




Slide 1



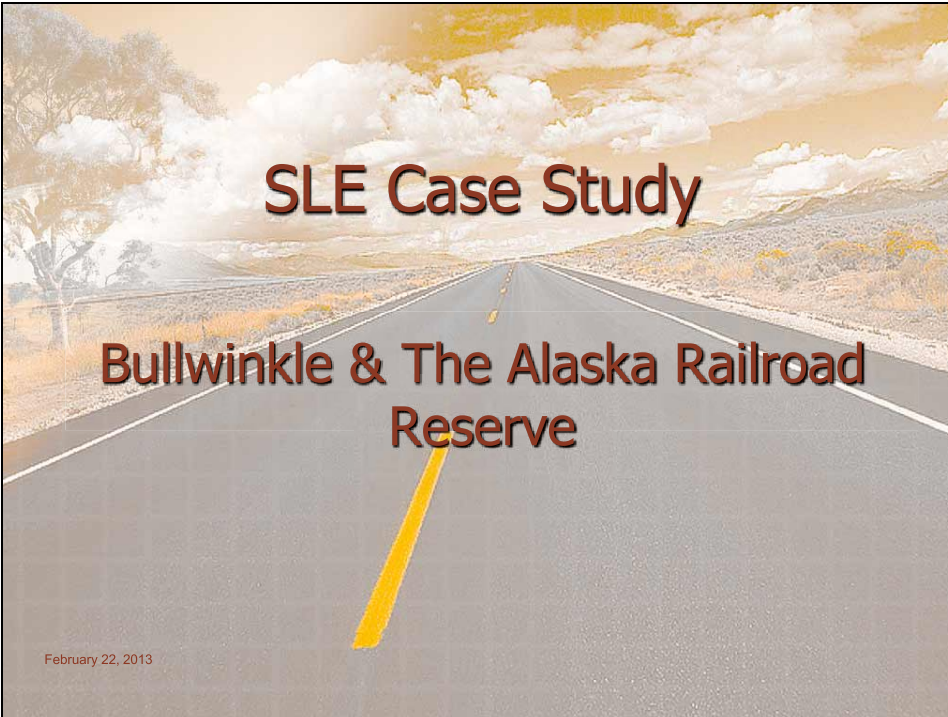
Section Line Easements



Access Law and Issues Affecting Public and Private Lands In Alaska
February 22, 2013

The slide features two circular logos at the top. The left logo is the Alaska Road Commission logo, featuring a moose head. The right logo is the Department of Transportation & Public Facilities logo, featuring a road and a sun. The central image is a landscape with rusted metal debris in the foreground and mountains in the distance under a blue sky with light clouds. Below the image is a caption in blue text.

Slide 2



SLE Case Study

Bullwinkle & The Alaska Railroad Reserve

February 22, 2013

The slide shows a perspective view of a paved road with a yellow center line leading towards a horizon under a cloudy sky. The text is overlaid in a dark brown font. A small date stamp is visible in the bottom left corner.

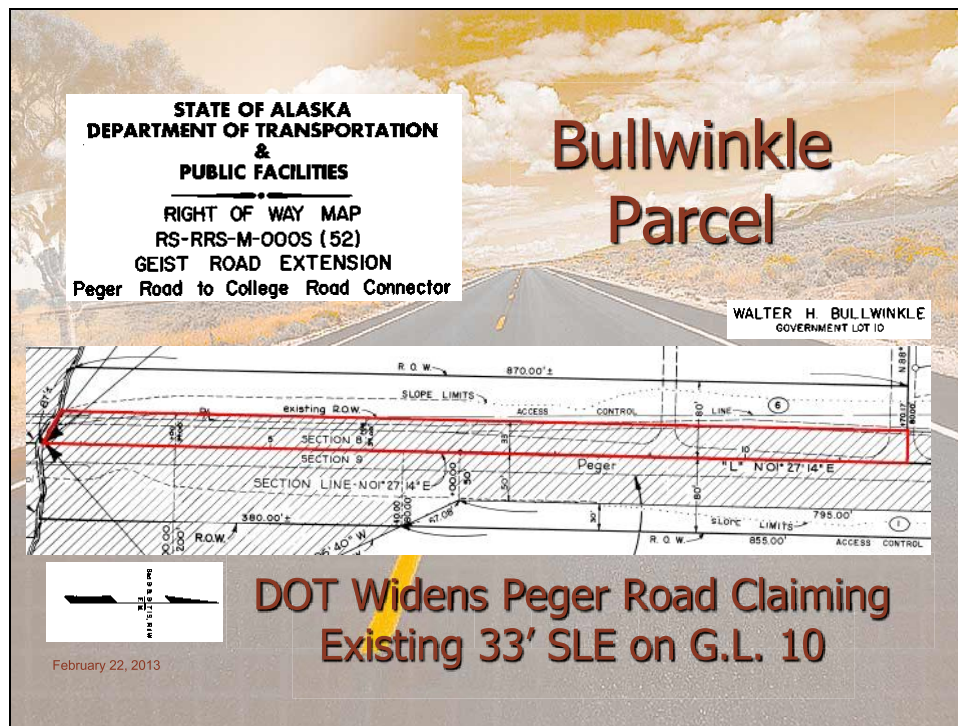
Walter Bullwinkle – Section Line Easement

Slide 3

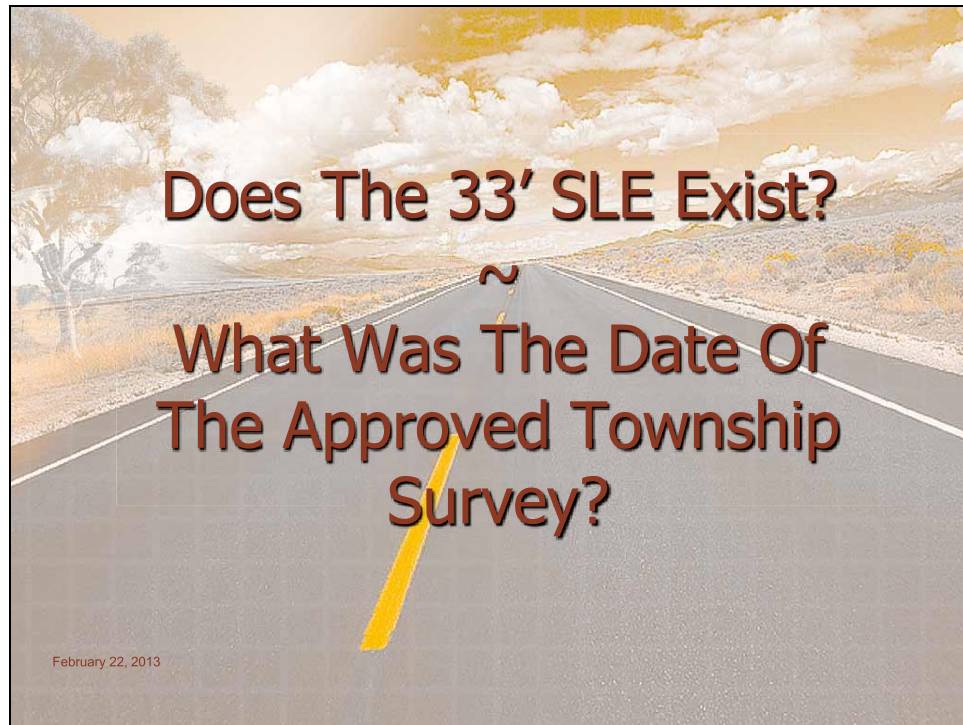


Line between sections 8 and 9, located on the west side of Peger Road north of the Chena River.

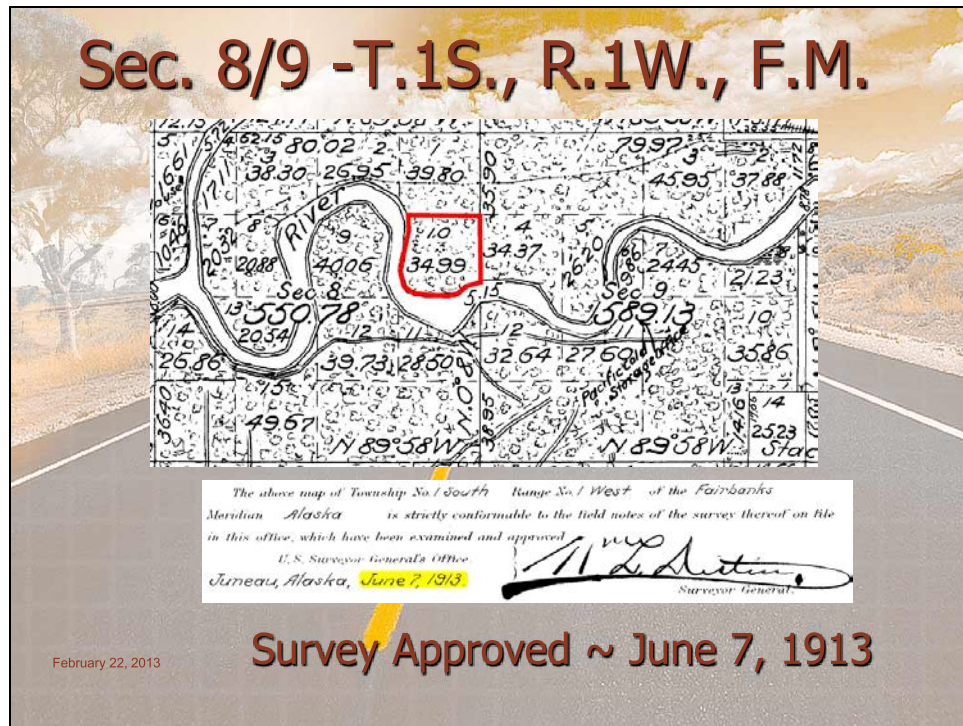
Slide 4



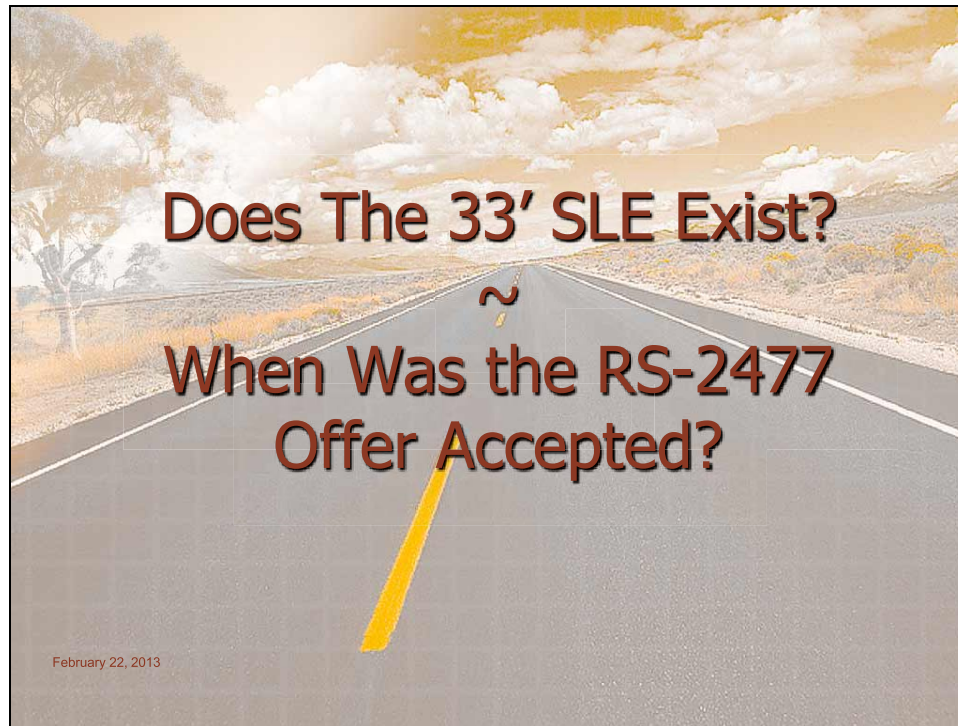
DOT needed to widen Peger ROW and sought to acquire additional land from Bullwinkle. No compensation was offered for SLE.



Locate appropriate BLM Township Survey plats.



Bullwinkle owns Government Lot 10 in Section 8. BLM plat was approved June 7, 1913.



Offer of RS-2477 Grant must have been accepted by Territory.

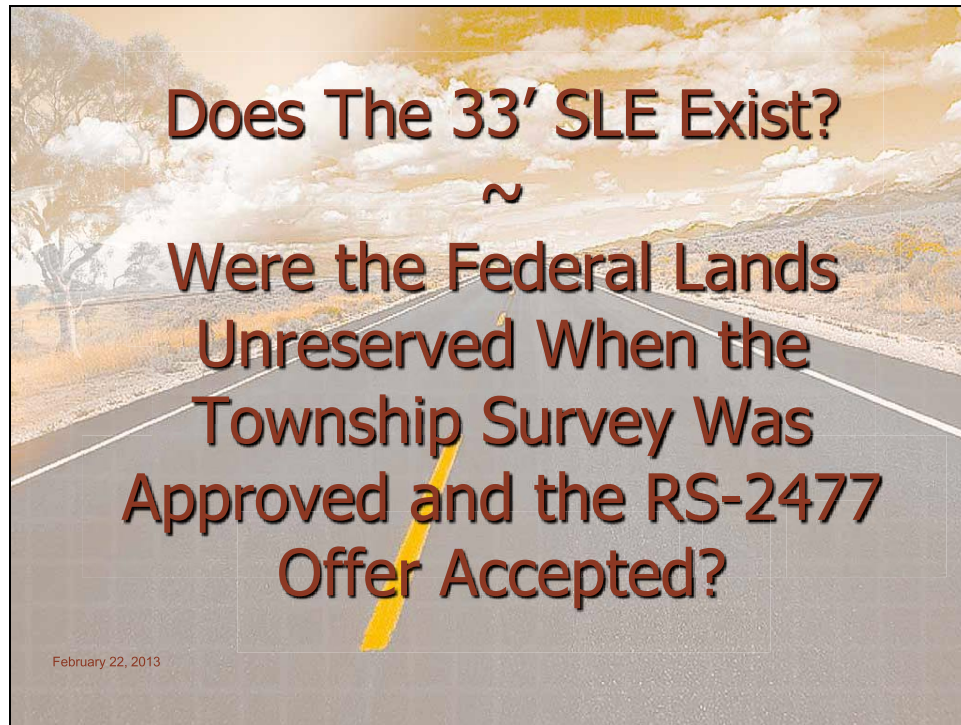
SLE Table

Surveyed Federal lands that were unreserved at any time during the indicated time period.	Effective Dates	Surveyed lands that were under State or Territorial ownership at any time during the indicated time period. (Note: includes un-surveyed lands after July 1, 1960)
none	April 5, 1923	None
66'	April 6, 1923 To January 17, 1949	66'

Federal SLE Offer Accepted by Territory of Alaska on April 6, 1923

February 22, 2013

Section Line Easement Table indicates offer accepted on April 6, 1923.



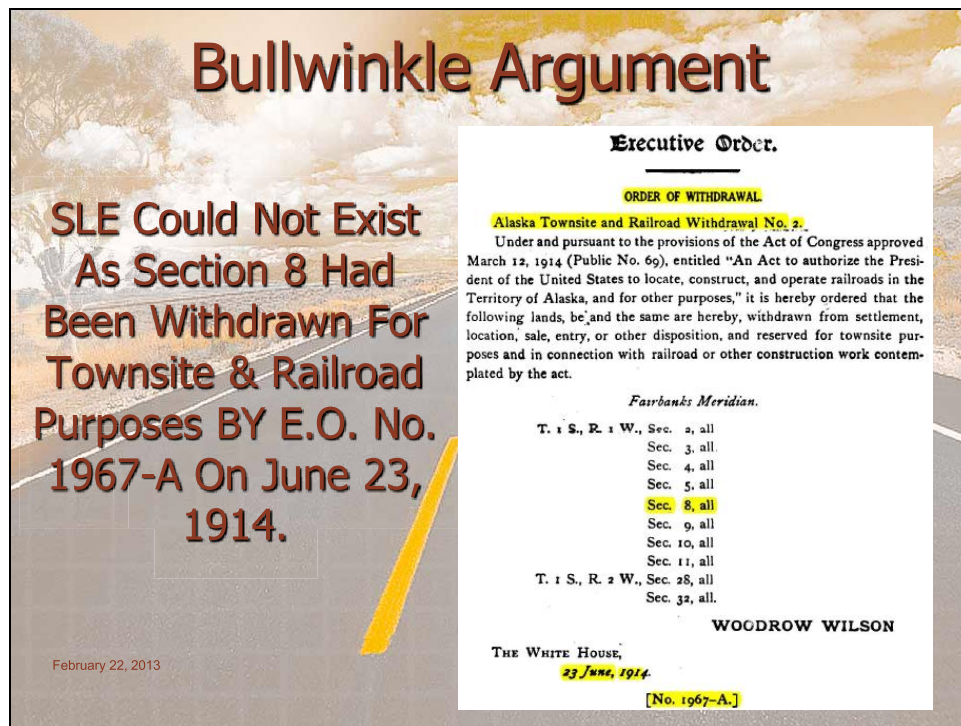
Does The 33' SLE Exist?

~

Were the Federal Lands Unreserved When the Township Survey Was Approved and the RS-2477 Offer Accepted?

February 22, 2013

Land must be unreserved for section line easement to be established.



Bullwinkle Argument

SLE Could Not Exist As Section 8 Had Been Withdrawn For Townsite & Railroad Purposes BY E.O. No. 1967-A On June 23, 1914.

February 22, 2013

Executive Order.

ORDER OF WITHDRAWAL

Alaska Townsite and Railroad Withdrawal No. 2.

Under and pursuant to the provisions of the Act of Congress approved March 12, 1914 (Public No. 69), entitled "An Act to authorize the President of the United States to locate, construct, and operate railroads in the Territory of Alaska, and for other purposes," it is hereby ordered that the following lands, be, and the same are hereby, withdrawn from settlement, location, sale, entry, or other disposition, and reserved for townsite purposes and in connection with railroad or other construction work contemplated by the act.

Fairbanks Meridian.

T. 1 S., R. 1 W., Sec. 2, all
Sec. 3, all
Sec. 4, all
Sec. 5, all
Sec. 8, all
Sec. 9, all
Sec. 10, all
Sec. 11, all

T. 1 S., R. 2 W., Sec. 28, all
Sec. 32, all.

WOODROW WILSON

THE WHITE HOUSE,
23 June, 1914.
[No. 1967-A.]

Lands including G.L. 10 had been withdrawn for railroad purposes in 1914.

State's Argument

**E.O. 2236
Released the
Withdrawal
of Section 8
on August
17, 1915**

Executive Order.

Alaskan Townsite.

Under and pursuant to the provisions of the Act of Congress approved March 12, 1914 (38 Stat., 305), entitled "An Act to authorize the President of the United States to locate, construct and operate railroads in the Territory of Alaska and for other purposes", it is hereby ordered that the following described lands, withdrawn by executive order of June 23, 1914, and reserved for townsite purposes under said Act, be, and the same are, hereby eliminated from said order, to wit: In Township 1 South, Range 1 West, Fairbanks Meridian: All of Sections No. 2, 5, 8, 11, and the north half of Sec. 4, Lots 1, 2, 3, 4, 5, 7, 8, 9, and 11 in Section 3, and Lots 6, 7, 9, 10, 11, 12, 13, and 14, W. 1/4 of SE. 1/4, and S. 1/4 of SW. 1/4 of Sec. 9, Lots 9, 10, 11, and 12 in Sec. 10.

Said elimination shall not affect the withdrawal of any other lands by said executive order of June 23, 1914.

WOODROW WILSON

THE WHITE HOUSE,
17 August, 1915.
[No. 2236.]

February 22, 2013

1914 withdrawal released by subsequent Executive Order in 1915.

Unreserved Status

Over Time, There Were Multiple Withdrawals and Releases Modifying The Unreserved Land Status Of The Bullwinkle Property.

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Since the RS-2477 Acceptance, There Had Been Two Large Gaps When The Lands Had Been Unreserved And Subject To Establishment Of The SLE: 11/26/24 to 3/9/31 And 9/16/36 to 3/3/42.

February 22, 2013

G.L. 10 subject to several withdrawals and releases providing for a variety of unreserved land gaps.

Bullwinkle's Entry Date

01-AUG-1947	001 Application Filed	APPLICATION RECEIVED	--
04-JAN-1954	244 Final Proof Filed	--	--
08-OCT-1954	131 Field Report Approved	--	--
11-APR-1960	341 Proof Of Pub Received	--	--
28-JUL-1960	879 Patent Issued	--	FA0001211125

Bullwinkle Filed On The Same Day That The Previous Homestead Entry Was Relinquished.

~

If There Had Been No Other Periods Of Unreserved Status, The SLE May Have Been Established Immediately Prior To The Filing Of Bullwinkle's Application.

February 22, 2013

Federal lands available for homesteading must be unreserved and open to entry. Even if only a few moments passed between prior entry relinquishment and Bullwinkle's application, that was enough time for the SLE to take effect.

SLE Confirmed

THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT

<p>STATE OF ALASKA,)</p> <p style="padding-left: 40px;">Plaintiff,)</p> <p style="text-align: center;">vs.)</p> <p>0.947 acres more or less;)</p> <p>WALTER H. BULLWINKLE; FAIRBANKS)</p> <p>NORTH STAR BOROUGH; and also)</p> <p>all other persons or parties)</p> <p>unknown claiming a right, title,)</p> <p>estate, lien, or interest in the)</p> <p>real estate described in the)</p> <p>complaint in this action,)</p> <p style="text-align: center;">Defendants.)</p> <p>Project No. RS-RRS-M-000S(52)</p> <p>Parcel No. 6</p> <p>Case No. 4FA-86-2479 Civil</p>	<p>FILED in the Trial Courts State of Alaska, Fourth District</p> <p>SEP 09 1991</p> <p>By _____ Deputy</p>
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ORDER CONFIRMING SECTION LINE EASEMENT

IT IS HEREBY ORDERED that

- The existence of the section line easement for Peger Road is hereby confirmed.

February 22, 2013

SLE issue heard in Superior Court. Bullwinkle argued alternately that the SLE never attached due to withdrawals, that the SLE had been vacated when RS-2477 was repealed by FLPMA or acceptance lost by repeal of 19 SLA 1923 or that federal law and BLM's positions are controlling.

Conclusion

- Section Line Had Been Surveyed...
- Land Had Been Unreserved...
- During Period of RS-2477 Acceptance

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All Requirements Necessary To
Established A Valid RS-2477 Section Line
Easement Under State Law Had Been
Met.

February 22, 2013

Section Line Easement is Validated.

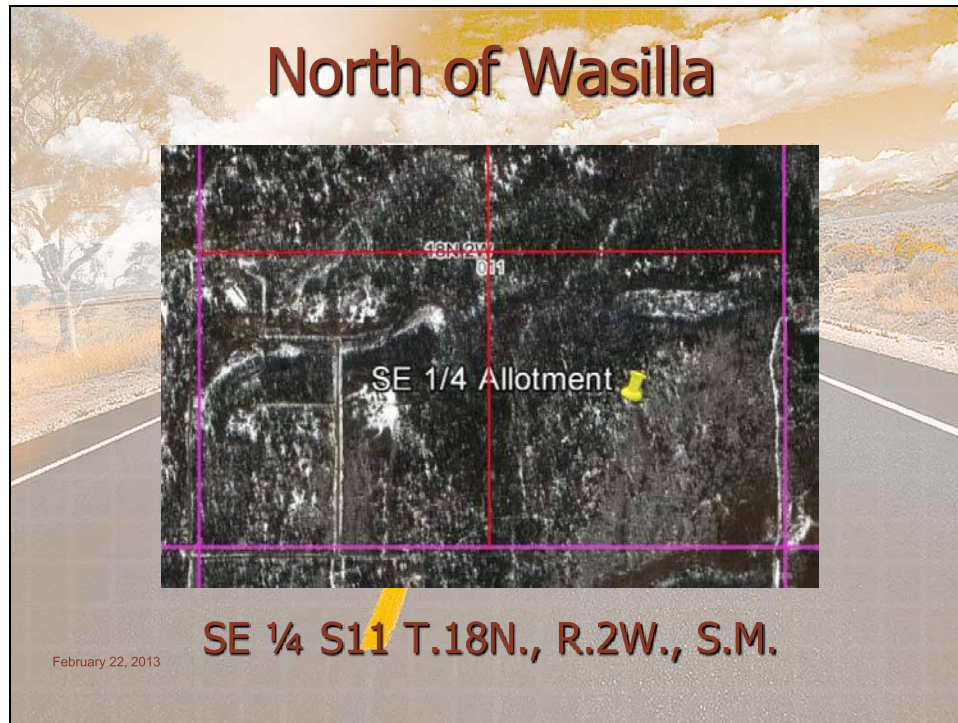
SLE Case Study

A Partial Township Survey &
Native Allotment

February 22, 2013

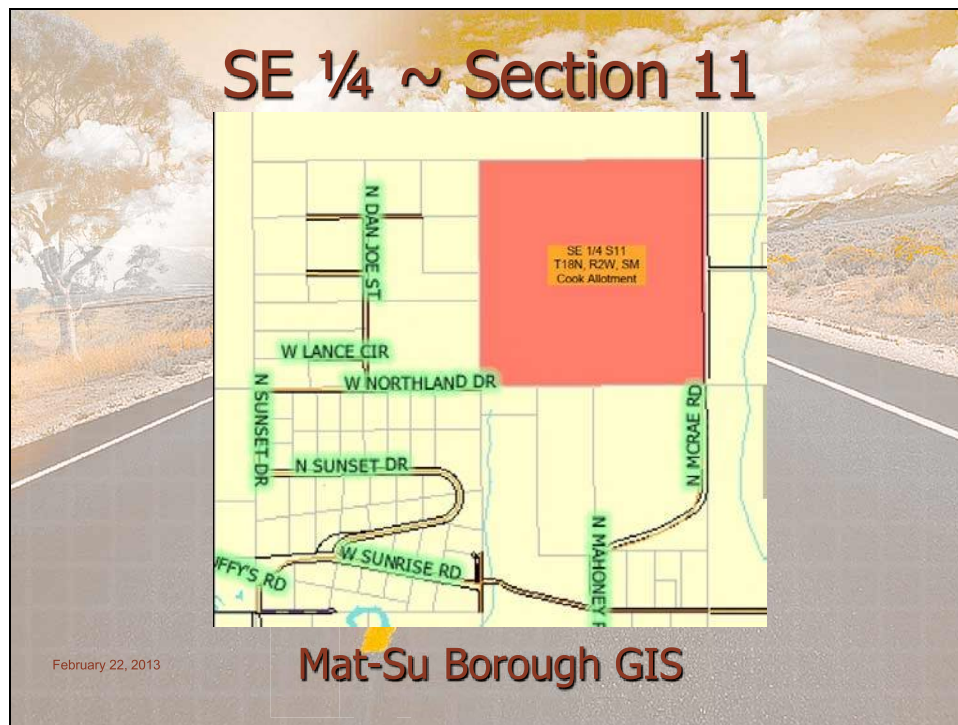
Partial Township Survey & Native Allotment – Section Line Easement

Slide 17

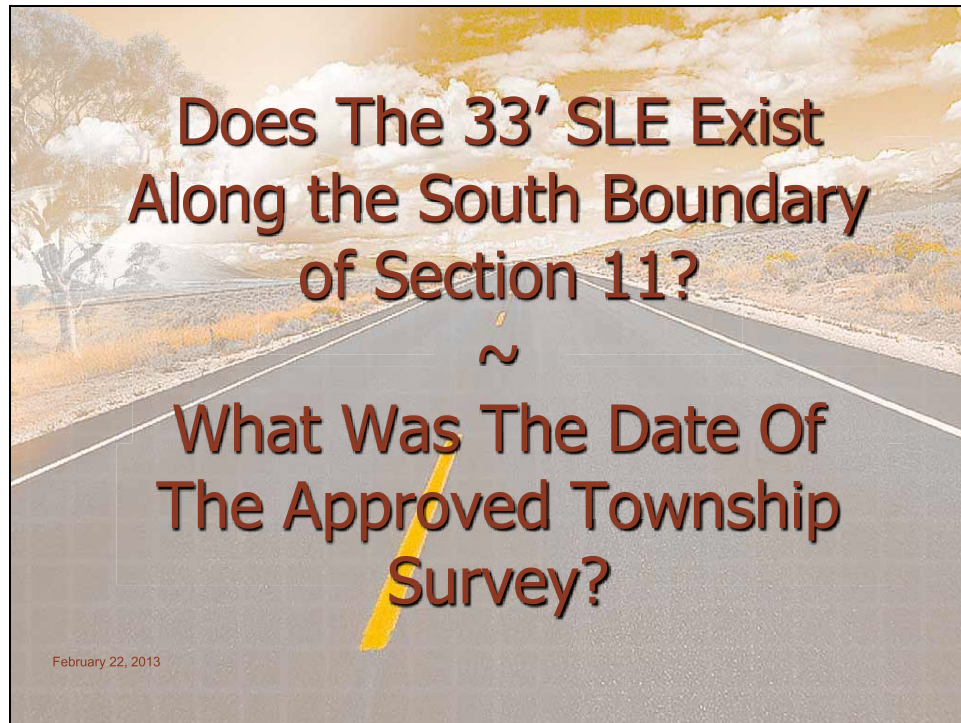


South and East boundaries of Section 11, located several miles north of Wasilla.

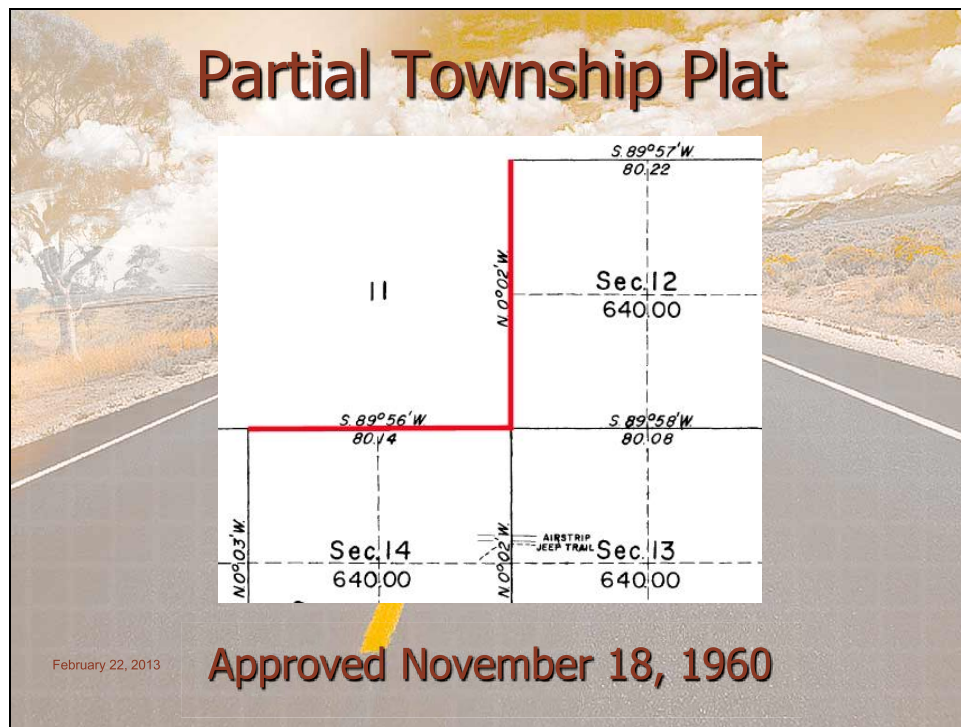
Slide 18



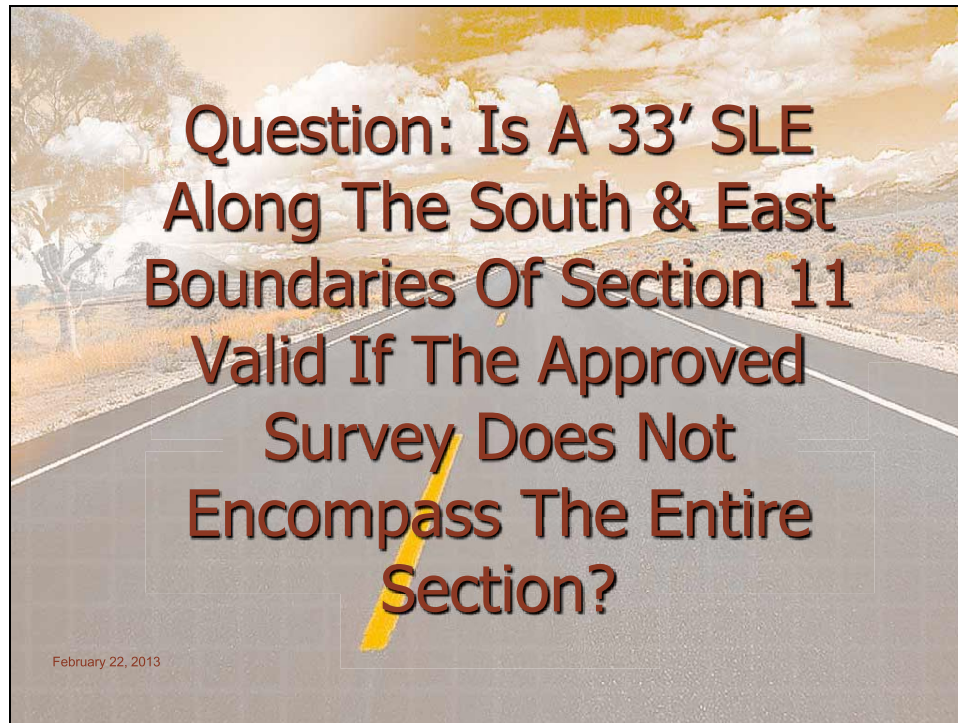
SE 1/4 of Section 11 certificated as a Native Allotment.



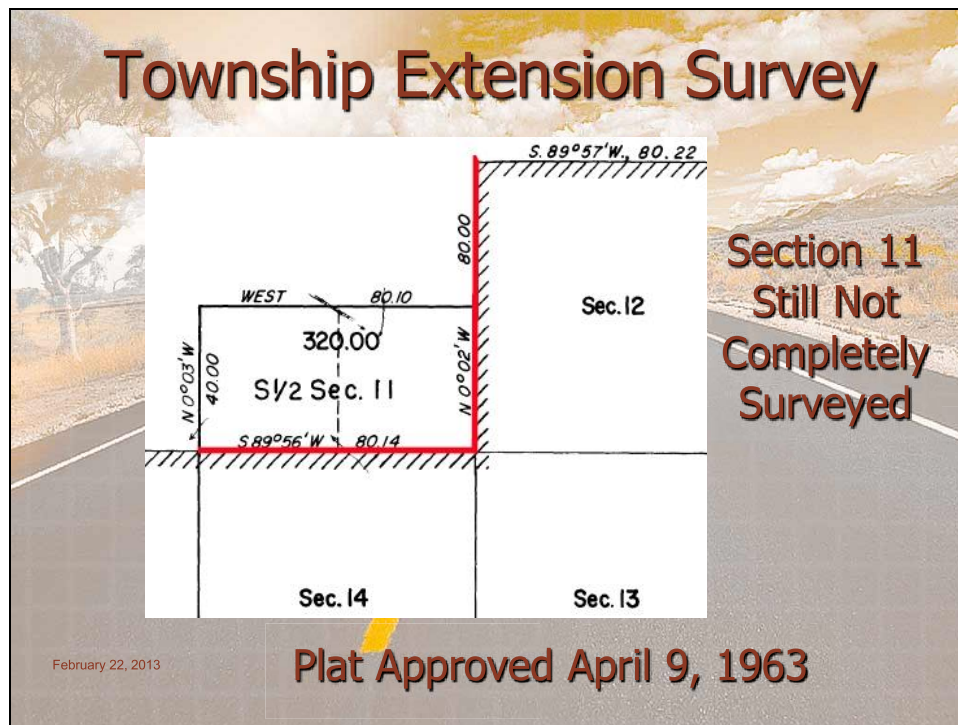
Locate appropriate BLM Township Survey plats.



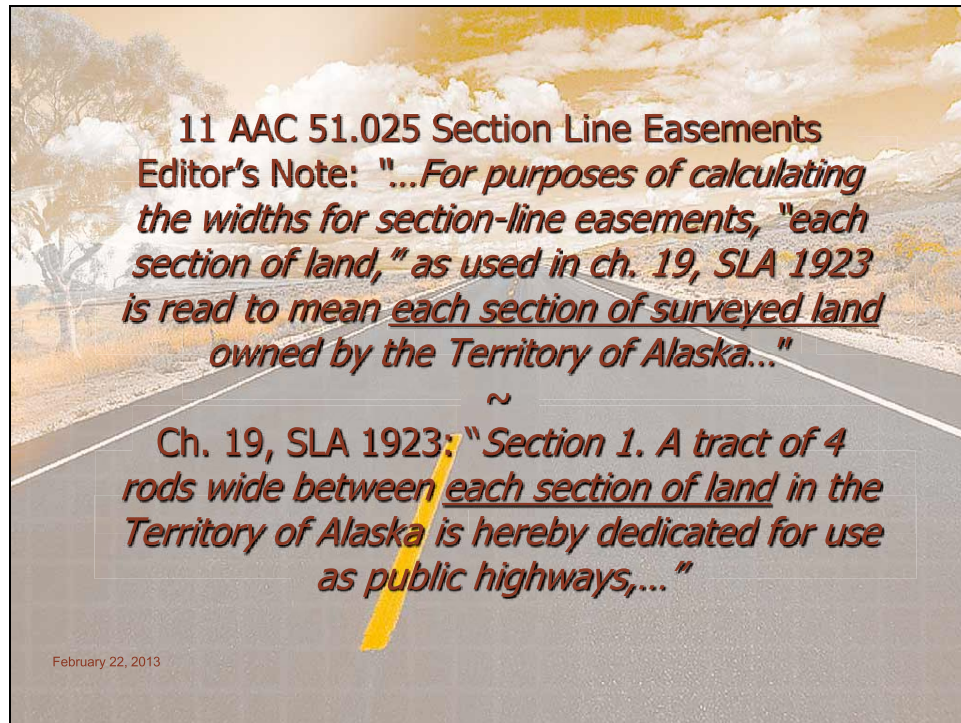
South and East lines of Section 11 are surveyed but Sections 1-10 & 16-18 unsurveyed and defined as "Tract A"



Does the SLE acceptance require that the entire section be surveyed?



A few years after the initial township survey, an extension survey defines the South 1/2 of Section 11. The North and N 1/2 of the West Section Line are still unsurveyed.



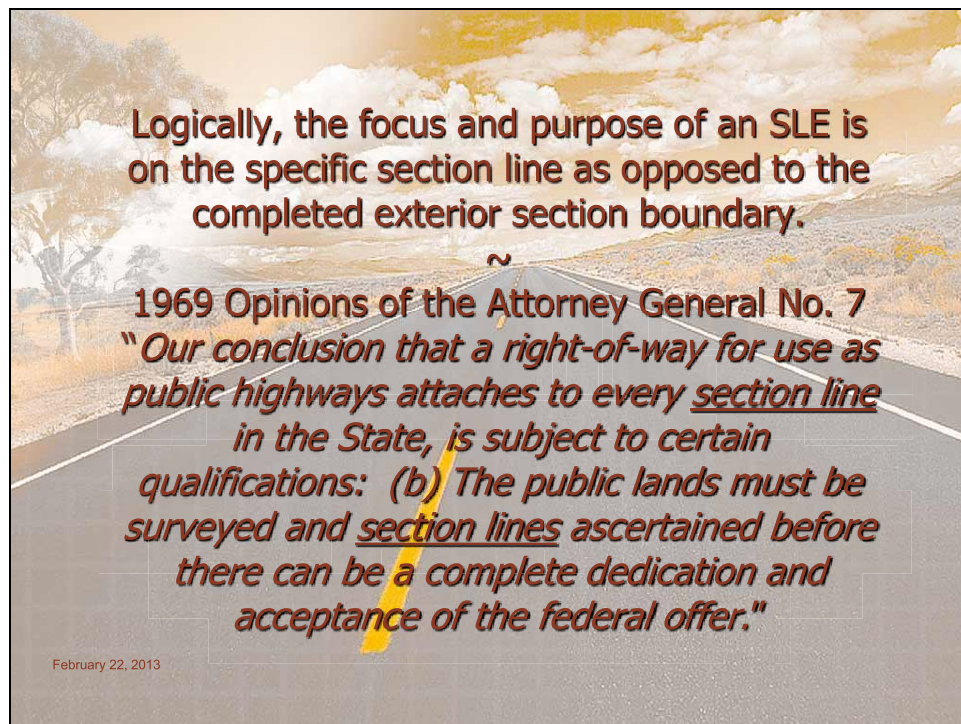
11 AAC 51.025 Section Line Easements
Editor's Note: *"...For purposes of calculating the widths for section-line easements, "each section of land," as used in ch. 19, SLA 1923 is read to mean each section of surveyed land owned by the Territory of Alaska..."*

~

Ch. 19, SLA 1923: *"Section 1. A tract of 4 rods wide between each section of land in the Territory of Alaska is hereby dedicated for use as public highways,..."*

February 22, 2013

I believe the Editor's emphasis is on "surveyed" as opposed to "section". SLA 1923 does not specify "surveyed".



Logically, the focus and purpose of an SLE is on the specific section line as opposed to the completed exterior section boundary.

~

1969 Opinions of the Attorney General No. 7
"Our conclusion that a right-of-way for use as public highways attaches to every section line in the State, is subject to certain qualifications: (b) The public lands must be surveyed and section lines ascertained before there can be a complete dedication and acceptance of the federal offer."

February 22, 2013

The 1969 AGO opinion also appears to specify a surveyed "section line" and not require that the full section be surveyed.

Assuming the Partial Survey of Section 11 Does Not Preclude the Application of an SLE, Does The 33' SLE Exist?

~

When Was the RS-2477 Offer Accepted?

February 22, 2013

While contrary opinions exist, we will assume a valid approved survey. Offer of RS-2477 Grant must have been accepted by Territory.

SLE Table

Surveyed Federal lands that were unreserved at any time during the indicated time period.	Effective Dates	Surveyed lands that were under State or Territorial ownership at any time during the indicated time period. (Note: includes un-surveyed lands after July 1, 1960)
66'	March 21, 1953 to December 14, 1968	100'
none	December 14, 1968 to Present	

Federal SLE Offer Accepted Again by Ch. 35 SLA 1953 On March 21, 1953

February 22, 2013

Section Line Easement Table indicates offer re-accepted by Territory on March 21, 1953.

Does The 33' SLE Exist?

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Were the Federal Lands Unreserved When the Township Survey Was Approved and the RS-2477 Offer Accepted?

February 22, 2013

Land must be unreserved for section line easement to be established.

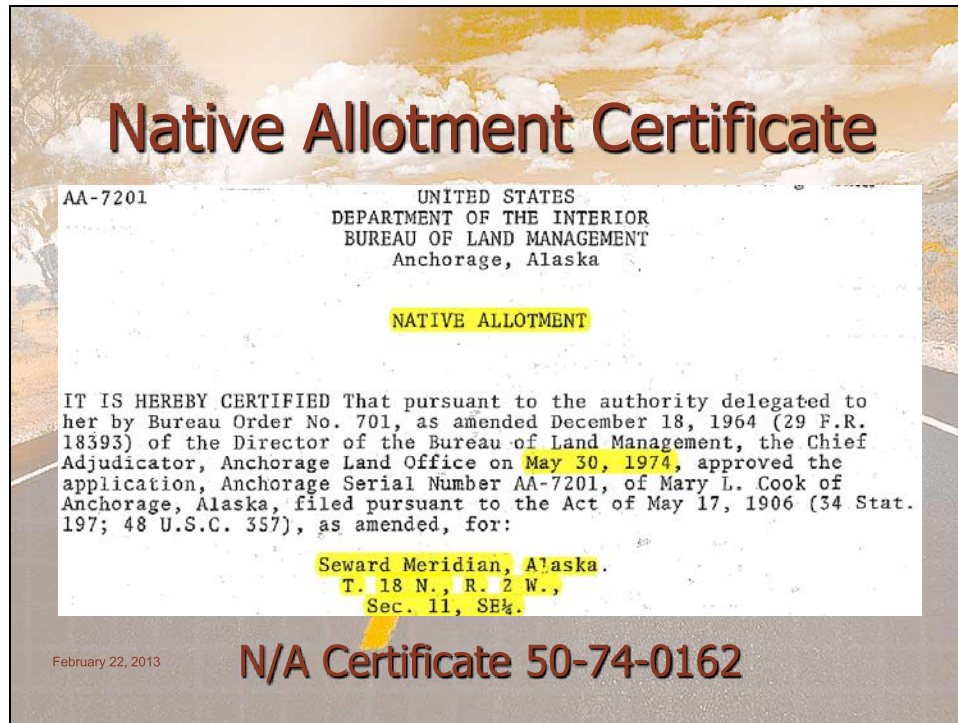
BLM Master Title Plat

11		12	
<i>Rsvd Min</i> 50-2005-0265 50-71-0015 <i>R/W Rsvd Min</i>	<i>Rsvd Min</i> 50-89-0283 50-74-0162 <i>NA Cert</i> <i>R/W Rsvd Min</i>	<i>Rsvd Min</i> 50-2005-0265 50-76-0217 <i>R/W Rsvd Min</i>	1228180 <i>R/W</i>
<i>Rsvd Min</i> 50-67-0486 50-64-0058 <i>R/W Rsvd Min</i>			<i>Rs</i> 50 122 <i>R/W</i>
<i>Rsvd Min</i> 50-89-0125 50-85-0615 <i>R/W Rsvd Min</i>	14	50-65-0049 <i>R/W</i>	13

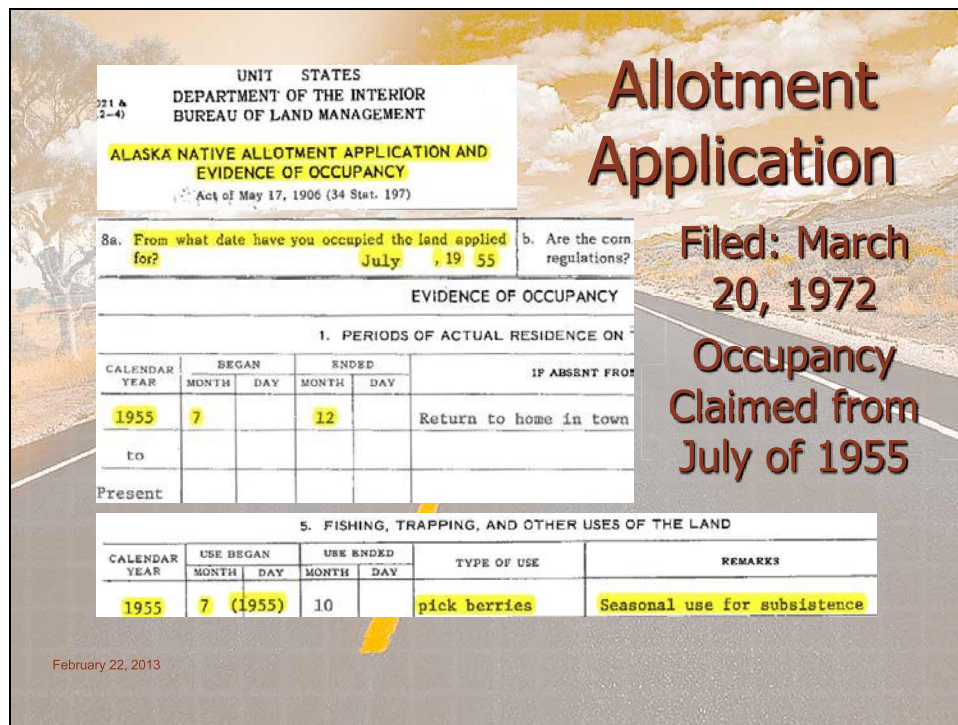
T.18N., R.2W., S.M.

February 22, 2013

MTP indicates a Native allotment certificate for the SE ¼ of Section 11.



Allotment Certificate dated May 30, 1974 – But when did rights vest?



Establish the date of Application and Occupancy for the Native Allotment.

A slide with a background of a road leading to a mountain range under a cloudy sky. The text is centered and reads: "Is the Land Reserved?" followed by "If Rights Vested as of the Date of Application, (...as they do with a Homestead Entry), the SLE would become effective as of the date of Township Survey – 11/18/60". Below this is a tilde symbol (~) and another line of text: "If Date of Occupation Controls, The Land Would be 'Reserved' Before The Survey is Approved...". A yellow arrow points from the second line of text up to the tilde. In the bottom left corner, there is a small date: "February 22, 2013".

Is the Land Reserved?

If Rights Vested as of the Date of Application, (...as they do with a Homestead Entry), the SLE would become effective as of the date of Township Survey – 11/18/60

~

If Date of Occupation Controls, The Land Would be "Reserved" Before The Survey is Approved...

February 22, 2013

Occupation in 1955 Precedes 1960 Survey – No SLE... But Application is in 1972 or 12 years after Survey – SLE Exists?

A slide with a background of a road leading to a mountain range under a cloudy sky. The text is centered and reads: "Does It Even Matter?" followed by a large red octagonal stop sign with the word "WHOA!" in white. Below the stop sign is a line of text: "An Allotment is Federal Trust Land...and the Feds do not accept the concept of SLE's!". A yellow arrow points from the text below up to the stop sign.

Does It Even Matter?

WHOA!

An Allotment is Federal Trust Land...and the Feds do not accept the concept of SLE's!

The Feds consider an SLE to be an unconstructed RS-2477, and the federal interpretation requires "construction" for acceptance of the RS-2477 grant.

The Rest of The Story...

ms09153 **DEED TO RESTRICTED NATIVE LAND**

THIS DEED, made and entered into this Fourteenth day of July, Two Thousand Six, by and between Mary L. Cook, Alaska Native of 4000 McMahon Avenue, Anchorage, Alaska 99516, GRANTOR, and Dennis Byler, of P.O. Box 877405, Wasilla, Alaska 99687, GRANTEE. This conveyance is made pursuant to the Native Allotment Act of May 17, 1906 (34 Stat. 197), as amended by the Act of August 2, 1956 (70 Stat. 954).

SE1/4, Sec. 11, T. 18 N., R. 2 W., Seward Meridian, Alaska, containing 160.00 acres. (Palmer Recording District) (State of Alaska).

Deed to Restricted Native Land - Sale
Mary L. Cook to Dennis Byler
Restrictions NOT retained

July 14, 2006 ~ Allotment Deeded to Private Party Without Restrictions! It Is Now Subject to State Law Including SLEs.

SE ¼ transitioned from a restricted native allotment (federal trust) to just another piece of land subject to State law...

One More Time...

Was the Land Reserved at the Time of Survey Approval?...

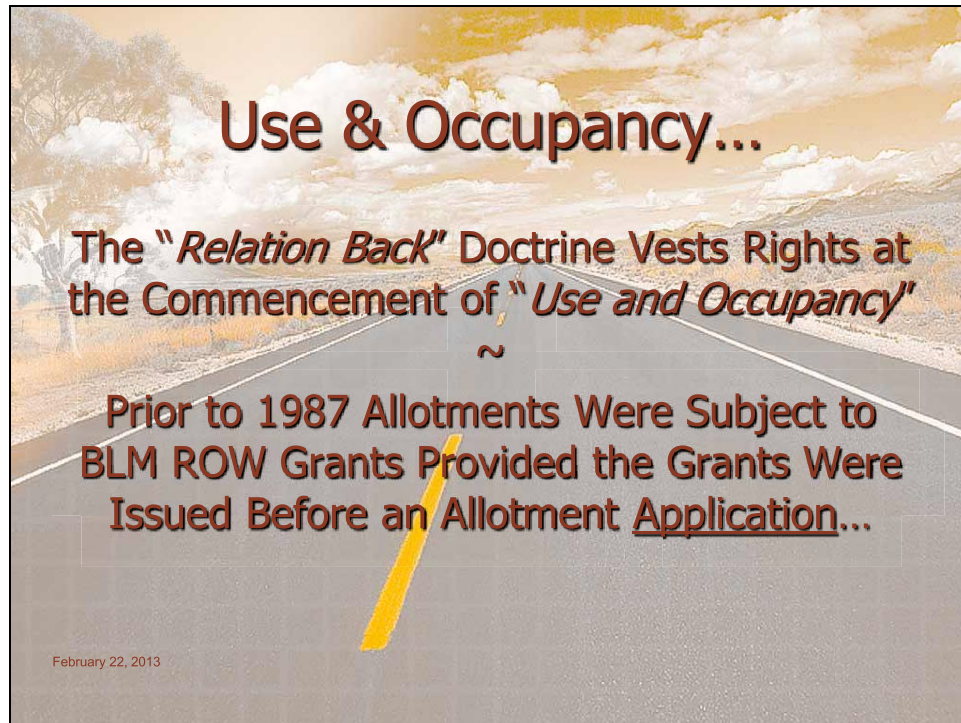
~

If 1955 Allotment Occupation Reserved Land, There is No SLE...

If 1972 Application Reserved Land, There is an SLE...

February 22, 2013

Anyone who has dealt with BIA will know the answer is obvious, it is the date of occupation...therefore no SLE. But...



Use & Occupancy...

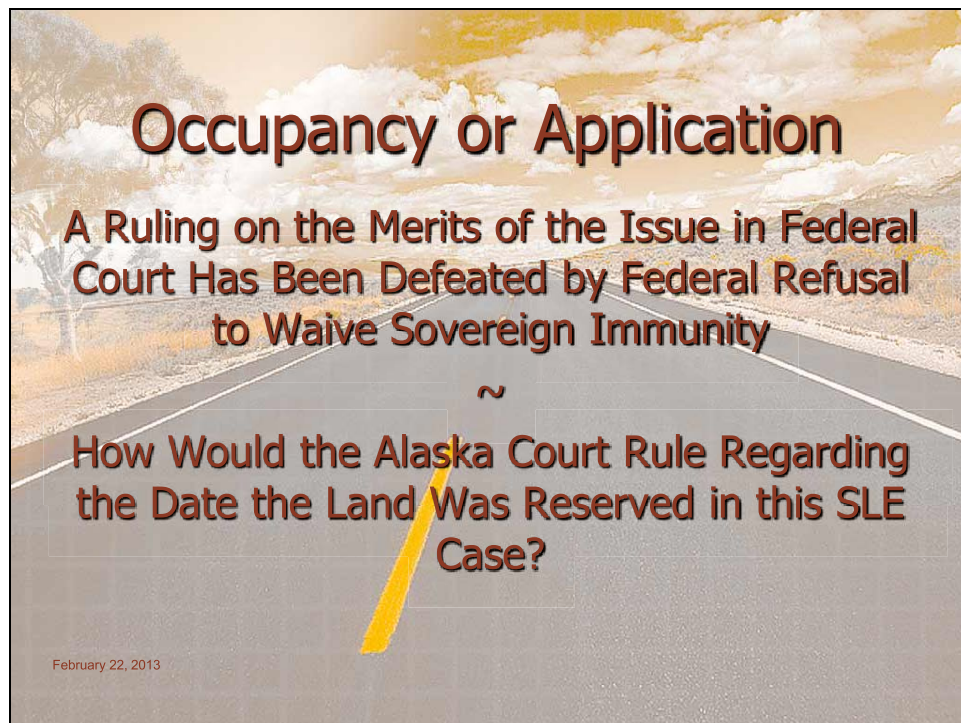
The "*Relation Back*" Doctrine Vests Rights at the Commencement of "*Use and Occupancy*"

~

Prior to 1987 Allotments Were Subject to BLM ROW Grants Provided the Grants Were Issued Before an Allotment Application...

February 22, 2013

1987 – 98 IBLA 203 (1987) GVEA – “Relation Back” to Occupancy for Allotments applied against ROW Grants issued prior to Allotment application.



Occupancy or Application

A Ruling on the Merits of the Issue in Federal Court Has Been Defeated by Federal Refusal to Waive Sovereign Immunity

~

How Would the Alaska Court Rule Regarding the Date the Land Was Reserved in this SLE Case?

February 22, 2013

The Allotment is now unrestricted and is subject to State law. Would the State court vest rights as of date of occupancy or date of application?