



## Memorandum

**To:** Bill Preston, PLS, GISP

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**From:** John F. Bennett, PLS, SR/WA

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**Subject:** Airport Acquisition Platting: Kipnuk & Chefornak Airports

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**Date:** January 23, 2015

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**Project #:** 2222.02 (Kipnuk) & 2222.03 (Chefornak)

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### Background:

The Department of Natural Resources was established as the platting authority for the Unorganized Borough when Sec. 10 Ch. 40 SLA 1998 was signed into law on May 20, 1998 and implemented on August 18, 1998. Prior to this authority, subdivisions of land in the Unorganized Borough could be made by deed and required no platting or review. Platting in the Unorganized Borough is governed by AS 40.15, Article 4 and the regulations in 11 AAC 53, Article 5.

Recognizing that subdivision of land for right-of-way acquisition by a condemning authority does not fit the conventional model of land subdivision for land use densification, the DNR platting statutes included Sec. 40.15.380 Applicability to governmental bodies; right-of-way acquisition plats. Due to the complexities of acquiring parcels from many landowners, this section provides that the acquisitions may be made by deed prior to the review, approval and recordation of the ROW acquisition plat. Effectively, the “subdivision” is created by the conveyance document and the ROW acquisition plat is a graphic representation of the parcels acquired, and the monuments recovered and set. The ROW acquisition plat is essentially a Record of Survey that requires an approval by the DNR Platting Authority.

Prior to the DNR platting authority, DOT&PF would typically prepare an “Airport Property Plan” as a tool for the negotiators and appraisers acquiring new land, as an exhibit to be reduced and attached to the conveyance documents, as an internal record for the status of land acquisitions and as a planning document to identify lands required for future airport expansions. Back in the late 1980’s, while FAA was willing to participate in the costs of preparing title opinions to limit their investment risk resulting from flawed title, they did not view the survey and mapping of airport boundaries with the same concern. With airport improvements and lease lots only tied to the runway centerline by stations and offsets, we have occasionally found lessee and DOT encroachments onto adjoining lands due to the lack of a survey relationship between the exterior airport boundary and the runway centerline. In the

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early 1990's DOT&PF was able to convince FAA that a boundary survey was also necessary to protect the federal investment and we began performing them under the Record of Survey authority (A.S. 34.65.030) with FAA funding.

The Record of Survey improved the quality of DOT&PF's airport boundary documentation but the land acquisition exhibits still left a lot to be desired. Unlike the acquisition of highway parcels where the acquisition deed is accompanied by an 8 ½" x 11" or 8 ½" x 14" parcel plat enlargement of the ROW plan graphics, the airport conveyance document exhibits were reductions of the full size (22" x 34") drawings. After Recorder's office microfilming, the exhibits were often illegible. Many of the airport conveyance documents included a metes and bounds description that would override an illegible exhibit but others described the property acquired by reference to the attached exhibit. And unlike highway ROW plans, as the airport property plans were in part status maps, they were generally not recorded. Often the only alternative when faced with a recorded and illegible airport conveyance document would be to obtain copies of the original documents and property plans from DOT&PF's offices.

In 1992 a proposed solution came out of DNR with the suggestion that all airport surveys be performed as an ASLS under instructions issued by DNR. The survey and platting would be performed prior to acquisition and the conveyance documents would describe the parcels to be acquired by reference to the recorded ASLS. Central Region DOT&PF agreed to try this process. I'm not sure how many were completed but anecdotally it was said that at one airport (possibly St. George) the ASLS for the airport boundary was surveyed, monumented and platted prior to acquisitions only to find that the designers had subsequently rotated the runway centerline, requiring that the work be completely redone. Ongoing design revisions are one of the primary reasons that ROW acquisitions are performed prior to final platting.

While the DNR platting authority governing ROW acquisition plats in the Unorganized Borough has been in place for almost two decades, there are few examples of compliance by DOT&PF. This is in part due to the 11 AAC 53.650 provision that "*The acquisition of a right-of-way or easement that does not divide a tract or parcel of land into two or more lots is exempt from...*" DNR's platting authority in the Unorganized Borough. Many rural highway projects acquire new ROW as an easement given that most of the existing rights-of-way they are building upon are highway easements. Airport lands on the other hand require a higher and more secure interest and so are primarily acquired in fee. Generally, we will find that airport projects, being mostly rural and requiring a fee interest, will generate most of the ROW acquisition plats under DNR's platting authority. Also, DOT&PF had been slow to transition into producing the acquisition plats which was in part due to DNR being slow to review and respond to DOT&PF submittals. The first approved airport ROW acquisition plat appears to be for Stevens Village, which was filed as Plat 2009-1 in the Rampart Recording District.

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Between 2011 and 2014, 8 additional airport ROW acquisition plats have been approved and recorded including 2 by R&M Consultants.

**Kipnuk Airport:**

An acquisition plan for Kipnuk airport is required as a result of lands acquired in fee for the new main and crosswind runways between July of 2009 and May of 2000. The new airport incorporates most of the old ANCSA 14c4 lands that DOT&PF acquired from Kugkaktlik Ltd. in 1982. The 14c4 conveyance includes a reversionary clause should the lands no longer be used for airport purposes. Three parcels, X-1B, X-1C and X-1D were determined to be excess to the Department's needs and were reconveyed by Commissioner's QCD to Kugkaktlik, Ltd. in November of 2013.

The acquisition plat should be fairly straightforward as it will very closely resemble the Record of Survey filed as Plat 2005-1 in the Bethel Recording District on January 10, 2005 by Marshall Hetlet (USKH). The acquisition plat will also delineate the disposal parcels X-1B, X-1C and X-1D. AS 40.15.380 specifically references "right-of-way acquisition" plats as opposed to parcels being relinquished. As both types constitute subdivided parcels, it is presumed that both would be shown on the subdivision plat.

A redlined copy of the 2005-1 ROS by G. Steffens dated 9/16/14 indicates that the survey will only require three monuments to be removed and three set as a result of the disposal of parcel X-1B.

There is one potentially significant title issue that must be resolved before initiating the survey and platting effort. When DOT&PF issued the Commissioner's QCD for the excess lands in 2013, the parcel labeled as X-1D was included in the conveyance to the grantee, Kugkaktlik, Ltd. This parcel represents that portion of the 14c4 airport lands that lie within Lot 7, USS 11477, a native allotment. At the time Kugkaktlik, Ltd. issued their 14c4 QCD to DOT&PF, the allotment had not been surveyed. Patent 50-2013-0148 conveying the lands surrounding the native allotment to Kugkaktlik, Ltd. in 2013 is not subject to the allotment because it had already been segregated by the US Survey No 11477. However, IC 479 issued to Kugkaktlik, Ltd. on February 2, 1982, 8 months prior to the 14c4 deed, specifically excludes native allotment F-16585 Parcel A (now known as Lot 7, USS 11477) from the conveyance of Section 11, T3S, R86W, SM to Kugkaktlik. There is also no exclusion referenced in the native allotment certificate 50-98-0560. The status block on the property plan notes that Parcel 1D is to be conveyed to Julia Ayaprun, the allottee who owns Lot 7 after the new runway is constructed.

There is likely more discussion of this issue in the Central Region files but with what I see now it appears that the disposal of Parcel X-1D to Kugkaktlik, Ltd., is in error because Parcel 1D was never owned by the village corporation when it issued the 1982 14c4 deed to DOT&PF. The disposal deed also makes Parcel X-1D subject to a reservation for DOT&PF to cut and

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remove trees and remove any structure that extends more than 18 feet above the airport runway. Even if the old airport boundary appears to extend into the allotment unintentionally, no claim can be made against a trust property by adverse possession or inverse condemnation. It doesn't appear that any monuments were set within the allotment as a part of the Plat 2005-1 ROS, so none would have to be removed.

The acquisition of Parcel 5 (Lot 5 USS 11477) results in a remainder of less than 40 acres based on the US Survey area 40.00 acres and an acquisition area of 20.61 acres. The 2005-1 ROS indicates that all BLM monuments set for Lot 5 were recovered and the plat reflects record and measured bearings and distances between them. The remainder to Lot 7 of USS 11477 is in excess of 40 acres. The relinquished parcels constitute a subdivision of the ANCSA 17c4 Tract I property. In this case, the "remainder" is that portion of Tract I that is still incorporated into the airport boundary and is far greater than 40 acres. Under DNR's 4/5/11 Policy for Implementation of 11 AAC 53.670(d), (less than 40 acre remainders) I don't believe any additional effort is required.

All airports must have legal access to the communities they serve. Access from the Kipnuk airport to the village is sketchy at best. The property plan indicates an access easement from the airport boundary to the west or from the airport apron to the Kipnuk School site (Plat 90-12S). The airport property plan labels a 25' wide access easement based on an ANCSA 17(b) easement (EIN 2a D1). This easement is excepted and reserved to the United States in patent 50-2013-0148 to Kugkaktlik, Ltd. Generally, 17(b) easements are not incorporated into DOT&PF projects due to usage limitations set by ANCSA and the fact that without a formal transfer of administration from BLM to DOT, they are considered to be under the jurisdiction and management of BLM. A 25' ANCSA 17(b) easement is limited to vehicles less than 3,000 pounds gross vehicle weight. That limitation would legally prohibit the use of anything larger than a small ATV including a pickup truck. This is not an issue to be solved by the acquisition plat but as the access corridor it is only shown on the existing property plan and ROS graphically, DOT may wish to have it surveyed up to the point it ties into a dedicated public right-of-way. The 2004 DCRA Community Profile map for Kipnuk indicates that the 17(b) easement may be overlain in part by a Utility & Boardwalk Easement dated 12/7/05 and recorded as document No. 2005-001431-0. In addition there is an easement from Kugkaktlik, Ltd. to DOT&PF recorded in B41/P155 on 5/22/85 that may have been a part of the old airport or access. These are not available from the recorder's office on-line but we will need to obtain a copy prior to commencement of the survey.

#### **Chefornak Airport:**

9/30/83: IC 753 surface estate to Chefarmute, Inc. T1N, R86W, SM Including Sections 19 & 29-32 subject to ANCSA 14c obligations.

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8/16/84: 14c4 reconveyance of old Chefnak airport to DOT&PF (B39/P705 Bethel) subject to reversion when lands have ceased to be used for an airport.

6/19/00: SWD Chefnakmute, Inc. to Village of Chefnak, a federally recognized tribe. (B88/P644 Bethel) This deed describes the Parcel 1 property that will become the relocated new Chefnak airport.

9/14/01: A 55 year airport lease between Chefnak Native Community/Chefnak Traditional Council and DOT&PF for Parcel 1 of the New Chefnak airport. (B95/P21 Bethel)

6/25/14: Commissioner's Deed of Relinquishment (2014-001216-0 Bethel) between DOT&PF and Chefnakmute, Inc. This deed reconveys the ANCSA 14c4 airport property excepting therefrom Parcel C of Plat 2014-9. The exclusion is for the airport access road ROW that was platted as a part of the Chefnakmute 14c survey requirements.

The DOT&PF managed lands that form the new Chefnakmute airport do not technically meet the criteria of a "subdivision" that requires a ROW acquisition plat under A.S. 40.15.380. The new airport and part of the access road have been secured under a 55 years lease from the Chefnak tribal entity. Of the 7 approved and recorded ROW acquisition plats for airports completed by DOT&PF Central Region, none involved land leases. Of the 2 approved and recorded ROW acquisition plats for airports completed by DOT&PF Northern Region, one involved leased land from a tribal entity but the plat also included other acquisitions, dedications or disposals. The Administrative Code for platting in the Unorganized Borough specifically exempts leasehold interests from DNR's platting authority. [11 AAC 53.610 (1)]

In addition to the 55 year airport lease at Chefnak, the airport relocation project also involved the relinquishment of the ANCSA 14c4 lands for the old airport excluding land required for the airport access road. The relinquishment of the old airport lands and segregation of the access road would constitute a "subdivision" requiring a ROW acquisition plat approved by DNR. However, that platting and definition of the access road ROW was accomplished with the ANCSA 14c survey filed as Plat 2014-9 in the Bethel Recording District. DNR recognizes the 14c plats prepared under federal authority as an exception to their platting authority. [11 AAC 53.610 (4)].

I have not seen anything to suggest that the new Chefnak Airport boundaries have been monumented so DOT still needs to survey and plat the property. It may be that DNR review and approval under their platting authority is not required and that the work can be performed as a Record of Survey.