

Highway Rights-of-Way In Alaska

XVI. Alaska Native Claims Settlement Act

The Alaska Native Claims Settlement Act²⁰¹ has provided two authorities for public access that have been occasionally incorporated into DOT&PF projects.

a. ANCSA 17(b) Easement

17(b) easements were reserved for public access across lands conveyed to Native corporations pursuant to Section 17(b) of the Alaska Native Claims Settlement Act. The easement reservations are cited in the Interim Conveyances and Patents to ANCSA Corporations²⁰² and graphically depicted on BLM 17(b) maps²⁰³. The intent was to provide linear easements for access across ANCSA lands to other public lands and site easements for changes in transportation mode such as 1 acre site easements at bodies of water and near air strips. These easements are specific as to width and use but may be ambiguous as to location unless they were established for an existing trail. Where no trail exists or the location is ambiguous, the location can be established by a mutual agreement between the easement manager (federal agency) and the land owner (ANCSA Corporation). Unless there has been a transfer of administration, BLM is the manager of the easement. Due to the limitations of use, management and width, these easements are rarely considered for use by DOT&PF projects. The only example of a 17(b) easement incorporated into a DOT project in the Northern Region was to allow for improvement of a 1 acre site easement as parking area for boat launching into the Tanana River at Manley Landing. (End of the Elliott Highway) Before a 17(b) easement could be transferred from BLM to DOT a Memorandum of Understanding was executed outlining the purpose, authorities and responsibilities for a 17(b) easement transfer of administration. Subsequently, a Transfer of Administration letter was issued for the specific easement to be transferred in reference to the MOU.

BLM's practice of imposing 17(b) easements rather than recognizing RS-2477 trail easements asserted by the State of Alaska has led to conflicting right-of-way claims. In a published Department of Law opinion²⁰⁴ regarding Klutina Lake (Brenwick-Craig) Road right-of-way near Copper Center on the Richardson Highway concluded that RS-2477 rights-of-way are not supplanted by overlapping ANCSA 17(b) easements. On April 1, 2008, Ahtna, Inc. filed a complaint in Superior Court claiming trespass by DOT&PF²⁰⁵. The Klutina Lake Road is included within the State Highway System Inventory²⁰⁶ and DOT responded that it does not recognize the Brenwick-Craig Road right of way as restricted to a 17(b) easement and that any 17(b) easement is subject to a superior R. S. 2477 easement. This case is on-going.

Additional information regarding ANCSA 17(b) easements can be found at the BLM

²⁰¹ ANCSA - P.L. 92-203 (85 Stat. 688), 43 U.S.C. 1601. - Regulations 43 CFR 2650.4-7.

²⁰² See BLM's Conveyance Document System at http://sdms.ak.blm.gov/scanned_images/patentindex.html

²⁰³ See BLM's 17(b) Easements Online at http://sdms.ak.blm.gov/scanned_images/esmtindex.html

²⁰⁴ http://www.law.alaska.gov/pdf/opinions/opinions_2002/02-015_665010201.pdf Scope of Klutina Lake Road Right-of-Way, Paul R. Lyle, AAG, July 17, 2002, File 665-01-0201

²⁰⁵ Ahtna, Inc. vs. Leo Von Scheben, Commissioner, DOT&PF, State of Alaska, Case No. 3AN-08-6337 Civil

²⁰⁶ Brenwick-Craig Road – CDS Route No. 195200 – 26.0 miles from Copper Center to Klutina Lake

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Alaska website for 17(b) easements²⁰⁷, BLM Departmental Manuals²⁰⁸ and the BLM ANCSA 17(b) Easement Management Handbook dated June 2007.²⁰⁹

b. ANCSA 14(c)(3) Reconveyance

Section 14(c) of ANCSA says that a village corporation which gets title to its ANCSA land must then re-convey title to individuals and organizations who occupied land on December 18, 1971 when ANCSA was signed²¹⁰. A village competing for a state or federally funded road project could increase the chances of having their project selected by providing a public right-of-way through the 14(c)(3) re-conveyance process.

While federal highway funds for other states are limited to those roads on the Federal-Aid Highway System, Alaska and Puerto Rico are in the unique position of being allowed to use federal highway funds for “*all*” public road construction. This resulted in a variety of small projects in the villages for landfill, water and sewage lagoon access. If the city where the project was incorporated and the village ANCSA corporation 14(c)(3) re-conveyance obligation had not yet been exhausted, DOT would facilitate the preparation and execution of a deed defining and conveying the lands necessary for the project right-of-way. This transaction would then later be identified in the federally mandated 14(c) survey and platting process.

For situations where there is not an incorporated municipality, the tracts of land that are defined in the 14(c) survey as intended for public use are conveyed from the ANCSA village corporation to the Municipal Land Trustee.²¹¹ An important note is that the apparent street and road rights-of-way indicated on a 14(c) plat are generally not considered to be “dedicated” as you would expect to find on a subdivision plat in most other platting jurisdictions. These parcels of land are defined as tracts and conveyed in fee to the Municipal Land Trustee²¹². In order to use these tracts of land for a public project it will be necessary to either obtain a permit from the Trustee or to have the Trustee dedicate the right-of-way “*tracts*” to the public by platting action. It appears that one benefit of the “*tracting*” the apparent street rights-of-way as opposed to dedication is to allow the trustee to maintain greater control over the lands until such a time that they can be conveyed to an incorporated municipality.

²⁰⁷ http://www.blm.gov/ak/st/en/prog/lands_realty/17b_easements.html

²⁰⁸ Department of the Interior Departmental Manual 601 DM 4 Administration of ANCSA 17(b) Easements

²⁰⁹

http://www.blm.gov/pgdata/etc/medialib/blm/ak/aktest/ims.Par.26550.File.dat/im_ak_2007_037_17bhandbook.pdf

²¹⁰ 14(c)(1) – Residences & Businesses; 14(c)(2) – Non-profits; 14(c)(3) – Present & Future public land uses; 14(c)(4) - Airports

²¹¹ See <http://commerce.alaska.gov/dcra/planning/mltp/mltp.htm> for a variety of resources regarding ANCSA 14(c)(3) and the Municipal Land Trustee Program.

²¹² State of Alaska, Department of Commerce, Community and Economic Development (DCCED)