

Lee Saylor, Mike Tinker, Stan Stowell

February 19, 1981

Re: Eureka/Rampart Trail ---

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runs through (end to end) the rectangular 80-acre site. As I understand the situation, everyone concerned, i.e. the State, BLM, and the Cobbs, agree that in times prior to 1974 the State had a valid "2477" public right-of-way for the Eureka/Rampart Trail route. Such a conclusion is readily compelled by the State's (or Territorial predecessor's) involvement, notably expenditure of public funds for construction and maintenance of the route. Examples of such government support and expenditures are found in the 1911, 1926, 1940, 1939-1940 Alaska Road Commission reports. Furthermore, the route has continually been shown on the U.S.G.S. topographical maps. The Eureka/Rampart Trail has the added distinction of being one of the few "2477" rights-of-way recorded. In 1964 the State commenced an upgrading project for the Eureka/Rampart Trail under the Pioneer Access Road Program authorized by Ch. 47 S.L.A. 1959 and Ch. 24 S.L.A. 1960. Progress on the improvement project, however, was halted at the headwaters of Minook Creek because Pioneer Access Road funds were diverted by legislation and executive order to emergency relief programs necessitated by the Good Friday earthquake. Lee is, of course, very familiar with these facts, for he brought them to my attention and produced most of the referenced documents.

Since the late 1800's, miners have used the Eureka/Rampart Trail (including that part through what is now the Cobb's T&M site) to move equipment, supplies, and themselves out of Eureka and Rampart for summer mining and back for wintering. Like everywhere else in Alaska, mining activity waxed and waned throughout the decades of the 1900's to the present. Traffic and use of the trail correspondingly increased and decreased to the tune of the mining activity. Furthermore, before 1940, the trail (again including that portion traversing what is now the Cobb's T&M site) was used extensively to get to and from Rampart on the Yukon River. At the time the Cobbs staked and claimed the T&M site the trail was apparently in a period of relative disuse. Undoubtedly linked with the several-fold gold price increase in the last few years, use of the Eureka/Rampart Trail has again increased, particularly by miners.

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In addition to recognizing the historic right-of-way, the State and BLM both agree that the State currently has a valid public right-of-way over the Cobb T&M site along the path of the Eureka/Rampart Trail route. While recognizing a past right-of-way, the Cobbs, on the other hand, suggest, or at least query, that the State abandoned its right-of-way by disuse. Ironically, the answer to this question is considerably shorter than all the preliminaries above. The answer is an unreserved no, the State has not abandoned, lost, or otherwise compromised its Eureka/Rampart right-of-way, including that portion over the Cobbs' T&M site. It is basic Hornbook law that a public right-of-way can be abandoned only if the holder of the easement subjectively intends to abandon. 39 Am.Jur.2d, Highways, etc., §150. Simple disuse, regardless for how long, is never enough. I see absolutely nothing in the record even hinting that the State at any time intended to abandon its right-of-way. Quite the contrary is indicated by the State's frustrated efforts at upgrading the entire Eureka/Rampart Trail in the near past, 1964. Furthermore, should the Cobbs pursue an abandonment theory, the burden of proof rests on them, i.e., they would have to develop affirmative evidence that the State intended to abandon its right-of-way. Additionally, since the State, as do all democratic governments, holds its rights-of-way in trust for the public, the law is liberally applied in favor of the public. In the same vein, A.S. 38.95.010 provides "No title or interest to land under the jurisdiction of the State may be acquired by adverse possession or prescription, or any other manner except by conveyance by the State."

Thus, it is my opinion that the State continues to have and did not abandon its Eureka/Rampart Trail right-of-way over the Cobbs' T&M site. I have no opinion, however, as to the exact location of the public right-of-way through the Cobb's property. That is an engineering and surveying exercise, rather than a legal one. I understand that this opinion letter will probably make its way to Mr. and Mrs. Cobb. In addition to talking with you, if they would like to discuss the matter with me, I will gladly do so.

Sincerely,

STATE OF ALASKA

WILSON L. CONDON
ATTORNEY GENERAL

By: 

Gary Foster

Assistant Attorney General

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