

From: John F. Bennett <johnf_bennett@dot.state.ak.us>
Sent: Tuesday, December 31, 2002 11:03 AM
To: Frank Mielke; kasandra_rice@dot.state.ak.us
Subject: Re: RS 2477

Frank, just before the Gov. issued his press release regarding DOI's new quiet title regs, Barton had sent out a request for info on RS2477 to see what if any impact this would have on us. I met with our Reg. Dir. and several others and related that in my experience with DOT, RS2477 is not a real significant issue. I could probably go through our plan sets and show where we have historically indicated an old road as having a claim of an existing ROW by virtue of RS2477 but most of those have been documented in our plans for over 20 years. We have had very few recent assertions and will likely have few in the future unless our mission changes. There was a footnote in the old Alaska Land Title case where one of the judges noted that prior to PLO 601, most of Alaska's highway ROW existed by virtue of RS2477. But once the PLO's came into effect our reliance on the less definite RS2477 went away. If we are considering the future, the problem DOT would have in relying on an existing RS2477 ROW is the fact that most of them were created on "path of least resistance" alignments and would not currently warrant the investment of large amounts of public funds given their less than optimum grades, alignments and geology. One argument I have heard with regard to the value for DOT of the old RS2477 rights of way is more their value as trading stock. That is we could use the possibility of a vacation of the old ROW as a mechanism to secure a new alignment that would be more acceptable to both DOT and the property owner. The background info on the DOI quiet title reg suggested that it would only be necessary to use their process with respect to DOI lands if other methods to secure ROW such as FLPMA Title V were unavailable. In our case we have both the Highways Title 23 grant process and the FLPMA Title V process which we have used effectively for highway grants across DOI lands, so it is unlikely we would need to use the quiet title regs to secure an RS2477 ROW. You are correct that the only RS2477 ROW of note that we have had activity on lately is the Klutina Lake Road. I was initially surprised to find it on the Alaska Highway System. We do very little maintenance on it but I understand we have kept it on because the extra mileage benefits us with the funding formula. The next big involvement we may have with an RS2477 is the Rampart road. We have a well documented historical trail that would meet the RS2477 requirements, but it is questionable as to how much of the alignment we would use. Also, I don't think it impacts any federal lands. If I understand the DOI regs, they would only apply to the quieting of title of a claim in interest in federal lands (such as an RS2477 ROW) or the claim of interest by the feds against private property. Our Rampart road properties are either DNR or ANCSA corp so I believe we would rely on our Alaska case law, statutes and regs regarding RS2477 as opposed to any federal policy or reg. One area that DOT still has a role to play is that our historical records are one of the primary sources of documentation for the assertion of an RS2477 ROW. When DNR did their initial assertion project they spend a long time in our files and our Planning section had one person designated as the RS2477 liaison to work with the DNR staff. If DNR fires their program back up again, we could still provide a lot of the background info needed to successfully assert our claims. I hope I'm not too late with this info. JohnB

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

From: Frank Mielke
To: John F. Bennett ; kasandra_rice@dot.state.ak.us
Sent: Monday, December 30, 2002 10:26 AM
Subject: RS 2477

John & Kim - as you may already have been informed, or accurately guessed this would be the case, RS 2477s are a high priority with the Gov. Dennis Poshard asked me to do a quick one page white paper on DOTPF activities regarding these. More specifically, where if anywhere are we asserting these as part of highway projects; outside of SE, I am aware of the Klutina Lake Road, and have the material on that; are there any others in Northern or Central regions? Please let me know so I can get this to Dennis tomorrow afternoon. Thanks.

