




Memorandum

To: Kathy Kelley, PLS

From: John F. Bennett, PLS 

Subject: Title gap at north end of Gambell Airport

Date: 11/30/15

Project #: R&M 2265.01/AKSAS 60585

The survey and review of title documents revealed an approximate 99-foot gap between the north boundary of Tract III and south boundary of Tract IV. (See draft ROS) Our review found the following:

1. Gray Rogers & Osborne Property Plan dated 10/1/62 defines Tract III according to dimensions of a parcel to be requested for patent from USA.
2. USS 4369 was surveyed in June of 1966 and approved in March of 1968. Tract III was surveyed as USS 4369, Lots 2 & 3.
3. The sum of the two GRO meanders along the west boundary of Tract III is 673 feet. The west boundary of USS 4369 Lot 2 has one meander measuring 567 feet, a 106 foot difference.
4. The updated Property Plan dated 7/20/83 labels Tract III as USS 4369 Lots 2 & 3, but dimensions them according to the prior GRO property plan.
5. The Tract IV document was executed on 6/15/84. It was defined by a metes & bounds description that is based on the Property Plan dated 7/20/83 and recorded with the Tract IV document.
6. The result is that the Tract IV area intended to be described and acquired in 1984 is separated from the northerly boundary of USS 4369 (N Bdy of Airport) by 99 feet.
7. Can the deed be read to assert the PAHE parcel without the gap? *Norken v. McGahan* (823 P2d 622 11/15/91) says that "The proper first step in deed construction is to look to the four corners of the document to see if it unambiguously presents the parties' intent without resorting to rules of construction. If the words of the deed taken as a whole are capable of but one reasonable interpretation, a court need go no further." The deed essentially has conflicting representations of where Tract IV is located. The text of the M&B description is clear and the incorporated property plan is mostly illegible. Although illegible, it graphically presents the intent that Tract IV adjoin Tract III. The purpose of an avigation and hazard easement is to restrict vertical construction and prevent penetrations of the imaginary surface that could create a hazard for aircraft landings and takeoffs. The A&H easement would be meaningless if a 99 foot gap was allowed to exist that would not protect the approach zone. This would very likely be considered an unreasonable interpretation of the deed. The appropriate location for Tract IV is to **move it south** so that the south boundary of Tract IV adjoins Tract III with Tract IV being centered on the projected runway centerline. While this may be a practical resolution it requires some knowledge of airport design criteria that does not reside within the four corners of the deed and so may be open to challenge. Our recommendation is that DOT issue a directive to R&M regarding their interpretation of the correct location for Tract IV and the ROS will note the conflict and how it was resolved. We also recommend that DOT pursue a corrective deed to avoid this issue in the future.