fixed term of time, with a specific date of expiration. An entry made thereafter was subject to the terms of the permit, which would expire in due course, leaving the entry unencumbered thereby. After the rights of the entryman attached, the land was segregated from the creation and/or imposition of other uses, reservations, or estates by a regulation then in force, 43 CFR 101.2(a) (1960). This segregative effect in favor of the agricultural entry related back to the time of the filing of the ◀ *homestead* ▶ application and the payment of incidental fees. Thereafter, the decision held, BLM could not enhance the nature of the reserved estate by converting a permit for a specific term to a ROW with an indefinite term.

We conclude, therefore, that both the Partridge and the Weidner ◀ *homestead* ▶ entries were made subject to the free-use material permit then held by the ◀ *Alaska* ▶ Road Commission, which was effective until 1964. The

filing of the Partridge ◀ ***homestead*** ▶ application, with payment of the fees, segregated the entered land for ◀ ***homestead*** ▶ purposes effective as of November 1959, so as to preclude the later encumbrance of the material site ROW, which was invalid insofar as it included land in the Partridge ◀ ***homestead.*** ▶ The patent issued to Partridge, therefore, properly did not include a reservation of the ROW.

[2] The situation with respect to the Weidner entry is more troublesome. (See issue number 2, supra.) Because the ◀ ***Alaska*** ▶ Department of Public Works had applied for the material site ROW and BLM had issued a decision authorizing the State agency to construct ("operate") the facility in advance of the ROW grant before Weidner made his ◀ ***homestead*** ▶ application, we must decide the effect of that chronology. It should be noted that the Bureau of Public Roads, on behalf of the Secretary of Commerce, had certified to BLM that the requested ROW was consistent with the public interest, as required by the Federal Aid Highway Act, supra, and that this also occurred prior to the filing of Weidner's ◀ ***homestead*** ▶ application. The regulation in effect at that time, 43 CFR 244.56 (1960), provided in part:

Upon receipt of an application * * * the Manager will return a duplicate map or maps to the State highway department which will forward them to the Secretary of Commerce for his determination that the lands are necessary for the purposes desired, as required by the act. Upon the receipt of such determination, if all else be regular, the right of way will be approved. [Emphasis added.]

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Since the record does not disclose any irregularity in the application by the State agency for the ROW, it would appear that at the time Weidner filed his ◀ ***homestead*** ▶ application the only thing necessary to the perfection of the ROW was the mere ministerial act of approving it by formal issuance of the granting document, an act which was required by regulation.

Moreover, at that time there had been a physical appropriation and devotion of the land to a public purpose under authority of law, which had been sanctioned by the Department of Commerce and the Department of the Interior. This, in itself, would seem a sufficient basis to preserve the public interest in the site until the formal ROW approval could be issued, under the rule applied in Wilcox v. Jackson, supra; Instructions, supra; Southern Idaho Conference Association of Seventh Day Adventists v. United States, supra; and Schaub v. United States, supra. It will be recalled that both the Southern Idaho Conference Association of Seventh Day Adventists and the Schaub cases, the respective Courts opined, in obitur dictum, that a material site ROW such as this would have been preserved even without an order or proclamation withdrawing the land from entry, and even in the absence of a special use permit or an order setting it aside.

The general regulations of the period provided with reference to all types of ROW's that anyone "entering or otherwise appropriating a tract of public land, to part of which a right-of-way has attached under the regulations * * * take the land subject to such right-of-way and without deduction of the area included in the right-of-way." 43 CFR 244.7. But the regulations do not address a circumstance such as this, where the State's ROW application and use predate the initiation of a ◀ ***homestead*** ▶ entry made before the ROW grant was formally approved. The essential question, then, is whether the ROW can be said to have "attached" at the time of the filing of Weidner's application. We hold that it had attached, as suggested by the case law cited above.

Those authorities allude to the land having been "appropriated" to public purposes. The character and quality of the "appropriation" in this instance was fixed by the pending ROW application (which had been fully perfected by the State), and by the certification by the Department of Commerce and the approval given by BLM to operate. To allow Weidner's application to intervene at this stage and defeat the prior filed State application would be contrary to public policy and to all previous pronouncements dealing with the subject. Accordingly,

we hold that the Weidner ◀ ***homestead*** ▶ entry was subject to the ROW, and that the reservation was properly included in his patent.

Issue numbers 3 and 4 thus are also resolved.

[3] Assuming, arguendo, that we are in error in holding that Weidner's entry was subject to the ROW, it must be observed that his failure to seek the administrative remedy which was available to him then, bars him from seeking such a remedy now. He could have protested

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the incorporation of the reservation in the patent when it issued and initiated a timely administrative appeal from any response by BLM which was adverse to his interest. Therefore, BLM erred in voiding the State's ROW more than 20 years later at Weidner's behest without considering the implications of Weidner's failure to act in accordance with the Department's rules of practice to preserve whatever right he believed he had.

We will forego a discussion of whether he may now be barred from judicial review of the question by a statute of limitations, laches, or other defenses to enforce repose, but we will point out that these would have been cogent considerations for BLM to take into account before acting as it did.

The only proper administrative avenue by which Weidner could have sought to expunge the ROW reservation at this late date would have been by the filing of an application to reform his patent pursuant to section 316 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1746 (1976). However, favorable action on such an application could only be premised on a finding that the reservation was included in the patent by error, and as we have here held that it was not error, the filing of such an application now would afford no viable recourse.

[4] Turning to the jurisdictional issue, this Board has on several occasions observed the rule announced in Germania Iron Co. v. United States, supra, to the effect that upon issuance of a patent the legal title is transferred out of the United States, so that this Department no longer has jurisdiction to adjudicate conflicting claims of title and interest between non-Federal parties. See, e.g., Silver Spot Metals, Inc., 51 IBLA 12 (1980). At first impression, it would appear that this is such a case, requiring the controversy between the State and Weidner to be resolved privately between them or by a court of competent jurisdiction.

However, this concern was addressed in Southern Idaho Conference Association of Seventh Day Adventists v. United States, supra, wherein the Court of Appeals said:

[The material site] * * * was not revoked or canceled by the "final disposal" through issuance of the patent. On the contrary, the patent expressly reserved the right-of-way for the material site in accordance with Department regulations. Neither the statute nor any regulation gives appellant any right of revocation or cancellation.

Under the patent reservation and the applicable statute and regulation the material site easement was appropriated by the United States through the Department of Interior and transferred to the State of Idaho pursuant to the provisions of 23 U.S.C. § 317. The United States still

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retains the easement in the material site subject to the permit. [Footnote omitted.]

418 F.2d at 415.

Thus, the retention by the United States of an easement of record is sufficient to confer jurisdiction on this Board to determine its efficacy.

In summary, then, the Partridge patent contained no reservation of a material site, but his entry was subject to the free-use permit which had issued for a specific term of time which expired in 1964. Thereafter, the State has had no right under the patent or the laws of the United States to occupy that portion of the site or to possess its resources. The ROW issued by BLM on the Partridge entry, after Partridge had established a prior right to the land, was indeed unauthorized and BLM acted correctly in recognizing this and in canceling the ROW insofar as it affected land in the Partridge ***homestead.*** However, that portion of the site which lies within the Weidner ***homestead*** patent was properly reserved as a material site ROW pursuant to 23 U.S.C. § 317 (1976) or, alternatively, as a common law ROW "appropriation" by the United States of its own land under authority of law for a public purpose, and the land will remain so encumbered until the ROW is properly revoked by the United States.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part and reversed in part.

_____ Edward W. Stuebing

Administrative Judge

We concur:

_____

James L. Burski

Administrative Judge

_____

Anne Poindexter Lewis

Administrative Judge

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Ask me about ISYS

DNR EASEMENT MANAGEMENT REGULATIONS.

John F. Bennett

From: "Mary Kaye Hession" <marykh@dnr.state.ak.us>
To: "John F Bennett" <johnf_bennett@dot.state.ak.us>
Cc: "Nancy Welch" <nancywe@dnr.state.ak.us>
Sent: Tuesday, April 23, 2002 4:58 PM
Subject: More DNR easement regs!

Nancy Welch recommended I ask your advice. We want to alert DOTPF that we'll probably include some easement sections in our next DNR regulation package (which is mostly about permits and might go out to the public in late May). During our "Phase 1" easement project, we'd primarily worked with Tamar di Franco in Statewide Design & Engineering. But I don't find her phone number in the White Pages any more. Which DOTPF people would you recommend for us to contact? And will you be willing to review the draft yourself?

The proposed easement sections wouldn't be the Final Solution on easement management (Bob Loeffler calls it "Phase 1.5" as opposed to "Phase 2"), but would attempt to say which agency is the default manager for public use and utility use on RS 2477's, section-line easements, etc. As you may recall, this issue came up during DNR's Phase 1 project. See the first three issues in our comments synopsis at http://www.dnr.state.ak.us/mlw/trails/11aac51.htm#dotpf

The regs would say DOTPF manages

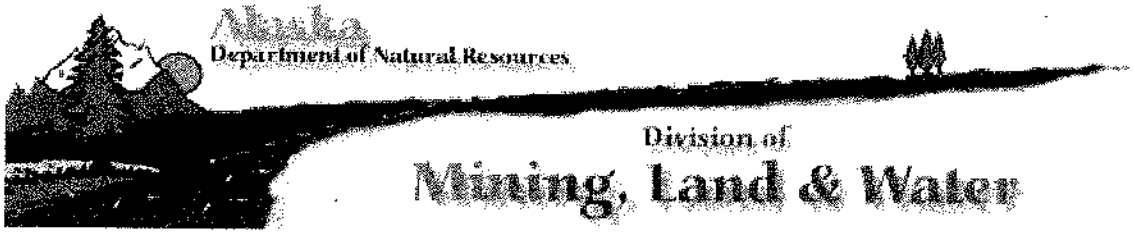
1) utility use on ALL RS 2477's and section-line easements, per AS 19.25.010;

2) public use on RS 2477's and section-line easements that are part of the state highway system or on a DOTPF-maintained airport (a DOTPF employee whose name I can't remember alerted me to the airport issue);

3) both utility and public use on other easements DNR transfers to it.

They would also say that DOTPF and DNR can agree to transfer easement management authority to a municipality.

So this would resolve the apparent conflict between AS 19.30.400 and AS 19.25.010 by separating public use (with DNR as default manager) from utility use (with DOTPF as default manager). I think our guys will be comfortable with that--it's the law. The bigger problem will be the conflict between AS 19.25.010 (enacted pre-Statehood, amended 1990 to add authority to charge a fee) and DOTPF's regulation 17 AAC 15.031 (adopted 1982, never amended). Do you know of any plans to amend that regulation?



Public Easements:
Update on New Regulations

As of May 3, 2001, the Department of Natural Resources' new public easement regulations have been approved by the Department of Law, filed by the Lieutenant Governor, and are in effect. The new regulations are scheduled to be printed in the July Register of the Alaska Administrative Code. After that publication, the new regulations will be added to the Legislature's online data base of regulations.

Thanks to everyone who commented on DNR's original regulation proposal during its public review period from November 1999 to March 2000. Your comments helped the department improve the proposal and decide which parts should become DNR's official policy immediately. An overview of public comments on the proposal, along with more detailed versions, is still available.

As a result of these public comments, DNR divided the regulations into two parts. Phase 1 is the part that has now gone into effect. But the rest have been set aside for a new round of agency and public review (Phase 2) that will begin soon.

ON THIS PAGE:

LINKS TO:

- New Easement Regulations (Phase 1) - 5 KB .pdf file
- Summary of Original Regulation Proposal (1999-2000) - 76 KB .pdf file
- Table of Comments from General Public - 485 KB .pdf file
- Detailed Comments from other than General Public - 220 KB .pdf file

You will need Adobe Acrobat Reader to access, view, and/or print these documents.
It is free, and available for downloading to your computer from *Adobe.*

What do the Phase 1 regulations do?

This new set of regulations:

- explains what public easements are (see 11 AAC 51.010);
- lists the types and widths of easement DNR deals with, including section-line easements (11 AAC 51.015-025);
- ensures that state land sales will automatically include access easements to streams and lakes above a minimum size, with smaller water bodies considered for easements case by case (11 AAC 51.035-045);
- sets out DNR's process for identifying RS 2477 rights-of-way (11 AAC 51.055);
- repeals the RS 2477 "certification" process and associated fees (11 AAC 51.020, etc.);
- provides standards for vacating easements (11 AAC 51.065);
- ensures that easements will be surveyed and the landowner will be notified before DNR authorizes road construction (11 AAC 51.100);
- ensures that landowners as well as easement users will have the right to appeal an easement decision that affects them (11 AAC 51.910);
- defines terms (11 AAC 51.990).

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What changes did the Department of Law make?

The Department of Law made many revisions before approving the new chapter. Mostly these revisions were to move or reorganize clauses, but one major change was necessary. DNR had proposed two sections to provide "immunity" (legal protection against liability for accidents and injuries) for the state, for property owners whose land is crossed by an easement, and for volunteers who build or maintain a road or trail on an easement. Landowners and resource developers had told DNR they were worried about unfair liability lawsuits. That concern could harm public access if it causes landowners to seek easement vacations, or prevents volunteers from building and maintaining trails. Unfortunately, the Department of Law concluded that only the Alaska Legislature can provide legal immunity, even though DNR previously had regulations on this topic (11 AAC 53.360-370).

Existing state laws offer some liability protection. AS 19.30.420 protects the state and municipalities on RS 2477 rights-of-way that are not part of the state highway system, but does not apply to other landowners or trail builders. AS 09.65.200 protects the landowner if an easement has no improvements other than a trail, an abandoned airstrip, or an unused road originally built for natural resource extraction. A bill passed in May 2001 by the Legislature, HB 127, protects volunteers who maintain an airstrip. However, these statutes have gaps. DNR will recommend passage of comprehensive legislation to fill in those gaps.

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What's next for Phase 2?

The Phase 2 regulations will tackle the following questions:

- Which agency should manage use of section-line easements? What about use of section-line easements to install utilities such as telephone and power lines?
- Who manages access and utility easements within land DNR has subdivided in the past?
- How should DNR transfer easement management to other agencies or to a city or borough?
- For easements managed by DNR, what are the management details?
- Can people voluntarily maintain trails on public easements without needing a DNR permit?

DNR expects to begin public review of the Phase 2 regulations in the summer of 2001. Further information on that proposal will be available on this web site.

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Major Issues Raised in Public Comments / DNR Responses

COMMENTS FROM PRIVATE LANDOWNERS / DNR RESPONSES

Public access easements should be limited to future highway construction.

Response: It's true that section-line easements and RS 2477 rights-of-way are highway easements. But Alaska law defines highway uses very broadly, all the way down to a "trail" or "walk" (AS 19.45.001(9)), and says such easements can also be used for utilities. So DNR's regulations couldn't limit their use to future road construction. Other easements DNR reserves are for general public access rather than specifically for highways.

Public access easements should be limited to current uses only. If there's only a footpath now, the state shouldn't be able to build a road there without notifying and compensating the landowner.

Response: Section-line easements and RS 2477 rights-of-way are highway easements, meaning the state has a right to use them for roads and utilities. This is a public property right that the state reserved before the land passed into private ownership. DNR's regulations could not provide for compensating the landowner for a right the state already owns. However, DNR agrees landowners should be notified before road construction begins. 11 AAC 51.100(e) will ensure notification in many cases, but this topic needs further work in Phase 2.

* ***My farm has a section-line easement. Why does DNR claim the state or the public "owns" that public easement? I'm the landowner!***

Response: Land title is traditionally described as a bundle of rights with many separate "sticks" that may be owned by different people. A public access easement is one stick in the bundle of rights. The state reserves that access right in public ownership (along with the mineral rights), even if the remaining rights pass into private ownership. See 11 AAC 51.010, revised to explain this more fully.

* ***No way will farmers apply for a DNR permit to use tractors and other farm equipment on their own land!***

Response: DNR's regulations don't apply to the landowner's use of his land (including the land subject to the easement), but only to public use of public easements. 11 AAC 51.100 (e) has been rewritten to clarify this. Landowners are free to use their property in any lawful way that doesn't block use of the easement. A landowner can log all the timber within the easement, graze his cattle there, use it for his leach field, cut hay off it, pick berries on it, place his own driveway and utility lines on it, or landscape it, for example.

* ***Easements mean I can't post my land against trespassers or keep hunters off it. What if I need to fence my land to keep my livestock safe?***

Response: The landowner and the public both have rights that must be respected. Phase 2 will look for ways to resolve conflicts between those rights. In the meantime, landowners are free to post "No Trespassing" signs next to the access easement (but not within it). The existence of a public access easement does not give anyone the right to set foot outside that easement without the landowner's permission. And DNR agrees that a public easement does not include the right to hunt without the landowner's permission. Finally, if it is only a utility easement, it does not include any right of access by the general public. The definition of "utility easement" in 11 AAC 51.990 has been revised to make this clear.

* ***It's not fair that the state protects itself from liability if an easement user is injured, yet doesn't protect the landowner! What if someone sues me?***

Response: State law (AS 09.65.200) gives landowners some protection if an injury is caused by a "natural condition" on "unimproved land," including on a trail. Also, AS 19.30.420 says that people use RS 2477 rights-of-way (which includes some section-line easements) at their own risk. Those laws do not cover all situations, so DNR's regulations attempted to fill in the gaps. Unfortunately, the Department of Law decided that DNR did not have the authority to do this. DNR agrees that a comprehensive statute is the best solution.

* ***Why does DNR keep trying to select or create RS 2477 rights-of-way? I question the validity of pursuing rights-of-way under a federal law that has been repealed.***

Response: It is true that the U.S. Congress repealed RS 2477 in 1976. However, repealing a law does not take away property rights granted or vested while it was in effect. For example, that same 1976 Act of Congress repealed the federal homestead laws, yet that did not take away or erase private land that had been obtained by homesteading. Unlike state land acquired under the Statehood Act, DNR does not "select" RS 2477 rights-of-way from

the BLM. Instead, it researches historic land title and historic public use to bring existing RS 2477 rights-of-way to light. DNR understands that private landowners may object to this process--especially if they were not aware, when they acquired the land, that the state already had a public easement across it. But a private landowner does not have to take DNR's word that an RS 2477 right-of-way exists. An affected person can bring a court challenge to make DNR produce its evidence of historic land status and use.

* ***An RS 2477 right-of-way across private land is a taking without compensation, forbidden by the U.S. Constitution.***

Response: There is a misconception here. To be valid, an RS 2477 right-of-way had to be created while the land was still in federal ownership and before any private entry occurred under the public land laws and mining laws. Subsequent private landowners took their land subject to all "valid existing rights" (property rights granted to others before they came into the chain of title). It is not a "taking" of private land when the public uses a right it owned all along.

* ***The state has no right to seize private property as historic trails. If the trails were in use, they should have been recorded as public rights-of-way before the land passed into private ownership. It isn't right for the state to come back 50 years later and say "There used to be a trail someplace; we're putting it in your yard." If property is sold without restrictions, you can't come back later and change the deal.***

Response: If the historic trail is on a valid RS 2477 right-of-way, it was reserved before the land passed from federal to private ownership. Recordation of the right-of-way would have been useful, but was not required, and still isn't: Alaska law does not mandate the recording of property transactions. A public easement is a property right that continues to exist unless and until it is abandoned. Although later private landowners might not know the easement exists, which is unfortunate, that does not change its status as a "valid existing right" to which the private land is subject.

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COMMENTS FROM ALASKA OUTDOOR COUNCIL & OTHER PUBLIC ACCESS USERS / DNR RESPONSES

* ***The RS 2477 certification process should be repealed, but the public and state agencies should still be able to nominate routes.***

Response: Although formal "nominations" are being repealed, DNR has broadened public notice under 11 AAC 51.055 to encourage people to come forward with information about potential RS 2477's. DNR believes they will be more likely to do so if they are not required to pay a $100 nomination fee to supply this information. The regulation provides for additional public notice, including to ADF&G. Repealing the nomination requirements eliminates a procedural hurdle that could hamper an RS 2477 assertion (this has already happened in one court case).

* ***Management of section-line easements should be clarified, including DOTPF's role. Some***

municipalities think they're the manager. The process of transferring easement management should be formalized. Until that is done, the public's access rights may not be protected.

Response: DNR agrees. This is a key problem that will be addressed in Phase 2; see more detail under Utilities.

* ***DNR says an easement does not represent full ownership, but it also says public easements remain in public ownership. Isn't that a contradiction?***

Response: Land ownership can be divided into many separate parts or "interests" that may be owned by several different parties. An easement is a single interest in land, so there may be an easement owned by the public across privately owned land. See the expanded 11 AAC 51.010(d) explaining this point.

* ***Our understanding was that RS 2477's could be asserted anywhere on unreserved federal land, yet the chart in 11 AAC 51.025 refers only to surveyed land. Why is that?***

Response: RS 2477 rights-of-way could indeed be accepted by actual construction and use (historic trails) without any survey, but 11 AAC 51.025 does not deal with such easements. Instead, it deals with section-line easements created under AS 19.10.010. The state's position is that even without actual construction and use, AS 19.10.010 was a valid acceptance of RS 2477 rights-of-way on surveyed federal land.

* ***Private parties, not just public authorities, established many if not most RS 2477's. So why does 11 AAC 51.055 refer to "a positive act on the part of a public authority"? Define public authority to include private parties.***

Response: DNR agrees that private parties established many RS 2477 rights-of-way, but private parties did not constitute a "public authority" and couldn't be included in such a definition. Instead, their actions constituted "public use" or "public user." In Alaska, public use is an equally valid way to accept an RS 2477 right-of-way (Hamerly v. Denton) and is listed first in 11 AAC 51.055(b)(3)(A) (ahead of (b)(3)(B)).

* ***It's not fair that only commenters can appeal an easement decision that affects them.***

Response: This requirement has been dropped from the easement regulations.

* ***Why doesn't DNR seek alternatives to mitigate adverse impacts of RS 2477 rights-of-way on landowners?***

Response: DNR welcomes any practical suggestions of alternatives. Measures such as requiring a survey before authorizing construction, so that the landowner can be identified and invited to comment, will help (see 11 AAC 51.100). And if the right-of-way is not yet officially platted, new language in 11 AAC 51.065(f) lets a landowner relocate the easement elsewhere on that person's own property. But from the standpoint of many landowners, that is not enough: they are outraged to find that there is an RS 2477 right-of-way on their land and feel the only solution is to vacate it, preferably at public expense. State law does not permit that option unless other access is available or the legislature itself takes the action.

* ***DNR should never allow a vacation unless "equal or better" access is available. It's a double standard to accept something less just because a municipality asks for it.***

> ***Response:*** DNR's regulations would be simpler if DNR could apply the "equal or better" standard to all vacations, but DNR does not have the power to do that where the legislature has set a different standard. Compare AS 19.30.410(1) and (2). The legislature chose to set a lower standard for the latter type of RS 2477 vacation.

* ***In considering "reasonably foreseeable uses" for a proposed RS 2477 vacation, DNR should consider the variety of users who may need access. For example, to a horseback rider, a paved highway would not provide an adequate replacement for a dirt trail.***

> ***Response:*** DNR agrees that one lawful use of an RS 2477 right-of-way should not replace or preempt another. DNR has added wording to 11 AAC 51.065 clarifying that these uses must be considered separately--and the replacement access does not need to keep them packaged together. The replacement could be a trail easement along one route, a road easement along another, and a utility corridor on a third alignment.

* ***We agree with agricultural landowners' concerns about DNR's public access policies relative to the rights of private landowners.***

> ***Response:*** Whenever private land is subject to public easements, there may be tensions between the two sets of rights. Phase 2 will seek to resolve these conflicts so that each of the parties can benefit from the right or rights that it owns. The law is clear, however, that landowners do not have the right to block public access on a public easement across their property. DNR's regulations can't change that legal relationship, nor would DNR want to.

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COMMENTS FROM THE DEPT. OF PUBLIC TRANSPORTATION & PUBLIC FACILITIES (DOTPF) / DNR RESPONSES

* ***DOTPF should have veto rights over RS 2477 vacations, as well as section-line easement vacations.***

> ***Response:*** DNR agrees; this has been added to 11 AAC 51.065.

* ***DNR's regulations should cross-reference the DOTPF regulation 17 AAC 15.031 to loop DOTPF into easement management. Our biggest concern is utility use on section-line easements, because DOTPF must pay to relocate the lines if the easement is later used to construct a highway.***

> ***Response:*** In Phase 2, DNR and DOTPF will need to resolve the apparent conflict between AS 19.30.400 (which says public use of RS 2477 rights-of-way is subject to DNR's regulations unless the right-of-way is transferred to DOTPF) and AS 19.25.010, which says utilities can be installed on state rights-of-way "only... if authorized by a written permit issued by" DOTPF. (Section-line easements are state rights-of-way.) One possibility, to be considered in Phase 2, is splitting easement management into separate parts, utility use and public use, with a different "default setting" for each type of use. DNR's regulations could state that unless otherwise specified, utility use on an RS 2477 right-of-way or section-line

easement is managed by DOTPF, and use by the general public, including informal roads and trails, is managed by DNR.

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COMMENTS FROM UTILITY COMPANIES / DNR RESPONSES

* ***AS 19.30.400, the RS 2477 law, doesn't or shouldn't apply to section-line easements. DNR has no authority in section-line easements. We object to getting any authorization from DNR to install utilities there.***

Response: Legally, AS 19.30.400 does apply to section-line easements that are 33' or 66' wide, and to the inner part of some wider section-line easements. AS 19.30.400 says DNR manages public use of RS 2477 rights-of-way unless the route is transferred to DOTPF. However, AS 19.25.010 says utility installations on a "state right-of-way" require a permit from DOTPF. RS 2477 rights-of-way and section-line easements surely qualify as "state rights-of-way," so this is an apparent conflict. In Phase 2, DNR and DOTPF need to work together to eliminate this conflict.

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COMMENTS FROM MUNICIPALITIES / DNR RESPONSES

* ***We build and maintain borough roads on these easements. DNR doesn't. The borough needs full control over the easements. When a DNR subdivision dedicates an easement to public use, that means it belongs to the borough.***

Response: In the past, the status of DNR-reserved subdivision easements was sometimes left in doubt. In future subdivisions of state land, DNR plans to make its intent clear. There is no reason for DNR to retain any control over the typical subdivision access and utility easement, and DNR will specifically convey such easements to the municipality. But if a section-line easement, RS 2477 right-of-way, or easement for access to public waters happens to cross that subdivision, DNR can't grant it out of state ownership. DNR should be able to transfer management authority to the borough (with borough consent), but not the right to vacate it. Phase 2 will go into this subject in more detail.

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For more information on RS 2477 Rights-of-Way, visit the RS 2477 webpage:

RS 2477 RIGHTS-OF-WAY

DMLW Division Home | DNR Department Home | State of Alaska Home

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WordPerfect Document: PAXTON J. SULLIVAN

Editor's note: 80 I.D. 810 (Not in I.D. format in the IBLA volume).

PAXTON J. SULLIVAN

IBLA 73-435 Decided December 28, 1973

Appeal from decision of the Fairbanks District Office, ***Alaska***, Bureau of Land Management, rejecting application for ***homestead*** ***entry*** serial No. F-19307.

Affirmed.

Homesteads (Ordinary): Lands Subject to--

Withdrawals and Reservations: Effect of

Where land included in a ***homestead*** ***entry*** is described among lands withdrawn subject to valid existing rights, the withdrawal attaches to the land upon cancellation of the ***homestead*** ***entry.***

Public lands which are withdrawn from all forms of appropriation under the public land laws, except locations for metal-liferous minerals under the mining laws, are not subject to entry under the homestead laws.

APPEARANCES: Joseph Rudd, Esq., Ely, Guess and Rudd, of Anchorage, ***Alaska***, for appellant.

OPINION BY MR. GOSS

Paxton J. Sullivan has appealed to the Secretary of the Interior from a decision of the Manager, Fairbanks District Office, Bureau of Land Management, dated May 18, 1973, rejecting his application for ***homestead*** ***entry.***

Appellant's application, filed October 16, 1972, was rejected for the reason that the land applied for was withdrawn from entry by Public Land Order 5150 on December 27, 1971, 36 F.R. 25410, and by Public Land Order No. 5180 on March 9, 1972, 37 F.R. 5583.

14 IBLA 120

IBLA 73-435

Appellant contends in his statement of reasons that the lands involved were included within the ***homestead*** ***entry*** of Don D. Magee (F-484) prior to the ***date*** of the two withdrawal orders cited by the District Manager. Appellant states that Mr. Magee's entry expired without the filing of final proof on or about March 30, 1972. Appellant argues that since, at the time of the withdrawals, the lands were covered by the existing valid ***homestead*** ***entry***, the lands were excepted from the operation of the withdrawal orders in accordance with the provision in the orders " subject to valid existing rights."

Where land in an existing ***homestead*** ***entry*** is described among other lands in a withdrawal order, the withdrawal becomes effective as to such land as soon as the existing entry is cancelled. Walter Pedersen, A-27734 (December 17, 1958); see also Solicitor's Opinion, 55 I.D. 205 (1935). Assuming the facts to be as appellant relates, the withdrawal would be effective except as to the existing rights of entryman Magee. When Magee's entry expired, the withdrawal attached to the land unconditionally and prevented any subsequent ***homestead*** ***entry*** thereon.

A public land application embracing land in a withdrawal must be rejected. Curtis Wheeler, 8 IBLA 148 (1972). Departmental regulation 43 CFR 2091.1 specifically provides in part that:

* * * applications which are accepted for filing must be rejected and cannot be held pending possible future availability of the land or interests in the land, when approval of the application is prevented by:

(a) Withdrawal or reservation of the lands * * *.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

_____

Joseph W. Goss, Member

We concur:

_____

Anne Poindexter Lewis, Member

_____

Joan B. Thompson, Member

14 IBLA 121

Ask me about ISYS

Subject: [Fwd: CONFIDENTIAL: Interior Department/RS-2477]
Date: Thu, 05 Sep 2002 13:21:28 -0800
From: Joe Perkins <Joe_Perkins@dot.state.ak.us>
To: Dennis Poshard <Dennis_Poshard@dot.state.ak.us>,
Mike Downing <mike_downing@dot.state.ak.us>,
Ralph D Swarthout <ralph_swarthout@dot.state.ak.us>,
David R Eberle <david_eberle@dot.state.ak.us>

With this coming we need to review RS2477.--Joe

Subject: CONFIDENTIAL: Interior Department/RS-2477
Date: Thu, 05 Sep 2002 06:30:07 -0800
From: John W Katz <jwkatz@sso.org>
Organization: Alaska Governor's Office
To: Pat Pourchot <pat_pourchot@dnr.state.ak.us>,
Marty K Rutherford <marty_rutherford@dnr.state.ak.us>,
Joe Perkins <joe_perkins@dot.state.ak.us>,
Kurt Parkan <kurt_parkan@dot.state.ak.us>, John Sisk <John_Sisk@gov.state.ak.us>,
Ken Freeman <Ken_Freeman@gov.state.ak.us>,
Karl A Ohls <karl_ohls@gov.state.ak.us>,
Bruce Botelho <Bruce_Botelho@law.state.ak.us>,
Joanne M Grace <joanne_grace@law.state.ak.us>,
Elizabeth J Barry <elizabeth_barry@law.state.ak.us>,
Sally Gibert <sally_gibert@gov.state.ak.us>
CC: Governor Knowles <ACK@gov.state.ak.us>,
David Ramseur <David_Ramseur@gov.state.ak.us>,
Michael Tubman <mjtubman@sso.org>, Sally Rue <Sally_Rue@gov.state.ak.us>

Yesterday, the Interior Department convened a meeting of governmental and private representatives to discuss a revised policy for addressing right of way assertions under RS-2477. No paper was distributed, and it is not clear when the policy will be announced. The policy is embodied in a memorandum to be signed by Secretary Norton; a formal rule making process under the APA is not contemplated.

The revised approach will repeal the Clinton policy which, in essence, required that claimants under RS-2477 prove the existence of a formal highway created by construction activity of significant scope. The new policy, which is quite similar to a memorandum issued by then Assistant Secretary Steve Griles several years ago, would recognize roads and trails created by vehicular and non-vehicular traffic, including horses, pedestrians, dog sleds, etc. The width of the "highway" would be consistent with its purpose and use. Also, the highway could include reasonable appurtenances, such as rest stops and culverts.

In redefining the terms "highway" and "construction," the new policy will take cognizance of traditional use patterns in Alaska. Accordingly, from what I can tell, the policy is quite consistent with positions the State has advocated previously. Because the policy is likely to lead to many more successful assertions under RS-2477, it will be quite controversial, with the environmental community in strong opposition. In view of a favorable judicial situation, the Department intends to apply the policy initially in South Dakota (Eight Circuit Court of Appeals).

More to come when the official documents become available.

John W. Katz <jwkatz@sso.org>
Director of State/Federal Relations and Special Counsel to the Governor
Office of the Governor
State of Alaska

Department of Transportation and Public Facilities
Office of the Commissioner
3132 Channel Drive
Juneau AK 99801-7898
(907) 465-3900 • Fax: (907) 586-8365

FAX

Date: 12/23/02 **PHONE:** _____

TO: Dave Eberle & Ralph Swarthout **FAX:** _____

FROM: Mike Barton **PHONE:** _____

Number of Pages (including this cover sheet): 6

Message:

REWRITE/wright aco 12-20-02
For release December XX, 2002

Contacts: Jeff Holdren, 202/452-7779
Cynthia Ellis, 202/452-5012

BLM Issues Final Rule on Conveyances, Disclaimers, and Correction Documents

The Bureau of Land Management (BLM) issued a final rule today that will allow any entity claiming title to lands or an interest in lands to apply for a "recordable disclaimer of interest." A recordable disclaimer of interest is an official determination that the United States neither owns nor holds a valid interest in certain lands. The disclaimer document is used to create an administrative procedure for landowners and other claimants to remove clouds of title from their lands or interest in lands.

The final rule published in the __[date]_____ *Federal Register* will further the intentions Congress expressed in its 1986 revisions to the Quiet Title Act (28 USC 2409). It is designed to eliminate the need for private legislation or litigation to remove clouds of title to the lands in which the BLM no longer holds interest. This rule

- removes the 12-year regulatory filing deadline for states from the existing regulation to better conform to the revised Quiet Title Act;
- removes the requirement that an applicant be a "present owner of record" to be qualified under the Act;
- allows any entity claiming title, not just current owners of record, to apply for a disclaimer of interest;
- defines the "state" as used in this rule; and
- clarifies how the BLM will approve disclaimer applications involving another Federal land managing agency.

The recordable disclaimer of interest provision is a case-by-case determination created by section 315 of FLPMA. It allows BLM to disclaim federal ownership in a wide variety of property interest that may be in dispute. The process for considering recordable disclaimer of interest applications has been in the Code of Federal Regulations since 1984.

The BLM started the public review and comment process on the proposed rule on Feb. 22, 2002. The agency received over 17,000 comments on the proposed rule, analyzed them for substantive issues, and, where appropriate, incorporated suggested changes into this final rule.

A copy of the final rule can be obtained by writing to the BLM at [address] or on the Internet at www.blm.gov

- BLM -

Final Rule-Disclaimers of Interest

On (insert date), the Bureau of Land Management (BLM) published a final rule to amend its regulations pertaining to recordable disclaimers of interest in lands.

About Today's Rule:

What does the rule do?
This final rule amends BLM's present regulations pertaining to Recordable Disclaimers of Interest by creating an administrative process for landowners and other claimants to remove clouds from their title to lands or interests in lands. The final rule also eliminates an application deadline as it applies to states. By eliminating the 12-year statute of limitations for filing suit, the final rule will comply with the Quiet Title Act. The final rule also defines "state" as used in the rule and clarifies how the BLM will process disclaimer of interest applications for lands managed by another Federal land managing agency.

Why do we need the rule?
This final rule creates an administrative procedure to eliminate the need for judicial action or special legislation to remove clouds from title of lands when the United States does not assert ownership or other interest in the property.

How is the final rule different from the old regulation or current situation?
Under the existing rule, BLM has to deny an application if more than 12 years have passed since the owner knew or should have known that the United States might have an interest in the property. This final rule exempts states from the 12-year statute of limitations for filing a disclaimer of interest to make the rule comply with the Quiet Title Act. The final rule also defines "state" as used in the rule and clarifies how the BLM will process disclaimer of interest applications for lands managed by another Federal land managing agency.

What are the important elements of this rule?
The final rule will allow any entity claiming title to lands or an interest in lands to apply for a disclaimer of interest. It will also exempt states from the requirement that an applicant request a disclaimer within 12 years of when it knew or should have known of a claim or potential claim by the United States to the lands or interests in lands in question.

What does the audience for this paper need to know?
You may obtain a copy of the final rule—

1. By locating a copy of the (insert date of publication) Federal Register, which is available at
2. BLM offices and many libraries;
3. From the BLM Internet website at www.blm.gov;
4. From the BLM Federal Register website at www.access.gpo.gov/su_docs/aces/aces140.html; or
5. From one of the contacts listed below in the "For Further Information Contact Section."

For further information, contact: Jeff Holdren, Lands and Realty Group Deputy Group Manager (202) 452-7779, or Cynthia L. Ellis, Regulatory Affairs Group, (202) 452-5012.

RECORDABLE DISCLAIMER QUESTIONS AND ANSWERS
(12/20/2002)

Q: Why is BLM adopting these new recordable disclaimer of interest rules?

A: First and foremost, the rules are not new. BLM's regulatory process for considering recordable disclaimer of interest applications has been in the Code of Federal Regulations since 1984. BLM is announcing three technical changes to those 1984 rules that will make the rules easier to use in resolving land ownership disputes.

1. The amendments would allow non-BLM federal land managers to object to the issuance of a recordable disclaimer by BLM. Previously BLM only had to consult with non-BLM federal land owners. But the objection must be accompanied by a substantive explanation for asserting it;

2. The amendments adopt an exemption from the 12-year "statute of limitations" for states that is similar to the exemption in the Federal Quiet Title Act. The amendments also include counties and other political subdivisions in the exemption from the "statute of limitations." This provision minimizes the impact of potential disagreements between states and counties over the submission of recordable disclaimer applications. The Federal Quiet Title Act does not specifically define the word "state," so this is a potential difference between BLM's amendment and the Federal Quiet Title Act. But there is no requirement that the two "statutes of limitation" should be the same;

3. The amendments eliminate the phrase "present owner of record" and replace it with "any entity claiming title to lands." This change is more consistent with the language of section 315 (which only refers to an "applicant") and the section 315's intention to "help remove a cloud on the title" to land that is bogged down in an ownership dispute.

Q: What is the relationship between the new recordable disclaimer of interest rules and R.S. 2477?

A: FLPMA and R.S. 2477 are separate statutes. The recordable disclaimer of interest process is the "catch-all" provision created by section 315 of FLPMA that allows BLM to disclaim federal ownership in a wide variety of property interests that may be in dispute. It is "content neutral" in that it does not specifically address R.S. 2477 right-of-way disputes, boundary disputes or any other type of dispute over property ownership. Without question, the recordable disclaimer of interest process can be used to address R.S. 2477 right-of-way disputes. But the same can be said of the 1984 rules that are already in effect.

Q: If the 1984 rules allow BLM to disclaim interests like R.S. 2477 rights-of-way, why the new changes?

A: Because the 1984 rules place restrictions on how the process can be used (12-year statute of limitations/"present owner of record" requirement) that are more narrow than the statute. The new changes are designed to make the new rule more useful in solving disputes.

Q: Doesn't the moratorium on R.S. 2477 rulemaking that was included in Interior's 1997 appropriations bill prohibit these new rules from being adopted?

A: No. The recordable disclaimer of interest rules were promulgated pursuant to section 315 (authorizing issuance of recordable disclaimers) and section 310 (authorizing promulgation of rules to implement authority) of FLPMA. The 1997 moratorium did not purport to limit the Department's ability to promulgate rules under FLPMA. Again, FLPMA and R.S. 2477 are separate statutes. The only connection between recordable disclaimers of interest and R.S. 2477 is that the recordable disclaimer of interest process can, and always could be, used to resolve a property dispute involving R.S. 2477 rights-of-way. But its application is not limited to R.S. 2477.

Q: Did the Department of the Interior hold meetings about this with officials from the state of Utah?

A: The heart of Secretary Norton's management philosophy for the Department is her "4 C's" approach — communication, consultation, and cooperation, all in the service of conservation. Talking with state and local officials is a crucial element to this approach. Consequently, Interior meets frequently with representatives of many states in a constant exchange of information and ideas. Interior has met with Utah officials to discuss a wide range of issues, from security during the Olympics to water rights, and R.S. 2477 matters have been a part of those discussions, as well.

Q: Do these new rules allow states to acquire rights-of-way for thousands of roads across sensitive areas?

A: The recordable disclaimer of interest process is a case-by-case determination for a variety of boundary-related land ownership issues based on evidence. It provides ample opportunity for public notice and input.

Q: Does Interior plan to revise the 1997 Secretary Babbitt policy regarding R.S. 2477?

A: Again, the appropriateness of the 1997 policy and what the Department might do to revise it has nothing to do with the recordable disclaimer of interest process under FLPMA other

than that process can, and always could, be used to resolve disputes involving R.S. 2477 rights-of-way. The problem with the 1997 policy is that it prevents Interior from resolving even minor disputes. It instructs BLM to "defer any processing of R.S. 2477 assertions except in cases where there is a demonstrated compelling, and immediate need to make such determinations." We believe the public deserves better. Guided by the Secretary's 4 C's, we are evaluating whether this "do nothing" policy serves the public's interest to resolve disputes with state and local governments.

The Bureau of Land Management

NEWS

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Last updated: 12/24/02

Bureau of Land Management For Release: Tuesday, December 24, 2002	Contacts: David Quick (202) 452-5125 Jeff Holdren (202) 452-7779

BLM Issues Final Rule on Conveyances, Disclaimers, and Correction Documents

The Bureau of Land Management (BLM) issued a final rule today that will allow any entity claiming title to lands or an interest in lands to apply for a "recordable disclaimer of interest." A recordable disclaimer of interest is an official determination that the United States neither owns nor holds a valid interest in certain lands. The disclaimer document is used to create an administrative procedure for landowners and other claimants to remove clouds of title from their lands or interest in lands.

The final rule will be published in the *Federal Register* and will further the intentions Congress expressed in its 1986 revisions to the Quiet Title Act (28 USC 2409). It is designed to eliminate the need for private legislation or litigation to remove clouds of title to the lands in which the BLM no longer holds interest. This rule

- removes the 12-year regulatory filing deadline for states from the existing regulation to better conform to the revised Quiet Title Act;
- removes the requirement that an applicant be a "present owner of record" to be qualified under the Act;
- allows any entity claiming title, not just current owners of record, to apply for a disclaimer of interest;
- defines the "state" as used in this rule; and
- clarifies how the BLM will approve disclaimer applications involving another Federal land managing agency.

The recordable disclaimer of interest provision is a case-by-case determination created by section 315 of FLPMA. It allows BLM to disclaim federal ownership in a wide variety of property interest that may be in dispute. The process for considering recordable disclaimer of interest applications has been in the Code of Federal Regulations since 1984.

The BLM started the public review and comment process on the proposed rule on Feb. 22, 2002. The agency received over 17,000 comments on the proposed rule, analyzed them for substantive issues, and, where appropriate, incorporated suggested changes into this final rule.

A copy of the final rule can be obtained by writing to the BLM at Regulatory Affairs Group, 1620 L Street NW, 401 LS, Washington, DC 20036 or on the Internet at www.blm.gov.

The BLM, an agency of the U.S. Department of the Interior, manages more land-262 million surface acres-than any other Federal agency. Most of the country's BLM-managed public land is located in 12 Western states, including Alaska. The Bureau, which has a budget of $1.8 billion and a workforce of 10,000 employees, also administers 700 million acres of sub-surface mineral estate throughout the Nation. The BLM's "multiple use" mission is to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations. The BLM accomplishes this by managing for such resources as outdoor recreation, livestock grazing, and energy and mineral development that helps meet the nation's energy needs, and by conserving natural, historical, cultural, and

other resources on the public lands.

This page was created by the
U.S. Bureau of Land Management,
Office of Public Affairs
1849 C Street, Room 406-LS
Washington, DC 20240
Phone: (202) 452-5125
Fax: (202) 452-5124

The Bureau of Land Management

NEWS

Last updated: 02/22/02

Proposed Rule on Conveyances, Disclaimers, and Correction Documents: Q's and A's

What is a recordable disclaimer of interest?
A recordable disclaimer of interest (disclaimer) is a document which is issued to help remove a cloud on the title to lands when a determination has been made that such lands are not lands of the United States and the United States does not hold a valid interest in the lands.

What is the purpose of a disclaimer?
A disclaimer is used to create an administrative procedure for landowners and other claimants to remove clouds from their title to lands or interest in lands. This procedure is a means to eliminate the need for judicial action or special legislation to remove clouds on title when the United States does not assert ownership or other interest in the property.

What is the authority allowing the Bureau of Land Management (BLM) to issue a disclaimer?
The Secretary of the Interior has been granted discretionary authority under sec 315 of the Federal Land Policy and Management Act (43 U.S.C., 1745) (FLPMA) to issue disclaimers. The Secretary has delegated this authority to BLM. Regulations to implement this authority were issued on September 1984.

What is the purpose of this proposed rulemaking?
Currently, BLM must deny an application if more than 12 years have elapsed since the owner knew or should have know of the alleged attributed to the United States. Also, an existing owner of record is the only entity which can request a disclaimer. The proposed rulemaking will eliminate the 12 year application deadline as it applies to states and also allow any entity claiming title to file a disclaimer, absent any other governing law or regulation.

Why was there a 12 year statute of limitations for filing a disclaimer and what impact does this rulemaking have on filings made by states?
The Quiet Title Act (28 U.S.C., 2490a(g), as enacted in 1972, restricted all parties, including states, to the 12-year limitation period. However, in 1986, Congress amended the Quiet title Act to exempt states from this 12-year statute of limitations. As currently written the rule does not except states from this provision of law, even though states are now exempt. Therefore, the proposed rule provides language that would exempt states from the 12 year statute of limitations and allow them to apply for disclaimers at any time. This change would make the rule consistent with the Quiet Title Act.

Do I have to pay to obtain a disclaimer?
Yes, you must pay a nonrefundable fee of $100, plus other administrative costs. You must pay in advance an amount based on an estimate of these costs. If the administrative costs exceed what you have paid you will be asked to pay the additional amount. If administrative costs are less than what you have paid, you will receive a refund.

What is Revised Statute (RS) 2477?
RS 2477 is a law enacted by the Congress in 1866 which states in its entirety "The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted." With this seemingly simple, 20 word Federal statute, Congress offered to grant rights-of-way to construct highways over unreserved public lands of the United States. The Law was repealed by FLPMA in 1976; however, highways established before October 21, 1976 were protected as valid existing rights. In recent years there has been growing debate and controversy over whether specific highways were constructed pursuant to RS 2477, and if so, the extent of the rights obtained under this authority. It is not known how many potential RS 2477 claims may be made by governmental entities in the future.

Does this proposed ruie relate to RS 2477 issues?
This proposed rule would provide an opportunity for States and other local governmental entities to secure a right to a

highway which is purported to be a RS 2477 highway reservation, if the right cannot be obtained by other means, such as by requesting a right of way as provided for in Title V of FLPMA.

Return to News Release

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U.S. Bureau of Land Management,
Office of Public Affairs
1849 C Street, Room 406-LS
Washington, DC 20240
Phone: (202) 452-5125
Fax: (202) 452-5124

Asserting your RS 2477 Rights

The following information is presented for informaional purposes. Many property owners have historic trails on their property. These trails may be RS2477 trails and certain laws apply to these trails. This article is an effort to raise awareness about what may or may not be done on an RS2477 Trail in Alaska.
Thank-you to DNR website for lots of updated information.

Links below describe all RS 2477 trails in Alaska
All Alaska RS 2477 Trails
Casefile Lookup with Complete Documentation References

Background
RS 2477 stands for Revised Statute 2477 from the Mining Act of 1866, which states:

"The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted."
The act granted a public right-of-way across unreserved federal land to guarantee access as land transferred to state or private ownership. Rights-of-way were created and granted under RS 2477 until its repeal in 1976. In Alaska, federal land was "reserved for public uses" in December 1968, with passage of PLO 4582, also known as the "land freeze." This date ends the window of RS 2477 qualification in Alaska.

What are RS 2477 Rights-of-Way?
The RS 2477 congressional offer stood for 110 years. Throughout that time, people created legal rights-of-way by using or constructing routes across unreserved federal land. State or local officials could also accept a right-of-way by spending tax dollars on actual construction on the route, or they could pass a law accepting rights-of-way for future construction. According to state court decisions, any of these methods would be enough to create a legal right-of-way, provided the land was unreserved, unappropriated federal land at the time of construction and use or acceptance. Once a right-of-way was established, it became a "valid existing right" owned by the state. Any homesteads, homesites, Native Allotments, federal parks, etc., created after an RS 2477 right-of-way was accepted would thus be subject to it.
Once established, an RS 2477 cannot be abandoned by non-use, or removed without undergoing a legal easement vacation procedure. As with any other state-owned right-of-way, the federal government could not cancel it, even if the land was later withdrawn or transferred out of federal ownership. RS 2477 rights-of-way provide access to the public and may exist on your property.
The State of Alaska views RS 2477 as an important tool to protect public access across federal land. In the 1980s the State of Alaska and the U.S. Department of the Interior agreed upon and platted several RS 2477 rights-of-way. In the past decade the Department of the Interior has not recognized RS 2477s that cross its land.

The RS 2477 Project
Since 1993, the Department of Natural Resources (DNR) has received varying levels of funding to pursue a research and adjudication project for RS 2477 rights-of-way. The project identifies routes throughout the state that appear to qualify as public rights-of-way under RS 2477. In recent years, court cases have determined the legal validity of RS 2477 routes. There have been few court cases in

Alaska that established RS 2477 rights-of-way. In the past, the status of most routes was typically uncontested and acknowledged to be legally valid under 43 USC 932 - RS 2477.
To successfully document an RS 2477 right-of-way on a historic route, the route must be shown to have been constructed or used when the land was unreserved federal land.

Typical route documentation includes:

* Alaska Road Commission annual reports and maps
* U.S. Geological Survey bulletins, reports, field notes, and maps
* U.S. Postal Service contracts, site reports, and maps
* Other publications (books, newspapers, magazines)

Personal accounts (affidavits) are also valuable evidence of route use and construction.
To date, DNR has researched over 2,000 routes and determined that approximately 647 qualify under the RS 2477 statute.

Current Litigation

The Harrison Creek - Portage Creek route is undergoing litigation. In March 1997 the State filed a Quiet Title action against the Department of the Interior for the right-of-way. This case is still in its "discovery" phase with plans to go to trial during the winter of 1999. It has the potential to set important precedent regarding the RS 2477 issue.
The state has been involved to varying degrees in three other RS 2477 cases: the Knik Glacier Trail, the Chickaloon River Trail (a Department of Transportation and Public Facilities (DOT&PF) condemnation case), and the Jualin Mine Trail. The State also filed a friend-of-the-court brief on behalf of Paul Shultz's lawsuit, which tried to show that there was an RS 2477 right-of-way across Fort Wainwright. Mr. Shultz's appeal to the United States Supreme Court was denied in early 1998.

1998 Legislation

In May 1998, the Alaska State Legislature passed a new law (AS 19.20.400) entitled "An Act Relating to State Rights-of-Way," that declares that more than 600 routes have been accepted as RS 2477 rights-of-way by public use and mandates that DNR record them in the respective recording districts. This bill was signed into law as Chapter 26, SLA 1998 (AS 19.30.400).

In general, this statute:

* identifies DNR as manager of these routes, unless transferred to DOTPF;
* acknowledges that there may be other qualifying routes not yet identified by the project;
* indemnifies the state from liability resulting from a person's use of an RS 2477 right-of-way;
* outlines procedures and restrictions for vacating RS 2477 rights-of-way.

In addition, the legislative act mandated the recordation of the 602 routes listed in the bill as qualifying RS 2477 rights-of-way.
The Department of Natural Resources has begun to record the surveyed RS 2477 routes and those crossing large parcels of land held by a single landowner. DNR also notified over 8000 owners of smaller parcels (those within the Fairbanks North Star Borough and Matanuska-Susitna Boroughs) that it was planning to record rights-of-way crossing over their parcels. Public outcry from concerned land owners has curbed those plans. Last year the Department raised concerns about recording unsurveyed RS 2477s across small tracts of land owned by private individuals, and although the Legislature chose not to act on the Department's concerns, Commissioner Shively intends to discuss this issue with the Legislature when it reconvenes next January. The Department does not plan to record routes that cross smaller private parcels this year.
Whether or not an RS 2477 route is recorded, the right-of-way still exists and encumbers the property it crosses. The original RS 2477 route may be re-routed or eradicated only through an easement vacation process. By statute, the Legislature must approve an application to vacate an RS 2477 if no reasonable, comparable alternate right-of-way or means of access exists. However, if an alternate means of access exists, then the state may approve the vacation.

Impacts of Recording Unsurveyed RS 2477 Routes

There are several issues associated with recording unsurveyed routes, in particular where they cross small private parcels. As an example, a route that is recorded as crossing five parcels may only affect three of them and miss three other parcels that should be affected.

It is impossible to know which specific parcels are actually impacted if an RS 2477 route is not surveyed. Therefore, surveying RS 2477 routes should be made a priority.
Another issue is the broad scale of the historic maps that depict the RS 2477 routes. The actual physical routes may be as far removed as one mile from the line depicted on the USGS maps. This problem is significant in densely populated areas, sometimes increasing the affected parties by a factor of ten. The RS 2477 encumbrance may negatively affect the disposition of private properties for their future use and potential sale.
Once the location of an unsurveyed route is recorded, it is part of the public record and reflects on the titles of all properties over which it apparently passes. If a subsequent survey shows that the route does not really affect a parcel, the original document cannot be removed from the record. The land record may only be amended by recording additional documents, such as disclaimers of interest.
Although RS 2477 routes were not specifically reserved in the original patent documents issued by federal or state governments, all patents are conveyed subject to valid, existing rights. RS 2477 rights-of-way comprise valid, existing rights. Lawsuits will likely occur between individuals who disagree over the actual location of an unsurveyed RS 2477 easement. This is another reason that DNR has advocated surveying RS 2477 routes before recording them. Surveys would ensure each route would be accurately applied to individual properties and reported for all future sales. DNR has asked the Legislature for the authority to record only those routes that have been surveyed or that only cross large tracts of land in single ownership, where the route's exact location isn't an issue. However, the Legislature has chosen not to act on this request. The law is clear that all qualifying RS 2477 trails must be recorded, surveyed or not. Because of the recent public concern expressed by land owners when notified that DNR would record unsurveyed routes across their property, DNR will not record unsurveyed routes crossing smaller private parcels this year. DNR does not believe it is appropriate to cause unnecessary legal problems between landowners and the public. The agency is complying with the requirements of Chapter 26 SLA 1998 by beginning to record the nine surveyed routes and those that impact only large land owners.
The statutes also do not address the issue of width of the RS 2477 easement. This will clearly be important to landowners impacted by valid RS 2477 encumbrances. It will also be important to the public using RS 2477 routes. Generally, it is assumed that the road right-of-way width that existed at the time the RS 2477 grant was accepted applies to that route, up to a width of 100 feet. Individual RS 2477 widths will likely differ.
These issues affect everyone with an interest in RS 2477: public users of RS 2477s, landowners mistakenly impacted due to the lack of a survey, and landowners who should be impacted by RS 2477s but who failed to appear on a list of affected parties due to a lack of survey.
The effect of recording an RS 2477 route across large tracts of land is significantly less than on smaller, privately owned parcels. Generally, owners of large tracts of land do not intend to sell their property, so the presence of an RS 2477 route crossing it does not have the same devaluating effect. If they do decide to subdivide and sell parcels, they may have an opportunity to relocate and build the trail elsewhere on their property where it does not interfere with the subdivision.

Frequently Asked Questions

1. Why does RS 2477 matter anymore?

Since Alaska achieved statehood in 1959, the pattern of land ownership has become complicated. The federal government is still conveying land to the State, and Native corporations are receiving land as part of the Alaska Native Claims Settlement Act of 1971. Since the passage of the Alaska National Interest Lands Act (ANILCA) in 1980, Alaska's federal parks, refuges, preserves and wilderness areas have expanded greatly. Courts have ruled that the RS 2477 right-of-way is transferred along with the title and must still be honored. Land ownership may have changed, but the access needs of many residents have not. These recent land acts included some provisions for access, but they are often difficult to implement. The State of Alaska believes it is important to preserve historic public access across these lands not only for present needs, but for potential future uses as well. Therefore, RS 2477 is an important access tool towards this goal.

2. How does the recording requirement affect me?
Over the last five years, the Department of Natural Resources has been funded to identify those RS 2477 rights-of-way that do exist. Currently, the DNR has identified over 600 such routes that qualify under the requirements of 43 USC 932 (Revised Statute 2477).

Under Chapter 26, SLA 1998, this information will be recroded int he applicable recording district. The title to property crossed by the recorded RS 2477 would be encumbered by that right-of-way. DNR has begun the recording process by recording across parcels along the ten surveyed rights-of-way and across owners of large parcels through which a route runs in its entirety. DNR has served notice of its intent to record over the properties of persons located within the Fairbanks North Star and Matanuska-Susitna Boroughs. Due to the strong public outcry from this notice, DNR has not plans to record over small private parcels this year, and will approach the Legislature next session for a remedy to the existing requirement.

3. What about the landowner's rights?
Many Alaskan landowners, such as Native corporations and private citizens, want assurance that RS 2477 identification and recording will not damage their rights and interests. Federal, state, and local governments must recognize the legitimate concerns of landowners and land managers and the people they may represent. However, RS 2477 routes existed before the property was segregated as a homestead or other private parcel. They represent the "valid existing rights" to which all patents and deeds are subject.

4. What if the state records an unsurveyed RS 2477 route and my property is inaccurately identified as having an RS 2477 encumbrance through it?
In order to clear your title, DNR would need to record a disclaimer of interest once the route is properly located by survey.

5. What if there is a historic route running through my property but it's not on the list included in the statute?
One of the provisions of the statute is that every year the DNR must report to the Legislature any routes it has determined qualify as RS 2477 routes. Ongoing research makes additions to this list probable. If there is a route on your property that existed prior to any federal land withdrawals, it may be a valid RS 2477 and may appear in state statute at a future time. Should this occur, the route would be recorded in the applicable recording district and your property would be subject to it.

6. If I wish to sell a piece of property with an RS 2477 running across it, will I still be able to sell it?
Yes, but the property will be subject to the RS 2477. It is the job of title companies to point out encumbrances to property title to alert buyers and their lending institutions of what they are purchasing. In some instances it may be possible to re-route an RS 2477 trail onto adjacent state land. Because such re-routes benefit the landowner, the re-route would be at his or her expense (and may include bonding, permit fees, platting costs, and construction costs). The alternate route would have to be constructed to the same standards and engineering as the original RS 2477 right-of-way.

7. A route leading to public land crosses my property. What if legal access to that land also exists? Will the RS 2477 still affect me?
It will, although as a matter of policy the state prefers to avoid private property when feasible alternatives exist. The state may vacate RS 2477 rights-of-way when it is in the state's best interest to do so. Vacations can occur where feasible alternate access exists or when the vacation is approved by the Legislature.

8. How does the vacation process work with regard to RS 2477s?
The 1999 Legislature passed a new law, Ch. 94, SLA 1999 (formerly SB 45), that changes the vacation process for RS 2477 rights-of-way. With this amendment, only the state--either DNR and DOTPF or the Legislature itself, rather than local government--can approve such a vacation. Because RS 2477 access rights are owned by the state, a request to relinquish them can be granted only if it serves the state's best interests.

However, a right-of-way vacation also requires a plat amendment, and the local platting authority remains responsible for this part of the process. When an eligible party petitions for the right-of-way vacation, the platting authority will hold a hearing to consider whether that change would eliminate anyone's access. Although local government cannot make the final decision on the RS 2477 right-of-way vacation, this process provides a way for local views to be expressed, and the state will consider those views in determining whether the vacation is in the state's best interests. If the vacation is approved by the state, the party petitioning for the vacation must hire a surveyor to prepare a vacation plat. The vacation will ultimately be recorded, which clears the landowner's title.

9. There is a route near my house that I know has been used for over 30 years, but it does not show up on the list in the statute. Can I nominate it?

An individual may submit information regarding historic access routes to the Department of Natural Resources. At a minimum, DNR requires the submission of a map showing the exact route location and at least one historical reference (such as an old map, a citation in a book, or an affidavit) of the route's existence and use prior to December 14, 1968. As time permits, DNR will review the information and inform you of the outcome of its administrative adjudication.

10. What uses can I expect on RS 2477 routes?

Protecting Alaska's RS 2477 rights does not mean maintenance or improvements will automatically happen. Some rights-of-way may be improved for access to valuable state resources, communities, and land. Others will be used as they have in the past, while some may be developed only as hiking trails or not used at all. The state has management authority over public access on RS 2477 rights-of-way. The state requires permits for significant upgrades of trails, a process that may require public notice.

Rights-of-way acquired under RS 2477 provide an access tool for the state that can help meet public access and trail-user needs. However, RS 2477 management questions remain.

On state land and rights-of-way managed by DNR, "generally allowed" uses do not require a permit. For example, these uses include using up to a four-wheel drive pickup on state land if the root system (vegetative mat) is not disturbed.

Other uses of state land may require a permit. If you would like to use a documented RS 2477 route in a manner that could harm the vegetative mat or cut a trail more than five feet wide, contact DNR and the underlying landowners before proceeding. Contact one of our regional offices if you have any questions about whether you need authorization for certain activities.

Case Files

Follow this link to the **Case Files** page. Note: there are some missing trail descriptions. We are currently working to correct and update this information. Thank you for your patience. Please direct any questions on RS2477 to the Division of Mining, Land and Water's RS 2477 unit.

If you need more information about RS 2477, the statute changes, or questions about a particular route, contact:

Alaska Department of Natural Resources
Division of Mining, Land & Water
3700 Airport Way
Fairbanks, AK 99709-4699
(907) 451-2740

CASEFILE SUMMARY
RST 1710
WET GULCH TRAIL

THIS CASEFILE SUMMARY CONTAINS REVISIONS AND ADDITIONS TO THE CASEFILE

SUMMARY DATED 1/24/95.

TRAIL LOCATION

THE WET GULCH TRIAL IS LOCATED IN SOUTHCENTRAL ALASKA, IN THE VICINITY OF KNIK, APPROXIMATELY 20 MILES NORTH OF ANCHORAGE. THE TRAIL ORIGINATES AT THE END OF **THE LOCAL ROAD** ON THE EASTERN OUTSKIRTS OF THE COMMUNITY OF KNIK, WHICH IS LOCATED ON THE NORTHERN SHORE OF KNIK ARM. FROM THE END OF **THE ROAD**, THE TRAIL TRAVELS NORTHEASTWARD FOR APPROXIMATELY 7 MILES, PARALLELING THE NORTHERN SHORE OF KNIK ARM AND A LOCAL ROAD. ABOUT ONE MILE NORTHEAST OF THE COUMMNITY OF COTTONWOOD, THE TRAIL VEERS NORTHWARD, FOLLOWING COTTONWOOD CREEK FOR A FEW MILES, AND CROSSING ANOTHER LOCAL ROAD AND THE
PALMER-WASILLA ROAD. THE TRAIL CONTINUES NORTHWARD
TO THE LITTLE SUSITNA RIVER, RUNS NORTHWARD OVER BALD MOUNTAIN RIDGE, AND FOLLOWS WET GULCH TO MILE 28 OF HATCHER PASS ROAD. THE LOCATION OF THE TRAIL, BASED ON HISTORICAL EVIDENCE, HAS BEEN MAPPED BY DNR, DIVISION OF LAND PERSONNEL, ON USGS 1:63,360 ANCHORAGE B-7, B-8, C-7 AND D-7, AND IS APPROXIMATELY 25 MILES LONG.

HISTORIC DOCUMENTATION

THE WET GULCH TRAIL WAS HISTORICALLY USED TO ACCESS THE WILLOW CREEK MINING DISTRICT FROM THE TOWN OF KNIK.

RST 1467-- Herning Trail

From the townsite of Knik on the Knik-Goose Bay Road, this trail heads north around the west side of Knik Lake, crossing Threemile Lake roughly 2.5 miles to the north. The route continues north alongside a portion of Fish Creek and crosses Big Lake Road at the point where it spans Lucille Creek. After crossing Little Meadow Creek and the Parks Highway roughly 0.75 miles north of the Big Lake Cutoff, the trail ends just north, at the point where it meets the Alaska Railroad. Trail length is 10 miles. The route is mapped on the USGS Anchorage B-8 and C-8 quadrangles. The DOT Trails Inventory depicts it on map 69 (Anchorage quadrangle) as the southern portion of trail 64.
The Herning Trail was a historic freighting and transportation corridor to mining claims along Willow Creek in the early 1900s. It continues as the Houston-Willow Creek Trail (RST 95), to the Willow Creek mining district. Historical documentation includes USGS bulletins, two memoirs, a magazine article, mining history, trail history, and miscellaneous maps.

RST 118-- Knik-Susitna Trail
This 30-mile-long route begins in the town of Knik, on the north side of Knik Arm, north of Anchorage, and heads northwest, joining ADL 200644, a 200-foot right-of-way running through T16N, R3W, SM. This easement becomes ADL 222930, a 400-foot right-of-way heading west to the trail's terminus at the Susitna River, within T17N, R7E, SM. The trail appears on USGS Anchorage B-8 and Tyonek C-2 maps. The DOT Trails Inventory depicts it on map 69 (Anchorage quadrangle) as trail 62, and on map 70 (Tyonek quadrangle) as trails 7 and 12. In ARC documents, it is labeled route 20A.
The Knik-Susitna Trail forms part of the historic Iditarod Trail, used to transport people, mail and freight to villages between Anchorage and Nome. Primarily a winter trail, it was passable but swampy in summer. Historical documentation includes ARC annual reports, a USGS bulletin, newspaper accounts, trail and mining histories.

This Personal Assertion form letter can be used for any trail listed as an RS 2477 Trail.

Personal Assertion of RS2477

Your name/addressDate
Attn: (Land mgmt Agency)
RE: RS2477 Right of Way
As a citizen of the United States of America, I am hereby asserting my rights granted to me by Federal Statue RS2477. These routes of travel may include, but are not limited to, highways, roadways, pathways and trails established before 1976 that cross and are on public lands not set aside for public use.
These routes shall also include routes, which through lack of use have been obscured by time. It also includes routes, which due to surface conditions, sand, rock, etc. or impacts of weather that show little or no signs of travel but have been historically used as access ways.
I am personally making an assertion to all right of ways that fall within the purview of RS 2477. This assertion will remain in effect from this day forward until such time responsible land management prevails.
Very Sincerely,
Signature

Below is correspondence with Judy Chapman. When she was with DNR she worked with th RS2477 trails and has extensive knowlege on this issue.

Nancy wrote:
Hi
Im working on research for an article about Knik. I have a few questions about RS2477 trails: #1710 #118 #1467.I found your name on the documetation for the Herning Trail.Could you tell me if its legal or acceptable for a private land owner to dig up the trail and use the land where the trail was for a gravel pit. This will block access to the trail and leave no access to a cemetery and a mat-su borough park that is planned. Mostly the trail is #1710 Wet Gulch Trail although historical evidence shows the Herning Trail and The Knik-Susitna section of the Iditarod Trail will also be unuseable after the gravel is extracted. There is a big hole now where some of the town of Knik was located and where most of these trails would have started in the early 1900's.Thank you for any information you can provide.
Nancy Sult
www.knik.org

Hi Nancy,
I am cc-ing Joe Sullivan with this note as he works with RS 2477s for DNR. I moved on to DOT and no longer have much interaction with the RS 2477 issue. However, I called his office and learned he is on leave until the end of the month.
In general, if the activity would obliterate the trail or degrade it, the person would have to apply for a DNR land use permit to conduct the activity. It's likely that as part of the permit the private landowner could relocate the trail to another location on his/her own land. A survey of the trail's rerouted location would likely also be required. The southcentral regional office (in Anchorage) can help people work through the permitting process (269-8552).
I also understand that DNR is working on easement regulations that would define the level of trail maintenance activities that could occur without a permit on RS 2477 routes, and would address other management issues. Currently the general rule for what is acceptable without a permit is what is "generally allowed" on state land under 11 AAC 96.
A complicating factor in the RS 2477 permitting process is that most RS 2477s that we have documented have not been surveyed, so in many cases there may be dispute over the trail's actual historic location, which might differ from what is on the ground today. If you have any additional

information further documenting/cementing the historic location of the trail, it would be wise to send a copy to DNR to add to the individual trail files. (c/o Joe Sullivan, 3700 Airport Way, Fairbanks AK 99709).
Joe may have more to add when he returns to Fairbanks.
Judy Chapman
DOTPF

These are the Laws mentioned in the above email. They describe what can be done on an RS2477 trail.

Alaska Administrative Code.

Title 11. Natural Resources

Chapter 96. Miscellaneous Land Use

Section 10. Operations Requiring Permits

previous: Chapter 96. Miscellaneous Land Use
next: Section 20. Equipment Use Not Requiring a Permit
11 AAC 96.010. Operations Requiring Permits

(a) A permit is required for the following activities on state lands:

(1) activity requiring

(A) the use of explosives and explosive devices, except firearms;

(B) the use of equipment not included in the list specified in 11 AAC 96.020;

(C) the use of hydraulic prospecting or mining equipment methods;

(D) drilling to a depth in excess of 300 feet, including exploratory drilling or stratigraphic test wells on state land not under oil or gas lease;

(E) geophysical exploration for minerals subject to lease or an oil and gas exploration license under AS 38.05.131 - 38.05.181;

(2) activity that the director determines may result in unnecessary harm to land having special scenic, historic, archaeologic, scientific, biological, recreational, or other special resource values; and

(3) activity on land under mineral permit, lease, oil and gas exploration license, or claim by a person other than the holder of the permit, lease, oil and gas exploration license, or claim, or the holder's authorized representative, if the parties cannot agree on what constitutes unnecessary or unreasonable interference as provided in 11 AAC 96.140(11) .

(b) The activities for which a permit is required under (a)(2) of this section will be listed, and the land designated as special use lands on the official records of the division, the records will be available in all state land offices. Activities requiring a permit on land designated as special use land is not a violation of this chapter unless the user has received written notice of the designation or the designation has been effective for 90 days.

Authority:

AS 38.05.020

AS 38.05.035

AS 38.05.131

AS 38.05.133

AS 38.05.180

AS 41.20.020

11 AAC 96.020. Equipment Use Not Requiring a Permit

(a) A current list of equipment types the use of which does not require a permit under 11 AAC 96.010 (a) (1)(B) will be maintained and available in all state land offices. A permit is required for the use of all equipment types not appearing on this list unless otherwise authorized by the director.

(b) This list will include but is not limited to the following:

(1) light portable field equipment; such as, hand-operated picks, shovels, pans, earth augers and backpack power drills and augers;

(2) vehicles such as snow machines, jeeps, pickups and weasels. Augers and drills may be mounted on such equipment;

(3) airborne equipment;

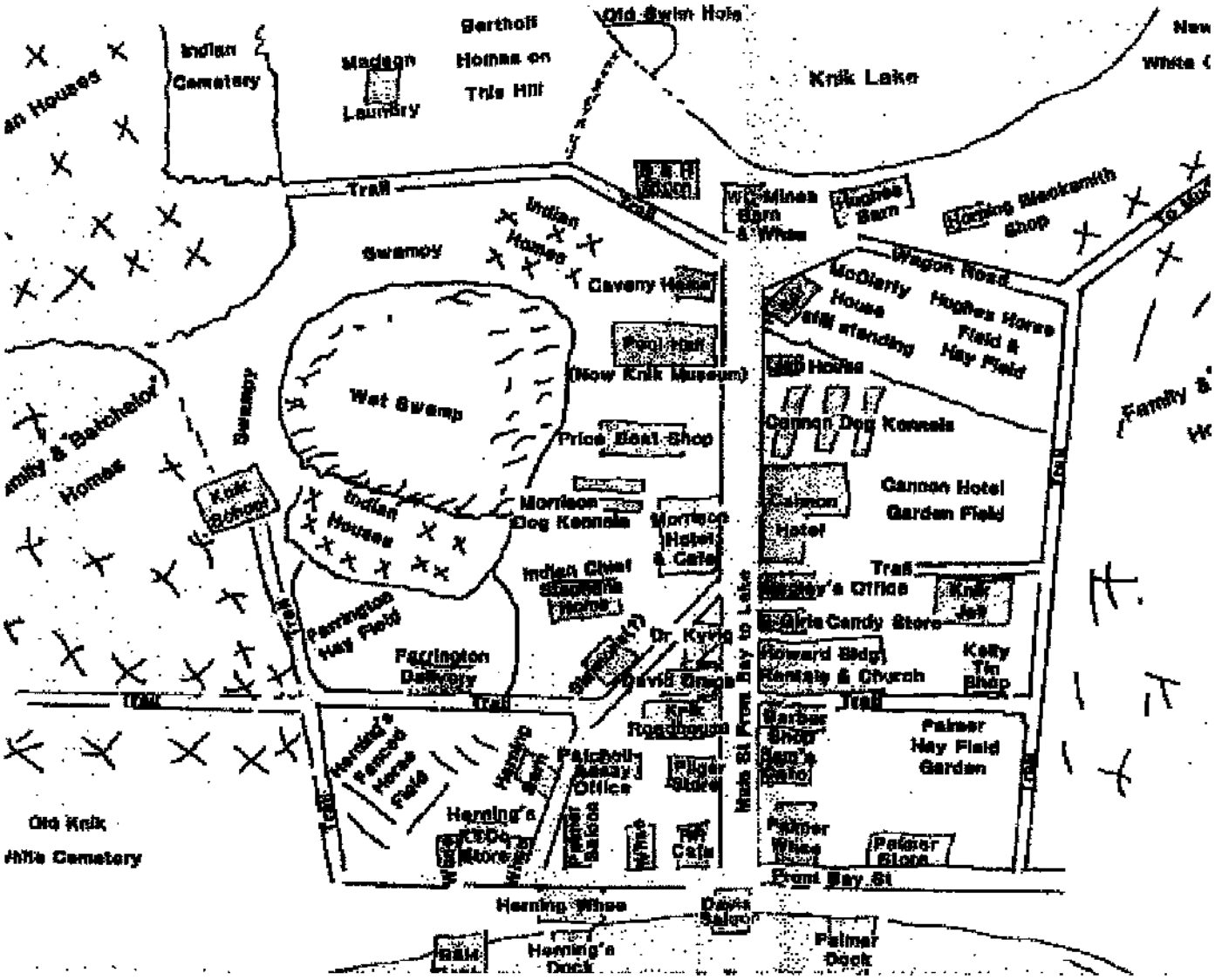
(4) marine equipment, except equipment which will disturb the submerged land.

(c) This section does not apply to areas designated under 11 AAC 96.010(a) (2).

Authority:

AS 38.05.020

AS 38.05.035


Indian Cemetery
Madson Laundry
Berthoff Homes on This Hill
Old Swim Hole
Knik Lake
Trail
Indian Houses
Swamp
Cavany Hotel
Wet Swamp
Price Boat Shop
Morrison Dog Kennels
Morrison Hotel & Cafe
Indian Chief
Farrington Hay Field
Farrington Delivery
Dr. Kyrig
Knik Roadhouse
Patchett Assay Office
Flyer Store
Herning's Store
Herning Whse
Herning's Dock
Main St From Bay to Lake
McGinnis Barn & Whse
Hughes Barn
Working Blacksmith Shop
Wagon Road
McGinnis House still standing
Hughes Horse Field & Hay Field
Cannon Dog Kennels
Cannon Hotel Garden Field
Hotel
Trail
Kelly Tin Shop
Palmer Hay Field Garden
Barber Shop
Palmer Whse
Palmer Store
Front Bay St
Davis Saloon
Palmer Dock
Old Knik White Cemetery