

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

NORTHERN REGION PRECONSTRUCTION, Right of Way Section

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October 29, 2007

Re: Project I-OA1-1(4)
Alaska Highway MP 1256-1270
Parcel 22 – Stephen Northway

Tanana Chiefs Conference
122 First Avenue, Suite 600
Fairbanks, Alaska 99701-4897
Attn: Tanna L. Carter, Realty Specialist

Dear Ms. Carter:

Your letter dated October 11, 2007 concluded that a legal right of way across the Stephen Northway allotment (U.S. Survey No. 5349) does not exist. Primarily you base your conclusion on the Relation Back Doctrine that would hold that the Alaska Highway right of way, created by a Public Land Order in 1942 would be subject to Mr. Northway's use and occupancy dating back to 1930. In addition, you note that the metes and bounds description for the new right of way acquired for the above referenced project in 1985 did not close. I requested a review of the metes and bounds legal description from our right of way engineering unit and received the following:

"ROW Engineering has examined the written metes and bounds description of Parcel 22 and has determined that it is indeed a valid description. The entirety of Parcel 22 is actually made up of two separate sub-parcels, with one sub-parcel lying on each side of the Alaska Highway. The written description, Exhibit A in the Grant of Easement, reflects this layout, with each sub-parcel of land having its own descriptive paragraph. One sub-parcel lies between the Tanana River and the Alaska Highway and it uses qualifying calls such as, "to the northerly mean high water line of the Tanana River" and "thence southeasterly along said right of way line.....". While these qualifying calls without numerical information would be difficult to plot out in the office, a surveyor in the field could most certainly reestablish the parcel as described.

The sub-parcel lying to the north of the highway does contain an error that causes a mis-closure in the description by about 19 feet. The error is caused by calling for a point on a "150' offset" rather than the 190' offset that it should be. We were able to isolate the error by using the right of way plan sheet (25 of 28) and parcel plat for the project and it can be assumed that this parcel could also be re-established by a surveyor in the field utilizing the same information."

One of the critical elements in a deed to convey real property is a description sufficient such that the property can be located on the ground to the exclusion of all other properties.

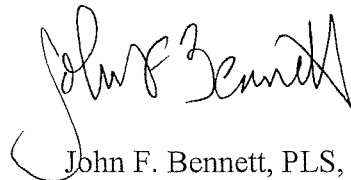
"Providing for the movement of people and goods and the delivery of state services."

This description may take many forms. While we regret the inclusion any typographical errors in our documents, the error in the Stephen Northway property description can be isolated and the parcel located on the ground.

Your primary question, however, has to do with the right of way for the Alaska Highway prior to the acquisition made for the MP 1256-1270 project. The Alaska Highway right of way was one of many rights of way that were conveyed from the federal government to the State of Alaska by a quitclaim deed dated June 30, 1959. Although I understand the relation back argument, the position of BLM is that once an interest (fee or easement) has been conveyed out of federal control, title recovery is required to obtain the interest back, as in other Aguilar type situations. Specifically, BLM's position speaks to allotments where the use and occupancy may have predated the quitclaim deed, a withdrawal for the road or public use of the road. Although DOT will eventually be brought into the loop via DNR and BLM, it appears that your initial point of contact for title recovery should be through BLM.

If you have any further questions regarding this correspondence, please feel free to contact me at (907) 451-5423 or by email at johnf_bennett@dot.state.ak.us.

Sincerely,



John F. Bennett, PLS, SR/WA
Chief, Right of Way