ACCESS 2003
RS 2477 Trails and Section Line Easements

March 13th 2003 - Panel Presentation
The DOT&PF Perspective – John F. Bennett, PLS, SR/WA

Introduction

- Imponderable*s* – Definition (adjective):

Incapable of being apprehended by the mind or the senses.

Generally, it's a statement or question that contains one or more flaws in logic or contradictions such that much thought about it ultimately results in a mental meltdown. In the best case scenario you will end up with a bad headache. In the worst case, your head will explode. It is also a style of humor often used by a comedian named Steven Wright. My favorite Steven Wright Imponderable goes:

I almost had a psychic girlfriend but she left me before we met.

However, as we are speaking of transportation issues, there are several "imponderables" that directly relate to Transportation:

Maintenance & Operations*: How does the guy who drives the snowplow get to work?*

Planning*: Why are there interstate highways in Hawaii?*

Environmental: *What do you do when you see an endangered animal eating an endangered plant?*

Imponderable for the Right of Way field: *What is an RS2477 Right of Way?*

- First impressions: Upon joining Northern Region Right of Way in 1986, I found....3-4 cubic feet of memos, legal opinions, and policy papers relating to RS2477 trails and section line easements. I presumed that this must be important stuff. Unfortunately, I also found that a great deal of this information was in conflict with each other.

- Back to the Front Burner: Soon after the Murkowski administration moved into their offices, we received urgent requests from the DOT Commissioner's Office for information regarding the new DOI Quiet Title regulations and the proposed "Recordable Disclaimer of Interest". The RS2477 issue had taken a low profile for the past several years, but now it appeared to be a subject of interest to our new Governor.

DOT & RS 2477 - Why it's not such a big deal to us. : When you think about DOT&PF facilities, you generally think of the primary highways such as the Richardson, Glenn and Parks. However, if you think with a historical perspective, you should consider the many pioneer roads and trails such as the Eureka to Rampart road, Ft. Gibbon to Kaltag trail and others that were constructed or maintained by DOT's federal predecessor agency, the Alaska Road Commission.

- Prior to the establishment of Public Land Orders specifically setting aside lands in Alaska for highway rights of way, public roads were primarily protected by RS2477.[1] However, from the mid-1940's

[1] "Prior to the issuance of Public Land Order No. 601..., nearly all public roads in Alaska were protected only by easements. Right-of-way easements were acquired under section 2477 of the Revised Statutes (43 U.S.C. sec. 932) by the construction of roads. This section granted a right-of-way for the construction

through the mid-1950's, the RS2477 rights of way for the active road system were replaced by the more definite Public Land Orders. Many trails and roads constructed and maintained by the ARC during the early mining period have fallen off the active highway system due to limited use and now receive little or no public maintenance.

- It is an interesting note that although RS2477 is a law directly relating to highway rights of way and DOT has been granted authority under the statutes to manage the State's highway system, much of the management authority resides with DNR. You will find most of the state statutes relating to RS2477 under Title 19, "Highways & Ferries" (A.S. 19.30.400 – A.S. 19.30.420) whereas most of the regulations regarding management of an RS2477 will be found in DNR's 11 AAC 51. It may seem a little odd that DOT has little interest in the current RS-2477 issue but that is due to our focus on the primary transportation routes listed within the State Highway System.[2] Trails were often located on path of least resistance without due consideration of to geology, archeology, frozen soils, grades and alignments. Although valid RS2477 trails may provide for a public ROW corridor of up to 100 feet in width, it might not be a wise investment of public funds to improve the existing facility if it would result in a deficient design or be costly to maintain. Section line easements have similar problems given that the rectangular system was laid out without consideration of grades and soil conditions. Fortunately, our alternatives for obtaining rights of way across DOI lands (Title 23 Highways and FLPMA Title V) are relatively straightforward and can usually be secured in a timely fashion.

- When BLM proposed it's RS2477 regulations in the 1990's, they argued that it was unreasonable for a state to develop new infrastructure based on an access law that was repealed more than 2 decades ago (1976) given that Congress had provided alternatives in the form of ANCSA 17(b) easements, ANILCA Title XI grants and FLPMA Title V grants. In my experience, DOT Northern Region has in fact utilized FLPMA Title V rights of way for several projects, particularly where only state funding is available. We have incorporated a 17(b) easement only once and have had little success in securing any rights of way under ANILCA Title XI. What the feds left unstated was the fact that the 17(b)'s provide only limited widths, uses and management authority and incorporating them into a highway project can involve more complex negotiations than if we had set out to acquire a new right of way in the first place. Title XI grants are difficult to impossible to secure. We have found that no matter how much information we provide with our application and subsequent transmittals, it never seems to be enough. The acquisition of a FLPMA Title V grant is a relatively straightforward process. However, it is difficult to get BLM to issue more than a limited duration grant. Fortunately, we have the ability to appropriate certain federal lands for highways under the USC 23 Highways using the authority of the Federal Highway Administration. As most of our highway program is federally funded, Title 23 Grants are the most common.

- Another reason why RS2477 is not so critical to DOT is the fact that most of the roads that utilize RS2477 Section Line/Trail rights of way and are appropriate for inclusion into the State Highway System are already under DOT's jurisdiction. I expect future dependence upon RS2477 by DOT as a method of securing rights of way for highways to be very limited.

Management Issues

- **Who's on first? DNR vs. DOT Management Jurisdiction**

  Sec. 19.30.400. Identification and acceptance of rights-of-way.

---

of highways over public lands not reserved for public uses." Footnote 8 - SOA vs. Alaska Land Title – Alaska Supreme Ct. 1983

[2] A.S. 19.10.020 Designation of the State Highway System. The Department may designate, locate create and determine what highway constitute the state highway system. A.S. 19.10.030. Responsibility for system. The department is responsible for the construction and maintenance of the state highway system.

(a) The state claims, occupies, and possesses each right-of-way granted under former 43 U.S.C. 932 that was accepted either by the state or the territory of Alaska or by public users. A right-of-way acquired under former 43 U.S.C. 932 is available for use by the public under regulations adopted by the Department of Natural Resources unless the right-of-way has been transferred by the Department of Natural Resources to the Department of Transportation and Public Facilities in which case the right-of-way is available for use by the public under regulations adopted by the Department of Transportation and Public Facilities.

11 AAC 51.055 Identification of R.S. 2477 rights-of-way:

(g) After reporting to the legislature under AS 19.30.400 (b), the department [DNR] *will manage use by the general public of an R.S. 2477 right-of-way that is identified under this section unless the*

(1) R.S. 2477 right-of-way is part of the state highway system or the department transfers the R.S. 2477 right-of-way to the Department of Transportation and Public Facilities for management;

11 AAC 51.100 MANAGEMENT OF RS 2477 RIGHTS-OF-WAY.

(a) The [DNR] commissioner has management authority over the use of any RS 2477 right-of-way that is not on the Alaska Highway system.[3]

Ok, this covers highways – but what about airports?…. In October of 1996 the AGO issued an opinion titled "Aviation Zoning".[4] The discussion was whether a State owned airport was subject to local planning, zoning and subdivision ordinances. The conclusion stated that

"Alaska Statute 02.25 et seq. authorizes the Department of Transportation and Public Facilities to enact zoning regulations with regard to state-owned airports and air navigation facilities. DOT&PF need not comply with local planning and zoning ordinances, or with local subdivision and platting requirements, in the same manner and to the same extent as other landowners."

The authority granted to DOT under Title 2 of the Alaska Statutes to "plan, establish, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police airports and air navigation facilities within the state." (A.S. 2.15.060, A.S. 2.15.160) would appear to satisfy any questions of management authority over existing public access rights that lie within the airport boundaries.

- **RS2477 SLE & Trail Vacations**

In the mid-1970's DNR & DOT established a policy[5] requiring approval by both agencies before a section line easement could be vacated. This policy recognized the highway purpose of the easement and the important access implications for all state owned lands. In recognition of local government authority, a vacation of an SLE located within the jurisdiction of a local government with platting authority required the approval of the local government, DNR and DOT. In the absence of a local platting authority, only DNR and DOT approvals are required. Although the vacations of SLE's included both federal RS2477 (66') based SLE's and State SLE's (100'), the procedure established for these vacations also seemed appropriate for the vacation of RS2477 Trails.

---

[3] Sometimes the terms "Alaska Highway System" and "State Highway System" get used interchangeably. See 11 AAC 51.990 Definitions "(14) "state highway system" or "Alaska Highway system" means all roads constructed, managed, operated, or maintained by the Department of Transportation and Public Facilities." Some of these roads may be under a maintenance agreement with the local governing authority. The DOT regulations define the "Alaska Highway System" in 17 AAC 05.010 as a sub-set of the "State Highway System" defined in A.S. 19.10.020.

[4] Aviation Zoning – October 24, 1996 – File No. 661-97-0228 – Carolyn E. Jones, Asst. Attorney General.

[5] September 30, 1974 Letter from DNR to "All Boroughs Within the State of Alaska"

In the early 1980's, DNR started a regulation project to update their 11 AAC 53 regulations. This was to include language regarding the vacation of RS2477 trail rights of way. DNR Planners initially proposed that an RS2477 trail must be first validated before it could be vacated. Some of the evidence supporting a particular RS2477 trail might be sketchy. We call this type of encumbrance a "cloud" on the title because it's hard to get a handle on (shades of gray). Under this theory, unless you could conclusively prove the validity of an RS2477, you could never clear title by vacation..... The DNR regulation project had some other difficulties and was never completed.

The vacation process is now clearly spelled out in A.S. 19.30.410 Vacations of rights-of-way and under DNR regulation 11 AAC 51.065 Vacation of Easements. The legislature was concerned about a possible attempt at mass vacations by an administration that did not appreciate the value of RS2477 rights of way. A.S. 19.30.410 ensures that an RS2477 right of way cannot be vacated unless a reasonably comparable means of access exists or can be established. In the alternative, the legislature can directly approve the vacation of an RS2477right of way. However, it's not clear whether the new vacation process will serve to clear title to land that may be subject to an unproven RS2477 right of way. Our historic highway rights of way in Alaska rarely came with a black and white document establishing clear title. Typically, the establishment of a highway ROW is a result of research and analysis of a variety of events and documents. In my time at DOT, I have had reason to recommend issuance of a Commissioner's Deed of Vacation or Quitclaim Deed for a right of way that I was unconvinced existed at all. The problem was that in someone's perception, likely that of the title insurer's, a cloud existed. In these situations, I have no problem processing what amounts to a "quitclaim vacation". (We don't know if we have anything, but if we do, we're getting rid of it!)

In the DOT Northern Region all requests and preliminary plats for section line easement vacations and other RS2477 vacations are submitted to our Planning section for review. After the platting authority has approved the vacation, the final drawing is forwarded to DOT&PF for two signatures. If the review planner's comments have been adequately addressed and the Department does not object to the vacation, the Chief of Planning will sign a certificate recommending that the Commissioner approve the vacation. The drawing is then forwarded for signature to our Regional Director who has authority to sign on behalf of the Commissioner. Several years ago the approval process had the Right of Way Chief recommending approval to the Regional Director rather than the Planning Chief. This process was changed as Planning was the lead section for plat reviews and was therefore in the best position to assure that the Department's comments had been addressed. You may find that the review and approval process varies according to Region.

- **RS2477 Management Imponderable – Rampart Road**

The construction of an all-season road from the Elliott Highway to Rampart is currently in the design phase. References to the old Rampart road are made in the records of the Alaska Road Commission as far back as 1908. The existing ROW is a mix of PLO[6], ANCSA 17(b) and RS2477[7]. The road has received little State maintenance since statehood and is impassable in many areas for most of the year however the road is listed in as being on the State Highway System, therefore, management jurisdiction of the RS2477 portion lies with DOT.

We intend to claim some portion of the corridor as existing highway right of way under RS2477. Several years ago I attended a Chamber of Commerce Transportation committee breakfast meeting where a former DNR Commissioner was to speak. Someone brought up the application of RS2477 and related it specifically to the proposed Rampart road project. The DNR Commissioner suggested that the RS2477 rights of way might be considered for use but only after obtaining the permission of the owner of the land it crossed. Needless to say I was shocked. Does the RS 2477 right of way grant constitute an existing easement for highway purposes or does it not? The public either has the right to use it or it does not. I

[6] The right of way for Federal Aid Secondary Highway System, Class "B" Route 6259, Rampart - Little Minook Creek Road was conveyed from the federal government to the State in the June 30, 1959 "Omnibus Act" Quitclaim Deed. The road was described as being "From Rampart southeasterly to Little Minook Creek mining area" with a constructed mileage of 4.5 miles.

[7] Eureka-Rampart Trail (RST 7)

am not aware of any legal obligation to request the property owner's permission to use a public right of way. His comments apparently reflected the leanings of the administration at the time. His comments were consistent with a 9/4/96 memo issued to the RS 2477 Working Group regarding a "Proposed Policy on RS2477" The summary of management policies regarding RS2477 trails included the following:

1. *"The **usable width** of the RS 2477 row should be determined by actual use patterns.* [Note: the proposed policy clearly wanted to distinguish between "usable" as opposed to the 100' legal width definition for highways according to AS 19.10.015. Any proposed changed in "usable" width or "allowable" use would be subject to public review.]
2. *The **management** of the row should be consistent with its past/and or present use including seasonal restrictions – i.e.) winter only or summer only.*
   *RS 2477 rows can be asserted and if not necessary, can be **vacated** using established criteria*:
   Policy – "Any RS2477 right-of-way needed to construct a highway or road for vehicular traffic that crosses private land will be acquired by the State through negotiated purchase or through normal condemnation procedures." [Note: this policy also suggested that where other access easements existed, (i.e. ANCSA 17(b)) that the RS 2477 right of way be vacated.]

Fortunately, these policies did not get into the 11 AAC 51 Regulations.

- **Butting Heads – Conflict on the Klutina Lake Road**

As I've stated above, DOT takes second seat to DNR with regard to assertion and management of RS2477 Trail rights of way. So it was a bit unusual when we had a bit of activity in the defense of this RS2477 right of way. The Klutina Lake Road, also known as the Brenwick-Craig road and the Valdez to Copper Center trail was asserted during the DNR research project and listed under AS 19.30.400 as RST-633. The trail history dates back to 1899 and this is one of the few if not the only road constructed under our 1960's Pioneer Road program where we received a letter from BLM stating that the road is protected by an RS2477 right of way. The segment we were interested in runs from the Richardson Highway near Copper Center along the Klutina River to Klutina Lake. Portions of the road come close enough to the Klutina River that it is possible to launch a boat from the right of way. Back in the summer of 1999 we had been contacted by individuals that representatives of Ahtna, Inc. had placed a fee station along the road and were charging people to camp or do anything other than travel from the Richardson to the lake. Initially, I believed this was a DNR management issue as I thought it was a non-system RS2477 trail. I later found that this road was on the state highway system, although it received little maintenance. Some time after this we heard that Ahtna had filed a trespass suit against a father and son fishing guide team (the Hughes) because they refused to pay a fee to Ahtna for launching their boats from the right of way. Ahtna initially argued that the road was not subject to an RS2477 right of way. At best, they said the road was subject to an ANCSA 17(b) easement, however, the scope of such an easement was so limited, that the Hughes' use exceeded the scope.[8] Ahtna's later briefs essentially conceded the existence of an RS2477 right of way, but that the Hughes' use also exceeded the scope of that easement. They argued that as the use of the road in 1968 (when the public lands were reserved in anticipation of ANCSA) did not include commercial fishing access, it could not include it now.

Now if Ahtna had blockaded the road, DOT would have taken action. And in fact in 2001 we did take action to have Ahtna remove a blockade. However, when Ahtna filed the trespass suit against the Hughes, DOT did not join in their defense. We did commission an AGO opinion regarding the scope of the Klutina Lake Road right of way because of our other conflicts with Ahtna over the years. The opinion was originally issued in July of 2002 as a "confidential" communication and later reissued as a general opinion in support of the Hughes' case.[9] The opinion supported a couple of the assertions we had already made.

[8] This is one of those classic situations where we have a well documented RS2477 easement overlain by an ANCSA 17(b) easement. Due to the limitations of scope and the conflicts in management authority for 17(b)'s, we will always hang our hat on the RS2477 before we incorporate a 17(b) into a project.
[9] The opinion can be obtained from the AGO website. (See Resources section later in this paper)

1. Litigation is unnecessary to perfect an RS 2477 right of way. Ahtna argued that an RS2477 right of way could only be perfected when recognized by a declaratory judgment.
2. RS 2477 rights of way are not supplanted by overlapping ANCSA 17(b) easements. ANCSA lands are "subject to valid existing rights".
3. Alaska courts will apply state law to determine the scope of an RS 2477 right of way.
4. The allowable uses will most likely be measured by that which is "reasonably necessary" in light of the historic use.

The AGO opinion was somewhat conservative in its discussion regarding scope. This was clarified a bit in a subsequent "confidential" update. The opinion focused on the scope as found in federal case law which suggests that it is limited to the historic use prior to the repeal of the RS2477 grant in 1976. This opinion did not discuss the 1999 Puddicombe Alaska Supreme Court Opinion and its reference back to the Dillingham decision that held that the right-of-way could be used for '*any purpose consistent with public travel*." I suspect this subject will come up again.

RS2477 Research & Assertions (DOT's Activities and Resources)

- **DOT&PF Research Resources**

Although DNR had the lead in the RS-2477 trail identification, research and assertion project, DOT&PF records provided significant resources for that work. Although our current responsibilities are limited to the roads listed on the State Highway System, we still retain many original resources necessary to support a claim of historical use, construction, maintenance and public funding.

Field Book archives: (examples)

"Winter Trail, Fairbanks – Ft. Gibbon, 1908"
"1929, Abercrombie Trail (Gulkana-Chisana)"
"1906, Rampart-Glen Wagon Road Survey"
"1922, Lignite to Kantishna and Kuskokwim"

Database archives – Naske project 14,000 records

Pioneer Access Road files

Alaska Road Commission Annual reports and miscellaneous records.

- **RS2477 Assertions for DOT Projects**

Dalton Highway (Can't take yes for an answer file…) – BLM Grant (F-21145) or RS-2477.

Right of way is difficult enough to acquire without arguing over what form it will take. However, it was an issue back in the pipeline construction days:

10/10/72: B.A. Campbell to BLM: On Jan. 8, 1970, The state applied for a right of way under RS 2477 between the Yukon R. and Prudhoe Bay. "We do not agree that another application is needed from us."

Wilderness Society v. Morton, 479 F.2d 842 (D.C. Cir.)(enbanc), cert. denied 411 U.S. 917 1973). AS 19.40.010 (concerning the Trans-Alaska pipeline haul road) properly accepted the RS 2477 grant.

4/8/74: B.A. Campbell to DOI: "Your unilateral grant in no way diminishes our prior right to construction of this road under RS2477.

5/2/74: BLM to B.A. Campbell: Transmits Grant of Right of Way for Public Road pursuant to TAPs Authorization Act and ANCSA subject to delivery of a map of definite location.

10/27/75 Woody J to BLM: As indicated in letters dated 10/10/72 and 5/8/74 from Comm. B.A. Campbell, the Yukon R. to Prudhoe Bay Highway is being constructed by SOA under RS 2477.

Chicken Airport Access Road assertion

Operating under a 9/28/84 MOU between DNR, DOT and BLM establishing procedures for assertion of RS 2477 rights of way established before 10/21/76, DOT submitted an assertion for the Chicken Airport Access road along with historical documentation. (Aviation files: Chicken airport road RS 2477 assertion.) Under this agreement BLM was not to adjudicate the validity of the assertion. No response was received.

McKinley Park access road assertion

In the fall of 1993, DOT HQ forwarded a 3" binder of documentation and analysis in support of an ownership assertion for the McKinley Park road. The assertion was based both on a purported transfer of title by the 1959 Omnibus Act Quitclaim Deed and RS 2477. The RS 2477 theory is based on a claim of public use of a trail leading to Kantishna prior to the land being reserved for the Park. To my knowledge, no action was taken by the Dept. of Law to pursue this assertion.

Valdez - Goldrush Creek Bridge – Snowslide Gulch: (RST #1930 Wortmann's Old Road)

This project proposed to reconstruct a pedestrian bridge on the "old military trail" heading north out of Valdez. The trail was well documented as a valid RS2477 trail and the underlying fee estate was held by DNR. The trail was not on the State Highway System and was not intended to be included by construction of this project. This presented a new situation for us. Typically DOT would obtain a DNR ROW Permit to construct a new facility. However, as this easement was already considered to be dedicated to "highway" purposes, we secured its use under a letter of non-objection. (March 16, 1999 memo from DNR)

Random Thoughts, Observations and other Imponderables

- **Puddicombe & Fitzgerald - Shultz, scope and other stuff.**

A couple of the more recent Alaska Supreme Court decisions regarding RS2477 arrived with Fitzgerald[10] and Puddicombe[11]. These decisions help clarify a couple of burning questions for me. This case involved the claim of an RS2477 trail across a US Survey on the Knik River. The Superior Court ruled against Fitzgerald and rejected their claims to the RS2477 right of way. Citing Alaska RS2477 cases Hamerly v. Denton, Dillingham Commercial Co. v. City of Dillingham and the 1993 9th Circuit decision Shultz v. Dep't of Army, the Supreme Court reversed the Superior Court and held that an RS2477 right of way did exist across the Puddicombe property. The Supreme Court then remanded the case to the Superior Court for a "determination of the precise location and extent of the right-of-way". On November 22, 1996, the Superior Court of Judge Brian Shortell issued an order[12] addressing the location of the right of way (following the existing driveway) and the width of the right of way (100' in width as per A.S. 19.10.015). Shortell determined the remand order was limited to a review of the location and width of the right of way and not scope of use. Also, in a foot note, it appears that not all Superior Court judges take reversal well…."*Although I strongly disagree with the Supreme Court's factual and legal analysis in this case, the doctrine of civil disobedience is not available to me to remedy the injustice that results. I must apply the appellate court's orders and I will do so to the best of my ability."* On February 12, of 1998, Judge Shortell issued an Order Supplementing November 22, 1996 Decision and Order on Remand. Judge Shortell decided that the Supreme Court really did intend for him to consider the scope (allowable

[10] Fitzgerald v. Puddicombe, Supreme Ct. No. S-6579, Superior Ct. No. 3PA-91-391 CIV, Opinion No. 4340 – April 26, 1996.
[11] Puddicombe v. Fitzgerald, Supreme Ct. No. 3PA-91-391 CI, Memorandum Opinion and Judgement, No. 0930 – August 25, 1999.
[12] Puddicombe v. Fitzgerald, Superior Ct. Case 3PA-91-00391CI, Order dated November 22, 1996

uses) of the RS2477 right of way. Shortell stated that "Alaska views the scope of an R.S. 2477 generously" and are not necessarily limited to the historical uses as they existing in 1976 when the RS2477 grant was repealed. This Order was appealed by Puddicombe and the Supreme Court issued the Puddicombe decision in 1999 with the following notes:

1. "The Ninth Circuit's 1996 decision vacating Schultz v. Department of the Army does not affect the analysis or result reached in Fitzgerald v. Puddicombe." ["An RS2477 right of way is governed by state law. In rendering the Fitzgerald decision, the Supreme Court found an RS2477 right of way existed and defined Alaska common law on this issue. This is the common law of the state and it is this law which this court must apply, regardless of the outcome of Schultz."]
2. "The scope of an RS 2477 grant is subject to state law. The superior court's reliance on AS 19.10015 to determine the scope was not erroneous." [100-width of right of way]
3. "The superior court did not err in holding that the right-of-way could be used for '*any purpose consistent with public travel*.' This conclusion is directly supported by our decision in Dillingham."

- **Blanchard v. Heimbuch – What's the real date of entry?**

To determine the application of an RS2477 trail or federal SLE right of way, three elements must be evaluated. First, is there a grant in effect? The offer of the grant was effective between the date of the 1866 Mining Law and the 1976 repeal in FLPMA. With regard to federal SLE's, you also have to verify if the acceptance of the grant by the territory or state was in effect. Second, when was the trail constructed (for trails) – or – when was the relevant township survey approved (for SLE's). Finally, was the land crossed by the trail or SLE un-appropriated, unreserved public land. One of the most common reservations of public land in Alaska that must be considered when evaluating whether the RS2477 right of way is applicable is the homestead entry. Often a review of the homestead abstract or historical index will provide a date of entry or application that is sufficiently distant from the other criteria that there is not much debate as to whether or not the RS2477 right of way applies. But what happens when the criteria dates are very close together? An example of this was a case off the Parks Highway between Nancy Lake and Willow.

Although the Blanchard v. Heimbuch[13] case never went to the Supreme Court, it provides some interesting discussion regarding homestead entry dates. The Heimbuchs filed an application for homestead entry of their property on May 26, 1961. The property had previously been entered by Dorius Carlson, who filed his application on June 11, 1959. On August 30, 1960, Carlson relinquished the homestead and Roy McFall filed his application on the same date. McFall relinquished his rights on May 26, 1961, the same date that the Heimbuchs filed their application. The Heimbuchs received a patent to their land on November 8, 1963. [So, does this mean there were no windows of unreserved status since June 11, 1959?] The court noted that under Hamerly[14], homesteaded land reverts to public land status during gaps between homestead entries and can be evaluated by the court for character of use. The Blanchards, who argued for a valid RS2477, testified that their predecessors used the road between 1959 and 1960 and there were several "gaps" existed between entries where the lands reverted to public land status. The Blanchards assert that the lands are only withdrawn from public land status when BLM issues a "notice of allowance" authorizing the entry. The Heimbuchs, however, assert that the "notice of allowance" is irrelevant to public land status and that the key date is the filing of the application. Using the filing date there are no gaps between entries and therefore, no RS2477 ROW. The Court noted that Hamerly considered the date of filing the application as the relevant date on which lands were withdrawn from the public domain. This is consistent with federal law, which states that patent, once issued, relates back to the date of filing the application for entry. The Court also stated that the issuance of the "Notice of Allowance" is but a ministerial duty which merely confirms the existence of a valid entry. The Court also considered whether a footnote in Shultz[15] which suggested that a claimant can acquire a right in federal land by physical entry without even so much as submitting an application would control over the application date. The Court ruled that the Shultz proposition directly conflicted with the Dillingham[16]

[13] Blanchard v. Heimbuch, Case No. 3PA-94-814 CI, Memorandum and Order, September 1, 1995.
[14] Hamerly v. Denton, - Alaska 1961
[15] Shultz v. Department of the Army, U.S., - 9th Cir. 1993
[16] Dillingham Comm. Co. v. City of Dillingham - Alaska 1985

decision and as the date of application was the operative date and there were no gaps in possession in which an RS2477 ROW could attach, no right of way was created. Now if the application for the subsequent entry was filed prior to the relinquishment of the prior entry, I would agree that there would be no gap to evaluate whether an RS2477 ROW could attach by public user. A homestead application may be considered the equivalent of an entry so far as the applicant is concerned based upon the application of the doctrine of relation back. When a patent is issued, and also when an entry is allowed, the rights of the applicant are deemed to go back to the date of the original application. The rule is applied to protect the applicant from intervening claimants.

Now this is where Indiana Jones says "I've got a bad feeling about this."

We have taken the position that a federal SLE will immediately attach when the three conditions were met. For example, if a township survey was approved in 1915, and the land was unreserved up till 1930, we would say the SLE automatically attached on April 6, 1923 when the Territorial Legislature accepted the RS2477 grant. To make the example more like the Blanchard's case, let's say the township survey was approved in 1915, a homestead entry occurred in 1922, the RS2477 grant was accepted in 1923, and then in 1924, the homestead entry was relinquished and another homesteader filed for entry on the same date. We would argue that the land had to be in unreserved status for the second homesteader to enter, and at that moment, the SLE attached, even if the relinquishment and new entry happened in the same day. In the Girves[17] case, the Alaska Supreme Court found that only a "positive act" was needed by the state or territory to establish an RS2477 easement and the legislative acceptance of the RS2477 grant constituted that act. Actual construction is not required. There may have only been a few moments between relinquishment and the next entry, but that was a sufficient "window" to allow the SLE to come into effect.

We would hold a similar position with regard to PLO rights of way. The PLO rights of way were "subject to valid existing rights". If a highway PLO was applied to a road crossing a pre-existing homestead entry, the entry did not prevent the application of the PLO, it was just subject to the prior existing right. If that prior existing right is terminated, or relinquished, the PLO would no longer be subject to the homestead entry and would move to the forefront. A similar situation was considered in State of Alaska v. Harrison[18]. In this case, the Chickaloon River road in crossed parcel of land that was first subject to a Railroad Townsite in 1917. Then PLO 601 came into effect in 1949 and would have provided a right of way withdrawal for the road, however, the PLO was subject to the Railroad Townsite. The Townsite was revoked in 1955 and Harrison filed for a homestead in 1956. He argued that as the Townsite prevented application of the PLO, no road ROW existed. The Court found that "there is no inconsistency or conflict between the railroad townsite withdrawal and Public Land Order 601." When the Railroad Townsite was revoked, it did so without purporting to affect the PLO right of way. Therefore, the road easement existed before the homestead entry.

So, getting back to Blanchard and Heimbuch, the question is why didn't the Superior Court consider whether a window opened between relinquishment and new application even if it happened on the same day? Perhaps the new applications were time stamped before the relinquishments leaving no window whereby the lands could be considered unreserved. Perhaps evidence of a public user is necessary while that window is open and the prior public use cannot be considered. The answer is in Hamerly[19]. Hamerly said that "*there must be public user for such a period of time and under such conditions as to prove that the grant has been accepted*." Hamerly identified four windows of opportunity between relinquishments and entries. "*It was only during those periods of time that public use of the road could constitute acceptance of the grant made by 43 U.S.C.A. § 932. Use made of the road at other times when the land was the subject of existing homestead or homesite entries may not be considered."* The Hamerly court found that there was no evidence of public use during the times the land was not subject to an entry and therefore no RS2477 right of way.

---

[17] Girves v. Kenai Peninsula Borough – Alaska 1975

[18] State of Alaska v. David B. Harrison, et al. – U.S. District Court, Alaska – Case No. A94-0464-CV – Order dated October 28, 1998.

[19] Hamerly v. Denton, (Alaska 1961)

- **RS 2477 Widths – Trails**

Trails - In my experience I have seen maps identifying rights-of-way claimed under RS 2477 labeled with widths varying from "ditch to ditch" or width of the physical road[20], to 60 and 66-foot widths and 100-foot widths. Where do these come from?

In a local Fairbanks 1962 Superior Court case, State of Alaska v. Fowler, the width of Farmer's Loop Road, established under provisions of RS 2477 by a public user, was at issue. The DOT ROW plans claimed that crossing this particular parcel, the ROW width for the existing road was 66-feet. The State of Alaska argued that the provisions of Sec. 1 Ch. 19, SLA 1923 (establishing public highways between each section of land in the territory) indicated the local law and reflected the local custom as to the width of the rights of way established pursuant to RS-2477 (33 feet on each side of centerline or 66 feet total). This might have been a stretch as the 1923 RS 2477 acceptance specifically related to SLE's. This opinion had been previously stated in the 1960 Opinions of the Attorney General, No. 29.[21] The AGO opinion concluded that the width of Alaska highways constructed under the RS2477 grant shall be 66-feet except where the actual width is specifically stated in the Public Land Order or set out by later State laws.

The court determined that only the 1962 physical width of the road would be considered a part of that right of way and deemed it "a reasonable width necessary for the use of the public generally." The court concluded that taking into consideration the character and extent of the user as disclosed by the evidence in Fowler, the "reasonable width necessary for the use of the public" constituted only the present width of Farmer's Loop Road, thirty feet. As if in response to the court's decisions, the State legislature enacted Sec. 1, Ch. 35, SLA 1963 (A.S. 19.10.015):

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

Therefore, it is argued that the 1963 legislature accepted the RS 2477 grant as it might pertain to those portions of highways still traversing unreserved public lands to the extent of 100 feet even where actual use of such highways was much more restricted. Until that time and with regards to lands which were already withdrawn from the public domain in 1963 but burdened only in part by RS 2477 rights of way, the Fowler decision and the precedent upon which it was predicated seem controlling: "*the right of way for such a road carries with it such a width as is reasonable and necessary for the public easement of travel.*" (Excerpted from 2/1/83 AGO informal opinion.)

1983 State v. Alaska Land Title Footnote supporting 1963 Title 19 law establishing 100' width for highways.

"*Notwithstanding that section 2477 of the Revised Statutes (43 U.S.C. 932) does not fix the width of the rights-of-way granted by it, the width when fixed by a positive act of the proper State or Territorial authorities has been held valid. Costain v. Turner, S.D. (1949) 72 S.D. 427, 36 N.W.2d 382; Butte v. Mikosowitz (1909) 39 Mont. 350, 102 P. 593. In both cases, the width fixed included an area in excess of the beaten path or track. The reasons which sustain the conclusion reached in those cases support the conclusion that in the case of public highways in Alaska constructed or maintained under the jurisdiction of the Secretary of the Interior, the width of the highways may be fixed by that official.*"

The occasional citation of a 60-foot width for an RS 2477 trail likely comes from Territorial legislation establishing widths for roads. On May 3, 1917 (Ch. 36, SLA 1917 Section 13) the legislature also addressed rights of way..."*The Divisional Commission shall classify all public Territorial roads and trails in the divisions as wagon roads, sled road, or trails...The lawful width of right of way of all roads or trails shall be sixty feet (60).*

[20] This may sometimes be reflected with a graphical depiction of the actual physical width with varying dimensions or an average physical width if the road width is somewhat uniform.
[21] 1960 Opinions of the Attorney General, No. 29, November 4, 1960 – Re: Right of Way Width, Construction of 43 U.S.C. 932

- **Recordation of RS2477 Trails**

DNR's RS2477 project at one point placed great emphasis on the need to locate and record all asserted RS2477 trails. This was intended to alleviate some of the stress on property owners who could not tell if their land was encumbered by an RS2477 easement that the state was asserting. Now... I am a big fan of accurate mapping and monumentation to locate property interests; however, I thought the need for immediate location and recording a bit of a stretch. The state received about 5400 miles of highway ROW from the federal government in 1959 by virtue of the Omnibus Act Quitclaim Deed. Most of these rights of way came to us without benefit of mapping or monumentation. The title companies argued in their ALTA v. State case that they also came without recorded notice and therefore they should not be held liable for not noting a highway encumbrance on their title policy. The court ruled against them stating that notice had been given by the publication of the PLO's in the federal register. While we can still debate whether the title companies were wronged in this decision, the public received either constructive notice with the publication of the PLOs or actual notice by virtue of the physical road which crossed their property. In any event, the highway system has survived substantially intact for the last 40 or so years without the level of location and recordation that was requested for the asserted RS2477 trails. If I were given the choice of spending a limited amount of funds mapping either the active highway system or the RS2477 trails, I would have to go with the highways. I can still surprise people when I tell them we still have sections of our primary highway system without benefit of mapping. (Richardson Highway between Summit Lake and Delta).

Section Line Easements – History & Background

- **Introduction**

So…revisiting our Imponderables, let's start with the question: *What is the width of a section line?*

Of course, being an imponderable, you should not have an answer. A section line is one dimensional, it has no width. The correct question should be: *What is the width of a section line easement?*

Answer: The width of a section line easement in Alaska may be:

0	feet – like our one dimensional section line, it doesn't exist.
33	feet – a half chain or 2 rods for our ROW Engineering 101 students
50	feet – half of a state SLE
66	feet – a full federal SLE
83	feet – half federal/half state SLE
100	feet – full state SLE

In order to determine what width of a section line easement might apply, it is necessary to evaluate the four elements that make up the section line easement.

1. Is the offer present and what is the nature of the offer?
2. Is the acceptance of the offer present?
3. Is the land unreserved, unappropriated lands? (for federal RS2477 grant)
4. Have the public lands been surveyed?

First let's talk about the offers and the acceptance:

Unlike the RS2477 trails rights-of-way, a section line easement in Alaska does not require construction or a public user to exist. The SLE is more like an easement dedication on a plat. It is a two-part contract that requires both an "offer" of a grant as well as an "acceptance" on behalf of the public. So let's start with a time line:

July 26, 1866: The 1866 Mining Law granted the "*right-of-way for construction of highways over unreserved public lands*." This is the *offer* of the federal grant. Public lands prior to this date could not be subject to an SLE as no offer had yet been made.

April 6, 1923: The Alaska Territorial Legislature accepts the RS2477 grant completing the dedication. *"A tract of 4 rods wide between each section of land in the Territory of Alaska is hereby dedicated for use as public highways..."* Before this date, the date of acceptance, federal section lines could not exist in Alaska. Here's where you get the possibility of a 0-foot wide or no section line easement. Now the acceptance language creates what will eventually become a significant issue. The RS2477 grant said "*construction"* of highways. The feds take their laws literally and to this day hold that an RS2477 highway right of way cannot exist along a section line where no road has been constructed. How did the Legislature get past this logic? The State position on section line easements is outlined in the 1969 Opinions of the Attorney General No. 7 dated December 18, 1969 entitled Section Line Dedications for Construction of Highways.
This opinion cites the 1961 Alaska Supreme Court case Hamerly v. Denton: *"…before a highway may be created there must be either some positive act on the part of the state, clearly manifesting an intention to accept a grant, or a public user…."* The positive act was the legislative acceptance. Therefore, on lands subject to state law, an SLE can attach to land where no road has been constructed. So, from this date forward, you have the potential for 33 & 66 foot wide section line easements. Just don't try to claim one across federal lands.

January 18, 1949: Big problem develops. The territorial laws are re-codified and the acceptance of the RS2477 grant gets mis-placed. Laws that are not re-incorporated are considered repealed. The contract is broken. You still have an offer on the table, but no acceptance of the federal RS2477 right of way. No new federal SLE's can be established. Did the established SLE's go away with the acceptance? No. Pre-existing section line highway easements created remained valid even when the law was temporarily repealed between 1949 and 1953. Brice v. State, (Alaska 1983)

March 26, 1951: The territorial legislature almost got it back together when it enacted Chapter 123 SLA 1951 and provided for "*A tract 100 feet wide between each section of land owned by the Territory of Alaska or acquired from the Territory."* This created what we call the "State" SLE's and the potential for 50 and 100-foot wide SLE's along with 83-foot wide SLE's when you mix a 50-foot state SLE on one side of the section line with a pre-existing federal 33-foot SLE on the other.

March 21, 1953: With Chapter 35 SLA 1953 we have come full circle and the territorial legislature includes language accepting the federal RS2477 grant to establish "*a tract 4 rods wide between all other sections in the Territory,…."* Now we are back in the business of establishing federal 33/66-foot wide SLE's and territory/state 50/100-foot wide SLE's. All is well until……

October 21, 1976: The offer of the RS 2477 grant was repealed by Title VII of the Federal Land Policy and Management Act (90 Stat. 2793).

Now that covers the first 2 of the 4 requirements – the offer and the acceptance.

Unreserved, unappropriated Lands: Once we have resolved the offer and acceptance issue for the federal RS2477 right of way, we need to ensure that the land is available for application of the grant.

If prior to the date of the RS2477 acceptance there has been a withdrawal or reservation by the Federal government, or a valid homestead or mineral entry, then the particular tract may not be subject to the section line dedication.

In the following pages I have included the table that provides guidance regarding the application of SLE's and the relevant dates they were effective. This table was based on a similar table handed out in the BLM public rooms years ago to people interested in researching SLE status. My table eventually made it in the 1994 ASPLS Standards of Practice Manual. The DNR Chapter 51 Regulations regarding Public Easements (effective 5/3/01) includes a similar research guide in a text format. With regard to the federal SLE (33'/66'), the research guides are consistent in stating the date the federal offer was accepted (April

6, 1923), the date the acceptance was re-codified out of existence, (January 18, 1949) and the date the offer was re-accepted (March 21, 1953). What is not consistent is the effective date that federal SLE's could no longer be asserted. My tabular guide indicates that after March 25, 1974, there could be no new federal SLE's. The DNR regulations indicate that after December 14, 1968 there could be no new federal SLE's. Which is correct?

DNR's responses to comments received for their draft easement regulations did a pretty good job of dealing with this issue. If we were to be consistent, the research guides should have stuck with the dates in which the federal offer and the territorial/state acceptance was effective. But what is expressed in both my 1993 table and the DNR regulations is the date that the federal offer/state acceptance of the RS 2477 grant was eliminated for "practical" purposes as opposed to "actually" eliminated. The "actual" termination of the federal offer/state acceptance was the date of repeal of RS 2477 by Title VII of the Federal Land Policy and Management Act (90 Stat. 2793) on October 21, 1976. However, prior to the repeal, a series of federal actions reserved large chunks of federal lands such that the "practical" application of the federal RS2477 SLE was no longer available.

"The notice of withdrawal that led to PLO 4582 (commonly called "the Land Freeze") was published Dec. 14, 1968, and went into effect upon publication. Because PLO 4582 was so sweeping, DNR has always used it as the practical end point for establishing RS 2477's in Alaska (whether along section lines or by actual construction and use). Exceptions conceivably exist, but they are "not the way to bet." (DNR Comment resolution)

There were a multitude of modifications to PLO 4582 leading up to its revocation by ANCSA (PL 92-203) on 12/18/71. On March 25, 1974 PLO 5418 was issued as an amendment to PLO 5180 and adds all unreserved lands in Alaska, or those lands which may become unreserved….to those already reserved by PLO 5180. That is the date I used although opportunities to assert a SLE up to that date might be slim.

Lands must be surveyed: The 1969 Attorney General Opinion regarding SLE's stated that *"The public lands must be surveyed and section lines ascertained before there can be a complete dedication and acceptance of the federal offer."* For a section line easement to become effective, the section line must be surveyed under the normal rectangular system. We look to the date of the official approval of the township survey to establish this fourth element. The 1969 AGO opinion also stated that an easement can attach to a protracted survey, if the survey has been approved and the effective date has been published in the Federal Register. The location of the easement is however subject to subsequent conformation with the official public land survey and therefore cannot be used until such a survey is completed.

United States Surveys and Mineral Surveys are not a part of the rectangular net of survey. If the rectangular net is later extended, it is established around these surveys. There are no section lines through a U.S. Survey or Mineral Survey, unless the section line easement predates the special survey.

- **Partial Township Plats – When does the SLE attach?**

In the basic federal SLE evaluation case, we look to see if the RS 2477 offer was in place [4/6/23 - 1/17/49; 3/21/53 – 12/14/68 (See 11 AAC 51.025 Section Line Easements)]; whether the land was un-appropriated and unreserved [review entry dates leading to patent for openings]; and the township survey approval [to determine whether the section line is surveyed.] This may present a problem where the section in question is surveyed as a result of multiple partial township surveys. In a perfect world, all sections within a township would be surveyed and approved simultaneously. However, in the real world, it could conceivably take four separate partial township approvals to enclose a particular section. So the question arises: Assuming the offer and unreserved status are in favor of an SLE, does an SLE attach when an individual section line is surveyed and the township plat for that survey is approved? Or will no SLE attach until the entire section is enclosed by lines monumented and approved by a township plat? To me, it seems reasonable that an SLE would attach to a surveyed, monumented and approved section line even if it formed the boundary of a section that was not fully enclosed. However, the DNR regulations (11 AAC 51.025) might be read to suggest that the critical element is the section of land rather than the section line. In Ch 19 SLA 1923, the Territorial Legislature accepted the RS 2477 grant

saying "*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…..."* The DNR regulations state that "*For the purposes of calculating the widths for section-line easements, 'each section of land,' as used in ch.19,SLA 1923, is read to mean each section of surveyed land owned by the Territory of Alaska, and each section of surveyed, un-appropriated, unreserved federal land open to the grant of a right-of-way under R.S. 2477."*

This problem is also compounded by the 1969 Opinions of the Attorney General No. 7 which I believe is still the operable guidance regarding SLE's. In paragraph 7 it states that "O*ur conclusion that a right-of-way for use as public highways attaches to every section line in the State, is subject to certain qualifications:…..b. The public lands must be surveyed and section lines ascertained before there can be a complete dedication and acceptance of the federal offer.15/…..15 Note, however, that the Alaska statutes apply to each section line in the state. Thus, where protracted surveys have been approved, and the effective date thereof published in the Federal Register, then a section line right-of-way attaches to the protracted section line subject to subsequent conformation with the official public land surveys."*

Now to wrap this segment up, just because walk out in the woods and find a string of section corners and quarter corners apparently established by an official government survey, don't get your hopes up that you will find an associated approved survey plat. I myself have found several GLO rectangular system monuments from the preteens and BLM rectangular monuments from the '70's and '80's that for a variety of reasons never resulted in an approved township plat. Until the survey is approved, they have no value. Another imponderable situation.

- **Can a SLE be vacated by Merger of Title?**

In the summer of 1996 we were working on a project to upgrade the intersection of University Avenue and Rewak Street. Part of this project incorporated a portion of a section line easement into an access-controlled facility. A question was raised as to whether the SLE continued to exist without an express vacation or did it merge into DOT's fee title. The AGO's short answer was "no".

A merger generally occurs when an easement interest and an underlying fee interest in the same property come into the hands of the same party. To determine whether the Rewak section line easement was merged into DOT's underlying fee interest it is necessary to identify the owner of the section line easement. At least two other states have considered whether an easement for road purposes will merge into the Fee. California case law suggests it probably will not merge, because the easement is held in trust for the general public.

The RS 2477 grant was for "the construction of highways". The state statute which accepted the federal grant purported to dedicate the easement "for use as public highways" and specifically provided for the reversion of title upon vacation. A section line easement allows the construction of a public roadway; a use which wholly dominates the surface estate once the use is made. The extent of the roadway use within the boundaries of the easement is limited only by reasonability. The underlying fee owner has little left once the highway occupies a section line easement, but DOT, the public entity charged with the management of the state highway system, has a great deal of interest, with the statutory authority to manage other compatible uses. (AS 19.25.010).

While DOT has the statutory authority to regulate and make use of section line easements, the nature of a public dedication and the specific language creating the dedication suggest that it is the public that technically holds the easement, subject to state authority and stewardship, until affirmatively vacated. The section line easement will remain valid until technically vacated.

- **DOT Letters of Non-objection for SLE Use**

Years ago, property owners impacted by SLE's often requested letters of non-objection from DOT prior to use or development of access. Requests are currently rare. The AGO advised in 1970[22] that DOH take

[22] NR DOT ROWE Research document No. 26.18

the lead in issuing letters of non-objection if requested. In 1976 the AGO directed the Dept of Highways to cease issuing letters of non-objection.[23] The advice was apparently the result of the pending Anderson v. Edwards SLE case in the vicinity of McCarthy. Anderson apparently constructed a roadway along an SLE under color of a letter of non-objection issued by DOH.

Although sporadic letters of non-objection were issued by those unaware of this prohibition, we eventually modeled an advisory letter after a sample issued by the AGO[24]. The sample letter addressed the following points:

1. SLE's are public easements. No one is entitled to exclusive use. Unrestricted access is the rule.
2. An SLE is for highway purposes. Any future use by the Department supersedes individual uses.
3. The individual is responsible to maintain construction within the SLE.
4. Other clearances/permits may be required.
5. Protect survey monumentation.
6. If accessing a state maintained road, you will need a driveway permit.
7. The individual is responsible to verify the existence of a SLE.
8. "Finally, it should be borne in mind that the letter of non-objection is not necessary for use of section lines." However, the Dept. may object to conflicts with public use, department use and law.

DNR manages the use of SLE's on DNR lands and was considering the implementation of regulations to manage them across private lands. Except for SLE's and portions of RS2477 trails that are within the State Highway System, DOT generally defers to DNR.

- **DOT Utilities and Section Line Easements**

The one area of DOT regulations that deals with RS2477 management involves the placement of utilities within Section Line Easements.

17 AAC 15.031 APPLICATION FOR UTILITY PERMIT ON SECTION-LINE RIGHTS-OF-WAY.

(a) Utility permits are required only for section-line rights-of-way presently used or proposed for use by the department. A person seeking to install a utility facility within a section-line right-of-way shall check with the department to determine whether the department presently uses or proposes to use the affected portion of the section-line right-of-way.

(b) Before issuing a permit for the installation of a utility facility within a section-line right-of-way, the department must be satisfied that a section-line right-of-way exists at the location where the facility is proposed to be installed by the permit applicant. The permit applicant shall furnish proof of the existence of the section-line right-of-way.

[23] NR DOT ROWE Research document No. 4.13
[24] NR DOT ROWE Research document No. 4.11

Section Line Easement Determinations

In order for easements to exist, the survey establishing the section lines must have been approved or filed prior to entry on Federal lands or disposal of State or Territorial lands. The Federal lands must have been unreserved at some time subsequent to survey and prior to entry.

Surveyed Federal lands that were unreserved at any time during the indicated time period.	Effective Dates	Surveyed lands that were under State or Territorial ownership at any time during the indicated time period. (University Grant lands may be an exception.
none	April 5, 1923	None
66'	April 6, 1923 to January 17, 1949	**66'**
none	January 18, 1949 to March 25, 1951	None
none	March 26, 1951 to March 20, 1953	**100'**
66'	March 21, 1953 to March 24, 1974	**100'**
none	March 25, 1974 to Present	**100'**

Note: This table assumes the same land status on both sides of the section line. A review of the land status can result in total easement widths of 0', 33', 50', 66', 83', and 100'. A section line easement, once created by survey and accepted by the State, will remain in existence unless vacated by proper authority.

Resources

1. Highway Rights of Way In Alaska rev. 11/1/93 – John F. Bennett : This paper was included in the 1994 Alaska Society Standards of Practice Manual and presented at several seminars regarding Alaska access issues. It contains a section on RS2477 Trails and Section Line easements including a table to analyze SLE widths and tips on research techniques. It can be downloaded from the ASPLS Website: www.ptialaska.net/~aspls/highways.pdf

2. DNR's Easement Vacation Decision Process – A Paper Presented at the 37th Annual Alaska Surveying and Mapping Conference – by Gerald Jennings, PLS, Joe Kemmerer, PLS, and Brian Raynes – February 2002 – A discussion of the DNR, DOT&PF and borough roles and the steps to be followed in the vacation of easements including RS2477 Trails and SLE's. This paper can be downloaded from the LCMF, Inc server which is used to store large documents for the ASPLS Website: www.lcmf.com/aspls/dnr_slev.pdf

3. Website of the Pacific Legal Foundation – RS2477 Background Info. - www.rs2477roads.com

4. Scope of Klutina Road right-of-way – AGO Opinion, July 17, 2002 – AGO Opinion Website - www.law.state.ak.us/opinions/docs/665010201.pdf

5. Alaska DNR RS2477 Project Website - www.dnr.state.ak.us/mlw/trails/f2477.htm

    a. DNR 11 AAC 51 Public Easements in PDF format - www.dnr.state.ak.us/mlw/trails/11aac51/ph1final.pdf
    b. 11 AAC 51 Public Easements – Comments from the General Public - www.dnr.state.ak.us/mlw/trails/11aac51/public.pdf
    c. 11 AAC 51 Public Easements – Comments from other than the General Public - www.dnr.state.ak.us/mlw/trails/11aac51/commresp.pdf

More Imponderables (The funny kind)

All those who believe in telekinesis, raise my hand.

Can vegetarians eat animal crackers?

How do you tell when you run out of invisible ink?

If a man is standing in the middle of the forest speaking and there is no woman around to hear him - Is he still wrong?

If it's zero degrees outside today and it's supposed to be twice as cold tomorrow, how cold is it going to be?

Is it true that cannibals don't eat clowns because they taste funny?

Why are there 5 syllables in the word "monosyllabic"?

Why did kamikaze pilots wear helmets?

Why don't sheep shrink when it rains?

Why is phonics not spelled the way it sounds?

Why is there an expiration date on sour cream?

What's another word for Thesaurus?

Why didn't Noah swat those two mosquitoes?

If you are driving at the speed of light and you turn your head lights on, what happens?

How do you know it's time to tune your bagpipes?

- End -