

**From:** John Bennett  
**To:** "[Quigley, Ryan L \(DOT\)](#)"  
**Subject:** RE: 2016 ASMC ROW Research Program  
**Date:** Wednesday, October 07, 2015 1:34:00 PM

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Yes, this is a scenario I wish I could have obtained clarification from the AGO when I was still on board. Maybe you can have them take a look. See attached Ault v. State. I've highlighted a couple of key paragraphs. When it gets to the section discussing adverse possession, it says that when you possess land under color of title, (I'm thinking the Notice of Utilization would constitute color of title), the boundaries of the land possess are measured by the terms of the colorable title rather than the observable physical use. So if you have a NOU and it specifies the width of ROW asserted by the State, and the state has had a good faith believe that they have validly possessed this ROW (even though we now know it violated the one take rule), the prescriptive easement should be based on the NOU width. There are some caveats about how this might not apply where the owner is in actual possession of a part of the property and in the Ault case I believe a part of his house was in the asserted ROW and some other gravel improvements.

So the question for the AGO is whether under Ault or other case law, they would be comfortable asserting the specified width in the NOU based on prescription because we now believe the NOU to be an invalid taking. JohnB

PS: I should have caught the ROW Act of 1966 limitation also.

**John F. Bennett, PLS, SR/WA** *Senior Land Surveyor – Right of Way Services*

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**From:** Quigley, Ryan L (DOT) [mailto:[ryan.quigley@alaska.gov](mailto:ryan.quigley@alaska.gov)]  
**Sent:** Wednesday, October 07, 2015 12:59 PM  
**To:** John Bennett; James H. Sharp; Fuglestad, Eric P (DOT); Karen Tilton; Shoemake, Rachel (DOT)  
**Subject:** RE: 2016 ASMC ROW Research Program

I should have said 58 year old NOU since they were no longer available after what 1966 if I remember right?

So you have a Second '47 Act Notice of Utilization showing a width beyond prescriptive use. What do you show in the basemap? The prescriptive claim width or the width depicted in the second utilization even though it was not legal but has been shown that way ever since?

This scenario is assuming no compensation for either notice (other than improvements if any) and notices recorded for both. The first on the original homestead we'll say and the second on a subdivision of the homestead.

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**From:** John Bennett [<mailto:JBennett@rmconsult.com>]  
**Sent:** Wednesday, October 07, 2015 12:47 PM  
**To:** Quigley, Ryan L (DOT); James H. Sharp; Fuglestad, Eric P (DOT); Karen Tilton; Shoemake, Rachel (DOT)  
**Subject:** RE: 2016 ASMC ROW Research Program

Hmmm...that brings up more questions. 40 years ago would be 1975ish. Were there actually prior recorded notices of utilization or are you saying that there was just occupation by a public road. If there was a recorded first Notice of Utilization prior to the one in 1975 I might agree that the 1975 one might have been ineffective. But the public may have accrued a right to the 1975 alignment by public prescriptive easement. In the document titled "A summary of '47 Act Opinions" dated April of 1965, they discussed the "First Take". One thing they noted was that if a land owner received compensation for a prior taking, even if they had a '47 Act reservation in their patent, the compensated taking would not count as a "first take" of the '47 Act reservation. If the prior utilization was before statehood, maybe the road was secured under SO 2665 and did not expend the "first take" of the '47 Act reservation. I think the first take issue was settled in 1960 so multiple utilizations after that would be questionable. JohnB

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**From:** Quigley, Ryan L (DOT) [<mailto:ryan.quigley@alaska.gov>]  
**Sent:** Tuesday, October 06, 2015 3:55 PM  
**To:** James H. Sharp; Fuglestad, Eric P (DOT); John Bennett; Karen Tilton; Shoemake, Rachel (DOT)  
**Subject:** RE: 2016 ASMC ROW Research Program

Out of curiosity, if you came across a 40 year old recorded notice of utilization that isn't legal because of prior utilization on the original property, would you no longer assert it in a base mapping scenario?  
Assume the property owner hasn't subdivided or dedicated anything from the parcel of the second notice.

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**From:** James H. Sharp [<mailto:jsharp@hdlalaska.com>]  
**Sent:** Tuesday, October 06, 2015 2:15 PM  
**To:** Quigley, Ryan L (DOT); Fuglestad, Eric P (DOT); 'John Bennett'; Karen Tilton; Shoemake, Rachel (DOT)  
**Subject:** RE: 2016 ASMC ROW Research Program

All,  
And I suppose after summarizing the effect and repeal of the 47 Act you will have to discuss the situations where the State hit the same owner with multiple 47 Act assertions.  
Jim

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**From:** Quigley, Ryan L (DOT) [<mailto:ryan.quigley@alaska.gov>]  
**Sent:** Tuesday, October 06, 2015 1:55 PM  
**To:** Fuglestad, Eric P (DOT); 'John Bennett'; Karen Tilton; Shoemake, Rachel (DOT); James H. Sharp  
**Subject:** RE: 2016 ASMC ROW Research Program

John,

Here is the "Vituperative Epithet" quote from Cliff Groh for you that we talked about working into the introduction.

Cheers!

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**From:** Fuglestad, Eric P (DOT)  
**Sent:** Monday, October 05, 2015 1:40 PM  
**To:** 'John Bennett'; Karen Tilton; Quigley, Ryan L (DOT); Shoemake, Rachel (DOT); [jsharp@HDLAlaska.com](mailto:jsharp@HDLAlaska.com)  
**Subject:** RE: 2016 ASMC ROW Research Program

John,

On Tuesdays, from 1 – 1:30, we have been having short group discussions. Getting our thoughts in order. Would like to put you on speaker phone tomorrow. Will you be available??

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**From:** John Bennett [<mailto:JBennett@rmconsult.com>]  
**Sent:** Monday, October 05, 2015 9:09 AM  
**To:** Karen Tilton; Quigley, Ryan L (DOT); Fuglestad, Eric P (DOT); Shoemake, Rachel (DOT); [jsharp@HDLAlaska.com](mailto:jsharp@HDLAlaska.com)  
**Subject:** 2016 ASMC ROW Research Program

Good morning everyone: I'm following up on some organizational stuff for the 2016 ASMC ROW presentation. I've just sent an email to Steve Buchanan to verify our date and time block. I believe it is to be Thursday, February the 18<sup>th</sup> for an 8 hour session. I will get back with you once I have confirmation on that. It is interesting that IRWA is at this point, going to do a repeat of 2013 by holding the Access Law Seminar on Friday the 19<sup>th</sup> at the Denaina Center. I had suggested to them that this might not be the best scheduling for maximizing revenue for the 2017 IRWA Conference in part because ASMC & IRWA will be competing for customers and also because of the state budget concerns that will likely limit training dollars and make it unlikely that a state employee would be approved for both training opportunities. IRWA is currently thinking this over but as of now they have the Denaina scheduled for Friday the 19<sup>th</sup>.

Attached are two preliminary documents that I would like each of you to review and revise as necessary and get back to me so I can update the masters. The spreadsheet is just to help me coordinate our presenter team. The MS word document is where I am starting a presentation

outline and schedule of events. There is nothing sacred about the schedule and I was just filling in names as placeholders until I get some feedback regarding your estimated presentation time requirements and speaking order preferences. Feel free to comment and provide me with any ideas regarding flow, additional elements and so on. Thanks, JohnB

**John F. Bennett, PLS, SR/WA** *Senior Land Surveyor – Right of Way Services*

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