

Public Easements by Prescription

- Is this a viable tool? Maybe not!
- ANCSA Lands
 - Federal protection against adverse possession for undeveloped ANCSA lands
 - Inverse Condemnation not prohibited
- Native Allotments
 - No adverse possession against trust lands
 - Inverse condemnation not applicable
- Federal & State lands: adverse possession
 - Case law and statutory prohibitions
- ANCSA lands and allotments may be condemned with payment of just compensation

Floating Easements

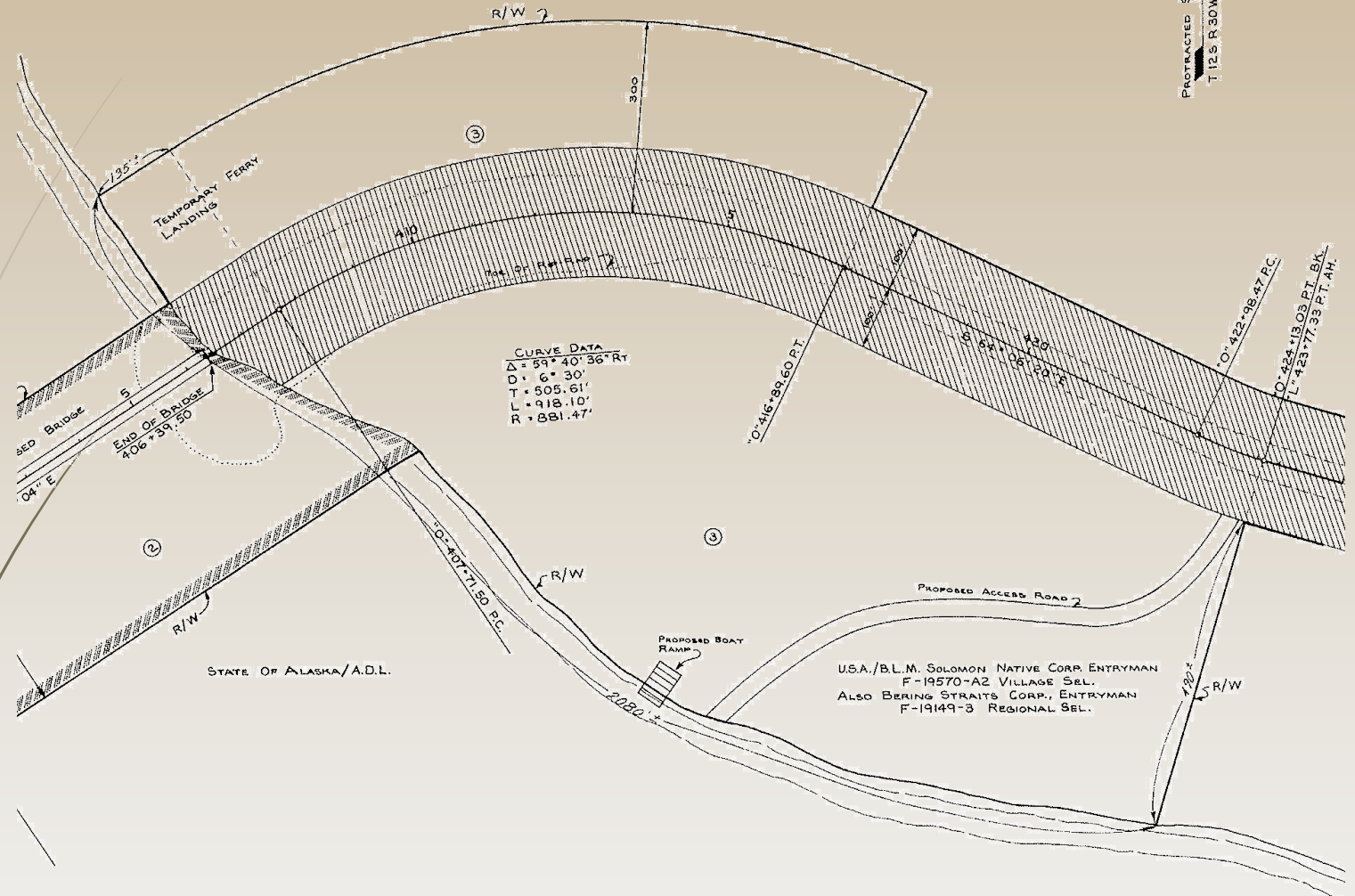
- An easement with no fixed location or width



Floating Easements

- An easement with no fixed location or width
- Similar to a “blanket” easement in that they tend to hinder development due to their location and size being indefinite and uncertain
- SO 2665 easements for new construction and ‘47 Act reservations would be considered to be “floating easements” (ROW Act of 1966)
- The Safety Sound Bridge ROW plans applied the 200’ wide PLO ROW as a “floating easement

Floating Easements



PROTRACTED SEC. 5 & 6
 T12S R30W, K.R.M.

0° 422+28.47 P.C.
 0° 424+19.03 P.T. B.K.
 L° 423+77.33 P.T. A.H.

STATE OF ALASKA/A.D.L.

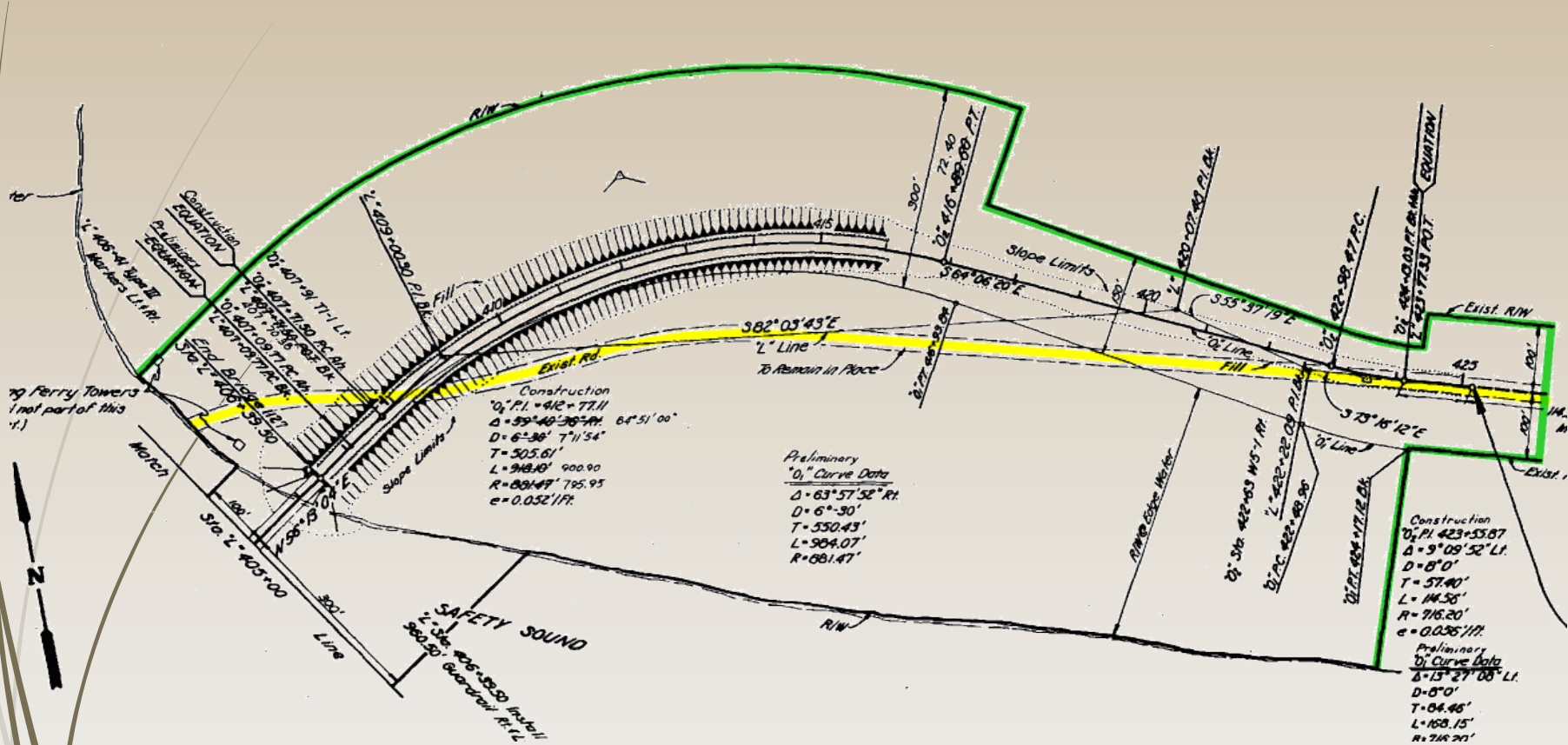
U.S.A./B.L.M. SOLOMON NATIVE CORP. ENTRYMAN
 F-19570-A2 VILLAGE SEL.
 ALSO BEARING STRAITS CORP., ENTRYMAN
 F-19149-3 REGIONAL SEL.

NORTON SOUND

| PARCEL | OWNER |
|--------|--------------------------|
| 2 | STATE OF ALASKA / A.D.L. |
| 16 | |

Safety Sound ROW plans – note cross hatching

Floating Easements



Safety Sound Bridge As-Built – Note location of existing highway

Floating Easements

- The proposed centerline is x-hatched as the existing PLO ROW
- 1971 – DOH Commissioner and BLM Director agree to consider PLO easement as “floating” to minimize the paperwork required to acquire new ROW and vacate old
- 1976 – BLM to DOH: Stop doing that!
- In recognition of NEPA & ANCSA
- ROW mappers “didn’t get the memo...”
- As new project ROW was acquired under BLM Grant, “floating easement” was not an issue

Federal Right of Way Grants

- East approach to Safety Sound Bridge

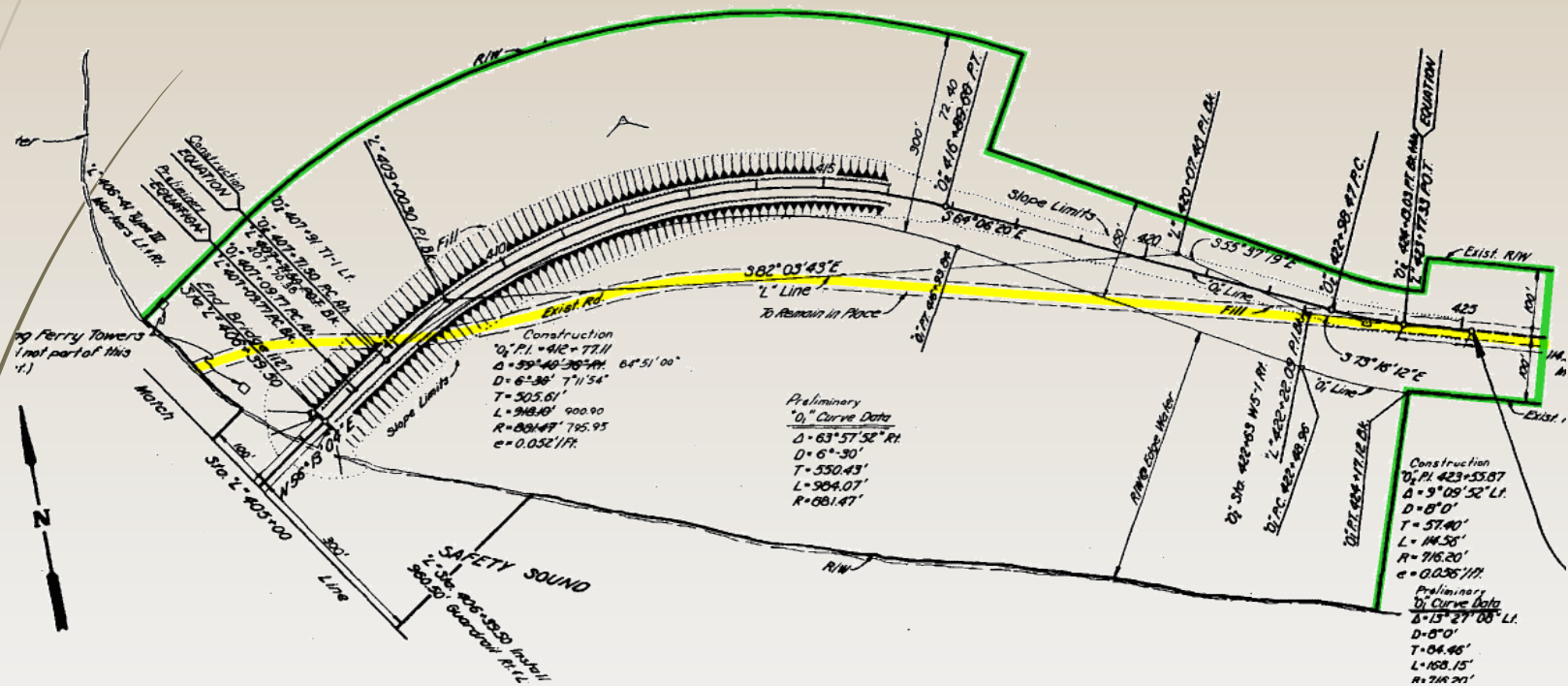


USGS Solomon 1955



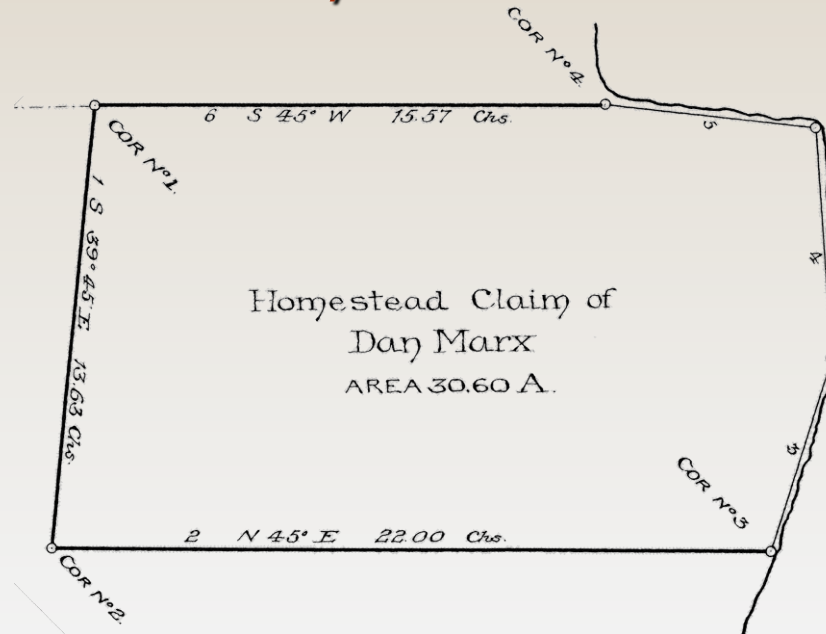
Federal Right of Way Grants

- East approach to Safety Sound Bridge
- Construction staff found alignment problem



Federal Right of Way Grants

- East approach to Safety Sound Bridge
- Construction staff found alignment problem
- Planned geometry would fall almost 100' to the north of the existing road
- Did designer use ROW as the centerline tie?
- Or was it the survey control tie to USS 480?



Federal Right of Way Grants

- East approach to Safety Sound Bridge
- Construction staff found alignment problem
- Planned geometry would fall almost 100' to the north of the existing road
- Did designer use ROW as the centerline tie?
- Or was it the survey control tie to USS 480?
- Did construction surveyor use wrong control?
- How should it be solved?
 - Acquire more ROW
 - Field adjust centerline curve to fit
- Ultimately, the survey & mapping errors were absorbed by holding the BLM Grant description and controlling it with the bridge

Use & Occupancy Native Allotments



Use & Occupancy

- PLO subject to valid existing rights
- U&O dates preceded PLO 601 on 8 allotments
- Did Omnibus QCD create a cloud on N/A title?
- Aguilar v. United States 1979 Native Allotments
- U.S. obligated to recover title for allottee
- Omnibus QCD interests subject to Aguilar title recovery process
- DNR can negotiate title recovery process
 - Title recovery request may be rejected
 - May be subject to easements
- U.S. can and may sue to recover title
- Policy: Assert as valid until shown the contrary

Old Nome-Council Road



Corner Ties at Safety Sound

Old Nome-Council Road

- 1953 realignment resulted in 2.5 mile loop
- The loop was not assigned a route number
- The loop was not named in the Omnibus QCD
- Status of Old Nome-Council Road?
 - Is it a public right-of-way?
 - Is it the 200-foot wide PLO ROW?
 - If not, what is the basis and width?
 - Does DOT own and manage the road?
 - Other title & policy issues?

Public Land Orders

- Initial ROS showed Old Nome-Council road crossing 30 separate parcels

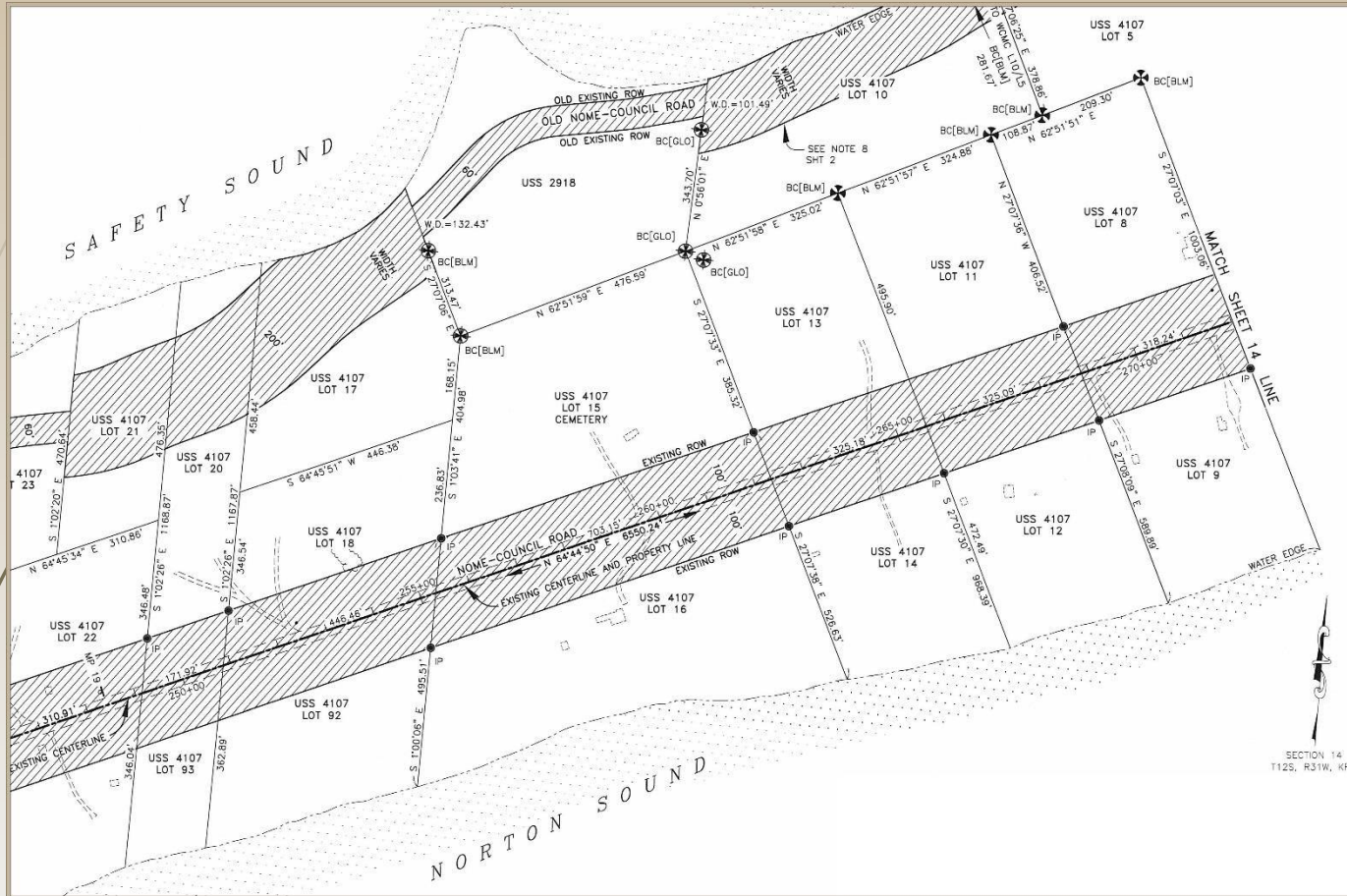
[Public Land Order 601]

ALASKA

**RESERVING PUBLIC LANDS FOR HIGHWAY
PURPOSES**

By virtue of the authority vested in the President and pursuant to Executive Order No. 9337 of April 24, 1943, it is ordered as follows:

Public Land Orders



PLO 200' ROW applied to old and new roads

Public Land Orders

- Initial ROS showed Old Nome-Council road crossing 30 separate parcels
- PLO 200' ROW applied to old and new roads
- PLO not applied to 3 allotments with use & occupancy dates prior to PLO 601

Omnibus Quitclaim Deed Issues

- Should both old & new routes be 200' ROW?

| | | | | |
|----------|--------------------------|--|--------------------------------|------------------------------------|
| | | BOOK <u>33 D</u> PAGE <u>77</u> D. | Ilamna Recording District | |
| | | Seward Recording District | Book <u>90</u> Page <u>24</u> | |
| | SEWARD | | | BOOK <u>14</u> PAGE <u>136</u> |
| | Serial No. <u>69-687</u> | QUITCLAIM DEED | BOOK <u>391</u> PAGE <u>12</u> | Alutian Islands Recording District |
| | | | Exchange Recording District | |
| CHITINA | Serial No. <u>70-19</u> | KNOW ALL MEN BY THESE PRESENTS that the Secretary of Commerce, United | | |
| | | States Department of Commerce, Grantor, under and pursuant to the <u>authority</u> | | |
| | | contained in Section 21 of the Act approved by the President on June 25, 1959 | | |
| | | (73 Stat. 141), does hereby devise, release, and quitclaim unto the State of | | |
| MCCARTHY | Serial No. <u>70-6</u> | Alaska, Grantee, its successors and assigns, subject to the condition set | | |
| | | forth below, <u>all rights, title, and interest of the Department of Commerce in</u> | | BOOK |
| | | | | BOO1 |
| | | | | HO1 |
| | | | | ALUT |

Omnibus Quitclaim Deed Issues

- Should both old & new routes be 200' ROW?
- "Through" & "Feeder" routes have been realigned with "Local" status assigned to old alignment...then named in Omnibus QCD
 - Tok-Cutoff: Route 8921 - Mentasta Spur
 - Richardson: Route 6851 - Old Richardson

67

BOOK 2 PAGE 138
Fort Gibbon Recording District

Book 8 Page 52
Manley Hot Springs Recording District
ALASKA

BOOK of VII PAGE 53
Menana Recording District

BOOK 398 PAGE 62
Anchorage Recording District

BOOK Misc PAGE 122
Rampart Recording District

FEDERAL-AID SECONDARY HIGHWAY SYSTEM, CLASS "B" ROUTES

B-27

| FAS Route No. | Name | Description | Highway District No. | Constructed Mileage | System Mileage |
|---------------------|--|--|----------------------------|------------------------|-------------------|
| 6804 | Manley Hot Springs-Tofty Manley Hot Springs Land- ing-Eureka | From Manley Hot Springs northeasterly through the Eureka mining area to FAS Route 680, with a branch near milepost 1 leading northwesterly to Tofty. | 20 | 43.7 | 43.7 |
| 6851 | Old Richardson Hwy. | From FAP Route 62 approximately 33 miles from Fairbanks northwesterly through a homesite area to the Tanana River. | 20 | 7.0 | 7.0 |

Omnibus Quitclaim Deed Issues

- Should both old & new routes be 200' ROW?
- “Through” & “Feeder” routes have been realigned with “Local” status assigned to old alignment...then named in Omnibus QCD
 - Tok-Cutoff: Route 8921 - Mentasta Spur
 - Richardson: Route 6851 - Old Richardson
- Should assertion be limited to 100-feet?
 - Clearly meets requirements for PLO ROW
 - No written DOT&PF Policy
 - Discussed in prior correspondence with BLM
 - DOT accepted recommendation of 100' ROW
 - Quasi Estoppel would lock in assertion

ROW Jurisdiction & Management

- The old loop is subject to a 100' PLO ROW



OR



ROW Jurisdiction & Management

- The old loop is subject to a 100' PLO ROW
- Not conveyed by Omnibus QCD to the State
- What is ROW where allotment use & occupancy precedes PLO 601 date?
- No "Aguilar" allotment reconveyance issue
- Old loop is effectively an "orphan" road
 - Similar to roads in Unorganized Borough
 - Or Boroughs without road powers (FNSB)
 - Outside of city jurisdiction
 - Outside of Service district
- Management may be assumed at later date by an authorized entity

Patent Reservations

- Conflicting reservation in allotment certificate

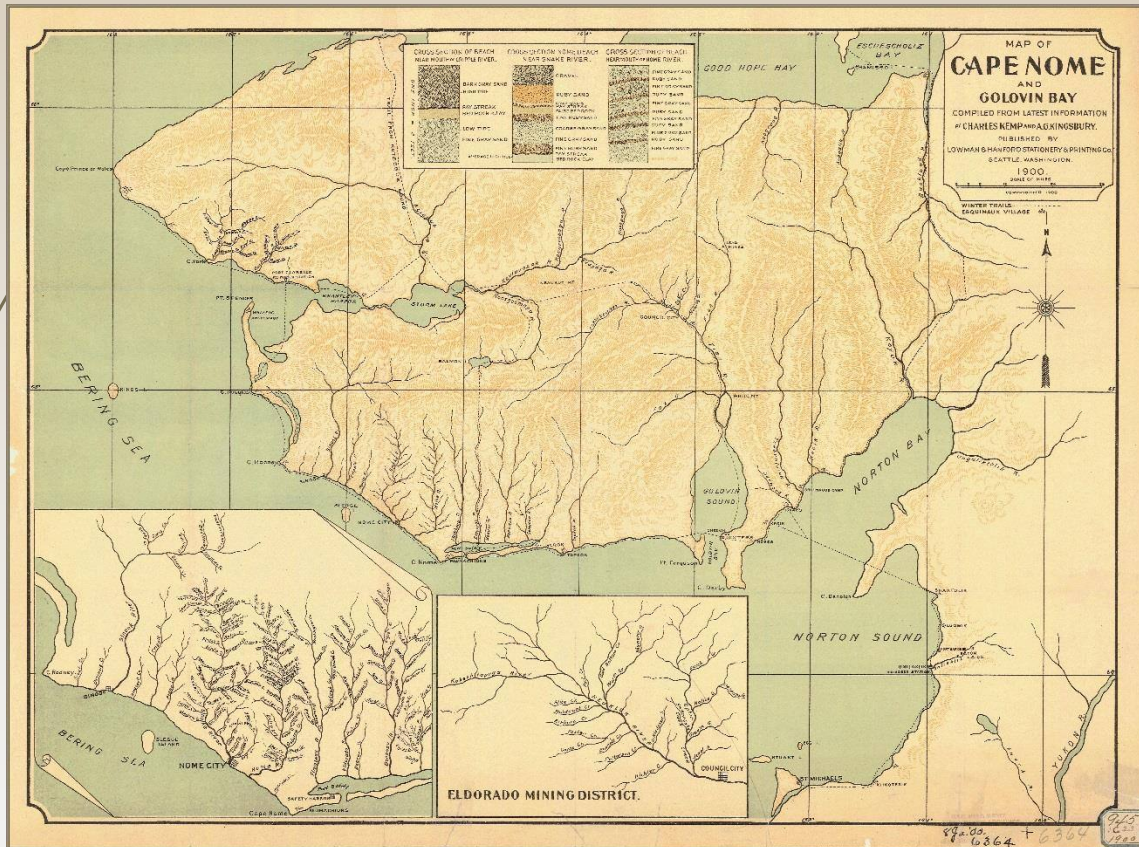


Patent Reservations

- Conflicting reservation in allotment certificate
- *“This allotment is subject to an easement for highway purposes, extending 100 feet each side of the centerline of the old Nome-Council Road and transferred to the State of Alaska pursuant to the quitclaim deed dated June 20, 1959.”*
- “subject to” can create problems in deeds
- Often confused with intent to reserve a right
- Does it create a right in this conveyance...or is it just an error?
- Methonen v. Stone Alaska 1997 – intention must be clear...ambiguities resolved in favor of land use free of easements.
- PLO assertion was limited to 100-feet

RS-2477 Trails & 1917 Territorial ROW Act

- Allotment Use & Occupancy precedes PLO 601



1900 Map of
Cape Nome
and Golovin
Bay

RS-2477 Trails & 1917 Territorial ROW Act

- Allotment Use & Occupancy precedes PLO 601
- “Aguilar” does not apply
- Allottee’s interest subject to valid existing rights
- Allotments are subject to valid RS-2477 ROW
- Including the 3 allotments on the old loop road
- But, what is the width of the RS-2477 ROW?
 - “ditch to ditch”...public user footprint?
 - 66’ based on 1923 territorial acceptance?
 - 100’ based on A.S. 19.10.015 declaration?
 - 60’ based on Territorial Act of 1917?

RS-2477 Trails & 1917 Territorial ROW Act

- 60' based on Territorial Act of 1917
 - *"The lawful width of right-of-way of all roads or trails shall be sixty feet (60)."*
- Territorial funds had been used on old loop
- 1917 Act did not serve to create rights-of-way
- Acts as a an acceptance of the RS-2477 Grant
- Reflected local law or custom with regard to standard width of a highway.
- 60' accepted for RS-2477 ROW across allotment

Summary

- ROW mapping of the Nome-Council road presented a variety of issues, some we have seen before and a few that were new.
- The state's assertion of the highway ROW is now fixed in the ROS and will be reproducible after future storms.
- ROS will serve to protect the rights of adjoining owners.



R O W

The image shows three hand-drawn characters: a capital 'R', a capital 'O', and a lowercase 'w'. The 'R' and 'w' are drawn with thick black outlines and a bright cyan inner glow. The 'O' is a heart shape, filled with pink and outlined in black. The background is a light beige color with some faint, thin lines on the left side.

The End