

22 If DOT&PF were to vacate any right-of-way in which it  
23 claimed an interest, the state is required by the constitution and  
24 by statute to give appropriate public notice and to execute and  
25 file a deed in the appropriate recording district. Alaska Const.  
26 art. VIII, § 10, AS 19.05.070. The specific method provided for

1 in the statute (vacation by deed) must be followed. The  
2 legislature did not authorize vacation of state right-of-way by  
3 plat .

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5 Neither the passage of time nor inaction on the part of  
6 the sovereign can work to the state's detriment. For Safeway to  
7 prevail, the court must find that AS 38.95.010, which prohibits  
8 alienation of any title or interest in state land by adverse  
9 possession, does not protect the sovereign's interests in this  
10 case. Calais proceeded at <sup>his</sup> own risk with full knowledge it  
11 previously had acceded to the state's interests in Becharof and  
12 with full knowledge of the state's objections. It filed a replat  
13 without DOT approval in violation of the municipal ordinance  
14 requiring all property owners to sign off.

15 Such facts fit exactly within the policy behind  
16 AS 38.95.010 barring adverse possession against the state. The  
17 State of Alaska does not have to be vigilant everywhere at all  
18 times against its title being eaten away. The State of Alaska  
19 does not have to go into court repeatedly and continuously to  
20 protect its interests; that is the purpose of the statute.

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22 Here, Safeway urges that the state should have taken  
23 steps to regain control of its right-of-way and that it should now  
24 be barred from doing so. In addition to the statute which  
25 protects the state from adverse possession claims, the Alaska  
26 Supreme Court has made clear that estoppel does not lie against

1 the state for affirmative acts inconsistent with state ownership.

2 In this case, the state's inaction in attacking encroachments into  
3 the state's right-of-way cannot be sufficient to bar the state  
4 from protecting public rights.

5           The facts in State v. Simpson, 397 P.2d 288 (Alaska 1964)  
6 provide instruction as to the Alaska Supreme Court's bias against  
7 finding an estoppel as related to highway right-of-way. In  
8 Simpson, the state itself had actually levied and collected taxes  
9 on land which was dedicated as a public right-of-way.  
10 Nevertheless, the state was not estopped from asserting its rights  
11 in the parcel as against a private party who had constructed  
12 improvements in the right-of-way. Such affirmative acts would not  
13 bar ejectment of the private party. The tax payment offset the  
14 rent-free enjoyment and use of the controverted parcel.  
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