

**From:** John F. Bennett <johnf\_bennett@dot.state.ak.us>  
**Sent:** Friday, July 19, 2002 1:16 PM  
**To:** Frank Mielke  
**Subject:** Re: Klutina Lake Road RS2477 Opinion  
**Attachments:** tab.gif

Frank, back in about 1966 we were rebuilding Farmer's Loop road in Fairbanks. Certain portions of the existing ROW could only be claimed under RS2477. Up until that time, a 66 foot width was often assigned to RS2477 trails by relation to the 4-rod wide RS2477 Section Line easements. However, one of the Farmer's Loop parcels ended up in condemnation and the court ruled that in absence of government declaration of a specific width for highway rights of way, the state could only claim the area physically used, or the "ditch to ditch" width. Although that case ended in Superior Court, it resulted in the adoption of :

Sec. 19.10.015. Establishment of highway widths.

(a) It is declared that all officially proposed and existing highways on public land not reserved for public uses are 100 feet wide. This section does not apply to highways that are specifically designated to be wider than 100 feet.

(b) Notwithstanding (a) of this section, a municipality may designate the width of a road that is not a part of the state highway system if the municipality maintains the road.

So this is the basis for the 100' width of RS2477 trails across private or state lands where the lands they crossed were unreserved public lands any time after the statute was enacted. As the majority of ANCSA lands were unreserved public lands at this time, most of the RS2477 trails crossing them will be subject to the 100 foot width.

I think the scope of use issue goes to the customary and traditional uses concept. If an RS2477 trail was traditionally used for travel, parking, camping, resting, etc....then that use would still be allowed. But I guess we won't know for certain until the parties butt heads in court. JohnB

----- Original Message -----

**From:** Frank Mielke  
**To:** John F. Bennett  
**Sent:** Friday, July 19, 2002 11:13 AM  
**Subject:** Re: Klutina Lake Road RS2477 Opinion

John - thanks for sending that; I thought that RS 2477s were ditch to ditch in width; Paul seems to think the 100 foot is reasonable; I think that is the position we should take; also not clear is whether we can construct rest stops, pullouts, trailhead access parking, etc. I vote for asserting that right, too.