



# College Utilities Corporation

July 2, 2018

**VIA CERTIFIED MAIL and E-MAIL (robert@mikekramer.com; rjohn@gci.net)**

Jason Roe  
c/o Robert John of Kramer and Associates  
542 2<sup>nd</sup> Avenue, Suite 207  
Fairbanks, Alaska 99701

Re: Tract A, Twin Lake Subdivision, Phase 1, Plat 99-77  
Our Client: College Utilities Corp.  
Our File: 4FA-18-02118 CI (*Pumpkin Limited v. USA dba CUC*)

Dear Mr. John:

For your files please find enclosed conformed copies of the following:

- CUC's 7/2/2018 Opposition to Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction;
- Attachments A through R to CUC's 7/2/2018 Opposition to Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction;
- CUC's proposed Order Denying Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction, lodged 7/2/2018;
- CUC's 7/2/2018 Amended Certificates of Service;
- CUC's 6/27/2018 Opposition to Plaintiff's Motion for Expedited Consideration of his Motion for Temporary Restraining Order and Preliminary Injunction; and
- CUC's proposed Order Denying Plaintiff's Motion for Expedited Consideration of his Motion for Temporary Restraining Order, lodged 6/27/2018.

If you have any questions, please do not hesitate to let me know.

Sincerely,

Mamie Brown, Corporate Counsel  
Phone: (907) 455-0116  
Email: [mamie@akwater.com](mailto:mamie@akwater.com)

Enclosures: as stated

CC: Oran Paul, Tiffany Van Horn

MSB/4FA-18-02118 CI (*Pumpkin Limited v. USA dba CUC*)/CUC Coverletter 7.2.2018 (Rev. 7.2.2018).docx

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

FILED in the Trial Courts  
State of Alaska Fourth District

JUL 02 2018

PUMPKIN, LIMITED, )

Plaintiff, )

vs. )

UTILITY SERVICES OF ALASKA D/B/A )  
COLLEGE UTILITIES CORP., )

Defendant. )

By \_\_\_\_\_ Deputy

Case No.: 4FA-18-02118 CI

**COLLEGE UTILITIES CORP.'S OPPOSITION TO PLAINTIFF'S MOTION FOR  
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AND  
MOTION TO QUASH**

College Utilities Corp., through counsel of record, hereby file this Opposition to Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction and Motion to Quash any temporary restraining order that may have been issued by the Court but not yet received by CUC. Plaintiff seeks a temporary restraining order and temporary injunction to enjoin College Utilities Corp. ("CUC"), a public utility, from lawfully entering an established section line easement located on Plaintiff's property to install water main within that established section line easement. As shown below, Plaintiff will suffer no immediate or irreparable harm as a result of COLLEGE UTILITIES CORP.'S OPPOSITION TO PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION *Pumpkin Limited v. Utility Services of Alaska, Inc., d/b/a College Utilities Corporation*, Case No. 4FA-18-02118CI MSB/4FA-18-02118CI (Pumpkin Limited v. USA dba CUC)/FINAL Opp to Pl.'s Mtn for Temporary Restraining Order.doc  
Page 1 of 20

COLLEGE UTILITIES CORP.

P.O. Box 80370

Fairbanks, Alaska 99708

Telephone: (907) 455-3118

Fax: (907) 479-7600

1 CUC's lawful activities. Plaintiff does not have a strong  
2 likelihood of success on the merits. In 2016, Plaintiff  
3 purchased Tract A, an undeveloped lot, subject to the  
4 established section line easement. CUC's main installation is  
5 entirely consistent with its lawful use of the section line  
6 easement and the intent of section line easements in general.  
7 In addition, if the balance of the hardships standard is found  
8 to apply, it does not favor Plaintiff. The Motion for Temporary  
9 Restraining Order and Preliminary Injunction should therefore  
10 be denied. Due to the short construction season, CUC  
11 respectfully requests that the Court schedule a hearing and  
12 consider the above matter on an expedited basis.

13  
14 **1. BACKGROUND.**

15 Plaintiff's property, Tract A within the Twin Lakes  
16 Subdivision Phase I, was platted with the Section Line Easement  
17 ("SLE") in place along its western edge in 1999.<sup>1</sup> McKinley  
18 Development Corporation, the owner of Tract A in 1999, adopted  
19 Plat 99-77 and dedicated the SLE for public use.<sup>2</sup> Plat 99-77  
20 was approved by the Fairbanks North Star Borough Platting  
21

22  
23 <sup>1</sup> Exhibit A (Plat 99-77) (clearly showing the section line easement).  
<sup>2</sup> *Id.*

1 Authority and accepted by the State of Alaska.<sup>3</sup> Plaintiff  
2 purchased Tract A, subject to the existing SLE, on October 26,  
3 2016.<sup>4</sup> Plaintiff previously admitted there was a SLE and that  
4 he had sought appointment to the Planning Commission or similar  
5 governmental entity for the purpose of obtaining influence to  
6 enable him to vacate the SLE.<sup>5</sup> The SLE has not been vacated.<sup>6</sup>

7 The State of Alaska, Department of Natural Resources  
8 (DNR), does not object to CUC's installation of water main  
9 within the SLE located on Plaintiff's property.<sup>7</sup> The SLE exists  
10 and runs along the western edge of Tract A.<sup>8</sup>

11 CUC is a public utility that is regulated by the  
12 Regulatory Commission of Alaska ("RCA") and provides water  
13 service pursuant to Certificate of Public Convenience and  
14

15  
16  
17  
18 <sup>3</sup> *Id.*

19 <sup>4</sup> Exhibit B (Statutory Warranty Deed [2016-016207-0]) ("SUBJECT TO...  
20 easements of record....").

21 <sup>5</sup> Exhibit C (6/28/2018 Affidavit of Tarik Spear).

22 <sup>6</sup> See generally, Exhibit D (Plat 2010-41) and Exhibit E (Plat 2009-89)  
23 (both Plats clearly show the SLE).

24 <sup>7</sup> Exhibit F (DNR's 6/26/2018 Non-Objection Letter to CUC).

25 <sup>8</sup> Exhibit G (Stutzmann Engineering Associates, Inc.'s 6/27/2018 Ltr.  
26 to CUC) ("Unless or until there is some dramatic reinterpretation of  
the entire body of law pertaining to the issue of section line  
easements, we believe that the easement exists, as shown, on the plat  
of the Twin Lakes Subdivision").

COLLEGE UTILITIES CORP.'S OPPOSITION TO PLAINTIFF'S MOTION FOR TEMPORARY  
RESTRAINING ORDER AND PRELIMINARY INJUNCTION

*Pumpkin Limited v. Utility Services of Alaska, Inc., d/b/a College Utilities  
Corporation, Case No. 4FA-18-02118CI*

MSB/4FA-18-02118CI (Pumpkin Limited v. USA dba CUC)/FINAL Opp to Pl.'s Mtn for  
Temporary Restraining Order.doc

1 Necessity No. 97.<sup>9</sup> CUC notified Plaintiff of CUC's intent to  
2 install four inch water main within the SLE running along the  
3 western boarder of Plaintiff's property in the Twin Lakes  
4 Subdivision Phase 1.<sup>10</sup> On March 16, 2017, the RCA published a  
5 Notice of CUC's Application to Expand Service Area which  
6 includes Plaintiff's property.<sup>11</sup> No comments were received.<sup>12</sup>  
7 On September 6, 2017, the RCA approved the service map and  
8 description as filed with the CUC's March 10, 2017  
9 application.<sup>13</sup> The RCA installation was approved pursuant to  
10 the Service Area Extension approved by the RCA on September 6,  
11 2017.<sup>14</sup>

12 CUC is installing a four inch water main within the SLE  
13 pursuant to its Certificate of Public Convenience and  
14 Necessity.<sup>15</sup> The majority of the area to be cleared within the  
15  
16

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17 <sup>9</sup> Exhibit H (Certificate of Public Convenience and Necessity) (CUC is  
18 authorized "to operate as a public utility... for the purpose of  
furnishing WATER SERVICE.") (emphasis added).

19 <sup>10</sup> Exhibit C at ¶ 5.

20 <sup>11</sup> Exhibit I (RCA's 3/16/2018 Notice of Utility Application to Expand  
21 Service Area).

22 <sup>12</sup> Exhibit J at p. 2 (RCA's 9/6/2017 Order Granting Application to  
23 Amend Certificate of Public Convenience and Necessity, Requiring  
24 Filings, Approving Service Area Map and Description, and Approving  
25 Tariff Sheets, U-17-015(2)).

26 <sup>13</sup> *Id.* at p. 7.

<sup>14</sup> *Id.* at p. 1-8.

<sup>15</sup> Exhibit H at p. 1.

1 SLE contains brush and young trees.<sup>16</sup> The SLE appears to have  
2 been clear cut in the past two or three years due to the size  
3 of brush in the SLE.<sup>17</sup> The route was selected to avoid existing  
4 structures, to avoid the removal of developed green spaces on  
5 multiple lots, and to avoid the need to excavate the driveway  
6 of Plaintiff's parents which also runs along the SLE.<sup>18</sup>

7 **2. LAW.**

8 "Equitable injunctive relief is an extraordinary remedy  
9 that is appropriate only where the party requesting relief is  
10 likely to otherwise suffer irreparable injury and lacks an  
11 adequate remedy at law."<sup>19</sup>

12 **a. Plaintiff's Burden under Civil Rule 65.**

13 Pursuant to Civil Rule 65(b), a temporary restraining  
14 order ("TRO") may be granted without notice to the adverse  
15 party or that party's attorney **only if**

16 (1) it clearly appears from specific facts shown by  
17 affidavit or by the verified complaint that immediate  
18 and irreparable injury, loss, or damage will result to  
19 the applicant before the adverse party or that party's  
20 attorney can be heard in opposition, and

21 <sup>16</sup> Exhibit C at ¶ 11 (6/28/2018 Affidavit of Tarik Spear).

22 <sup>17</sup> Exhibit K (FBNS GIS Image of Tract A).

23 <sup>18</sup> See Exhibit L (FNSB GIS Image of PAN No. 0608484); see also,  
24 Exhibit M (FNSB's Property Summary Report for PAN No. 0608484, dated  
25 June 28, 2018); Exhibit N (6/29/2018 Photograph of Driveway).

26 <sup>19</sup> *Lee v. Conrad*, 337 P.3d 510, (Alaska 2014) (citations omitted).

1 (2) the applicant's attorney certifies to the court in  
2 writing the efforts, if any, which have been made to  
3 give the notice and the reasons supporting the claim  
4 that notice should not be required.<sup>20</sup>

5 An applicant is not entitled to a TRO if he fails to show that  
6 he will suffer immediate and irreparable harm before  
7 Defendant's attorney may be heard on the matter.<sup>21</sup>

8 **b. Plaintiff's Burden under the Preliminary Injunction**  
9 **Standard.**

10 Where the party asking for relief does not stand to suffer  
11 irreparable harm, or where the party against whom the  
12 injunction is sought will suffer injury if the injunction is  
13 issued, the party requesting the preliminary injunction has the  
14 burden to provide the Court clear showing of probable success  
15 on the merits.<sup>22</sup>

16 Only if the requesting party stands to suffer irreparable  
17 harm and where, at the same time, the opposing party can be  
18 protected from injury, the balancing of the hardship standard

19  
20 <sup>20</sup> Alaska R. Civ. P. 65(b).

21 <sup>21</sup> *Id.*

22 <sup>22</sup> *Alsworth v. Seybert*, 323 P.3d 47, 56 (Alaska 2014) ("The superior  
23 court should have applied the probable cause success on the merits  
24 test, not the balance of the hardship test. Because the superior  
25 court applied the wrong standard, [the Alaska Supreme Court]  
26 vacate[s] the preliminary injunction in full.").

1 applies.<sup>23</sup> Under the balancing of the hardships standard, a  
2 plaintiff is not entitled to obtain a preliminary injunction  
3 unless all three factors are present: "(1) the plaintiff must  
4 be faced with irreparable harm; (2) the opposing party must be  
5 adequately protected; and (3) the plaintiff must raise  
6 "serious" and substantial questions going to the merits of the  
7 case; that is, the issues raised cannot be 'frivolous or  
8 obviously without merit.'"<sup>24</sup> The Court must assume the  
9 defendant ultimately will prevail when assessing the harm to  
10 the defendant from the injunction and assume that the plaintiff  
11 ultimately will prevail when assessing the irreparable harm to  
12 the plaintiff absent an injunction.<sup>25</sup>

13 **c. Section Line Easements.**

14 Section Line Easements are right-of-way dedicated for  
15 public use as public highways.<sup>26</sup> When a subdivision is platted,  
16 all rights-of-ways and "public areas" are dedicated to public  
17 use.<sup>27</sup> Utility installations are an acceptable secondary use of  
18  
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20

21 <sup>23</sup> *Id.* at 54-55.

22 <sup>24</sup> *Id.* at 54.

23 <sup>25</sup> *Id.*

24 <sup>26</sup> AS 40.15.030.

25 <sup>27</sup> *Id.*



1 a section line easement.<sup>28</sup> Reasonable use must be made of the  
2 right-of-way.<sup>29</sup>

3 No permit is required for utility installations within a  
4 right-of-way that is not currently in use or proposed for use  
5 by the Department of Transportation.<sup>30</sup> A section line easement  
6 continues in effect until vacated, whether or not the section  
7 line easement is being used.<sup>31</sup>

### 8 3. DISCUSSION.

9 The issuance of a TRO requires the Plaintiff to  
10 demonstrate that he will suffer immediate and irreparable harm  
11 before CUC's attorney may be heard on the matter.<sup>32</sup> The  
12 issuance of a preliminary injunction requires the Plaintiff to  
13 demonstrate a clear showing of probable success on the merits.<sup>33</sup>

14 As shown below, Plaintiff has neither made the immediate  
15 and irreparable harm showing that the issuance of a TRO  
16 requires nor made the clear showing of probable success on the  
17 merits that is required to ascertain a preliminary injunction.  
18  
19

20 <sup>28</sup> AS 19.25.010.

21 <sup>29</sup> *Anderson v. Edwards*, 625 P.2d 282, 287 (Alaska 1981) (finding that  
22 clearing all 100 feet of a 100-foot right-of-way was unreasonable  
23 where a 25-foot road was installed).

24 <sup>30</sup> 17 AAC 15.031(a).

25 <sup>31</sup> 11 AAC 51.025(b).

26 <sup>32</sup> Alaska R. Civ. P. 65(b).

1 Even if the Court determines that the balancing of the  
2 hardships standard applies, the balance of the hardship does  
3 not favor the Plaintiff. The Motion for Temporary Restraining  
4 Order and Preliminary Injunction should be therefore be denied.

5 **a. Plaintiff will not suffer immediate or irreparable harm.**

6 There is no harm to plaintiff, immediately, irreparably or  
7 otherwise. Plaintiff's filing ignores the fact that it  
8 purchased Tract A subject to an established SLE and that it had  
9 more than adequate notice of the easement on the property.<sup>34</sup> A  
10 reference to the Plat containing the SLE was even included on  
11 the legal description of its Deed.<sup>35</sup> The SLE was dedicated to  
12 public use by September 17, 1999, with the filing and recording  
13 of Twin Lakes Subdivision Plat No. 99-77.<sup>36</sup> Plaintiff's owner  
14 has additional stated that he sought appointment to the  
15 Planning Commission or similar government entity for the  
16 purpose of obtaining influence to enable him to vacate the  
17 section line easement over the property.<sup>37</sup>

21 <sup>33</sup> *Alsworth v. Seybert*, 323 P.3d at 56.

22 <sup>34</sup> Exhibit A.

23 <sup>35</sup> Exhibit B.

24 <sup>36</sup> Exhibit A.

25 <sup>37</sup> Exhibit C at ¶ 8.

1 Plaintiff's filing also ignores the fact that a cleared  
2 road already runs down the SLE at or in close proximity to the  
3 location where CUC plans to install water main.<sup>38</sup> CUC's lawful  
4 entry and use of the SLE to install water main within that  
5 established SLE is neither a taking nor trespass.<sup>39</sup> Plaintiff's  
6 reliance on *United States v. Gates of Mountain Lakeshore Homes*,  
7 732 F2d 1411 (9<sup>th</sup> Cir.) is uninstructional and irrelevant; that  
8 case related to the application of federal law on federal land.  
9 *Nollan v. Cal. Coastal Com*, 483 U.S. 825 (1987) is also is  
10 uninstructional and irrelevant. That case involved a permitting  
11 authority misusing a building permit process to ascertain a  
12 beachfront public easement.<sup>40</sup> In this case, the section line  
13 easement is a "public highway" per the statutory meaning, even  
14 if no road has been built.<sup>41</sup> Plaintiff already received the  
15 benefit of its bargain when it accepted less than a fee simple  
16 estate when it purchased Tract A.<sup>42</sup>

17  
18  
19  
20 <sup>38</sup> See Exhibits K.

21 <sup>39</sup> AS 40.15.030.

22 <sup>40</sup> *United States v. Gates of Mountain Lakeshore Homes*, 732 F2d  
23 1411 (9<sup>th</sup> Cir.).

24 <sup>41</sup> 11 AAC 51.025(b).

25 <sup>42</sup> Exhibit B (Plaintiff's Statutory Warranty Deed states, "Subject to...  
26 easements of record....").

1 Without addressing remediation efforts CUC will provide,<sup>43</sup>  
2 Plaintiff's erroneously alleges he will suffer over \$100,000 in  
3 damages.<sup>44</sup> The entire assessed value of Plaintiff's land in  
4 2018 is \$84,354.<sup>45</sup> Plaintiff cannot be harmed for a property  
5 right it does not own; Plaintiff is not entitled to damages  
6 under AS 09.45.730 for the lawful removal of trees and brush.<sup>46</sup>  
7 The trees and brush in issue do not have a particular value in  
8 of themselves. Plaintiff's property is not a Christmas or  
9 ornamental tree farm. Plaintiff is not a professional topiary  
10 sculptor or a botanist who collects rare and endangered plants.  
11 Any removed trees and brush can be replanted or replaced with  
12 no change in Plaintiff's property value.

13 Furthermore, CUC has no control over the public, who have  
14 a right to traverse the section line easement irrespective of  
15 CUC's main installation. Section Line Easements are right-of-  
16 way dedicated for public use as public highways.<sup>47</sup> The SLE was  
17 dedicated to public use when the subdivision was platted in  
18  
19

20 <sup>43</sup> Remediation after a main installation is standard utility practice.

21 <sup>44</sup> Pl.'s 6/25/2018 Verified Complaint for Injunctive Relief and  
Damages at p. 5.

22 <sup>45</sup> Exhibit O (FBNS 6/28/2018 Assessing Property Account Summary for  
PAN 0509256 [Tract A]).

23 <sup>46</sup> See *Anderson v. Edwards*, 625 P.2d 282, 286 (Alaska 1981).

24 <sup>47</sup> AS 40.15.030.

1 1999.<sup>48</sup> CUC's installations are an acceptable secondary use of  
2 a SLE.<sup>49</sup> The State of Alaska specifically anticipates that CUC  
3 will be installing within the SLE.<sup>50</sup>

4 Even assuming that the Court found Plaintiff would be  
5 harmed by CUC's main installation within the section line  
6 easement as provided by state law, any harm would not be  
7 irreparable, and thus would not meet the standard for the  
8 issuance of a TRO.<sup>51</sup> Either Plaintiff or CUC can replant and/or  
9 reseed any cleared area(s) and/or plant trees and shrubs of  
10 sufficient size to interrupt the open and unimpeded access by  
11 the public over the installed water main. Contrary to  
12 Plaintiff's opinion, raspberries, roses, irises, and  
13 wildflowers can all be replaced.<sup>52</sup> CUC has offered to replant  
14 and reseed cleared areas to remain on good terms with  
15 Plaintiff.<sup>53</sup>

17 Accordingly, Plaintiff is unlikely to prevail on the  
18 merits and failed to raise any substantial questions going to  
19

20 <sup>48</sup> *Id.*

21 <sup>49</sup> See AS 19.25.010; *Fisher v. GVEA*, 685 P.2d 127 (Alaska 1983).

22 <sup>50</sup> See AS 19.25.010.

23 <sup>51</sup> See *Lee v. Konrad*, 337 P.3d 510 (Alaska 2014).

24 <sup>52</sup> See Pl's 6/25/2018 Verified Complaint for Injunctive Relief and  
25 Damages at p. 5.

26 <sup>53</sup> Exhibit C at ¶ 10-12.

1 the merits of the case. Therefore, the denial of the TRO and  
2 preliminary injunction is appropriate.

3 **b. A section line easement exists over Tract A.**

4 Plaintiff's analysis of *Brice v. Division of Forest, Land*  
5 *& Water*, 669 P.2d 311, and *State v. Land Title Ass'n*, 667 P.2d  
6 714 (Alaska 1983) are irrelevant.<sup>54</sup> Even if there were any  
7 concern about the validity of a section line easement on the  
8 original land patent based on a 1913 survey containing  
9 Plaintiff's property or earlier entry, those concerns became  
10 irrelevant subsequent to the platting of the property as Twin  
11 Lakes Subdivision, Phase I, Plat No. 99-77. All rights-of-way  
12 are dedicated to public use when a subdivision is platted.<sup>55</sup>  
13 Any question that previously may have been valid regarding the  
14 existence of the SLE on Plaintiff's property was answered when  
15 the Fairbanks North Star Borough filed and recorded the Twin  
16 Lake Subdivision plat finalized by the then owner of the Tract  
17 A, McKinley Development Corp.<sup>56</sup>

18  
19 **c. The Section Line Easement may be utilized by CUC to**  
20 **Install Water Main.**

21  
22 <sup>54</sup> Pl.'s 6/25/2018 Motion for Temporary Restraining Order and  
Preliminary Injunction at pp. 4-6.

23 <sup>55</sup> AS 40.15.030.

<sup>56</sup> Exhibit A.

1 Enjoining CUC, a public utility, from lawfully entering an  
2 established SLE located on Plaintiff's property to install  
3 water main within that established SLE will cause serious harm  
4 on CUC by further delaying construction efforts, escalating  
5 construction cost, and hindering timely water service. Contrary  
6 to Plaintiff's argument that *Fisher v. GVEA*, 685 P.2d 127, 129  
7 (Alaska 1983) should be limited to allow only powerline  
8 construction on previously unutilized easements, the court in  
9 *Fisher* specifically noted that utility installations are  
10 specifically included within the uses of section line easements  
11 provided for by statute.<sup>57</sup>

12  
13 Installation of the four inch water main in the section  
14 line easement on Plaintiff's property is reasonably anticipated  
15 to use 20-30 feet, from stockpiled materials for installation  
16 on one side of the trench, the trench itself, the heavy  
17 equipment used for trenching and backfilling, and the backfill  
18 material which is dirt previously removed from the trench.<sup>58</sup> No  
19 permit is required for a utility company to use a section line  
20 easement unless it is presently used or proposed for use by the  
21

22 <sup>57</sup> *Fisher* at 130; AS 19.25.010.

23 <sup>58</sup> See Exhibit P (photo depicting 4" water main installation elsewhere  
within the same service project).

1 Department of Transportation.<sup>59</sup> The holding of *Fisher* was broad.  
2 After reviewing multiple jurisdictions and AS 19.25.010, the  
3 Alaska Supreme Court held:

4 In our view this statute places Alaska among those  
5 states which permit powerline construction as an  
6 incidental and subordinate use of a highway easement.  
7 Since the statute makes no distinction between urban  
8 and rural areas, or between those utilities which  
9 benefit highway travel and those which do not, and  
10 does not call for acquisition of an additional  
11 servitude from the owner of the fee, it cannot be  
12 squared with any of the other rules mentioned  
13 above.... The fact that the section line easement was  
14 not actually used for highway purposes does not  
15 dictate a different result. Since a highway could be  
16 built, a powerline, which is a subordinate and less  
17 intrusive use, may be. **'The rule is, that the use of  
18 an easement in lands cannot be extended or made  
19 greater than the terms of the reservation authorizes,  
20 but it may be less.'** Further, a regulation promulgated  
21 under AS 19.25.010 provides that utility use of an  
22 unused section-line right-of-way is permissible even  
23 without a permit from the state.<sup>60</sup>

24 Under this holding, CUC's use of the unused section line  
25 easement to install water main is permissible even without a  
26 permit from the state.<sup>61</sup>

20 \_\_\_\_\_  
21 <sup>59</sup> 17 AAC 15.031; *Fisher v. GVEA*, 658 P.2d 127 (Alaska 1983) (holding  
22 that a utility may construct a powerline on an unused Section Line  
23 Easement).

24 <sup>60</sup> *Fisher* at 130, citing AS 12.25.010 and 17 AAC 15.031(a) (further  
25 citations omitted) (emphasis added).

26 <sup>61</sup> See *id.*



1 Furthermore, section line easements are right-of-ways  
2 dedicated for use as *public highways*.<sup>62</sup> Highway is defined as "A  
3 free and public road, way, or street; one which every person  
4 has the right to use."<sup>63</sup> All rights-of-way are dedicated to  
5 public use when a subdivision is platted.<sup>64</sup> The public has the  
6 right to use the Section Line Easement even without CUC's  
7 anticipated main installation. Further, the State of Alaska  
8 anticipates that utilities will be installed within a section  
9 line easement.<sup>65</sup> Plaintiff's arguments that CUC cannot install  
10 a water main in a dedicated section line easement stretches the  
11 bounds of credulity and should be considered frivolous in the  
12 fact of clear statutory authority to the contrary.

13 **d. No Permit is required for CUC to Install Water Main in the**  
14 **Section Line Easement.**

15 The Department of Transportation ("DOT") confirmed that the  
16 SLE is not currently being used by the DOT. AS 19.25.010  
17 provides that a utility facility may be constructed "... within  
18 a state right-of-way only in accordance with regulations  
19 adopted by the department and authorized by written permit...."

21 \_\_\_\_\_  
22 <sup>62</sup> AS 19.10.010.

23 <sup>63</sup> BLACK'S LAW DICTIONARY Free Online Legal Dictionary (2<sup>nd</sup> Edition,  
24 2018) (other citations omitted).

25 <sup>64</sup> AS 40.15.030.

1 However, regulations adopted by the DOT note that the permit is  
2 required only if the section line easement is in use or is  
3 anticipated to be used by the State of Alaska.<sup>66</sup> CUC contacted  
4 the Fairbanks Office of the Alaska DOT and was advised that the  
5 SLE is not in use or is anticipated to be used. Thus, no permit  
6 is required for CUC's installation per state regulation.

7 **e. Defendant's water main installation was duly noticed;**  
8 **Plaintiff received an opportunity for hearing.**

9 Plaintiff was afforded notice and an opportunity for a  
10 hearing. On March 16, 2017, the RCA published Notice of CUC's  
11 Application to Expand Service Area (to include Plaintiff's  
12 property).<sup>67</sup> No comments were received.<sup>68</sup> The RCA approved the  
13 serve map and description as filed with CUC's Application,  
14 dated March 10, 2017.<sup>69</sup>

15 Furthermore, Plaintiff received personal notice that the  
16 water main would be installed over his property.<sup>70</sup>  
17 Superintendent Spear spoke with Plaintiff's owner and agent,  
18 Mr. Roe, on multiple occasions regarding the installation of  
19

20  
21 <sup>65</sup> AS 19.25.010.

<sup>66</sup> 17 AAC 15.031.

<sup>67</sup> Exhibit I at p. 1.

<sup>68</sup> Exhibit J at p. 1-8.

<sup>69</sup> *Id.* at p. 7.

<sup>70</sup> Exhibit C at ¶ 5.

1 the water main.<sup>71</sup> Plaintiff only later objected to the  
2 installation; that objection was based on his desire that the  
3 installation should occur without any clearing.<sup>72</sup> At no time did  
4 Plaintiff indicate any belief that the SLE was either invalid  
5 or inappropriate for use for the water main installation;  
6 rather, he admitted that he had sought appointment to the local  
7 Planning Commission or similar entity for the sole purpose of  
8 obtaining sufficient influence to succeed in getting the SLE  
9 vacated.<sup>73</sup>

10 **f. Reasonable Inquiry was taken into the Use of the Section**  
11 **Line Easement on Plaintiff's Property.**

12 Although CUC can use any portion of the SLE, CUC has made  
13 all reasonable inquiries to determine the least obtrusive path  
14 for the main installation. Before determining the location of  
15 the main installation, CUC had multiple conversations with  
16 Plaintiff's agent and owner, Mr. Roe.<sup>74</sup> The route was selected  
17 to avoid existing structures and to avoid the need to excavate  
18 the driveway of Plaintiff's parents.<sup>75</sup>

21 <sup>71</sup> *Id.* at ¶ 5.

22 <sup>72</sup> Exhibit Q at p. 1 (Pl.'s 6/12/18 Ltr. to CUC).

23 <sup>73</sup> Exhibit C at ¶ 8.

24 <sup>74</sup> *Id.* at ¶ 5.

25 <sup>75</sup> See Exhibits K and L; see also, Exhibit M.

1           Moreover, contrary to Plaintiff's claim, CUC does not  
2 intend to "clear a 33-foot-wide, 1,246 foot-long public  
3 passageways."<sup>76</sup> CUC provided Plaintiff multiple assurances that  
4 CUC will clear no more than needed to complete the main line  
5 extension.<sup>77</sup> Plaintiff has numerous openings and clearings  
6 along the selected route; the route enables CUC to avoid  
7 disturbing more than is necessary to complete the main  
8 installation and to avoid disturbing developed green strips for  
9 six other properties.<sup>78</sup> The selection of the outer edge limits  
10 how much clearing needs to be performed.

#### 11           **4. CONCLUSION.**

12           For the foregoing reasons, Plaintiff's Motion for  
13 Temporary Restraining Order and Preliminary Injunction should  
14 be denied. If any temporary restraining order has been issued  
15 by the Court but not yet received by CUC, this Court should  
16 grant CUC's Motion to Quash. CUC, a public utility, should not  
17 be estopped from lawfully entering the established SLE located  
18

19  
20  
21 <sup>76</sup> See Pl.'s Motion Temporary Restraining Order and Preliminary  
Injunction at p. 3 (dated June 25, 2018).

22 <sup>77</sup> See e.g., Exhibit R (CUC's Letter to Pl., dated June 13, 2018) ("Be  
rest assured that the CUC crew will only be removing what is  
necessary to accomplish their work.").

23 <sup>78</sup> Exhibit K.

COLLEGE UTILITIES CORP.  
P.O. Box 80370  
Fairbanks, Alaska 99708  
Telephone: (907) 455-3118  
Fax: (907) 479-2699

1 on Plaintiff's property to install water main within that  
2 established SLE.

3 DATED at Fairbanks, Alaska this 1<sup>st</sup> day of July, 2018.

4 COLLEGE UTILITIES CORP.

5 By: Mamie S. Brown

Mamie S. Brown

6 3691 Cameron Street, Suite 201

7 Fairbanks, Alaska 99709

8 Phone: (907) 479-3118

Email: mamie@akwater.com

9 Alaska Bar No. 1210076

10 **CERTIFICATE OF SERVICE**

11 I hereby certify that a copy of the foregoing document  
12 was emailed on this 1<sup>st</sup> day of July, 2018 to:

13 Robert John  
14 Kramer and Associates  
15 542 2<sup>nd</sup> Avenue, Suite 207  
16 Fairbanks, Alaska 99701

17 rjohn@gci.net

18 By: Mamie S. Brown

A  
L  
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S  
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**2016-016207-0**

Recording Dist: 401 - Fairbanks  
10/27/2016 09:33 AM Pages: 1 of 1



After recording return to the Grantee  
Escrow No.: Y96999-JN(E)

**STATUTORY WARRANTY DEED**

**THE GRANTOR:** Thomas Felix Krause and Silke Schiewer, husband and wife  
whose mailing address is: 3655 Keystone Road, Fairbanks, AK, 99709

for and in consideration of TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION in hand paid, conveys and warrants to

**THE GRANTEE(s):** Pumpkin, Ltd  
whose mailing address is: PO Box 72789, Fairbanks, AK, 99707

the following described real estate:

**Tract "A" of TWIN LAKES SUBDIVISION, PHASE I, according to the plat filed September 17, 1999 as Plat No. 99-77; Records of the Fairbanks Recording District, Fourth Judicial District, State of Alaska.**

SUBJECT TO property taxes; reservations and exceptions as contained in the U.S. Patent; easements of record; and covenants, conditions and restrictions of record, if any.

Dated this 26th day of October, 2016.

Thomas Felix Krause

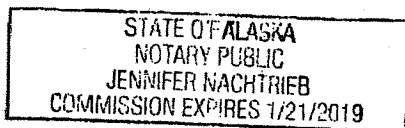
Silke Schiewer

STATE OF ALASKA )  
JUDICIAL DISTRICT OR COUNTY: FOURTH )ss.

THIS IS TO CERTIFY that on this 26th day of October, 2016, before me the undersigned Notary Public, personally appeared Thomas Felix Krause and Silke Schiewer known to me and to me known to be the individual(s) described in and who executed the foregoing instrument and acknowledged to me that he/she/they signed the same freely and voluntarily for the uses and purposes therein set forth

(Seal)

Notary Public in and for ALASKA  
My commission expires: \_\_\_\_\_



COLLEGE UTILITIES CORP.  
P.O. Box 80370, Fairbanks, Alaska 99708  
Telephone: (907) 455-3118  
Fax: (907) 479-2699

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

PUMPKIN, LIMITED, )  
 )  
Plaintiff, )  
 )  
vs. ) Case No.: 4FA-18-02118 CI  
 )  
UTILITY SERVICES OF ALASKA D/B/A )  
COLLEGE UTILITIES CORP., )  
 )  
Defendant. )  
 )

AFFIDAVIT OF TARIK SPEAR

I, **Tarik Spear**, being first duly sworn, do hereby depose and state the following:

1. I am the Superintendent of College Utilities Corp. and have worked for CUC for over 15 years. I have personal knowledge of the facts stated herein.

2. I am responsible for designing, building, and installing main in CUC's territory. I have installed over 200,000 linear feet of main in CUC's territory. I also facilitate contracts and agreements for main installations and utility work at other utilities and the military. I oversee crews of 8-15 employees. I have history of completing large scale utility projects on time and under budget. Also, I supervise utility operations.

AFFIDAVIT OF TARIK SPEAR  
*Pumpkin Limited v. Utility Services of Alaska, Inc., d/b/a College Utilities Corporation, Case No. 4FA-18-02118CI*  
MSB/4FA-18-02118CI (Pumpkin Limited v. USA dba CUC)/Affidavit of Tarik Spear.doc  
Page 1 of 4

COLLEGE UTILITIES CORP.  
P.O. Box 80370, Fairbanks, Alaska 99708  
Telephone: (907) 455-3118  
Fax: (907) 479-2699

1 3. I have managed numerous customer contract jobs both large  
2 and small earning CUC recognition from the State of Alaska, the  
3 City of Fairbanks, the City of Nenana, the Alaska Railroad,  
4 other Utilities, and local contractors.

5 4. On information and belief, Mr. Jason Roe ("Mr. Roe") owns  
6 and is the agent for Pumpkin, Ltd. On information and belief,  
7 Pumpkin, Ltd. is the current owner of Tract A. On information  
8 and belief, Pumpkin, Ltd. has owned Tract A since October of  
9 2016.

10 5. CUC notified Mr. Roe of our intent to install a four inch  
11 water main within the Section Line Easement ("SLE") running  
12 along the western edge of Plaintiff's property ("Tract A") at  
13 the Twin Lakes Subdivision, Phase I, on or about April 2018.  
14 Mr. Roe had more than enough advanced notice of the SLE on  
15 Tract A.  
16

17 6. I contacted the Department of Transportation ("DOT") and  
18 was advised that the SLE was not currently being used or  
19 proposed for use by DOT. DNR does not object to CUC's use of  
20 the SLE.

21 7. On information and belief, the SLE in question has not  
22 been vacated.  
23

24 AFFIDAVIT OF TARIK SPEAR

25 *Pumpkin Limited v. Utility Services of Alaska, Inc., d/b/a College Utilities*  
*Corporation, Case No. 4FA-18-02118CI*

26 MSB/4FA-18-02118CI (Pumpkin Limited v. USA dba CUC)/Affidavit of Tarik  
Spear.doc

Page 2 of 4



1 8. Mr. Roe admitted that there is a SLE on Tract A. Mr. Roe  
2 stated to me that he recently sought appointment to the  
3 Planning Commission or similar governmental entity for the  
4 purpose of obtaining influence to enable him to vacated the SLE  
5 over Tract A. A contractor with BlackHawk Works overheard this  
6 conversation.

7 9. Either Mr. Roe or CUC can replant and/or re-seed any  
8 cleared areas, and/or plant trees or brush of significant size  
9 to interrupt open/unimpeded access by the public over the  
10 installed water main.

11 10. CUC offered to replant and re-seed any cleared areas  
12 and to plant trees and/or brush of significant size in an  
13 attempt to remain on good terms with Mr. Roe.

14 11. CUC's crew removes only what is necessary to  
15 accomplish their work. The majority of the area that needs to  
16 be cleared contains bush, grass, and young trees.

17 12. CUC is willing to replant trees and re-seed any  
18 cleared areas with right-of-way mix or grass after  
19 installation. This was relayed to Mr. Roe on multiple  
20 occasions.

21  
22 FURTHER THE AFFIANT SAYETH NAUGHT.

23  
24 AFFIDAVIT OF TARIK SPEAR

*Pumpkin Limited v. Utility Services of Alaska, Inc., d/b/a College Utilities  
25 Corporation, Case No. 4FA-18-02118CI*

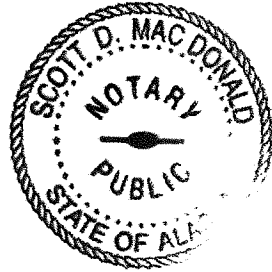
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26 Spear.doc  
Page 3 of 4

COLLEGE UTILITIES CORP.  
P.O. Box 80370, Fairbanks, Alaska 99708  
Telephone: (907) 455-3118  
Fax: (907) 479-2699

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Dated this 28<sup>th</sup> day of June, 2018, at Fairbanks, Alaska.



By: Tarik Spear

Tarik Spear, Superintendent  
College Utilities Corp.  
3691 Cameron Street, Ste. 201  
Fairbanks, Alaska 99708  
Phone: (907) 479-3118  
Email: tarik2@akwater.com

SUBSCRIBED AND SWORN TO before me this 28<sup>th</sup> of June, 2018.

Scott D. Mac Donald  
Notary Public in and for Alaska  
My Commission Expires 2/11/21

AFFIDAVIT OF TARIK SPEAR  
*Pumpkin Limited v. Utility Services of Alaska, Inc., d/b/a College Utilities Corporation, Case No. 4FA-18-02118CI*  
MSB/4FA-18-02118CI (Pumpkin Limited v. USA dba CUC)/Affidavit of Tarik Spear.doc  
Page 4 of 4



THE STATE  
of ALASKA

GOVERNOR BILL WALKER

June 26, 2018

ADL 421061

Utility Services of Alaska, Inc.  
3691 Cameron Street, Ste 201  
Fairbanks, AK 99709  
via email: maimie@akwater.com

RE: Non-Objection to placement of a utility within a section line easement

The Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Northern Regional Land Office (NRO) has received your request for non-objection to construct an underground water line within a State-managed section line easement (SLE) that you conclude to be present in the following location(s):

Legal Description: Within the western Section Line Easement and within Sea Way, as depicted on Plat 99-77, Fairbanks Recording District, and as shown on the attached drawings.

Alaska Statute 19.10.010 provides for the appropriate development of a SLE for access purposes. Additionally, the Alaska Supreme Court has stated in *Fisher v. Golden Valley Elec. Ass'n, Inc.* 658 P.2d 127 (1983) that the construction of utilities within these easements is an acceptable secondary use if the utility does not interfere with use of the SLE for access purposes. However, pursuant to 11 AAC 51.100(j), DNR does not issue permits for secondary uses of SLEs on non-State lands. Therefore, as lands along this section line are not owned by the State of Alaska nor are access improvements proposed, DNR-DMLW does not verify the location and width of any SLEs that may impact your project. However, NRO does not object to the placement of the proposed infrastructure if SLEs have attached as you conclude.

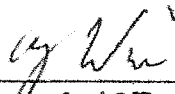
Please note that as the primary purpose of a SLE is for access, you may be required to relocate your infrastructure at your own expense if the area you occupy is reasonably needed for future access development.


Public access along any SLE may not be blocked through physical obstruction, signage, or other means, including by alterations to the topography of the easement that will obstruct additional use of the easement. Please also be advised that any materials such as trees that are disturbed in the course of development are the property of the underlying land owner.

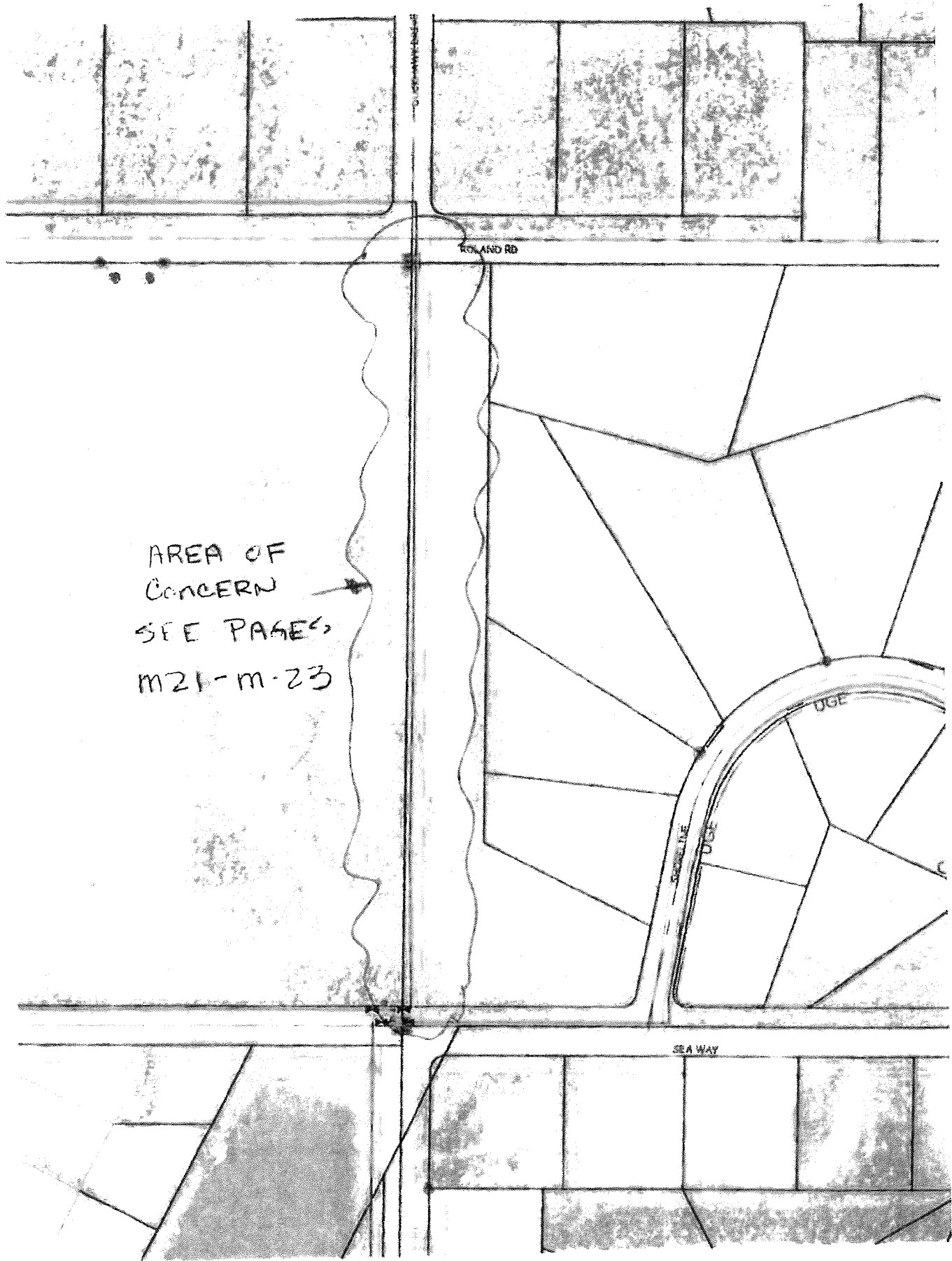
It is your responsibility to protect all corner markers, witness corners, reference monuments, mining claim posts, bearing trees and other monuments of record against damage, destruction, or obliteration. You are required to notify this office of any damaged, destroyed, or obliterated markers and will be responsible for reestablishing the markers at your own expense in accordance with DMLW survey practices.

Because this letter of non-objection is based on an analysis of current conditions, this letter non-objectioning to construction activities is valid for a period of 3 years from the date of signature below. The administrative record for this non-objection is the casefile for ADL 421061. Questions concerning this letter may be directed to AJ Wait via email to [aj.wait@alaska.gov](mailto:aj.wait@alaska.gov) or via phone at (907) 451-2777.

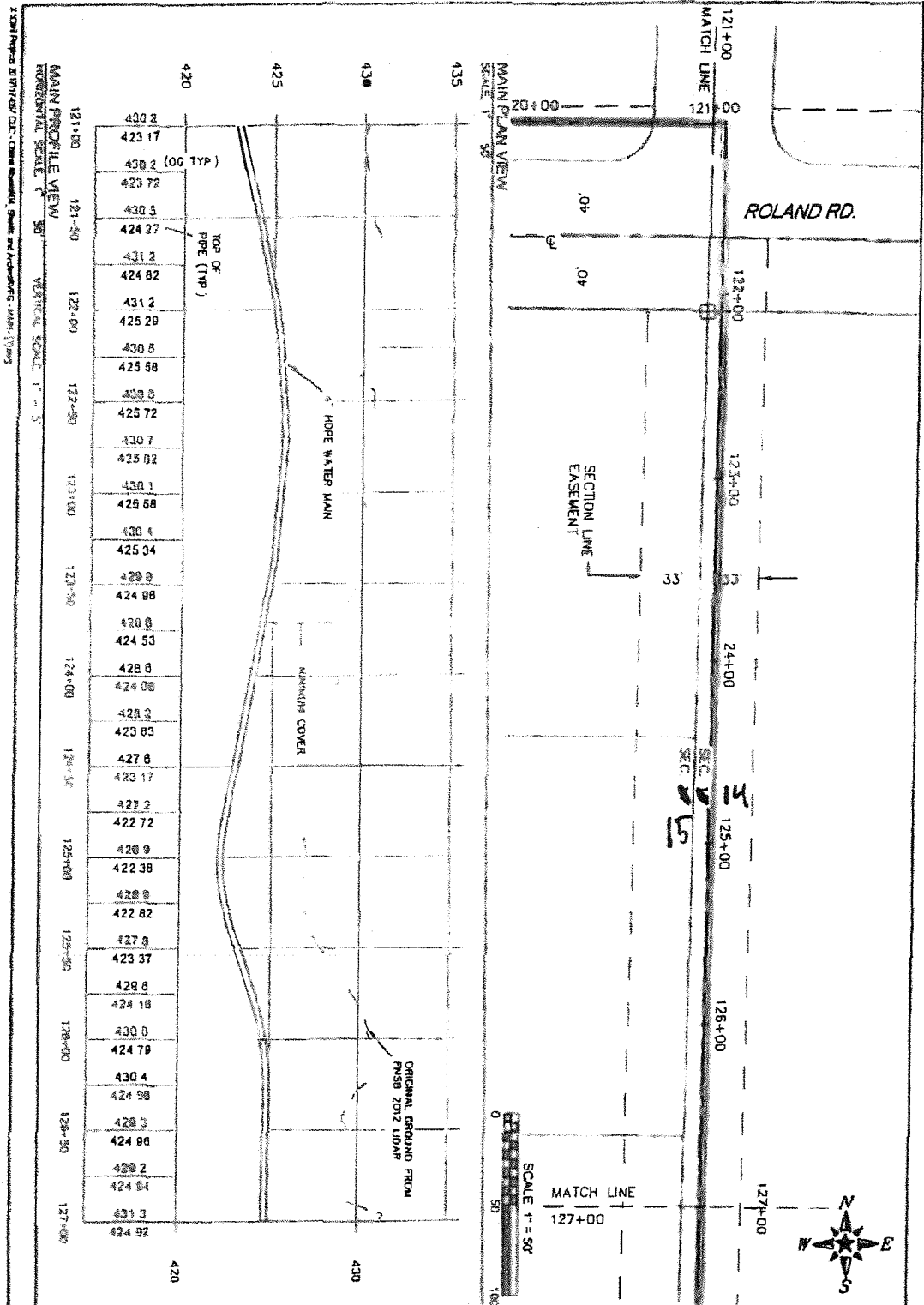
Sincerely,

  
\_\_\_\_\_  
Authorized Officer  
DNR Division of Mining, Land and Water

  
\_\_\_\_\_  
Date

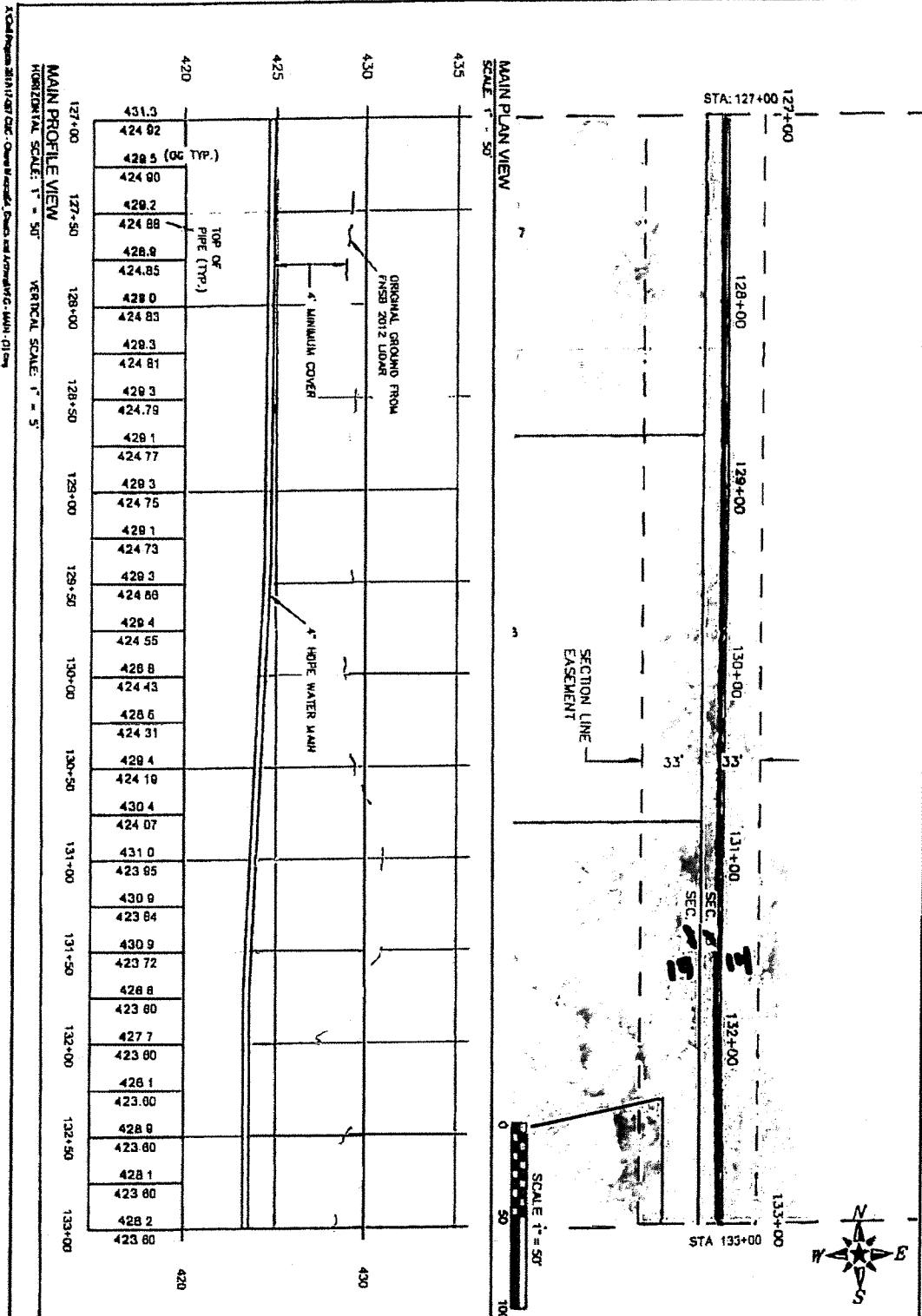


AREA OF  
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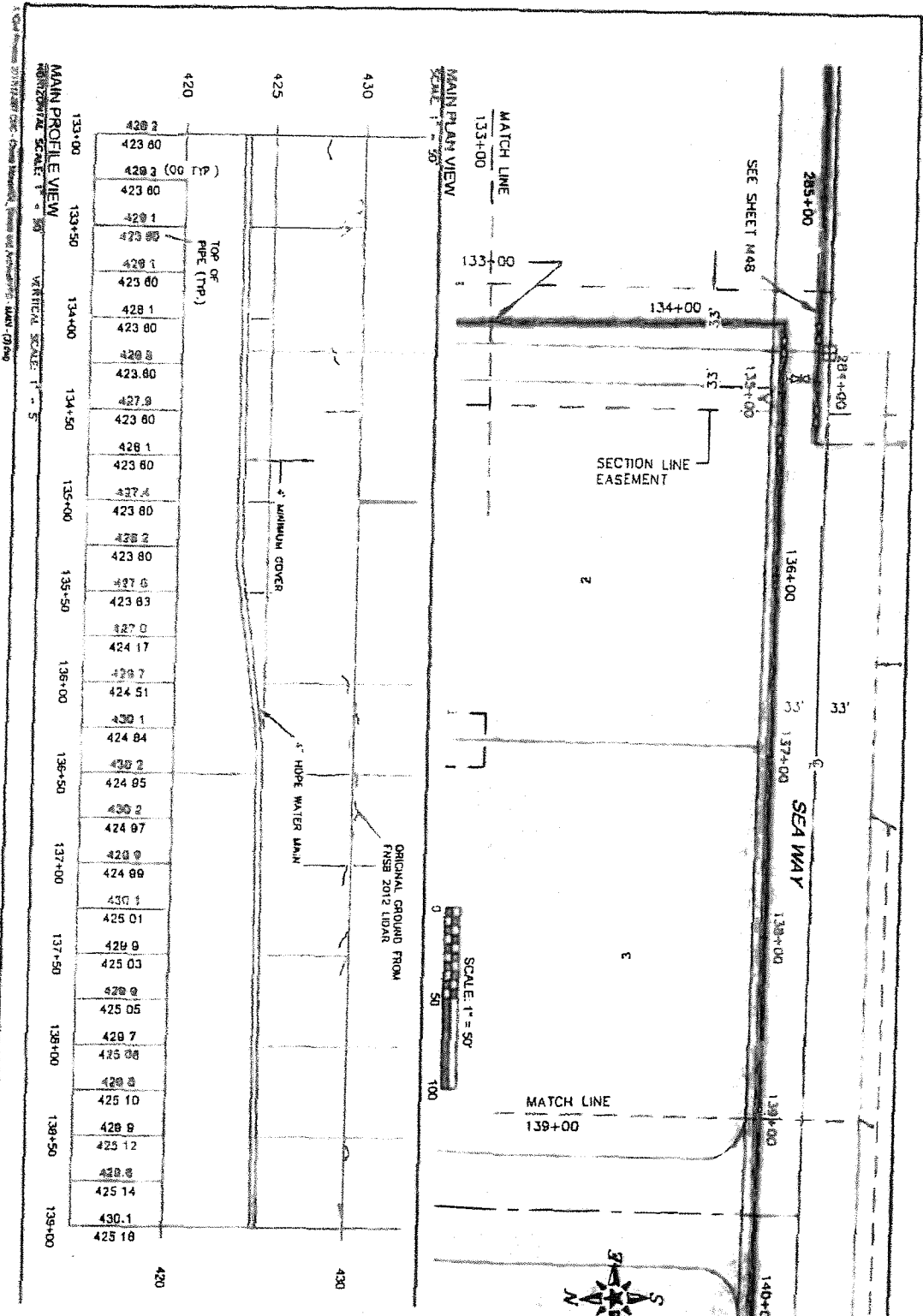


**Construction**

|                    |                 |               |  |                           |  |
|--------------------|-----------------|---------------|--|---------------------------|--|
| DATE:<br>5/11/2018 | CHECKER:<br>SEA | DRAWN:<br>JOS | Chena Marina Area Water Main<br>Installation                       | LOCATION                  | <br>TUTZMANN<br>ENGINEERING<br>ASSOCIATES, INC.<br>P.O. BOX 71429, FAIRBANKS, AK 99707<br>9 ADAM AVENUE, FAIRBANKS, AK 99701<br>(907) 452-4094 (C 527) |
|                    |                 |               | <b>MAIN</b><br><b>PLAN &amp; PROFILE</b><br>FOR: COLLEGE UTILITIES | CHENA MARINA AND VICINITY |  |
| <b>M21</b>         |                 |               |  |                           |  |



|  |   |                           |  |
|--|---|---------------------------|--|
| <b>Construction</b>  |   | LOCATION:                 | <p><b>STUTZMANN ENGINEERING ASSOCIATES, INC.</b><br/>P.O. BOX 71429, FAIRBANKS, AK 99707<br/>9 ADAM AVENUE, FAIRBANKS, AK 99701<br/>(907) 452-4094 (C 627)</p> |
| DR. AMN. 05<br>CHECKED: SEA<br>DATE: 5/11/2018<br><b>M22</b> | Chena Marina Area Water Main Installation<br><b>MAIN</b><br><b>PLAN &amp; PROFILE</b><br>FOR: COLLEGE UTILITIES | CHENA MARINA AND VICINITY |  |



**Construction**

|            |                 |                |   |                                     |  |
|------------|-----------------|----------------|---|-------------------------------------|--|
| <b>M23</b> | DATE: 5/11/2018 | DRYER: JMS     | Chena Marina Area Water Main Installation | LOCATION: CHENA MARINA AND VICINITY | <p><b>STUTZMANN ENGINEERING ASSOCIATES, INC.</b><br/>P.O. BOX 71429, FAIRBANKS, AK 99707<br/>9 ADAM AVENUE, FAIRBANKS, AK 99701<br/>(907) 452-4094 (C 627)</p> |
|            | CHECKER: SEA    | PLAN & PROFILE | FOR COLLEGE UTILITIES                     |                                     |  |



**STUTZMANN ENGINEERING ASSOCIATES, INC.**

9 Adak Avenue • P.O. Box 71429 • Fairbanks, Alaska 99707-1429

907-452-4094 • FAX 452-1034

Email: emound@sea-arctic.com

June 27, 2018

Utility Services of Alaska, Inc.  
3691 Cameron Street, Suite 201  
Fairbanks, AK 99709

Atten.: Mamie Brown

Subject: Section Line Easement, Tract A, Twin Lakes Subdivision, Phase I

I have reviewed the documents you supplied, along with the prior research provided by my colleague, Mr. Jeremy Stark. It appears to me that our research, and the resultant conclusion that a section line easement is present along the westerly edge of Section 14, T1S, R2W, F.M. within Twin Lakes Subdivision, Phase I, is consistent with the standard procedures and guidelines that have been utilized by surveyors, right of way professionals, platting authorities and others for the past three decades, or more.

The standards and procedures to which I refer hereinabove were prepared by John F. Bennett, PLS, SR/WA, formerly the Right of Way Engineering Supervisor for the Alaska Department of Public Transportation and Public Facilities, Northern Region. This document, titled *Highway Rights of Way in Alaska*, has been updated and expanded several times over the years. The latest version is still included within the *Standards of Practice*, prepared by the Alaska Society of Professional Land Surveyors. I have attached the 1993-94 version of the Bennett paper to this letter, as it is the version that would have been in use at the time when the plat of Twin Lakes Subdivision, Phase I, was accepted by the platting authority and recorded in 1999. You will find the specific discussion of section line easements on pages 7 through 12 of the Bennett paper.

Our conclusion is consistent with that of the surveyor who prepared the plat of Twin Lakes Subdivision, Phase I, along with the Fairbanks North Star Borough platting officials who reviewed the section line research as part of the approval process.

Based on the research, we find that area in question, along the line between Section 14 and Section 15, was open and unreserved Federal land for a significant portion of the period between the enabling act (Territorial Legislature, Chapter 19 SLA 1923) and the filing of the Hollist homestead application in 1948. Hollist carried his entry to maturity and received a federal patent, No. 1127095, in 1949. At least two other homestead entry applications were filed with the General Land Office (GLO) and abandoned prior to the successful Hollist entry, based on a brief search of the Bureau of Land Management (BLM) historical index.

All parties can agree that the section line in question was surveyed on the ground by the GLO in 1911 and that the plat thereof was approved in 1913. This means that the easement in question could instantly attach to the line on the date of the enabling Act of 1923 since the presence of a surveyed section line is one of the prerequisites for the dedication. The owner's assertion that the application of a section line easement would be "retroactive" is frivolous since no third party was involved at the time of the act. The federal government may offer to burden its own lands at any time and in any manner that it chooses.

The hiatus in the operation of the Act of 1923, extending from January 18, 1949 to March 20, 1953, would have no effect whatsoever on the easement in question, within Tract A. The section line easement had already been attached to the line in question for two decades, and the hiatus would not and could not act to extinguish it.

Unless or until there is some dramatic reinterpretation of the entire body of law pertaining to the issue of section line easements, we believe that the easement exists, as shown, on the plat of Twin Lakes Subdivision. Please call if you have questions regarding this report.

Sincerely,

STUTZMANN ENGINEERING ASSOCIATES, INC.



Eugene Mound, PLS

# Highway Rights of Way in Alaska

*(Prepared by John F. Bennett, PLS, SR/WA, Right of Way Engineering Supervisor for the Alaska Department of Public Transportation and Public Facilities, Northern Region)*

*rev. 11/1/93*

## I. Introduction

The following is a compilation of notes relating to highway rights of way in Alaska. It is not to be construed as a comprehensive or complete statement and analysis of the legislation and legal issues upon which these rights of way are based.

The discussion in this paper is primarily limited to those highway rights of way established by State or Federal legislation and under the jurisdiction of the predecessors of the Department of Transportation and Public Facilities. Rights of way created by condemnation, conveyance, prescription, dedication, permitting by the State of Alaska and recent federal acts such as ANCSA, ANILCA, FLPMA, are not covered.

The primary intent of this presentation is to provide the land professional with an understanding of the process by which many of the highway rights of way in Alaska were established as well as some guidelines and sources of information which can be used to determine whether a particular property is impacted by these rights of way.

Daniel W. Beardsley, SR/WA and Attorney at Law is acknowledged for providing portions of the case law summaries and analyses as well as for "firing me up" to put this collection of right of way information to print.

## II. History

The Department of Transportation and Public Facilities is the primary management authority for highways in Alaska. Therefore, it is appropriate to review the history of the agency for whose benefit many of the rights of way to be discussed were established.

Prior to the establishment of the Alaska Road Commission, there were several pieces of Federal legislation dating back to 1900 relating to the appropriation of funds for the War Department to construct military roads in Alaska. The Act of April 27, 1904 (P.L. 188 - 33 Stat. 391) was of particular interest in that it provided for mandatory service of the male population in the construction and maintenance of public roads. Specifically, it required that "all male persons between eighteen and fifty years of age who have resided thirty days in the district of Alaska, who are capable for performing labor on roads or trails...to perform two days' work of eight hours each in locating, constructing, or repairing public roads or trails...or furnish a substitute,...or pay the sum of four dollars per day for two days' labor."

The roots of what is now the Department of Transportation and Public Facilities began with the Act of January 27, 1905 (P.L. 26 - 33 Stat. 391) which established the Alaska Road Commission under the direction of the Secretary of War. "The said board (of road commissioners) shall have the power, and it shall be their duty, upon their own motion or upon petition, to locate, lay out, construct, and maintain wagon roads and pack trails from any point on the navigable waters of said district to any town, mining or other industrial camp or settlement, or between any such towns, camps, or settlements therein."

In 1917 the Territorial legislature created a territorial Board of Road Commissioners and appropriated funds for road construction. On May 3, 1917 (Ch. 36, SLA 1917 Section 13) the legislature also addressed rights of way..."The Divisional Commission shall classify all public Territorial roads and trails in the divisions as wagon roads, sled road, or trails...The lawful width of right of way of all roads or trails shall be sixty feet (60).

Pursuant to the Act of June 30, 1932 (P.L. 218 - 47 Stat. 446)(48 USC 321a), Congress transferred administration over the roads and trails in Alaska to the Secretary of the Interior and authorized the construction of roads and highways over the vacant and unappropriated public lands under the jurisdiction of the Department of the Interior. This statute did not specify the width of the rights-of-way which may be established.

The Secretary of the Interior's jurisdiction over the Alaskan road system ended on June 29, 1956 when Congress enacted section 107(b) of the Federal-Aid Highway Act of 1956 (70 Stat. 374), which transferred the administration of the Alaskan Roads to the Secretary of Commerce. The Commerce department operated the system as the Bureau of Public Roads.

On April 1, 1957 the Territory of Alaska enacted the Alaska Highway & Public Works Act of 1957 in order to create a Highway Division to carry out a planning, construction, and maintenance program.

The transfer of the Department of Interior's jurisdiction to the Department of Commerce was reiterated on August 27, 1958, when Congress revised, codified, and reenacted the laws relating to highways as Title 23 of the U. S. Code. (P.L. 85-767, Sect. 119 - 72 Stat. 898).

The Alaska Omnibus Act, enacted on June 25, 1959 (P.L. 86-70 - 73 Stat. 141), directed the Secretary of Commerce to convey to the State of Alaska all lands or interests in lands "owned, held, administered by, or used by the Secretary in connection with the activities of the Bureau of Public Roads in Alaska." On June 30, 1959, pursuant to section 21(a) of the Alaska Omnibus Act, the Secretary of Commerce issued a quitclaim deed to the State of Alaska in which all rights, title and interest in the real properties owned and administered by the Department of Commerce in connection with the activities of the Bureau of Public Roads were conveyed to the State of Alaska. Although not all of the conveyed rights of way were considered "constructed", the system mileage of the rights of way included 2,200 miles classified as "primary" system routes, 2,208 miles of "secondary class A" routes, and 990 miles of "secondary class B" routes for a total of 5,399 miles of rights of way.

As the State of Alaska was not quite prepared to handle the operation of the road system, the Governor as authorized by the Omnibus Act, entered into a contract with the Bureau of Public Roads on July 1, 1959 to continue certain highway survey, design, construction and maintenance functions in connection with the Federal-aid highway program until the State Department of Public Works was suitably organized and equipped to perform these functions. The State assumed full highway functions in mid- 1960.

Legislative action in July of 1977 merged the State Department of Highways, Public Works (which included the Division of Aviation) and the Alaska Marine Highways into the Department of Transportation and Public Facilities.

### III. RS 2477

The Mining Law of 1866 - Lode and Water Law, July 26, 1866 (Section 8 - 14 Stat. 253) The Federal offer for road easements over public lands was made through the following:

"The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted."

The above referenced Section 8 of the 1866 Mining Law was re-designated as Section 2477 of the Revised Statutes 1878. (43 U.S.C. 932)

Generally, the issue of RS 2477 brings to mind remote or historic trails. However, certain portions of primary and secondary highways may exist without benefit of a clearly established right of way. In some cases, the public may claim an easement by prescription. In other areas, the easement may exist by virtue of RS 2477. In the Alaska Supreme Court case State v. Alaska Land Title Ass'n, a memo from the Chief Counsel of BLM dated 2/7/51 noted that "Prior to the issuance of Public Land Order No. 601..., nearly all public roads in Alaska were protected only by easements. Right of way easements were acquired under section 2477 of the Revised Statutes (43 U.S.C. sec. 932) by the construction of roads."

#### a. Trails

The interpretation and application of RS 2477 in Alaska is a highly debated and controversial subject. The opinions of the State and Federal agencies as well as those among the private sector vary considerably. The primary issues to be resolved include the matters of legal jurisdiction, allowable use, management authority, width of right of way, and determination of whether a particular trail meets the validity tests of an RS 2477 grant.

Rather than debate the entire issue in this paper, the reader is directed to review the State and Federal guidelines for RS 2477 as well as the relevant Federal and State case law which is summarized at the end of this section.

**Federal position:** See BLM memorandum to the Secretary of the Interior regarding Departmental policy on RS 2477 dated December 7, 1988.

In general, in order for the RS 2477 grant to be accepted under the Federal position, the following conditions must have been met:

1. The lands involved must have been public lands, not reserved for public purposes, at the time of the grant.
2. Some form of construction of the highway must have occurred.

3. The highway must be considered a public highway.

Under the Federal position the width of the right of way depends on whether at the time of acceptance, the RS 2477 trail was under the jurisdiction of a State or local government. If so, then statutory widths may apply. If not, then the width may be based upon the area in use including back slopes and drainage ditches.

In general, the Federal position is that no incidental uses are allowed. (i.e. powerlines)

An accepted RS 2477 grant of right of way may be abandoned or relinquished by the proper authority in accordance with State, local or common law.

During 1992 and 1993 the Federal Government has been holding hearings and soliciting comments from any party with an interest in RS 2477. These hearings have taken place in Alaska and throughout the western states where RS 2477 is an issue. The intent is to submit a final report to the U.S. Congress in anticipation of legislation which would resolve the long standing conflicts over this issue. On June 1, 1993, the Secretary of the Interior, delivered to the Appropriations Committees of the Senate and the House of Representatives, the Report to Congress on RS 2477. In the letter which transmitted the report, the Secretary of the Interior stated:

"Until final rules are effective, I have instructed the Bureau of Land Management (BLM) to defer any processing of RS 2477 assertions except in cases where there is a demonstrated, compelling and immediate need to make such determinations."

**State position:** See 11 AAC 51.010 - State of Alaska Administrative Code titled Nomination, Identification, and Management of RS 2477 Rights-of-Way. Note that as of November of 1993, there is intended to be a rewrite of this regulation in order to streamline the process.

Evaluation Criteria:

1. The nominated RS 2477 crossed public land that was not reserved for public use at the time the RS 2477 grant was accepted.
2. Sufficient evidence is provided to show that public use or when relevant (Section line easements) that a positive act on the part of a public authority constitutes acceptance of the RS 2477 grant.

Essentially, the research and evaluation required to determine whether the RS 2477 grant has been accepted is similar to that required for section line easements and public land orders. Many sources of information are available to aid in the establishment of the date that a trail was constructed or in public use. Primary sources include the 1989 "Alaska Trails Database" and the 1973 "Alaska Existing Trail System" maps. The mapping consists of 153 1:250,000 USGS maps with the claimed RS 2477 trails marked and numbered. The 1989 database has over 14,000

entries of trail names, dates, and references. These sources are available for review at the Department of Transportation offices. (See section VI c. of this paper, *Public Land Orders - Practical applications - "Date of Construction"*). To determine whether the land in question was unreserved at the time the grant was accepted, the BLM land status records must be reviewed. (See section VI c. of this paper, *Public Land Orders - Practical applications - "Land Status"* and section III b. *RS 2477 - Section Line Easements - discussion on lands not reserved for public uses.*)

Width of RS 2477 right of way: In a 1962 Superior Court case, State of Alaska v. Fowler, Civil Action No. 61-320 the width of Farmer's Loop Road, established under provisions of RS 2477 by a public user, was at issue. The court determined that only the 1962 width of the road would be considered a part of that right of way and deemed it "a reasonable width necessary for the use of the public generally." The State of Alaska argued that the provisions of Sec. 1 Ch. 19, SLA 1923 (establishing public highways between each section of land in the territory) indicated the local law and reflected the local custom as to the width of the rights of way established pursuant to RS-2477 (33 feet on each side of centerline or 66 feet total). This opinion had been previously stated in the 1960 Opinions of the Attorney General, No. 29. The AGO opinion concluded that the width of Alaska highways constructed under Title 43, Sec. 932 shall be 66 feet except where the actual width is specifically stated in the Public Land Order or set out by later State laws. The court concluded that taking into consideration the character and extent of the user as disclosed by the evidence in Fowler, the "reasonable width necessary for the use of the public" constituted only the present width of Farmer's Loop Road, thirty feet. As if in response to the court's decisions, the State legislature enacted Sec. 1, Ch. 35, SLA 1963:

Establishment of Highway Widths. (a) It is declared that all officially proposed and existing highways on public lands not reserved for public uses are 100 feet wide. This section does not apply to highways which are specifically designated to be wider than 100 feet. AS 19.10.015.

Therefore, it is argued that the 1963 legislature accepted the RS 2477 grant as it might pertain to those portions of highways still traversing unreserved public lands to the extent of 100 feet even where actual use of such highways was much more restricted. Until that time and with regards to lands which were already withdrawn from the public domain in 1963 but burdened only in part by RS 2477 rights of way, the Fowler decision and the precedent upon which it was predicated seem controlling: "the right of way for such a road carries with it such a width as is reasonable and necessary for the public easement of travel." (Excerpted from 2/1/83 AGO informal opinion.)

Incidental uses such as a powerline or communications line are allowed under State law. See Fisher v. Golden Valley Electric.

Vacation: DNR regulations do not currently address vacations of RS 2477 rights of way at this time. However, in 1992 a request to vacate an adjudicated RS 2477 right of way was received for comment at DOT&PF. Upon discussion with DNR, it was determined that as the RS 2477 trail right of way was based upon the same grant as a section line easement, that the process for



vacation should follow similar guidelines as that for a section line easement. The proposed rewrite to 11 AAC 53, DNR's surveying regulations is purported to deal with the issue of vacation of RS 2477 trails as well as section line easements.

RS 2477 was repealed by Title VII of the Federal Land Policy and Management Act on October 21, 1976. However, the application of the RS 2477 grant was effectively eliminated by a series of public land orders which eventually withdrew all federal public lands in Alaska. (See section III b. *RS 2477 - Section Line Easements - discussion on lands not reserved for public uses.*)

Surveyors with an interest in the RS 2477 issue are advised to recognize that the State and Federal positions differ significantly and are currently in a state of flux. Check with BLM and DNR for the latest information regarding the RS 2477 issue.

#### **b. Section Line Easements**

The offer of a right of way for highways across unreserved, unappropriated Federal lands provided in the aforementioned Mining Law of 1866 is also the basis for Section line rights of way. The position of Federal agencies suggests that section line easements cannot exist on Federal lands as the construction requirement of the RS 2477 grant was not fulfilled. The State position on section line easements is outlined in the 1969 Opinions of the Attorney General No. 7 dated December 18, 1969 entitled Section Line Dedications for Construction of Highways.

The acceptance of the offer became effective on April 6, 1923, when the Territorial legislature passed Chapter 19 SLA 1923 which provided that "A tract of 4 rods wide between each section of land in the Territory of Alaska is hereby dedicated for use as public highways..."

The section line easement law remained in effect until January 18, 1949. On this date the legislature accepted the compilation of Alaska law which also repealed all laws not included. By failing to include the 1923 acceptance, the section line easement law was therefore repealed.

On March 26, 1951, the legislature enacted Ch. 123 SLA 1951 which stated that "A tract 100 feet wide between each section of land owned by the Territory of Alaska or acquired from the Territory, is hereby dedicated for use as public highways..." The 1953 law was amended on March 21, 1953 by Ch. 35 SLA 1953, to include "a tract 4 rods wide between all other sections in the Territory..." (See Alaska Statute AS 19.10.010 Dedication of land for public highways.)

For a section line easement to become effective, the section line must be surveyed under the normal rectangular system. On large areas such as State or Native selections, only the exterior boundaries are surveyed, therefore no section line easements could attach to interior section lines unless further subdivisional surveys were carried out. The 1969 Opinion of the Attorney General regarding section line easements states that an easement can attach to a protracted survey, if the survey has been approved and the effective date has been published in the Federal Register. The location of the easement is however subject to subsequent conformation with the official public land survey and therefore cannot be used until such a survey is completed.

Land surveyed by special survey or mineral survey are not affected by section line easements since such surveys are not a part of the rectangular net. However, the location of a special or mineral survey which conflicts with a previously established section line easement cannot serve to vacate the easement.

Acceptance of the RS 2477 offer can only operate upon "public lands, not reserved for public uses". Therefore, if prior to the date of acceptance there has been a withdrawal or reservation by the Federal government, or a valid homestead or mineral entry, then the particular tract is not subject to the section line dedication. The offer of the RS 2477 grant was still available until its repeal by Title VII of the Federal Land Policy and Management Act (90 Stat. 2793) on October 21, 1976. However, prior to the repeal, the application of new section line easements was effectively eliminated by a series of public land orders withdrawing Federal lands in Alaska. Public Land Order 4582 of January 17, 1969 withdrew all public lands in Alaska not already reserved from all forms of appropriation and disposition under the public land laws. PLO 4582 was continued in force until passage of the Alaska Native Claims Settlement Act on December 18, 1971. While repealing PLO 4582, ANCSA also withdrew vast amounts of land for native selections, parks, forests and refuges. A series of PLO's withdrew additional acreage between 1971 and 1972. PLO 5418 dated March 25, 1974 withdrew all remaining unreserved Federal lands in Alaska. Therefore it is noted that as of March 25, 1974, there could be no new section line easements applied to surveyed Federal lands.

The Alaska Supreme Court has decided that a utility may construct a powerline on an unused section line easement reserved for highway purposes under AS 19.10.010 Use of rights-of-way for utilities. Alaska Administrative Code 17 AAC 15.031 Application for Utility Permit on Section Line Rights-of-way provides for permitting by the Department of Transportation. The process for vacating a section line easement is provided in the DNR Administrative Code 11 AAC 53. A section line vacation requires approval from the Departments of Transportation and Natural Resources and the approval of a platting authority, if one exists in the area of the proposed vacation.

### **Research Technique**

1. Review the Federal Status Plat and note the patent number or serial number of any action which affects the section line in question.
2. Using either BLM's land status database or Historical Index determine the date of reserved status or the date of entry leading to patent.
3. From BLM's township survey plats extract the date of plat approval.
4. Review the dates and track the status of the lands involved to determine if they were unreserved public lands at any time subsequent to survey approval and prior to entry or appropriation. Particular attention should be directed towards any applicable Public Land Orders. In order for section line easements to have been created, the lands must have been unreserved public lands at some time between April 6, 1923 and January 17, 1949, or between March 21, 1953 (March 26, 1951 in the case of lands transferred to the State or Territory) and March 24, 1974.
5. Using the date of entry or reservation and the date of survey plat approval, prepare an analysis of the data as follows:
  - a. If date of entry predated survey plat approval there is no easement.
  - b. If entry predates April 6, 1923 (date of enabling legislation for section line easements) there is no section line easement.
  - c. If survey plat approval predates April 6, 1923 but date of entry is after April 6, 1923 there is a 66 foot section line easement.
  - d. If survey plat approval is during the period of January 18, 1949 and March 20, 1953 and date of entry also falls within this period, there is no section line easement.
  - e. If survey plat approval is during the period of January 18, 1949 and March 20, 1953 and date of entry falls after March 21, 1953, there is a 66 foot section line easement.
  - f. If survey plat approval was prior to January 18, 1949 and the date of entry was during the period of January 18, 1949 and March 20, 1953, there is a 66 foot section line easement.
  - g. If the land is in State ownership or was disposed of by the State or Territory after March 26, 1951, there is a 100 foot section line easement. University Grant

Lands may be an exception as the application of a section line easement may be in conflict with the federal trust obligation.

- h. If survey plat approval date and the date land was disposed of by the Territory both fall within the period of January 18, 1949 and March 25, 1951, there is no section line easement.
- i. If survey plat approval was prior to January 18, 1949 and the land was disposed of by the Territory during the period of January 18, 1949 and March 25, 1951, there is a 66 foot section line easement.
- j. United States Surveys and Mineral Surveys are not a part of the rectangular net of survey. If the rectangular net is later extended, it is established around these surveys. There are no section lines through a U.S. Survey or Mineral Survey, unless the section line easement predates the special survey.

There may be many other situations which will require evaluation and decision on a case by case basis. An attachment is included to demonstrate some of the above points. Any section line easement, once created by survey and acceptance by the State or Territory remains in existence, unless vacated by the proper authority.

### Section Line Easement Determinations

In order for easements to exist, the survey establishing the section lines must have been approved or filed prior to entry on Federal lands or disposal of State or Territorial lands. The Federal lands must have been unreserved at some time subsequent to survey and prior to entry.

| 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. (University Grant lands may be an exception.) |
|---|--|---|
| none  | April 5, 1923                            | None  |
| 66'   | April 6, 1923<br>to<br>January 17, 1949  | 66'   |
| none  | January 18, 1949<br>to<br>March 25, 1951 | None  |
|   | March 26, 1951<br>to<br>March 20, 1953   | 100'  |
| 66'   | March 21, 1953<br>to<br>March 24, 1974   |   |
| none  | March 25, 1974<br>to<br>Present          |   |

Note: This table assumes the same land status on both sides of the section line. A review of the land status can result in total easement widths of 0', 33', 50', 66', 83', and 100'. A section line

easement, once created by survey and accepted by the State, will remain in existence unless vacated by proper authority.

c. **RS 2477 Case Law Summary (From DNR paper RS 2477s - Building on Experience)**

1. Clark v. Taylor, 9 Alaska 928 (4th Div. Fairbanks 1938). The public may, by user, accept the RS 2477 grant, and 20 years of "adverse" public use was sufficient in this case. However, the case also intimates that there is no such thing as an unsurveyed "section line" acceptance of the RS 2477 grant.
2. Berger v. Ohlson, 9 Alaska 389 (3rd Div. Anchorage 1938). The RS 2477 grant may be accepted by the general public, through general user, even absent acceptance by governmental authorities, although there must be sufficient continuous use to indicate an intention by the public to accept the grant.
3. U.S. v. Rogge, 10 Alaska 130 (4th Div. Fairbanks 1941). Same as 2.
4. Hamerly v. Denton, 359 P.2d 121 (Alaska 1961). Same as 2. In addition, this case held that AS 19. 10.010 (the section line dedication) was equivalent to a legislative acceptance of the RS 2477 grant.

But before a highway may be created, there must be either some positive act on the part of the appropriate public authorities of the state, clearly manifesting an intention to accept a grant, or there must be a public user for such a period of time and under such conditions as to prove that the grant has been accepted.

The court defined public lands as: "lands which are open to settlement or other disposition under the land laws of the United States. It does not encompass lands in which the rights of the public have passed and which have become subject to individual rights of a settler." Once there is a valid entry the land is segregated from the public domain.

In this case there were a number of entries which were subsequently relinquished or closed prior to the Hamerley's home site entry which went to patent. The public usage to establish acceptance of the grant had to be established when the land was not subject to an entry. The court found that there was no evidence of public use during the times the land was not subject to an entry. "Where there is a dead end road or trail, running into wild, unenclosed and uncultivated country, the desultory use thereof established in this case does not create a public highway."

5. Mercer v. Yutan Construction Co., 420 P.2d 323 (Alaska 1966). Trial court was correct in finding that the issuance of a grazing lease, expressly subject to later rights of way, did not reserve the leased land such that the government could not accept the RS 2477 grant and build a right of way.

6. Wilderness Society v. Morton, 479 F.2d 842 (D.C. Cir.) (en banc), cert. denied 411 U.S. 917 1973). AS 19.40.010 (concerning the Trans-Alaska pipeline haul road) properly accepted the RS 2477 grant, the court citing Hamerly v. Denton favorably. This is the only reported federal court case dealing with an Alaska RS 2477 issue as of October 1, 1987.
7. Girves v. Kenai Peninsula Borough, 536 P.2d 1221 (Alaska 1975). Same as Hamerly v. Denton.
8. Anderson v. Edwards, 625 P.2d 282 (Alaska 1981). Where the state has not stepped in to regulate a section line right of way created via AS 19.10.010, a private citizen may use it, but only up to a width that is reasonable under the circumstances. Consequently, a citizen using a right of way who had cut too many trees to widen it must compensate the fee owner.
9. Fisher v. Golden Valley Electric Association, 658 P.2d (Alaska 1983). Utility use of an otherwise unused (i.e., it was not otherwise regulated or used by the State) RS 2477 section line right of way for a powerline was permitted notwithstanding the underlying fee owners' objections. The case leaves room to argue for additional incidental and subordinate uses that "are the progression and modern development of the same uses and purposes" (referring to the "transmission of intelligence, the conveyance of persons, and the transportation of commodities.")
10. Alaska v. Alaska Land Title Association, 667 P.2d 714 (Alaska 1983). RS 2477 did not establish the width of rights of way created under it. The Department of the Interior's Order No. 2665 for certain RS 2477 roadways did, however, establish a width. See further discussion of this case in section VI f. Public Land Order Case Law Summary.
11. Brice v. State, 669 P.2d 1311 (Alaska 1983). Pre-existing section line highway easements created under AS 19.10.010 remained valid even when the law was temporarily repealed between 1949 and 1953.
12. Dillingham Commercial Co. v. City of Dillingham, 705 P.2d 4110 (Alaska 1985). This case reaffirmed the holding of Hamerly v. Denton, and then found that relatively slim evidence of user was sufficient to prove the acceptance of an RS 2477 grant. In Hamerly the court had found inadequate evidence of user. The different results of the two cases probably rest on the fact that in Hamerly the evidence of use was disputed, but in Dillingham no rebuttal evidence showing lack of use was submitted. The Dillingham court also held that once the RS 2477 road was created, it could be used for any purpose consistent with public travel.

#### IV. The Act of 1947

**a. Background:** The Act of 1947 was one of three similar right of way reservations that are commonly noted in federal patents in Alaska. When researching title of lands along the highway system, you may find a document called a "Notice of Utilization". This notice declares the use of the right of way reservation provided by the Act of 1947. Of the three patent reservations, only the Act of 1947 specifically reserves rights of way for roads, however, the others are briefly mentioned due to the similarity of their intent.

The first act provided a right of way for "Ditches and Canals" to be noted in all patents as of August 30, 1890. (26 Stat. 391 - 43 U.S.C. 945) At the time of enactment, the United States had no canals or ditches either constructed or in the process of construction. The congress was however, concerned that disposal of land in a region under the land laws might render it difficult and costly to obtain the necessary rights-of-way when the work was undertaken. This act was eventually amended to require payment for land even if it was patented subject to the reservation.

The second act provided a right of way for the future construction of "Railroads, telegraph and telephone lines. (38 Stat. 30 - 43 U.S.C. 975 March 12, 1914) Section 615(a)(i) of The Alaska Railroad Transfer Act of 1982 (ARTA), P.L. 97-468 revoked 43 U.S.C. 975 in its entirety. The United States consequently has no remaining authority to utilize the 975d reservations. Section 609 of ARTA specifically states the requirement that future rights-of-way be obtained from current land owners under applicable law.

**b. The '47 Act:** The Act of July 24, 1947 (Pub. L. 229 - 61 Stat. 418)(48 U.S.C. 321d) applied only to lands which were entered or located after this date. This act reserved rights of way for roads, roadways, highways, tramways, trails, bridges, etc. Also commonly known as the "'47 Act".

*"In all patents for lands hereafter taken up, entered, or located in the Territory of Alaska, and in all deeds hereafter conveying any lands to which it may have reacquired title in said Territory not included within the limits of any organized municipality, there shall be expressed that there is reserved, from the lands described in said patent or deed, a right of way thereon for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures constructed or to be constructed by or under the authority of the United States or any State created out of the Territory of Alaska. When a right of way reserved under the provisions of Sections 321a-321d of this title is utilized by the United States or under its authority, the head of the agency in charge of such utilization is authorized to determine and make payment for the value of the crops thereon if not harvested by the owner, and for the value of any improvements, or for the cost of removing them to another side, if less than their value."*

The U.S. Senate Committee on Public Lands submitted a report leading to the passage of the "'47 Act" stating the following: "The bill is designed to facilitate the work of the Alaska Road Commission. As the population of Alaska increases and the Territory develops, the Road Commission will find it increasingly difficult to obtain desirable highway lands unless legislative provision is made for rights-of-way. The committee believes that passage of this legislation will help to eliminate unnecessary negotiations and litigations in obtaining proper rights-of-way throughout Alaska."



This act provided for a taking of right of way across land subject to the reservation without compensation except for the value of crops and improvements. The act only authorized the first take. Subsequent acquisitions required compensation for the land taken.

Width of Right of Way: This Act did not specify right-of-way widths. However, a right-of-way of any width could be acquired over such lands by merely setting it by some sort of notice, either constructive or actual insofar as new roads are concerned, and since it did not limit the reservation to new roads only, it would also affect subsequent settlements on existing roads.

The Act of 1947 was repealed by Section 21 of the Alaska Omnibus Act, P.L. 86-70, June 25, 1959 (73 Stat. 146). The repeal became effective on July 1, 1959. This repeal only eliminated the insertion of the reservation into the patents of lands as of July 1 date, therefore lands patented or entered after this date are not subject to the act. Lands patented before the repeal were still subject to the reservation.

**c. Right of Way Act of 1966** - This act repealed the use of '47 Act reservations by the State of Alaska (HB 415 Ch. 92, 1966 - April 14, 1966)

*"Section 1. PURPOSE. This Act is intended to alleviate the economic hardship and physical and mental distress occasioned by the taking of land by the State of Alaska, for which no compensation is paid to the persons holding title to the land. This practice has resulted in financial difficulties and the deprivation of peace of mind regarding the security of one's possessions to many citizens of the State of Alaska, and which, if not curtailed by law, will continue to adversely affect citizens of this state. Those persons who hold title to land under a deed or patent which contains a reservation to the state by virtue of the Act of June 30, 1932, ch. 321, sec.5, as added July 24, 1947, ch. 313, 61 Stat. 418, are subject to the hazard of having the State of Alaska take their property without compensation because all patents or deeds containing the reservation required by that federal Act reserve to the United States, or the state created out of the Territory of Alaska, a right-of-way for roads, roadways, tramways, trails, bridges, and appurtenant structures either constructed or to be constructed. Except for this reservation the State of Alaska, under the Alaska constitution and the constitution of the United States, would be required to pay just compensation for any land taken for a right-of-way. It is declared to be the purpose of this Act to place persons with land so encumbered on a basis of equality with all other property holders in the State of Alaska, thereby preventing the taking of property without payment of just compensation as provided by law, in the manner provided by law."*

The Alaska Statutes also reflect the elimination of the '47 Act in AS 09.55.265 and AS 09.55.266. AS 09.55.265 Taking of property under reservation void states that "After April 14, 1966, no agency of the state may take privately owned property by the election or exercise of a reservation to the state acquired under the Act of June 30, 1932, ch 320, sec. 5, as added July 24, 1947, ch.313, 61 Stat. 418, and taking of property after April 14, 1966 by the election or exercise of a reservation to the state under that federal Act is void. (2 ch 92 SLA 1966)" AS 09.55.266 Existing rights not affected, states that "AS 09.55.265 shall not be construed to divest the state of, or to require compensation by the state for, any right of way or other interest in real property which was taken by the state, before April 14, 1966, by the election or exercise of its right to take property through a reservation acquired under the Act of June 30, 1932, ch 320, sec. 5, as added July 24, 1947, ch.313, 61 Stat. 418.

**d. '47 Act Case Law Summary:**

1. Hillstrand v. State, 181 F. Supp 219 (1960) Once right of way has been selected and defined, later improvements, necessitating utilization of land upon which road is not already located, can only be accomplished pursuant to condemnation and compensation provisions.
2. Myers v. U.S., 210 F. Supp, 695 (1962) Where the United States issued patent which stated that lands conveyed were subject to a reservation for right of way for roads, and grantees accepted patents with full knowledge of reservation, grantees received and held titles subject to such reservation.
3. SOA v. Crosby - Alaska Supreme Ct. No. 322, February 3, 1966. All lands disposed by BLM under the Small Tract Act (Act of June 1, 1938, 52 Stat. 609) which was made applicable to the State of Alaska in 1945 (Act of July 14, 1945, 59 Stat. 467) are not subject to the Act of 1947. This exception applies even if the small tract patent contains a '47 Act reservation.

## V. 44 LD 513

A 44 LD 513 notation is not a "public" right of way in the sense of an RS 2477 or a PLO right of way. However, as they are noted on the BLM master title plats and historical indices, the question often arises as to whether they are available for general use. Therefore, a short discussion of their intended purpose is presented with the following excerpts from a June 15, 1979 letter from the Department of the Interior to the General Services Administration regarding the Haines-Fairbanks pipeline.

Prior to the enactment of the Federal Land Policy and Management Act, there was no general statutory provision for the setting aside of rights-of-way for Federal agencies, and the Bureau of Land Management customarily employed the procedures set out in the 44 LD 513 (Page 513, Volume 44 of Land Decisions of the Department) Instructions to accomplish that purpose. The 44 LD 513 Instructions, issued in 1916 pursuant to the Secretary of the Interior's general management authority over the public lands, advised the General Land Office (now BLM) regarding procedures to: put the public on notice of the existence and location of Federal improvements on the public lands; and to protect those improvements when the public lands upon which they were constructed were conveyed out of Federal ownership. The Instructions directed the Bureau to make appropriate notations in the tract books to accomplish the first purpose and to insert exception clauses in the land patents to accomplish the second.

The principle underlying the Instructions is that the construction of a Federal facility on public lands appropriates the lands to the extent of the ground actually used and occupied by that facility and for so long as the facility is used and occupied by the United States. When a federal agency no longer needed the facility, the agency would send a "Notice of Intention to Relinquish" to the BLM. BLM would then determine whether the lands would be turned over to the General Services Administration for disposal or returned to the public domain.

Unlike withdrawals and reservations, 44 LD 513 notations do not continue in effect once the Federal Government's use and occupancy terminates. The notations draw the efficacy from the Federal use and occupation. They have no existence separate and apart from that Federal use and occupancy. Once the Federal use and occupancy terminates in fact, the notations have no segregative effect even though they still remain on the land records. Therefore, it is not possible for any Federal agency to transfer 44 LD 513 notations to third parties.

## VI. Public Land Orders

### a. Introduction

It is fairly clear from Alaska Supreme Court decisions that ignorance of the PLO rights of way is no defense against their effect. Professionals in the title, surveying, and real estate fields must be sufficiently knowledgeable of PLO's such that they can recognize their possible impacts on a given property. At a minimum the professional needs to be aware of the available resources that can aid in determining whether a PLO right of way exists. The following is a summary of the PLO's affecting highway rights of way in Alaska:

### b. Public Land Order Summary

1. 4/23/42      E.O. 9145

This order reserved for the Alaska Road Commission in connection with construction, operation and maintenance of the Palmer-Richardson Highway (Now Glenn Highway), a right of way 200 feet in width from the terminal point of the highway to its point of connection with the Richardson Highway. The area described is generally that area between Chickaloon and Glennallen.

2. 7/20/42      PLO 12

This order withdrew a strip of land 40 miles wide generally along the Tanana River from Big Delta to the Canadian Border. It also withdrew a 40 mile wide strip along the proposed route of the Glenn Highway from its junction with the Richardson Highway, East to the Tanana River.

3. 1/28/43      PLO 84

This order withdrew all lands within 20 miles of Big Delta which fell between the Delta and Tanana Rivers. The purpose of the withdrawal was for the protection of the Richardson Highway.

4. 4/5/45 PLO 270

This order modified PLO 12 by reducing the areas withdrawn by that order to a 10 mile wide strip of land along the now constructed highways. The highways affected by this order are as follows:

1. Alaska Highway - from Canadian Border to Big Delta
2. Glenn Highway - from Tok Junction to Gulkana

5. 7/31/47 PLO 386

Revoked PLO 84 and PLO 12, as amended by PLO 270. The order withdrew the following land under the jurisdiction of the Secretary of the Interior for highway purposes:

1. A strip of land 600 feet wide along the Alaska Highway as constructed from the Canadian Boundary to the junction with the Richardson Highway at Delta Junction.
2. A strip of land 600 feet wide along the Gulkana-Slana-Tok Road (Glenn Highway) as constructed from Tok Junction to its junction with the Richardson Highway near Gulkana. This order also withdrew strips of land 50 feet wide and 20 feet wide along the Alaska Highway for purposes of a pipeline and telephone line respectively. Pumping stations for the pipeline were also withdrawn by this order, as well as 22 sites which were reserved pending classification and survey.

6. 8/10/49 PLO 601

This order revoked E.O. 9145 as to the 200' withdrawal along the Glenn Highway from Chickaloon to Glennallen.

It also revoked PLO 386 as to the 600 foot wide withdrawal along the Alaska Highway from the Canadian Boundary to Big Delta and along the Glenn Highway from Tok Junction to Gulkana.

**Subject to valid existing rights** and to existing surveys and withdrawals for other than highway purposes...PLO 601 withdrew and reserved for highway purposes... a strip of land 300 feet on each side of the centerline of the Alaska Highway, 150 feet on each side of the centerline of all **Through** roads as named, 100 feet on each side of centerline of all **Feeder** roads as named, and 50 feet on each side of the centerline of all **Local** roads. **Local** roads were defined as *"All roads not classified above as Through Roads or Feeder Roads, established or maintained under the jurisdiction of the Secretary of the Interior"*.

It is important to note that PLO 601 did not create highway easements. This Order was a withdrawal *"from all forms of appropriation under the public land laws, and reserved for highway purposes."*

This was essentially the first, and therefore one of the most important acts to comprehensively classify and define the width of the rights of way over public lands in Alaska.

7. 10/16/51 PLO 757

This order accomplished two things:

1. It revoked the highway withdrawal on all "feeder" and "local" roads established by PLO 601.
2. It retained the highway withdrawal on all the "through roads" mentioned in PLO 601 and added three highways to the list.

After issuance of this order the only highways still withdrawn included the Alaska Highway (600'), Richardson Highway (300'), Glenn Highway (300'), Haines Highway (300'), Seward-Anchorage Highway (300'), Anchorage-Lake Spenard Highway (300'), and the Fairbanks-College Highway (300').

The lands released by this order became open to appropriation, subject to the pertinent easement set by Secretarial Order No. 2665, discussed below.

8. 10/16/51 S.O. 2665

The purpose of this order, issued on the same date as PLO 757, was to *"(1) fix the width of all public highways in Alaska established or maintained under the jurisdiction of the Secretary of the Interior and (2) prescribe a uniform procedure for the establishment of rights of way or easements over or across the public lands for such highways."* It restated that the lands embraced in "through roads" were withdrawn as shown under PLO 757. It also listed all the roads then classified as feeder roads and set the right of way or easement (as distinguished from a withdrawal) for them at 200'. The right of way or easement for local roads remained at 100 feet.

This Order provided what was termed a "floating easement" for new construction. Under this provision, *"rights of way or easements....will attach as to all new construction involving public roads in Alaska when the survey stakes have been set on the ground and notices have been posted at the appropriate points along the route of the new construction specifying the type and width of the roads."*

9. 7/17/52 Amendment No. 1 to S.O. 2665

This amendment reduced the 100' width of the Otis Lake Road, a local road not withdrawn in the Anchorage Land District, to 60 feet.

10. 9/15/56 Amendment No. 2 to S.O. 2665

This amendment added several roads to the "through" (300' width) road list including the Copper River Highway, the Sterling Highway, and the Denali Highway. Several highways were deleted from the "feeder" (200' width) road list including the Sterling

Highway and the Paxson to McKinley Park Road. The Nome-Kougarok and Nome-Teller roads were added to the list of "feeder" roads.

11. 8/1/56 Public Law 892 - Act of August 1, 1956

The purpose of this Act (P.L. 892 - 70 Stat. 898) was to provide for the disposal of public lands within highway, telephone and pipeline withdrawals in Alaska, subject to appropriate easements. This Act paved the way for the issuance of a revocation order (PLO 1613) which would allow claimants and owners of land adjacent to the highway withdrawal a preference right to acquire the adjacent land.

12. 4/7/58 PLO 1613

This order accomplished the intent of the Act of August 1, 1956. Briefly, it did the following:

1. Revoked PLO 601, as modified by PLO 757, and provided a means whereby adjacent claimants and owners of land could acquire the restored lands, subject to certain specified highway easements. The various methods for disposal of the restored lands are outlined in the order.

2. Revoked PLO 386 as to the lands withdrawn for pipeline and telephone line purposes along the Alaska Highway. It provided easements in place of withdrawals.

Prior to PLO 1613 the road rights of way classified as "feeder" and "local" were defined as easements whereas the "through" roads were still withdrawals. PLO 1613 effectively eliminated the last of the withdrawals established by the aforementioned Land Orders by converting the "through" roads to easements.

To more clearly relay the intent of the Federal Government in issuing PLO 1613, the following is quoted from a BLM informational memo titled -

INFORMATION REGARDING LANDS ADJOINING CERTAIN HIGHWAYS

*"Between August 10, 1949, and April 7, 1958, the lands underlying the following highways in the Fairbanks Land District were withdrawn from entry for highway purposes:.....The acquisition of rights in homesteads, homesites, etc., along these highways during this period included property only up to the boundary line of the highway withdrawals. They did not include any part of the reserved area. On April 7, 1958, Public Land Order 1613 was issued revoking the withdrawals and opening the lands to application for private ownership under the public land laws. However, the Government retained an easement for highway and other purposes extending 150 feet from the centerline of each highway listed here. The effect on you, as owner of land or as an applicant for land adjoining these highways is as follows:*

PRIVATE OWNERS OF PATENTED LAND: *....If you own land with frontage on any of the other highways listed above, there now exists 150 feet of public land between your boundary and the centerline of the highway. The same Government easement applies to this 150 feet. It cannot be*

*used for other than highway purposes without permission of the Bureau of Public Roads. However, should the highway be changed or abandoned, the owner would have full use of the*

*land. Owners of private lands will have a preference right of purchase at the appraised value the released land adjoining their private property. This right will extend to land only up to the center line of the highway concerned. ....However, at the time of purchase he must furnish proof that he is the sole owner in fee simple of the adjoining land.*

*CLAIMANTS WITH VALID UNPERFECTED ENTRIES OR CLAIMS FILED BEFORE APRIL 7, 1958: ...In this instance, you may exercise a right to amend your entry or claim to include the property (Underlying the highway easement). This additional land will not be included in the area limitation for your type of filing.*

*TIME LIMITATIONS: The preference right applications mentioned above must be filed in the Land Office within 90 days of receipt of the appropriate Notice from the Land Office. If not filed within at that time, the preference right will be lost. The lands then will become subject to sale at public auction."*

As might be expected from the previous sentence, the preference right sales offered a great potential for future problems. A Department of Natural Resources internal memo to the Commissioner dated June 18, 1984 discusses the problems that arose.

The memo described a situation along the Old Glenn Highway in which BLM had sold the original patentee, Mr. Setters, a PLO 1613 highway lot based upon his preference right. Prior to this preference right sale, Mr. Setters had conveyed away his original patent and it was now owned by a Mrs. Pavék. At this point there was not a conflict as Mr. Setters' PLO 1613 Lot was subject to a highway easement and Mrs. Pavék had direct access onto the easement. However, DOT&PF had relinquished a portion of the right of way without realizing any ramifications. Mr. Setters now owned a strip of unencumbered land between Mrs. Pavék and the highway. Mr. Setters then approached Mrs. Pavék with an offer to sell access rights across his strip of land for \$30,000. Mr. Setters had paid BLM \$25 for the entire PLO 1613 highway lot.

In order to prevent additional occurrences of this problem, the Alaska Statutes were modified as follows:

*A.S. Sec. 09.45.015. Presumption in certain cases.*

*(a) A conveyance of land after April 7, 1958, that, at the time of conveyance was made, adjoined a highway reservation listed in section 1 of Public Land Order 1613 of the Secretary of the Interior (April 7, 1958), is presumed to have conveyed land up to the center-line of the highway subject to any highway reservation created by Public Land Order 601 and any highway easement created by Public Land Order 1613.*

*(b) The burden of proof in litigation involving land adjoining a highway reservation created by Public Land Order 601 or a highway easement created by Public Land Order 1613 is on the person who claims that the conveyance did not convey an interest in land up to the center-line of the highway. (2 ch 141 SLA 1986)*

*A.S. Sec 09.25.050. Adverse Possession.*



*(b) Except for an easement created by Public Land Order 1613, adverse possession will lie against property that is held by a person who holds equitable title from the United States under paragraphs 7 and 8 of Public Land Order 1613 of the Secretary of the Interior (April 7, 1958)*

This problem also raised the issue as to whether the State had received a fee interest or an easement interest when the highway rights of way were conveyed from the Federal Government by virtue of the 1959 Omnibus Act Quitclaim Deed. If the State had in fact received a fee interest, then there could be no sales to third parties of these highway lots and therefore no conflict. Our initial reading of the Public Land Orders suggests that by time of PLO 1613, all highway rights of way created by the PLO's existed as easements. However, over the years this has been interpreted differently by other agencies and various informal opinions from the Department of Law. The Department of Transportation has for many years and does now treat these PLO rights of way as easements. In April of 1991 the Northern Region of DOT&PF requested a formal Attorney General's Opinion on the issue of fee or easement in order to set this question aside. On February 19, 1993 the opinion was issued concluding that "under the Alaska Omnibus Act and resulting Quitclaim Deed, the State of Alaska received, in general, easements for its roads at statehood."

13. 6/11/60      Public Law 86-512 - Act of June 11, 1960

This Act amended the Act of August 1, 1956. This was a special act to allow the owners and claimants of land at Delta Junction and Tok Junction a preference right to purchase the land between their property and the centerlines of the highway. The Act was necessary since the land in both towns was still reserved for townsite purposes, even after the highway, telephone line, and pipeline withdrawals were revoked.

14. 8/19/65      DOI Memorandum - Revocation of S.O.2665 and amendments

This memo served as notification that several Secretarial Orders were to be revoked on December 31, 1965 including S.O. 2665 and its amendments.

**c. Practical Applications:**

One of the many points that the 1983 Supreme Court case State of Alaska v. Alaska Land Title Association established was that the publication of a public land order in the Federal Register imparted constructive notice as to the land it affected. Therefore the title companies were liable to the policy holders for not disclosing the existence of PLO rights of way which encumbered their property.

Once a person has become involved in researching several PLO rights of way, it is fairly clear that this much of the required information is obscure and of limited availability. We realize that if it is challenging research for our in-house staff that regularly work with these issues, then it

will be very difficult work for private sector professionals and virtually impossible for the layman.

I have found form letters in the Northern Region Right of Way office dating to 1980 that one of the major title companies intended to submit to DOT&PF for each title report that they were to prepare. The letters each stated the following:

"We are presently engaged in a title search of the following described real property. Since alleged highway rights-of-way created by Public Land Orders 601, 757, 1613, or Department Order 2665 are not recorded by property description, please advise us if the State of Alaska is claiming a right-of-way for a local, feeder, or through road on the following property and specify the width of the right-of-way you are claiming:"

DOT's response to the form letters at the time was essentially the same as it is today. That is, our files are open to whomever needs to research the necessary information, but unfortunately we do not have the personnel to review and respond to these requests for every title report generated in the State.

Therefore, if you have a need to know the status of a highway PLO with respect to a particular piece of property, then you also have the need to know how to perform the proper research.

In order to evaluate the effect of a PLO, you must review three items:

1. Land Status - Dates of Entry
2. Effective Date of Public Land Order
3. Date of Road Construction (or Posting)

Land Status: A common element of each PLO that served to establish a highway right of way was that they were "subject to valid existing rights". Our interpretation of that stipulation is that if the land was withdrawn or reserved prior to the effective date of a PLO, then the PLO could not act to create a right of way. These reservations or withdrawals could include homestead entries, mineral entries, military withdrawals, and such.

The primary source of information on land status with respect to the validity of a PLO are the Bureau of Land Management status records. Generally the process is to -

1. Review the Master Title Plat in order to locate the property in question.
2. Review the Historical Index for actions involving the property in question and the dates that they occurred.

**Caveats:** Not all land actions would serve to preclude the application of a highway PLO. For example, in one particular situation involving a federal grazing lease the lease document stated that "Nothing herein shall restrict the acquisition, granting, or use of permits or rights-of-way under applicable law."

Actions that might serve to create a "valid existing right" may have preceded the earliest date noted on a BLM Historical Index. For example, some very early mining claim and homestead location notices were filed in the Federal Magistrate's office (now the Recorder's office) and are not noted on the Historical Index.

There may be gaps in the "valid existing rights" that would allow a PLO right of way to take effect. For example, a homestead entry that may have precluded the application of a PLO right of way at one point in time may be relinquished, returning the land to the public domain. Upon relinquishment, the PLO right of way may be created.

Effective Date of Public Land Order: This may be the easiest part of a PLO right of way review. Assuming that you have copies of all of the pertinent Land Orders, the process can be as follows:

1. Review the PLO's to see when the road in question is specifically named. (For example, the Taylor Highway and the Manley Hot Springs to Eureka roads were named as Feeder roads with a ROW of 100' each side of centerline in DO 2665, but were not specifically named at all in PLO 601.) This exercise is necessary in order to establish the earliest date that a PLO highway right of way may have been created.

Caveat: It may be the easiest part of the research but it isn't foolproof. For example, the Edgerton Cutoff and New Edgerton highway have long been a point of confusion. The Edgerton Cutoff is the old road which has been noted in the ARC report since the 1920's as a cutoff from the Richardson to Chitina. It is the road that is specifically referenced in PLO 601 and SO 2665 as a "feeder" road (200' ROW). The new Edgerton highway was also created under SO 2665 but was not specifically mentioned as it was created under the "posting" requirements for new construction. An ARC public notice dated 9/15/56 designated the new Edgerton as a "feeder" road under SO 2665 as staked.

If you do not have copies of the PLO's available, bound volumes of all Alaska Land Orders can be viewed or copied at the BLM public room. Another interesting resource within BLM is the index of "Orders Affecting Public Lands in Alaska". This index lists the Order number, reference number, date, description, approximate land area involved, and a cross reference to other relevant land orders.

Date of Road Construction (or posting): This is likely to be the most difficult aspect of the research due to the relatively unorganized state of the documents that will establish such a date. The date of construction is particularly important when attempting to establish whether an unnamed local road right of way is subject to a conflicting land reservation or withdrawal.

1. Alaska Road Commission Annual Reports: These reports, dating from 1905 to 1954 name each road that was constructed and maintained under ARC jurisdiction along with

the amount of public funds expended. Many of these reports can be viewed at the BLM Resource Library in Anchorage, DOT&PF Right of Way offices in Anchorage and Fairbanks, the University of Alaska Rasmussen Library in Fairbanks, DOT&PF Northern Region Planning in Fairbanks, and the Alaska Branch of the National Archives in Anchorage.

2. As-built plans, Field Books - ARC/BPR: Each DOT&PF Regional office has retained some records from the Alaska Road Commission and the Bureau of Public Roads. For example the Northern Region (Fairbanks) has ARC field books dating as early as 1907. We also have some road as-builts from the 1940's and 1950's.

3. USGS Mapping Base Photography and other Historical Aerial Photos: Private Photogrammetry firms often have an extensive photo archive which can fix a date for certain improvements such as roads. Aeromap USA of Anchorage claims to have archive photos dating back to the 1940's. Early 1950's and later photography which was the basis for the USGS quadrangle mapping is also a prime source for fixing dates on roads. Note that just because a road is shown on a USGS quad does not mean it truly exists. There have been a few occasions where roads were placed on USGS quads based upon proposed plans but for some reason were never constructed.

4. Federal Records Center/National Archives Documents: After statehood, a large amount of the archived records of the ARC/BPR were retained by the Federal Highway Administration and transferred to their regional headquarters in Portland, Oregon. These records were eventually sent to the Federal Records Center in Seattle for storage and eventual transfer into the National Archives. Almost two years ago, the National Archives opened a branch office in Anchorage (Old Federal Courthouse), and received records relating to Alaska from the Seattle office. In their possession are dozens of cases of correspondence, weekly/monthly/annual reports, field books and plans relating to the construction of roads in Alaska. A few years ago, the DOT&PF Northern Region Planning office hired U of Alaska history professor Klaus Naske to research these records for information relating to certain RS-2477 roads. The result was a 14,000 record database indexing references to particular roads as found in the ARC Annual Reports, Miscellaneous ARC/BPR documents in possession of the Federal Records Center, and references from the files of the U of Alaska Rasmussen Library (mostly newspaper clippings). Also submitted with the database were xerox copies of all of the documents referenced. Although this database has served to facilitate access to thousands of the available archived documents, there still exist many thousands of additional un-indexed documents in the ARC/BPR files at the National Archives.

5. Miscellaneous Mapping, Surveys, and Reports: Other sources of information that can be used to date the existence of a particular road can be the plats and field notes of GLO/BLM surveys. Generally the plats and running field notes for U.S., Mineral, and Township surveys will note the intersection of survey lines with existing roads and trails. Also references of access can be found in the mineral reports of the U.S. Geological

Survey. Descriptions of control monumentation established by the U.S. Coast and Geodetic Survey have also served to establish the dates of roads.

**d. Evaluation of Information:** Many times it will be necessary to perform a cost/benefit analysis in order to establish what level of research is warranted. Although each evaluation will necessarily include a comprehensive review of the "land status" and the "effective date of PLO" portions of the research, the "date of construction" portion can easily involve a seemingly endless number of manhours. Once you have invested an amount of research into these areas that balances with the risk you may incur, then the evaluation of whether a PLO right of way exists is fairly straight forward. For example:

1. A local (secondary) road crosses your property. The State of Alaska claims jurisdiction for the road, however the right of way was never specified in your homestead patent and you have never given a specific easement for the road. Is the road subject to a PLO right of way?
  - a. If your homestead date of entry preceded August 10, 1949 (PLO 601) then there is no PLO easement.
  - b. If your homestead date of entry was after August 10, 1949 but preceded the date of construction (or posting when allowed by SO 2665), there is no PLO easement.
  - c. If your homestead date of entry was after August 10, 1949 and after the date of construction (or posting when allowed by SO 2665), there will be a PLO right of way easement.

Caveats: Some items to be aware of when evaluating your research data are as follows:

1. Road re-classifications and name changes - Note that PLO 601 classified the Nome-Solomon road as a "feeder" road. SO 2665 maintained the "feeder" classification but extended the route and changed the name to the "Nome-Council" road. Under PLO 601, the "Taylor" highway would have fallen under the classification of an unnamed "local" road. SO 2665 upgraded the classification to a "feeder" road. SO 2665 classifies the Paxson to McKinley Park road as a "feeder". Amendment No. 2 to SO 2665 changes the name of the road to "Denali Highway" and reclassifies it to a "Through" road.
2. Note that the preceding research and evaluation will only establish whether a PLO right of way exists or not. It generally does not take into account the location of the physical road with respect to a particular piece of property or the fact that they road may have shifted by maintenance or construction realignment over a period of time.
3. Note that in some records - particularly BLM status maps and land adjudication documents, that a right of way may be noted as a "50' CL", "100' CL", or a "150'CL".

Many people have erroneously interpreted these notations to mean total right of way widths when in fact they represent the half widths. (i.e. 50' on each side of centerline).

**e. Case Study:**

The following excerpts from IBLA case 88-589 provide a good discussion of the history of roads in Alaska and the application of laws relating to PLO rights of way.

April 29, 1991 (IBLA 88-589 Frank Sanford Et. Al.) Alaska: Native Allotments

*A decision recognizing that a Native allotment is subject to an easement for highway purposes extending 50 feet on each side of the centerline of a road conveyed to the State of Alaska by a quitclaim deed issued pursuant to the Alaska Omnibus Act, P.L. 86-70, 73 Stat. 141, will be affirmed where an easement of that width had been established under the Act of June 30, 1932, 47 Stat. 446.*

*The quitclaim deed cited in BLM's decision refers to Schedule A which is a list of highways. FAS Route No. 8921 is listed as a secondary class "B" highway named the Mentasta Spur with 7.0 miles constructed and described as follows: "From a point on FAS Route 46 approximately 10 miles west of Little Tok River, west to Mentasta Lake." Although this describes the road crossing Sanford's parcel, the conveyance does not indicate its width. The State contends that a 100-foot right-of-way is proper; other parties contend either that the road was abandoned or, alternatively, that only a 60-foot right-of-way is appropriate.*

*In a recent decision, Lloyd Schade, 116 IBLA 203 (1990), we provided a brief outline of the history of the administration of roads in Alaska:*

*Pursuant to the Act of January 27, 1905, 33 Stat. 616, as amended by the Act of May 14, 1906, 34 Stat. 192, Congress authorized the Secretary of War to administer the roads and trails in Alaska. In 1932, Congress transferred administration over those roads and trails to the Secretary of the Interior pursuant to the Act of June 30, 1932, 47 Stat. 446.*

*The State's response to the Sanford appeal included an affidavit by John Bennett, a registered professional land surveyor employed as Engineering Supervisor in the right-of-way division of the State's Department of Transportation and Public Facilities. Bennett states that he has examined records in an attempt to learn when the Mentasta Spur Road was established. Excerpts from a 1960 document by the Division of Highways of the Alaska Department of Public Works entitled Fifty Years of Highways is attached to Bennett's affidavit as Exhibit A. The document refers to a "Tok Cutoff Glenn Highway" as "constructed during World War II." A copy of Alaska Road Commission Order No. 40, Supplement No. 1 (August 1, 1952) includes an attachment which refers to a "Mentasta Loop." Exhibit B consists of a quadrangle map and a list of monument descriptions indicating that the road through Sanford's allotment existed in the 1940's. The map bears a hand-written notation indicating that the present location of the Tok Cutoff of the Glenn Highway which does not cross Sanford's parcel was a "1951 Reroute."*

*Public Land Order No. 601 of August 10, 1949, 14 FR 5048 (August 16, 1949), revoked a prior PLO and divided all roads under the Secretary's jurisdiction in Alaska into three classes: through roads, feeder roads, or local roads. That order withdrew from all forms of appropriation under the public land laws public lands within 150 feet of each side of the center line of all through roads, 100 feet of each side of the centerline of all local roads and reserved the lands for highway purposes.*

*On October 19, 1951, PLO 757 amended PLO 601 by revoking the general withdrawal for local and feeder roads (16 FR 10749, 10750 (Oct. 19, 1951)). Simultaneously, the Secretary issued Secretarial Order (SO)*

2665 establishing easement for, rather than withdrawals of, 50 feet on each side of the center of each local road and 100 feet on each side of the center line of each feeder road. 16 FR 10752 (Oct. 19, 1951). Because the Mentasta Spur was not listed as a through road or feeder road, the size of the easement established was 50 feet on each side of the center, or 100 feet in total width.

As authority for the establishment of these easements, the PLO cited the Act of June 30, 1932, identified earlier as the statute by which Congress transferred administration over roads and trails from the Secretary of War to the Secretary of the Interior. Section 5 of that statute required the Secretary to reserve in patents a right-of-way for roads "constructed" or to be constructed by or under the authority of the United States." Act of June 30, 1932, ch. 320 as added, Act of July 24, 1947, ch 313, 61 Stat. 418. Reference to the more recent history of the administration of Alaskan roads discloses:

The Secretary of the Interior's jurisdiction over the Alaskan road system ended in 1956 when Congress enacted section 107(b) of the Federal-Aid Highway Act of 1956, 70 Stat. 37, which transferred the administration of the Alaskan roads to the Secretary of Commerce. This change in authority was reiterated on August 27, 1958, when Congress revised, codified, and reenacted the laws relating to highways as Title 23 of the United States Code. See 23 U.S.C. 119 (1958). The Commerce Department's Bureau of Public Roads reclassified and renumbered the Alaskan roads under its jurisdiction as primary, secondary "A", and secondary "B" routes, but did not specify the widths of those classes of roads.

Section 21 (a) of the Alaska Omnibus Act, 73 Stat. 145 (1959), enacted on June 25, 1959 directed the Secretary of Commerce to convey to the State of Alaska all lands or interests in lands "owned, held, administered by, or used by the Secretary in connection with the activities of the Bureau of Public Roads in Alaska." Section 21(d)(3) an (7) of that Act repealed 23 U.S.C. 119 (1958), and the Act of June 30, 1932, 47 Stat. 446, effective July 1, 1959. 73 Stat. 145-46 (1959).

Lloyd Schade, supra at 204-205. On June 30 1959, pursuant to section 21(a) of the Alaska Omnibus Act, the Secretary of Commerce issued the quitclaim deed which included the road in question.

Accordingly, we conclude that BLM properly recognized that Sanford's Native allotment is subject to an easement for highway purposes extending 50 feet on each side of the centerline of a road transferred to the State of Alaska by a quitclaim deed issued pursuant to the Alaska Omnibus Act, P.L. 86070; 73 Stat. 141, when an easement of that width had been established under the Act of June 30, 1932, 47 Stat. 446. Any issue concerning the abandonment of such a right-of-way is properly within the jurisdiction of the state courts.

#### **f. Public Land Order Case Law Summary:**

1. United States v. Anderson, 113 F.Supp., 1, 14 Alaska 349 (D. Alaska 1953) Land withdrawn by PLO 386 for the Alaska Highway was not subject to entry by individuals.
2. Matanuska Valley Bank v. Abernathy, 445 P.2d 235 (Alaska 1968) Purchasers were entitled to rescind sale agreement where there was a mutual mistake as to the status of title of land. (Land was subject to a PLO 1613 highway easement.)
3. Hahn v. Alaska Title Guaranty Co., 557 P.2d 143 (Alaska 1976) A Public Land Order published in the Federal Register constitutes a "public record" which imparts constructive notice with regard to a particular tract of real estate. The appellee, a title insurance

company was determined to be liable to the extent that the right of way crossing the insured land exceeded that indicated on the policy. (PLO 601).

4. State, Dep't of Highways v. Green, 586 P.2d 595 (Alaska 1978) A 50 foot right of way reservation provided by SO 2665 for local roads applied to subject lot only if the effective date of the Small Tract Act lease was preceded by both construction of road and issuance of secretarial order.

The Greens argued that the PLO did not apply as their lot was subject to a specific reservation (33') by virtue of the Small Tract Act. SO 2665 is a general order whereas the reservation created by the small tract act was specific. The Court ruled the two conflicting orders should be "harmonized if possible" unless there is a conflict. Since the 33 foot reservation was for access streets serving interior lots and the 50 foot reservation was for local roads there was not a conflict. The court relied on the rule of construction that "where language of a public land grant is subject to reasonable doubt such ambiguities are to be resolved strictly against the grantee and in favor of the government".

5. 823 Square Feet, More or Less v. State, 660 P.2d 443 (Alaska 1983) Surveying, staking, stripping, and clearing of entire 100 feet were sufficient act of appropriation to create a 100 foot wide right of way although the road with ditches was only 48 feet wide. Discusses application of SO 2665 and PLO 601 on lots created under the Small Tract Classification order No. 22 of March 23, 1950.

6. State v. Alaska Land Title Ass'n, 667 P.2d 714 (Alaska 1983) This is the primary case for PLO rights of way. By virtue of PLOs 601, 757, and 1613 and DO 2665, the State of Alaska and the Municipality of Anchorage claimed easements for local, feeder and through roads greater than shown in the patents. Three properties, owned by Pease, Boysen and Hansen, were involved in the appeal.

PLO 601 was effective on August 10, 1949; PLO 757 and DO 2665 on October 19, 1951 and PLO 1613 on April 7, 1958.

The lease for the Pease small tract was dated May 1, 1953. The patent, issued on October 4, 1955, contained 33 foot easements along two boundaries, one of which was Rabbit Creek road, and a blanket reservation under 43 USC 321d (the '47 Act). Rabbit Creek Road was in existence at the time of the original leases.

Boysen had property bordering the Seward Highway. The date of entry was January 2, 1951 and the patent was issued on May 15, 1952 with a 47 Act reservation. The Seward highway was constructed prior to the effective date of any of the PLOs. Hansen's property was entered on January 23, 1945 with a patent issued on June 1, 1950. Hansen's property was entered prior to 1947 therefore it was not subject to a 47 Act reservation.



As to the Hansen property, the Court ruled that the property was not subject to PLOs or DO since the entry in January, 1945 was prior to the effective date of any of them. The other two properties were found to be subject to PLO rights of way. A number of arguments against the validity of the PLO rights of way were dismissed by the Court.

**Right of Way Act of 1966:** The Pease and Boysens patents were subject to a '47 Act reservation. They argued that the Right of Way Act of 1966 precluded the State and Municipality's claims for feeder and local roads under the DO 2665. The Court ruled that the ROW Act applied only to the '47 Act reservation, 43 USC 321d. DO 2665 was promulgated under 43 USC 321a, which was not repealed by the ROW Act.

**Constructive Notice:** The PLOs and DO were not recorded. On April 4, 1959 the Federal government conveyed its interest in the Alaska highways to the State. That deed was not recorded until October 2, 1969. Pease and Boysen claimed the State's interest was invalid against them as subsequent innocent purchasers in accordance with AS 34.15.290 which protects subsequent innocent purchasers for value who are without notice of a prior interest. The Court distinguished PLOs and the DO from a wild deed outside the chain of title. Issue in this case was whether the publication of the PLOs and DO in the Federal Register was constructive notice. The Court reaffirmed its earlier decision in Hahn v. Alaska Title Guaranty Co. that publishing in the Federal Register was constructive notice; therefore subsequent purchasers were not innocent purchasers protected by the recording statutes.

**Title Company Liability:** The Court was asked to overturn Hahn v. ATG, since the PLOs and DO were not recorded in Alaska. The Court refused to do so. The title companies were subject to the claims of Pease and Boysen.

**Estoppel:** Pease and Boysen claimed the State and Municipality were estopped from claiming an interest due to the fact that for over 20 years they had been allowed the property to be developed in a manner inconsistent with the assertion of the claimed easements. Relying on its finding that the constructive notice was imparted by the Federal Register, the Court ruled that notice made reliance by the parties unreasonable therefore the estoppel claim lacked merit.

**Patent Statute of Limitations:** The patents did not contain any reservation for the PLO and DO rights of way. This six year statute of limitations to contest a patent had expired long before the State claimed its easement interest. In reaffirming State, Department of Highways v. Green, the Court found that a right of way not expressed in the patent was a valid existing right and the patentee takes subject to such right.

By operation of law, land conveyed by the United States is taken subject to previously established rights of way where the instrument of conveyance is silent as to the existence of such rights of way. No suit to vacate or annul a patent in order to establish a previously existing right of way is necessary because the

patent contains an implied by law condition that it is subject to such a right of way.

**Staking:** The lower court held that the additional widths created by DO 2665 did not apply to the rights of way for adjacent to the Pease and Boysen properties because the road had not been "staked" in accordance with the terms of DO 2665. The Supreme Court rejected that conclusion on the basis that the staking was only required for new construction. Since the roads were in existence at the time of the DO, staking was not required.

7. State, DOT&PF v. First National Bank of Anchorage, 689 P.2d 483 (Alaska 1984) The Bank's predecessor, Pippel, on June 10, 1946, entered onto land that was secretly withdrawn for the military by PLO 95 in 1943. BLM canceled the entry, then subsequently reinstated it. A patent was issued to Pippel on October 11, 1950. PLO 95 was not revoked until April 15, 1953.

The state argued that the entry was not a valid existing right due to the invalid entry on withdrawn land, therefore the property was subject to a 300 foot wide right of way under PLO 601. However, the Court ruled that once a patent is issued, defects in the preliminary process are cured. Since the state did not contest the patent within the six year statute of limitations, the patent made the 1946 entry presumptively valid. Consequently the entry related back to 1946, prior to the PLO.

8. Resource Investments v. State, DOTPF, 687 P.2d 280 (Alaska 1984) Reaffirms the decision in the Alaska Land Titles case that a homestead entry constitutes a "valid existing right" as defined by PLO 601.

APPENDIX A

Certificate of Public Convenience  
and Necessity No. 97 Granted to

COLLEGE UTILITIES CORPORATION

DESCRIPTION OF SERVICE AREA:

|     |     |           |  |
|-----|-----|-----------|--|
| T1S | R2W | Sections: | 1, 2, S 1/2 of 10, 11, 12, 13, 14, 15, 22, 23, 24, and that portion of 25, 26, 27 and 35 lying North of the right bank of the Tanana River   |
| T1S | R1W | Sections: | That portion of W1/2 of W1/2 of NW1/4 of 4 lying West of Noyes Slough; that portion of 5 lying North of Noyes Slough; 6, 7, that portion of W1/2 of 8 lying West of Noyes Slough and West of the Chena River, but excluding all areas in S1/2 of SW1/4; SW1/4 of 17; S1/2 of NW1/4 of 17; SW1/4 of NE1/4 of 17; portion of SE1/4 of NE1/4 of 17 more particularly described as W1/2 of Block 13 and Block 16 of E. M. Jones Subdivision; NW1/4 of SE1/4 of 17; 18 except a portion of NE1/4 more particularly described as Lots 1 and 2, Block One, West Addition Fairwest Subdivision, filed in the Fairbanks Recording District on January 24, 1968, as instrument No. 64-486; 19; W1/2 of 20; and that portion of the W1/2 of 29 and of 30, lying North of the right bank of the Tanana River |
| T1N | R1W | Sections: | W1/2 of SW1/4 of 29; S1/2 of 30; 31; 32; and 33  |
| T1N | R2W | Sections: | 35 and 36  |

(All the above with reference to the Fairbanks Meridian)

CHRONOLOGY:

|                                      |            |                |
|--------------------------------------|------------|----------------|
| Certificate Granted:                 | 06/05/1970 | (U-70-009(1))  |
| Service Area Extension:              | 07/22/1971 | (U-71-030(1))  |
| Service Area Extension:              | 07/25/1972 | (U-72-038(1))  |
| Service Area Extension:              | 09/12/1973 | (U-73-031(1))  |
| Service Area Extension:              | 11/05/1975 | (U-75-075(1))  |
| Service Area Extension:              | 10/12/1976 | (U-76-054(1))  |
| Service Area Extension:              | 08/09/1977 | (U-77-040(1))  |
| Service Area Description Correction: | 08/08/1978 | (U-77-040(1E)) |
| Service Area Extension:              | 04/10/1979 | (U-79-007(1))  |
| Service Area Extension:              | 07/26/1979 | (U-79-045(1))  |
| Revision:                            | 06/20/1983 | (U-83-021(1))  |

|                         |            |                   |
|-------------------------|------------|-------------------|
| Service Area Extension: | 12/23/1983 | (U-83-066(1))     |
| Service Area Extension: | 05/20/1985 | (U-84-020(4))     |
|                         |            | and (U-84-039(4)) |
| Service Area Extension: | 08/29/1985 | (U-84-020(5))     |
|                         |            | and (U-84-039(5)) |
| Service Area Extension: | 06/30/1999 | (U-98-039(2))     |
| Service Area Extension: | 03/19/2010 | (U-09-106(2))     |
| Service Area Extension: | 09/06/2017 | (U-17-015(2))     |

# Regulatory Commission of Alaska

## Certificate of Public Convenience and Necessity No. 97

*Having found that the grantee of this certificate is fit, willing, and able to provide the utility services applied for and that such services are required for the convenience and necessity of the public, the Regulatory Commission of Alaska, pursuant to the authority vested in it by AS 42.05, hereby issues this certificate of Public Convenience and Necessity to*

### COLLEGE UTILITIES CORPORATION

*authorizing it to operate a public utility, as defined by AS 42.05.990(4) (C) for the purpose of furnishing*

### WATER SERVICE

*This Certificate is issued under, and subject to, the provisions of AS 42.05 and all rules, regulations, and orders from time to time promulgated by the Commission governing the rates, charges, services, facilities, and practices of utility operations of the kind authorized herein.*

*The specific nature, scope, terms, conditions, and limitations of the authority granted by this Certificate, as amended to date, are set forth in the appendix hereto and in the following order(s) of the Commission which, by this reference, are incorporated in and made a part hereof as though fully set forth herein.*

**Docket No.  
U-09-106(2)**

**Date of Order  
March 19, 2010**

**(Chronology and service area description shown on the attached Appendix A)**

*IN WITNESS THEREOF, the undersigned members of the Commission have executed this Certificate of Public Convenience and Necessity at Anchorage, Alaska on this 19<sup>th</sup> day of March, 2010.*



Regulatory Commission of Alaska

*Robert M. Pugh*  
(CHAIR)  
*Ken Gierd*  
(COMMISSIONER)  
*[Signature]*  
(COMMISSIONER)  
*Paul F. Sunkie*  
(COMMISSIONER)  
*[Signature]*  
(COMMISSIONER)

# NOTICE OF UTILITY APPLICATION TO EXPAND SERVICE AREA

## NOTICE OF UTILITY APPLICATION TO EXPAND SERVICE AREA

The REGULATORY COMMISSION OF ALASKA (Commission) gives notice that on March 10, 2017, College Utilities Corporation (CUC), filed an application to expand their service area under previously certificated Certificate of Public Convenience and Necessity (Certificate) No. 97, authorizing water service in Fairbanks. Docket No. U-17-015 was opened to address this matter.

CUC proposes to provide water service throughout the Chena Marina and Twin Lakes subdivisions west of Fairbanks. The proposed main extension will tie into existing CUC mains in the Broadmoor Subdivision. The main extension must cross under the Chena River via directional drilling. The area has approximately 300 developed lots that currently receive water by private water wells or private storage tanks.

No requests for waiver or petitions for confidentiality were filed with the application. The Commission has not assessed the completeness of the application. The Commission may determine whether the application is complete by March 31, 2017.

A person who proposes to file an application to furnish the same, or substantially the same, service or facility to essentially the same area, in whole or in part, thus creating the potential for mutually exclusive applications, must file a notice of intent to file a competing application by April 17, 2017. The person proposing competing service must then file the competing application by June 16, 2017. If no notice of intent to file a competing application is filed by April 17, 2017, the Commission will proceed to grant or deny the CUC application to amend its certificate in accordance with the applicable provisions of AS 42.05.221 - 42.05.281.

You may obtain more information about this application by contacting Kristen Winters, Director of Regulatory Affairs for CUC at 3691 Cameron Street, Suite 201, Fairbanks, AK 99709; phone (907) 479-3118. The complete filing is also available for inspection at the Commission's office at 701 West 8th Avenue, Suite 300, Anchorage, AK 99501; phone: (907) 276-6222, or may be viewed at the Commission's website at <http://rca.alaska.gov> by typing Docket No. "U-17-015" in the *Find a Matter* search box.

To comment on this filing, please file your comments by 5:00 p.m., April 6, 2017, at the Commission's address given above or via our website at:

<https://rca.alaska.gov/RCAWeb/WhatsNew/PublicNoticesComments.aspx>.

Please reference Docket No. U-17-015 and include a statement that you have filed a copy of the comments with CUC at its address given above.

Individuals or groups of people with disabilities, who require special accommodations, auxiliary aids or service, or alternative communication formats, please contact Joyce McGowan at (907) 276-6222, toll-free at 1-800-390-2782, or TTY (907) 276-4533 or send a request via electronic mail to [rca.mail@alaska.gov](mailto:rca.mail@alaska.gov) by April 3, 2017.

DATED at Anchorage, Alaska, this 16th day of March, 2017.

REGULATORY COMMISSION OF ALASKA

Robert M. Pickett  
Chairman

**Attachments, History, Details**

**Attachments**  
None

**Details**  
Department:

Commerce, Community and  
Attachment 1  
Page 1 of 2

**Revision History**

Created 3/16/2017 2:46:59 PM by nlwilliams

|                       |  |
|-----------------------|--|
| Category:             | Economic Development   |
| Sub-Category:         | Public Notices   |
| Location(s):          | Pipeline/Utilities   |
| Project/Regulation #: | Statewide  |
| Publish Date:         | 3/16/2017  |
| Archive Date:         | 4/7/2017   |
| Events/Deadlines:     | Public Comment Deadline<br>3/16/2017 3:00pm - 4/6/2017<br>5:00pm |

Regulatory Commission of Alaska  
701 West Eighth Avenue, Suite 300  
Anchorage, Alaska 99501  
(907) 276-6222; TTY (907) 276-4533

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STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Stephen McAlpine, Chairman  
Rebecca L. Pauli  
Robert M. Pickett  
Norman Rokeberg  
Janis W. Wilson

In the Matter of the Application Filed by COLLEGE  
UTILITIES CORPORATION to Amend Certificate  
of Public Convenience and Necessity No. 97 to  
Extend Its Water Service Area

U-17-015  
ORDER NO. 2

**ORDER GRANTING APPLICATION TO AMEND CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY, REQUIRING FILINGS,  
APPROVING SERVICE AREA MAP AND DESCRIPTION, AND  
APPROVING TARIFF SHEETS**

BY THE COMMISSION:

Summary

We grant the application filed by College Utilities Corporation (CUC) to amend the Certificate of Public Convenience and Necessity (Certificate) No. 97 service area. We require CUC to file status reports on the financing of its water distribution system extension. We approve the service area map and description filed by CUC on March 10, 2017. We approve Tariff Sheet Nos. 3 and 4 filed by CUC on March 10, 2017.

Background

CUC provides water public utility service to portions of the Fairbanks North Star Borough west of the City of Fairbanks under Certificate No. 97.<sup>1</sup> CUC's public water

<sup>1</sup>CUC also provides sewer public utility service in the Fairbanks North Star Borough pursuant to Certificate No. 37. CUC is not seeking to expand its sewer public utility service area in this proceeding.



1 utility service territory includes portions of the Chena Marina and Twin Lakes subdivisions,  
2 in which CUC does not currently provide service. CUC proposes to construct the Chena  
3 Marina Water Main Extension (Extension), which will allow CUC to provide public water  
4 utility service to approximately 300 occupied lots in these two subdivisions.

5 CUC is not currently authorized to provide public water utility service in the  
6 portions of the two subdivisions located in Township 1 South, Range 2 West, Sections 15,  
7 22, and 27, Fairbanks Meridian.<sup>2</sup> CUC filed an application to add the south half of  
8 Section 15, all of Section 22, and that portion of Section 27 north of the right bank of the  
9 Tanana River to its Certificate No. 97 service area.<sup>3</sup> CUC filed proposed revisions to  
10 Tariff Sheet Nos. 3 (Water Service Area) and 4 (Service Area Description (Water)) with  
11 its Application on March 10, 2017.

12 We issued public notice of the Application with comments due by April 6,  
13 2017. No comments were received. CUC supplemented the Application.<sup>4</sup>

#### 14 Discussion

##### 15 Application to Amend Certificate

16 A public utility's certificate describes the nature and extent of the authority  
17 granted to the utility, including a description of the utility's authorized service area. We  
18 review an application to amend a certificate to determine whether the utility is fit, willing,  
19 and able to provide the utility services applied for and that the services are required for  
20

21  
22 <sup>2</sup>Certificate No. 97, Appendix A, at 1.

23 <sup>3</sup>*Application for Amended Certificate of Public Convenience and Necessity for  
College Utilities Corporation*, filed March 10, 2017 (Application), at 4.

24 <sup>4</sup>*Application to Amend CPCN 97 Index for Electronic Filing (SUPPLEMENT)*, filed  
25 March 24, 2017. Correspondence from K. Winters, filed August 14, 2017 (Winters  
26 Correspondence).

1 the convenience and necessity of the public.<sup>5</sup> When determining whether an entity is fit,  
2 willing, and able to provide utility services, we examine that entity's managerial, technical,  
3 and financial fitness.

4 Managerial Fitness

5 CUC is a wholly owned subsidiary of Fairbanks Sewer & Water, Inc. (FSW).  
6 The FSW management team operates CUC and CUC's interconnected affiliate Golden  
7 Heart Utilities, Inc. (GHU).<sup>6</sup> This management team also operates FSW's subsidiary  
8 Utility Services of Alaska, Inc. (USAI), which provides administrative and operation  
9 services to both CUC and GHU. Together, CUC and GHU serve approximately 9,000  
10 water utility customers.

11 FSW President Oran Paul has served as a senior manager for CUC and  
12 GHU since 2007 and has 19 years of managerial experience in the Fairbanks area. FSW  
13 Vice-President and Director of Administration Tiffany Van Horn is a certified public  
14 accountant and has served in managerial positions for CUC and GHU since 2007. USAI  
15 Director of Operations Bernard Stack holds water distribution and water treatment  
16 operator certificates from the Alaska Department of Environmental Conservation (ADEC)  
17 and has 38 years of experience with CUC and GHU. USAI Director of Regulatory Affairs  
18 Kristen Winters is a graduate of the National Association of Regulatory Commissioners  
19 Utility Rate School and has served in managerial positions with USAI since 2007. FSW  
20 Chief Financial Officer Elizabeth Styers served as controller for CUC and GHU from 1997  
21 until 2009, when she was promoted to her current position.<sup>7</sup>

22  
23 <sup>5</sup>AS 42.05.241.

24 <sup>6</sup>GHU provides water utility service in and near the City of Fairbanks pursuant to  
25 Certificate No. 118. GHU provides sewer utility service in the and near the City of  
26 Fairbanks pursuant to Certificate No. 290.

<sup>7</sup>Application, Exhibit IIA.

1                   Based on the experience of the management team operating CUC and its  
2 closely related affiliates, we find that CUC is managerially fit to provide water public utility  
3 service in the proposed service area addition.

4                   Technical Fitness

5                   CUC has provided certificated water public utility service in the Fairbanks  
6 North Star Borough since 1970.<sup>8</sup> CUC had the proposed Extension investigated by a  
7 professional engineer, who found that service could be provided through the Extension  
8 without modifying CUC's water source. The Extension is designed to include insulated  
9 pipes and water circulation to prevent winter freezing. The Extension is also designed to  
10 maintain adequate water pressure for residential customers in the service area but is not  
11 designed to accommodate fire service flows. The Extension will require installation of  
12 pipe under the Chena River, through wetlands, and possibly through a known  
13 contaminated site, and will require additional review by ADEC and the United States Army  
14 Corps of Engineers.<sup>9</sup>

15                   CUC states that it will file a copy of ADEC's Final Operation Approval upon  
16 completion of the proposed Extension.<sup>10</sup> We note that CUC will need to comply with  
17 ADEC requirements to obtain this approval, which includes multiple reviews to determine  
18 design and construction compliance with the technical requirements of state law.<sup>11</sup>

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<sup>8</sup>Order U-70-009(1)/U-70-010(1), *Order Granting Certificate in Docket No. U-70-9, Order Denying Certificate in Docket No. U-70-10*, dated June 5, 1970.

<sup>9</sup>Application at 5, Exhibit IIIH(3).

<sup>10</sup>Application at 5.

<sup>11</sup>18 AAC 80.210.

1 Based on its history of providing water public utility service, the information  
2 provided, and the commitment to comply with ADEC's requirements, we find that CUC is  
3 technically fit to provide water public utility service in the proposed service area addition.

4 Financial Fitness

5 CUC referred to its most recent annual financial statements as evidence of  
6 its financial fitness to provide service in the additional service territory.<sup>12</sup> These  
7 statements show that on December 31, 2016, CUC had assets worth \$29.7 million,  
8 shareholder equity of \$7.4 million, and long-term debt of \$8 million. In 2016, CUC  
9 received \$6.5 million in water and sewer service revenue, which resulted in net income  
10 of \$812,470. In 2015, CUC had net income of \$429,746.<sup>13</sup>

11 CUC states that the Extension will be entirely funded by a low interest rate  
12 loan from the ADEC Alaska Drinking Water Fund (ADWF).<sup>14</sup> ADEC has notified CUC that  
13 the Extension has qualified for inclusion on the ADWF priority funding list.<sup>15</sup>

14 CUC's proposed Extension is into a low density residential area with  
15 approximately 300 developed lots that currently receive water service through private  
16 wells or hauled water.<sup>16</sup> CUC projects that initially 94 lots will connect to the new public  
17 utility water facilities. Based on this projection, CUC estimates that contributions in aid of  
18 construction will provide \$877,540 of the \$2,600,000 cost of constructing the Extension.  
19 CUC further estimates that water utility rates paid by these 94 new customers would

20  
21 <sup>12</sup>Application at 5-6.

22 <sup>13</sup>*College Utilities Corporation Financial Statements and Supplementary*  
23 *Information with Independent Auditor's Report, Years Ended December 31, 2016 and*  
24 *2015, filed April 3, 2017, at 4-6.*

25 <sup>14</sup>Application at 6.

26 <sup>15</sup>Winters Correspondence.

<sup>16</sup>Application at 4.

1 produce \$53,513.20 in revenue and that costs related to the expanded system would  
2 increase CUC's revenue requirement by \$53,964. These estimates yield a gross revenue  
3 deficiency of \$451.<sup>17</sup>

4 Based upon CUC's financial strength and its qualification for low interest  
5 rate financing of the Extension through the ADWF, we find that CUC is financially fit to  
6 provide water public utility service in the proposed service area addition.

7 Public Convenience and Necessity

8 CUC proposes to extend water public utility service into a residential area  
9 of the Fairbanks North Star Borough where such service is currently not available. The  
10 Extension would be insulated and provide for circulation of heated water to prevent  
11 freezing in the winter.<sup>18</sup> CUC's proposed Extension has been reviewed by ADEC and  
12 found to be qualified for placement on the ADWF priority list based in part "[on the] size  
13 of the population that will benefit from the project," the "public health and environmental  
14 hazards to be addressed by the project," and the "effect of the proposed project on water  
15 quality."<sup>19</sup>

16 We find that the public convenience and necessity requires water public  
17 utility service in the Chena Marina and Twin Lakes subdivisions of the Fairbanks North  
18 Star Borough. Therefore, we approve the Application and amend Certificate No. 97 to  
19 include authority to provide water public utility service in the south half of Section 15,  
20 Section 22, and that portion of Section 27 north of the right bank of the Tanana River, all  
21 in Township 1 South, Range 2 West, Fairbanks Meridian.

24 <sup>17</sup>Application at Exhibit IIF.

25 <sup>18</sup>Application at Exhibit IIIH(3).

26 <sup>19</sup>Winters Correspondence; 18 AAC 76.020(d)(4), (5), (6).

1 Required Filings

2 We require CUC to file status reports in this docket on Extension financing  
3 activities. The first status report shall be filed by December 5, 2017, and subsequent  
4 status reports shall be filed every 90 days thereafter until Extension financing has been  
5 secured. These status reports should specifically identify all communications with ADEC  
6 related to the requested ADWF loan, including the date of any application submittals, and  
7 the identity of any other sources of financing that CUC chooses to pursue.

8 Service Area Map and Service Area Description

9 CUC filed a proposed amended service area map and a written service area  
10 description.<sup>20</sup> We have reviewed the service area map and the service area description  
11 and determined that they are accurate. Therefore, we approve the amended service area  
12 map and service area description filed by CUC. The amended Certificate No. 97 service  
13 area description is attached as an appendix to this order.

14 Tariff Sheets

15 We approve Tariff Sheet Nos. 3 and 4 filed by CUC on March 10, 2017, with  
16 an effective date of September 6, 2017. The validated tariff sheets will be returned under  
17 separate cover.

18 Final Order

19 This order constitutes the final decision in this proceeding. This decision  
20 may be appealed within thirty days of this order in accordance with AS 22.10.020(d) and  
21 Alaska Rule of Appellate Procedure 602(a)(2). In addition to the appellate rights afforded  
22 by AS 22.10.020(d), a party has the right to file a petition for reconsideration in  
23 accordance with 3 AAC 48.105. If such a petition is filed, the time period for filing an  
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<sup>20</sup>Application, Exhibit IID.

1 appeal is tolled and then recalculated in accordance with Alaska Rule of Appellate  
2 Procedure 602(a)(2).

3 **ORDER**

4 THE COMMISSION FURTHER ORDERS:

5 1. The *Application to Amend Certificate No. 97* filed by College Utilities  
6 Corporation on March 10, 2017, is granted.

7 2. By December 5, 2017, and every 90 days thereafter, College Utilities  
8 Corporation shall file status reports in this docket as discussed in the body of this order.

9 3. The service area map and service area description filed by College  
10 Utilities Corporation on March 10, 2017, are approved.

11 4. Tariff Sheet Nos. 3 and 4 filed by College Utilities Corporation on  
12 March 10, 2017, are approved with an effective date of September 6, 2017.

13 DATED AND EFFECTIVE at Anchorage, Alaska, this 6th day of September, 2017.

14 BY DIRECTION OF THE COMMISSION  
15 (Commissioners Stephen McAlpine and  
16 Janis W. Wilson, not participating.)

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Regulatory Commission of Alaska  
701 West Eighth Avenue, Suite 300  
Anchorage, Alaska 99501  
(907) 276-6222; TTY (907) 276-4533









# Property Summary

[back to Search Page](#)

|  |  |   |
|--|--|---|
| <b>PAN</b><br>0608484                                      | <b>PROPERTY PHYSICAL DESCRIPTION - DO NOT RELY ON AS A LEGAL DESCRIPTION</b><br>LOT 1A BLOCK 1 ROLAND ACRES FIRST ADDITION PREVIOUSLY ASSESSED AS LOT 1<br>BLOCK 1 ROLAND ACRES Previously assessed as 1S 2W 15 1527 | <b>PROPERTY CLASS</b><br>Residential  |
| <b>NEIGHBORHOOD</b><br>1101 Chena Ridge                    | <b>BUSINESS</b>  | <b>STATUS</b><br>TAXABLE  |
| <b>MILLAGE GROUP</b><br>0987 Chena Hills Road Service Area | <b>MOST RECENT MILLAGE RATE</b><br>18.5070   | <b>ADDITIONAL INFORMATION</b><br><a href="#">Building Details</a><br><a href="#">View Property Location</a> |
| <b>FIRE SERVICE AREA</b><br>CHENA GOLDSTREAM FIRE S A      |  |   |

**LAND AREA**  
Parcel  
Lot 1A Block 1 41338 Square Feet

| OWNER                 |           | ADDRESS       |
|-----------------------|-----------|---------------|
| NAME                  | INTEREST  | SITUS ADDRESS |
| ROE, HARRY JAMES      | OWNERSHIP | 2634 SEA WAY  |
| ROE, KIMBERLY DINNEEN | CO-OWNER  |               |

## Documents

Documents are current as of 12-31-2016

The FNSB provides a link to view the recorded document at the State of Alaska Recorders Office through the Instrument #. Current registered documents **not** showing may be seen at the State of [Alaska Recorders Office Search page](#). The FNSB has no control over the contents posted on any external web sites and these sites may have separate terms of use and privacy policies. The inclusion of this web link does not imply endorsement by the FNSB of the site, its content, advertisers or sponsors.

| DESCRIPTION    | RECORD DATE | BOOK | PAGE | INSTRUMENT #                  |
|----------------|-------------|------|------|-------------------------------|
| Quitclaim Deed | 3/15/2018   |      |      | <a href="#">2018-003938-0</a> |
| Warranty Deed  | 4/16/2013   |      |      | <a href="#">2013-007008-0</a> |
| Deed of Trust  | 4/16/2013   |      |      | <a href="#">2013-007009-0</a> |
| Plat           | 4/16/2010   |      |      | <a href="#">2010-005982-0</a> |
| Plat           | 9/3/2009    |      |      | <a href="#">2009-016980-0</a> |
| Ordinance      | 3/9/1989    |      |      |                               |

## Assessment History

For questions regarding assessments, contact the FNSB Department of Assessing at 907-459-1428.

| YEAR | LAND     | STRUCTURES ETC. | FULL VALUE TOTAL | EXEMPTIONS TOTAL | TAXABLE   |
|------|----------|-----------------|------------------|------------------|-----------|
| 2018 | \$24,741 | \$293,188       | \$317,929        | \$0              | \$317,929 |
| 2017 | \$24,741 | \$112,198       | \$136,939        | \$0              | \$136,939 |
| 2016 | \$24,741 | \$109,439       | \$134,180        | \$0              | \$134,180 |
| 2015 | \$24,741 | \$103,205       | \$127,946        | \$0              | \$127,946 |
| 2014 | \$24,741 | \$28,025        | \$52,766         | \$0              | \$52,766  |
| 2013 | \$24,741 | \$0             | \$24,741         | \$0              | \$24,741  |

[Pay Property Taxes by credit card](#)

## Tax History (Updated: 06/28/18 03:50 AM AST)

If taxes are delinquent the interest calculation date is: 9/4/2018. All prior year delinquent payments must be made with guaranteed funds.

For payments made after the due dates, please call the FNSB Division of Treasury and Budget at 907-459-1441 for the correct amount.

| YEAR | TAX LEVIED | STATE EXEMPTED | FEES     | TOTAL DUE  | TOTAL PAID | NET DUE    |
|------|------------|----------------|----------|------------|------------|------------|
| 2018 | \$5,883.90 | \$0.00         | \$0.00   | \$5,883.90 | \$1,500.00 | \$4,383.90 |
| 2017 | \$2,380.14 | \$0.00         | \$0.00   | \$2,380.14 | \$2,380.14 | \$0.00     |
| 2016 | \$2,263.76 | \$0.00         | \$153.62 | \$2,417.38 | \$2,417.38 | \$0.00     |
| 2015 | \$2,181.74 | \$0.00         | \$57.88  | \$2,239.62 | \$2,239.62 | \$0.00     |
| 2014 | \$880.46   | \$0.00         | \$27.99  | \$908.45   | \$908.45   | \$0.00     |



# Property Summary

[back to Search Page](#)

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|--|---|---|
| <b>PAN</b><br>0509256                                      | <b>PROPERTY PHYSICAL DESCRIPTION - DO NOT RELY ON AS A LEGAL DESCRIPTION</b><br>TRACT A TWIN LAKES PHASE 1 Previously assessed as 1S 2W 14 1414 | <b>PROPERTY CLASS</b><br>Vacant Land  |
| <b>NEIGHBORHOOD</b><br>1101 Chena Ridge                    | <b>BUSINESS</b>   | <b>STATUS</b><br>TAXABLE  |
| <b>MILLAGE GROUP</b><br>0987 Chena Hills Road Service Area | <b>MOST RECENT MILLAGE RATE</b><br>18.5070  | <b>ADDITIONAL INFORMATION</b><br><a href="#">Building Details</a><br><a href="#">View Property Location</a> |
| <b>FIRE SERVICE AREA</b><br>CHENA GOLDSTREAM FIRE S A      |   |   |

**LAND AREA**  
Parcel  
1 224943.8 Square Feet

| OWNER        |           | ADDRESS          |
|--------------|-----------|------------------|
| NAME         | INTEREST  |                  |
| PUMPKIN LTD, | OWNERSHIP | No data returned |

## Documents

Documents are current as of 12-31-2016

The FNSB provides a link to view the recorded document at the State of Alaska Recorders Office through the instrument #. Current registered documents **not** showing may be seen at the State of [Alaska Recorders Office Search page](#). The FNSB has no control over the contents posted on any external web sites and these sites may have separate terms of use and privacy policies. The inclusion of this web link does not imply endorsement by the FNSB of the site, its content, advertisers or sponsors.

| DESCRIPTION                | RECORD DATE | BOOK        | PAGE       | INSTRUMENT #             |
|----------------------------|-------------|-------------|------------|--------------------------|
| Deed of Trust              | 10/27/2016  |             |            | <del>2016-016208-0</del> |
| Warranty Deed              | 10/27/2016  |             |            | <del>2016-016207-0</del> |
| Warranty Deed              | 2/28/2014   |             |            | <del>2014-002579-0</del> |
| Multi-Parcel Deed of Trust | 2/14/2008   |             |            | <del>2008-002545-0</del> |
| Covenant Amendment         | 4/22/2004   |             |            | <del>2004-008316-0</del> |
| Easement(s)                | 3/8/2004    |             |            | <del>2004-004696-0</del> |
| Multi-Parcel Deed of Trust | 1/8/2002    |             |            | <del>2002-000421-0</del> |
| Quitclaim Deed             | 7/25/2000   | <u>1208</u> | <u>856</u> |                          |
| Multi-Parcel Deed of Trust | 7/25/2000   | <u>1208</u> | <u>857</u> | <del>2000-016391-0</del> |
| Plat                       | 9/17/1999   |             |            | <del>1999-022976-0</del> |
| Covenants                  | 9/17/1999   | <u>1161</u> | <u>852</u> |                          |
| Ordinance                  | 3/9/1989    |             |            |                          |

## Assessment History

For questions regarding assessments, contact the FNSB Department of Assessing at 907-459-1428.

| YEAR | LAND     | STRUCTURES ETC. | FULL VALUE TOTAL | EXEMPTIONS TOTAL | TAXABLE  |
|------|----------|-----------------|------------------|------------------|----------|
| 2018 | \$84,354 | \$0             | \$84,354         | \$0              | \$84,354 |
| 2017 | \$84,354 | \$0             | \$84,354         | \$0              | \$84,354 |
| 2016 | \$84,354 | \$0             | \$84,354         | \$0              | \$84,354 |
| 2015 | \$84,354 | \$0             | \$84,354         | \$0              | \$84,354 |
| 2014 | \$84,354 | \$0             | \$84,354         | \$0              | \$84,354 |
| 2013 | \$84,354 | \$0             | \$84,354         | \$0              | \$84,354 |

[Pay Property Taxes by credit card](#)

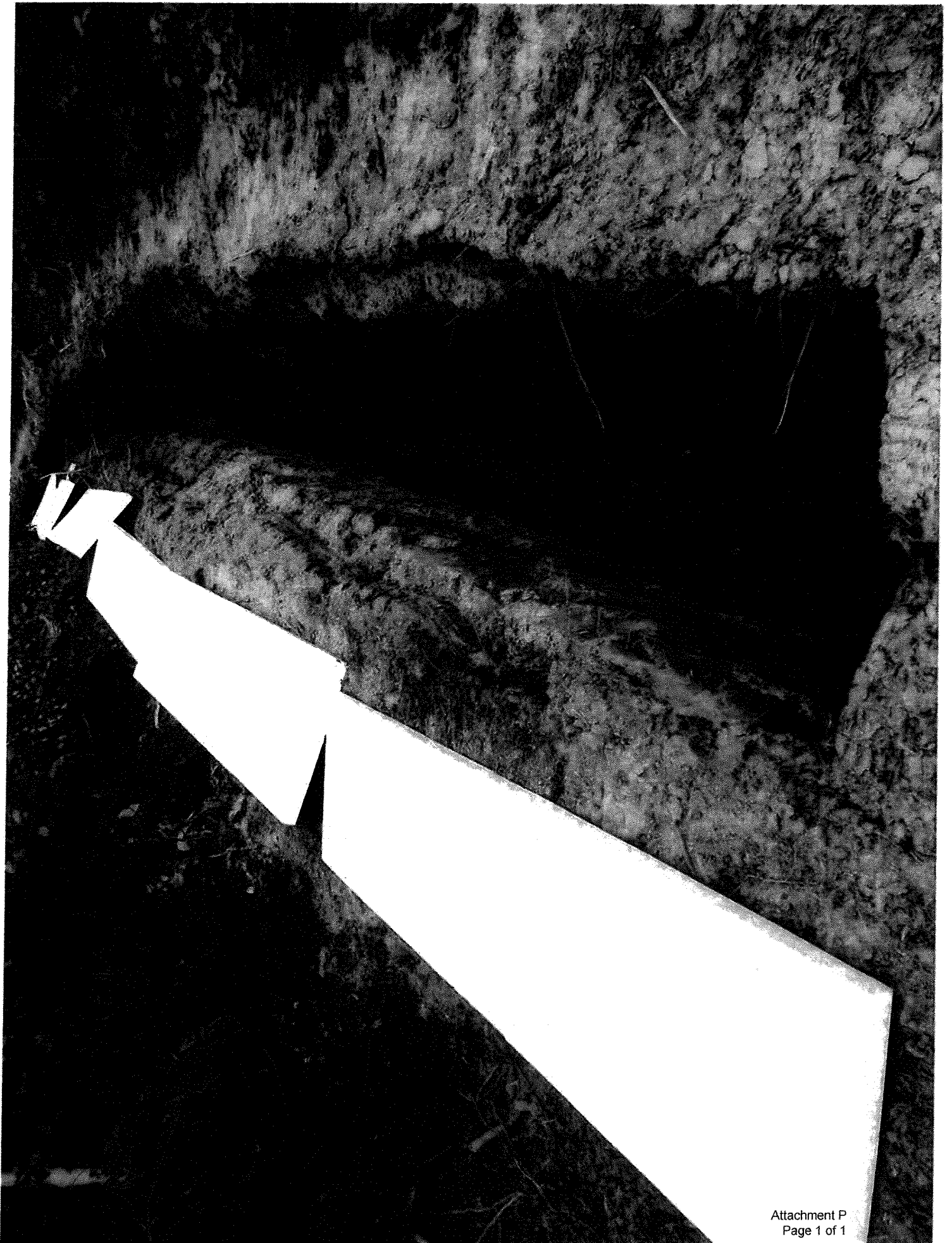
## Tax History (Updated: 06/28/18 03:50 AM AST)

If taxes are delinquent the interest calculation date is: 9/4/2018. All prior year delinquent payments must be made with guaranteed funds.

For payments made after the due dates, please call the FNSB Division of Treasury and Budget at 907-459-1441 for the correct amount.

| YEAR | TAX LEVIED | STATE EXEMPTED | FEES    | TOTAL DUE  | TOTAL PAID | NET DUE    |
|------|------------|----------------|---------|------------|------------|------------|
| 2018 | \$1,561.12 | \$0.00         | \$0.00  | \$1,561.12 | \$0.00     | \$1,561.12 |
| 2017 | \$1,466.14 | \$0.00         | \$46.45 | \$1,512.59 | \$1,512.59 | \$0.00     |
| 2016 | \$1,423.14 | \$0.00         | \$0.00  | \$1,423.14 | \$1,423.14 | \$0.00     |
| 2015 | \$1,438.40 | \$0.00         | \$0.00  | \$1,438.40 | \$1,438.40 | \$0.00     |

|      |            |        |        |            |            |        |
|------|------------|--------|--------|------------|------------|--------|
| 2014 | \$1,407.52 | \$0.00 | \$0.00 | \$1,407.52 | \$1,407.52 | \$0.00 |
|------|------------|--------|--------|------------|------------|--------|



542 4<sup>th</sup> Avenue, Suite 207  
Fairbanks, Alaska 99701  
(907) 888-4098



**Kramer**  
and Associates

310 K Street, Suite 207  
Anchorage, Alaska 99501  
(907) 888-4098, Fax (907) 264-6602

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Legal Assistant  
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taira@mikekramerlaw.com

Reilly Cosgrove  
reilly@mikekramerlaw.com  
C (907) 987-5048

June 12, 2018

Mamie Brown  
Utility Services of Alaska Inc.  
3691 Cameron St. #201  
Fairbanks, AK 99709

*via email only*

[mamie@akwater.com](mailto:mamie@akwater.com)

Dear Ms. Brown:

I represent Jason Roe, owner of Tract A, in the Twin Lakes subdivision, Phase 1, Plat 99-77.

College Utilities has scheduled a hydro ax to clear a 33' strip of Mr. Roe's property, to install an underground water main to service the 6 lots to the west of Mr. Roe on former T.L. 1501, see exhibit A.

Mr. Roe will be seeking an injunction to stop the work unless you can convince us the easement exists **and** that you need a 33' clearing to accomplish your work.

College Utilities believes there is a 66' section line highway easement and that it has a legal right to bury water mains entirely on Mr. Roe's side of this alleged easement. Mr. Roe disputes the existence of the easement. If an easement exists, he disputes that College Utilities has a right to use it for a buried water main.

### **There is no Easement**

Section line easements were granted to Alaska on April 6, 1923,<sup>1</sup> when the territory accepted the federal grant offered in 43 U.S.C. Sec. 932. After April 6, 1923, section line easements were automatically created on unreserved land upon recording

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<sup>1</sup> Chapter 19 SLA 1923.

of the survey that created the section line. Attached as exhibit B is the June 7, 1913 survey of Section 14, Township 1 South, Range 2 West. Because the survey predates the acceptance of the grant, no SLE was created in Section 14.

The common law rule of law is statutes are prospective unless there is clear legislative intent the statute is to apply retroactively.<sup>2</sup> AS 01.10.090 provides: No statute is retrospective unless expressly declared therein.

Chapter 19 SLA 1923 succinctly states:

A tract of four rods wide between each section of land in the Territory of Alaska is hereby dedicated for use as public highways, the section line being the center of said highway. But if such highway shall be vacated by any competent authority the title to the respective strips shall inure to the owner of the tract of which it formed a part by the original survey.

The grant of 43 U.S.C. Sec. 932 was a continuing one, as was its acceptance by 19 SLA 1923. As lands came into the public domain after 1923, they became impressed with section line highway easements. 1969 Op. Att'y Gen. No. 7 at 6 (Alaska, December 18, 1969).<sup>3</sup>

The territorial legislature did not violate common law and statutory law by retroactively creating SLE's on land that had been surveyed prior to 1923.

Attached as exhibit C is the original patent to Lynn Hollist. The patent was issued in August 23, 1949, and the homestead entry was on July 5, 1949, when the certificate of entry was issued.<sup>4</sup>

Because both of these events occurred between January 18, 1949, when 43 U.S.C. Sec 932 was revoked, and March 20, 1953, when the law was reinstated, no SLE was imposed on Mr. Hollist's homestead. His homestead later became the Twin Lakes subdivision.

The 9th Circuit has stated that the scope of a federal highway grant is a matter of federal law and RS 2477 R.O.W.'s are not subject to power lines. In *U.S. v. Gates of the Mountains Lakeshore Homes, Inc.*, 732 F.2d 1411, 1413 (9th Cir. 1984), the court, construing RS 2477, held that the scope of a federal land grant is a question of federal law. The court recognized that federal law sometimes adopts and

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<sup>2</sup> *Brice v. State*, 669 P.2d 1311 (Alaska 1983).

<sup>3</sup> *Id.* at 1315.

<sup>4</sup> Exhibit D, *Luker v. Sykes*, 357 P.3d 1191 (Alaska 2015). HN 6 citing two other AK cases confirming that entry is when the certificate was issued, not when application was filed.



applies state law to federal land grants, but found that federal statutes passed after RS 2477 was enacted dictated a distinctly federal rule applicable to the placement of electric power transmission lines within RS 2477 roads.

In the earlier case of *Fisher v. GVEA*,<sup>5</sup> the Alaska Supreme Court purportedly recognized a right to install electric lines as incidental to highway use, but this decision is in direct conflict with subsequent 9th Circuit law and even if valid, only applies to electric lines, not buried water mains.

### **A Highway Easement Cannot Be Used For Water Mains**

Even if a highway easement exists, the statutory definition of highway does not allow for highway easements to serve as utility easements. AS 19.25.010 only allows utilities on a ROW if first authorized by D.O.T.:

A utility facility may be constructed, placed, or maintained across, along, over, under, or within a state right-of-way only in accordance with regulations adopted by the department and if authorized by a written permit issued by the department. The department may charge a fee for a permit issued under this section.

Mr. Roe is unaware of any such permit from D.O.T. authorizing College Utilities to hydro ax his property.

Even if an easement is found to exist, College Utilities planned clearing of the entire 33' is unreasonable. In *Anderson v. Edwards*,<sup>6</sup> Anderson sought to clear the entire 100' SLE but the Supreme Court held that the Legislature's inherent intent was to only dedicate the land necessary for the use of the highway, essentially the width of the highway, and the area necessary to construct it. Anderson's clearing of the entire easement was held to be unreasonable,<sup>7</sup> and subjected him to treble damages for trespass to trees under AS 09.45.730.<sup>8</sup>

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<sup>5</sup> 658 P.2d 127 (Alaska 1983).

<sup>6</sup> 625 P.2d 282 (Alaska 1981).

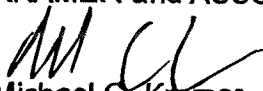
<sup>7</sup> *Id.* at. 287.

<sup>8</sup> *Id.* at. 289.

Mr. Roe has authorized me to seek an injunction to block your threatened trespass. Please respond by 3:00pm, June 13, 2018, so that I can file for the injunction if necessary.

Very truly yours,

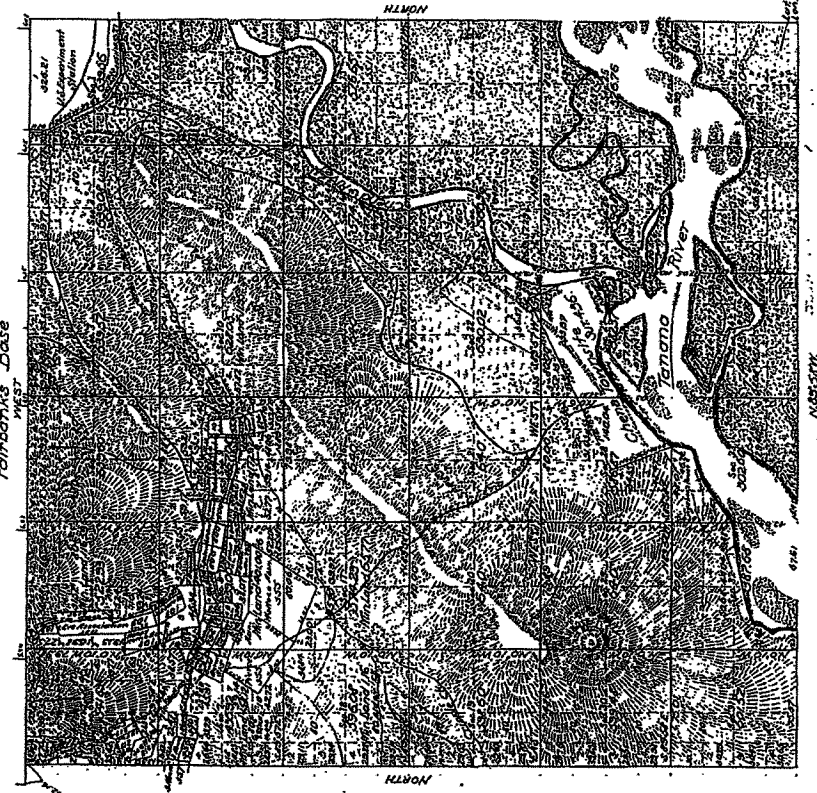
KRAMER and ASSOCIATES



Michael C. Kramer



15-107121  
 Township No. 1 South Range No. 2 West of the Fairbanks Meridian, Alaska  
 Fairbanks Base  
 WEST



| SECTION | ACRES | CHANGES |
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| Section 100 | 40.00 |

The above copy of Township No. 1 South Range No. 2 West of the Fairbanks Meridian, Alaska is hereby certified to be a true and correct copy of the original as filed in this office. Such copy has been examined and approved.

W. S. KENNEDY, Register  
 Fairbanks, Alaska, June 2, 1913.

| Section | Acres | Owner |
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# The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, a Certificate of the District Land Office at Fairbanks, Alaska, is now deposited in the Bureau of Land Management, whereby it appears that pursuant to the Act of Congress of May 20, 1862, "To Secure Homesteads to Actual Settlers on the Public Domain", and the acts supplemental thereto, the claim of Lynn O. Hallist has been established and duly consummated in conformity to law for the following described land:

Fairbanks Meridian, Alaska.

T. 1 S., R. 2 W.,  
sec. 14, lot 6 and SW<sup>1</sup>/<sub>4</sub>;  
sec. 15, NW<sup>1</sup>/<sub>4</sub>.

The area described contains 150.03 acres, according to the Official Plat of the Survey of the said Land on file in the Bureau of Land Management.

NOW KNOW YE, That there is therefore granted by the United States, unto the said Lynn O. Hallist, the tract of Land above described; TO HAVE AND TO HOLD the said tract of Land, with the appurtenances thereof, unto the said Lynn O. Hallist and to his heirs and assigns forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws and decisions of courts; and there is reserved from the land hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States. And, there is also reserved to the United States, a right of way for the construction of railroads, telegraph and telephone lines in accordance with the Act of March 12, 1914 (38 Stat., 305). And there is reserved from the land hereby granted, a right of way thereon for roads, roadways, highways, tramways, trails, bridges and appurtenant structures constructed, or to be constructed by, or under authority of the United States, or of any State created out of the Territory of Alaska, in accordance with the Act of July 24, 1947 (61 Stat., 418).

Excepting and reserving also to the United States, pursuant to the provisions of the Act of August 1, 1946 (60 Stat., 755), all uranium, thorium, or any other material which is or may be determined to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, together with the right of the United States, through its authorized agents or representatives at any time, to enter upon the land and prospect for, mine and remove the same.

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of

Land Management, in accordance with the provisions of the Act of June 17,

1948 (62 Stat., 476), has, in the name of the United States, caused these letters

(SEAL)

to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in the District of Columbia, the ~~THIRTY-THIRD~~

day of ~~APRIL~~ in the year of our Lord one thousand nine

hundred and ~~FOURTY-NINE~~ and of the Independence of the

United States the one hundred and ~~SEVENTY-DURSH~~.

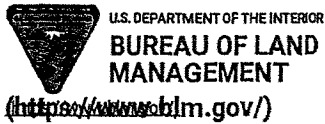
For the Director, Bureau of Land Management.

*Jae. J. Homer*

By \_\_\_\_\_ Chief, Patent Section.

Patent No. 1127095

ABOUT US (HTTPS://WWW.BLM.GOV/ABOUT) | LEADERSHIP (HTTPS://WWW.BLM.GOV/LEADERSHIP) | MEDIA CENTER (HTTPS://WWW.BLM.GOV/MEDIA) |  
 (HTTPS://WWW.BLM.GOV) MAPS (HTTPS://WWW.BLM.GOV/MAPS) | CAREERS (HTTPS://WWW.BLM.GOV/CAREERS) | CONTACT US (HTTPS://WWW.BLM.GOV/CONTACT)



SDMS ALASKA

**SPATIAL DATA MANAGEMENT SYSTEM**

Alaska Case Retrieval Enterprise System (ACRES)

Case Abstract for: AKF 007148

| CASE DATA         |                  |                |            |
|-------------------|------------------|----------------|------------|
| Case Serial Num:  | AKF007148        | FRC Site Code: | WAS        |
| Case Type:        | 256700 He Alaska | Accession Num: | --         |
| Case Status:      | Closed           | Box Num:       | -- (of) -- |
| Case Status Actn: | Case Closed      | Disp Date:     | --         |
| Case Status Date: | 31-AUG-1949      | Location Code: | ARCHIVE    |
| SM Acres:         | 0.0000           | Abnd Yr:       | --         |
| Claim Name:       | --               |                |            |

| CUSTOMER DATA     |                |                        |           |
|-------------------|----------------|------------------------|-----------|
| Cust ID:          | 000046447      |                        |           |
| Customer Name:    | HOLLIST LYNN O | Interest Relationship: | Applicant |
| Customer Address: | Withheld       | Percent Interest:      | 0.0000    |

| ADMINISTRATIVE/STATUS ACTION DATA |                            |                      |              |     |     |               |
|-----------------------------------|----------------------------|----------------------|--------------|-----|-----|---------------|
| Date                              | Code Description:          | Remarks              | Doc ID       | Ofc | Emp | Doc Img *     |
| 28-MAY-1948                       | 001 Application Filed      | APPLICATION RECEIVED | --           | PSF | DLC | --            |
| 15-DEC-1948                       | 518 W/Val Lse Min Rpt Revd | --                   | --           | AJA | ADP | --            |
| 04-FEB-1949                       | 130 Field Report Requested | --                   | --           | AJA | DLC | --            |
| 15-JUL-1949                       | 872 Final Cert Issued      | --                   | --           | AJA | DLC | --            |
| 23-AUG-1949                       | 879 Patent Issued          | --                   | PA0001127095 | AJA | DLC | Not Available |
| 31-AUG-1949                       | 970 Case Closed            | TITLE TRSF           | --           | PSA | DLC | --            |
| 27-AUG-1992                       | 996 Converted To Prime     | --                   | --           | 940 | BKM | --            |

| FINANCIAL ACTION DATA |                         |     |     |           |          |         |
|-----------------------|-------------------------|-----|-----|-----------|----------|---------|
| Date                  | Code/Description        | Ofc | Emp | Money Amt | Acct Adv | Asmt Yr |
| 28-May-1948           | 072 Filing Fee Received | PSF | DLC | 10.00     | --       | --      |

**GENERAL REMARKS**  
 No Case Remarks found

**GEOGRAPHIC NAMES**  
 No Geonames found

| LAND DESCRIPTION   |       |       |     |         |           |    |     |     |     |     |    |         |         |
|--|-------|-------|-----|---------|-----------|----|-----|-----|-----|-----|----|---------|---------|
| Mr   | Twp   | Rng   | Sec | Allquot | Survey ID | Tr | Blk | Lot | DI  | Bor | NR | LS      | Acres   |
| 13   | 001 S | 002 W | 014 | --      | --        | -- | --  | 6   | 02  | 090 | 11 | PA      | 38.0300 |
| MTP (/perl-bin/scanned_images/mtp/disp_image.pdf.pl?mtr=F001S002W) TWPLAT (/perl-bin/scann |       |       |     |         |           |    |     |     |     |     |    |         |         |
| Doc ID: PA0001127095 23-Aug-1949 USR: 754  |       |       |     |         |           |    |     |     |     |     |    |         |         |
| 13   | 001 S | 002 W | 014 | SWSW    | --        | -- | --  | 02  | 090 | 11  | PA | 40.0000 |         |
| MTP (/perl-bin/scanned_images/mtp/disp_image.pdf.pl?mtr=F001S002W) TWPLAT (/perl-bin/scann |       |       |     |         |           |    |     |     |     |     |    |         |         |
| Doc ID: PA0001127095 23-Aug-1949 USR: 754  |       |       |     |         |           |    |     |     |     |     |    |         |         |
| 13   | 001 S | 002 W | 015 | E2SE    | --        | -- | --  | 02  | 090 | 11  | PA | 80.0000 |         |
| MTP (/perl-bin/scanned_images/mtp/disp_image.pdf.pl?mtr=F001S002W) TWPLAT (/perl-bin/scann |       |       |     |         |           |    |     |     |     |     |    |         |         |

357 P.3d 1191, \*1191; 2015 Alas. LEXIS 134, \*\*1

Civil Procedure > ... > Costs & Attorney  
Fees > Costs > General Overview

**HN2** Standards of Review, Abuse of Discretion

An appellate court reviews for abuse of discretion the superior court's discovery rulings, control over trial proceedings, and determination of prevailing party status for purposes of Alaska R. Civ. P. 79.

Civil Procedure > Appeals > Standards of  
Review > Abuse of Discretion

Civil Procedure > ... > Disqualification &  
Recusal > Grounds for Disqualification &  
Recusal > Appearance of Impropriety

Civil Procedure > Appeals > Standards of  
Review > De Novo Review

**HN3** Standards of Review, Abuse of Discretion

An appellate court reviews a request for disqualification of a judge based on the appearance of impropriety de novo and denial of a motion to disqualify a judge for abuse of discretion.

Real Property Law > Subdivisions > General  
Overview

Real Property Law > ... > Transfer Not By  
Deed > Dedication > Procedure

**HN4** Real Property Law, Subdivisions

A survey of public lands does not ascertain boundaries, it creates them. The running of lines in the field and the laying out and platting of townships, sections and legal subdivisions are not alone sufficient to constitute a survey. Until all conditions as to filing in the proper land office and all requirements as to approval have been complied with, the lands are to be regarded as unsurveyed and not subject to disposal as surveyed lands. In other words, to justify the application of the term "surveyed" to a body of public land something is required beyond the completion of the field work and the consequent laying out of the boundaries, and that something is the filing of the plat and the approval of the work of the surveyor.

Governments > Federal Government > Property

**HN5** Federal Government, Property

Under the now-repealed homestead laws, a party established a claim to land not when the federal authorities allowed entry but rather when the party took the steps necessary to have entry recognized. Entry means that act by which an individual acquires an inceptive right to a portion of the unappropriated soil of the country by filing his or her claim in the appropriate land office.

Governments > Federal Government > Property

**HN6** Federal Government, Property

Under the homestead law three things are needed to be done in order to constitute an entry on public lands: First, the applicant must make an affidavit setting forth the facts which entitle him or her to make such an entry, second, he or she must make a formal application, and, third, he or she must make payment of the money required. When these three requisites are complied with, and the certificate of entry is executed and delivered to him or her, the entry is made, the land is entered.

Governments > Federal Government > Property

**HN7** Federal Government, Property

The homestead laws allowed the filing of an application for entry onto unsurveyed land along with a requirement of final proof. 48 U.S.C.S. § 371. The applicant could obtain patent to the land subject to a later survey, 48 U.S.C.S. § 375, 43 C.F.R. § 65.8 (1962 cum. supp.), (or in certain cases without any survey at all. 48 U.S.C.S. § 371.)

Governments > Federal Government > Property

**HN8** Federal Government, Property

See 43 C.F.R. § 65.8(b) (1962 cum. supp.).

Real Property Law > Encumbrances > Limited Use

Mike Kramer



# College Utilities Corporation

June 13, 2018

VIA EMAIL (mike@mikekramerlaw.com)

Jason Roe  
c/o Mike Kramer of Kramer and Associates  
542 Fourth Ave.  
Fairbanks, Alaska 99701

RE: Tract A, Twin Lake Subdivision, Phase 1, Plat 99-77

Dear Mike,

Thank you for your letter dated June 12, 2018. Attached for your ease of reference is research regarding the 66' section line easement that currently exists on Mr. Roe's property. Be rest assured that the CUC crew will only be removing what is necessary to accomplish their work.

Please contact me if you have any questions or concerns regarding this important matter.

Sincerely,

Mamie S. Brown  
Corporate Counsel  
Direct Line: (907) 455-0116  
Email: [mamie@akwater.com](mailto:mamie@akwater.com)

Attachments: Section Line Easement Research

CC: Oran Paul, Tiffany Van Horn, Bernie Stack, Tarik Spear

OP/MSB/TS/ITMO Jason Roe (Tract A, Twin Subdivision, Phase 1, Plat 99-77)/CUC Ltr Kramer Roe Section Line Easement (Rev. 6.13.2018).docx



*Patented Entry*

Bureau of Land Management - Alaska LIS-Online Reports  
Case Abstract for: AKF 007148

Case Serial Num: AKF 007148 FRC Site Code: WAS  
Case Type: 256700 He Alaska Accession Num:  
Case Status: Closed Box Num: of  
Case Status Actn: Case Closed Disp Date:  
Case Status Date: 31-AUG-1949 Location Code: ARCHIVE

Customer Data

Custid: 000046447 Int Rel: Applicant Pct Int: 0.0000  
Cust Name: HOLLIST LYNN O  
Cust Address: Withheld

Administrative/Status Action Data

| Date        | Code/Description         | Remarks              | Doc ID       | Ofc | Emp |
|-------------|--------------------------|----------------------|--------------|-----|-----|
| 28-MAY-1948 | 001 Application Filed    | APPLICATION RECEIVED | --           | PSF | DLC |
| 15-DEC-1948 | 518 W/Val Lse Min Rpt Rc | --                   | --           | AJA | ADP |
| 04-FEB-1949 | 130 Field Report Request | --                   | --           | AJA | DLC |
| 15-JUL-1949 | 872 Final Cert Issued    | --                   | --           | AJA | DLC |
| 23-AUG-1949 | 879 Patent Issued        | --                   | PA0001127095 | AJA | DLC |
| 31-AUG-1949 | 970 Case Closed          | TITLE TRSF           | --           | PSA | DLC |
| 27-AUG-1992 | 996 Converted To Prime   | --                   | --           | 940 | BKM |

Financial Action Data

| Date        | Code/Description        | Ofc | Emp | Money Amt | Acct Adv | Asmt |
|-------------|-------------------------|-----|-----|-----------|----------|------|
| 28-May-1948 | 072 Filing Fee Received | PSF | DLC | 10.00     | -        |      |

No Case Remarks Found

No Geographic Names Found

Land Description

| Mr | Twp  | Rng  | Sec | Aliquot           | Survey ID            | Tr | Blk | Lot       | Di       | Bor | NR | LS | Acres       |          |
|----|------|------|-----|-------------------|----------------------|----|-----|-----------|----------|-----|----|----|-------------|----------|
| 13 | 001S | 002W | 014 | --                | --                   | -- | --  | 6         | 02       | 090 | 11 | PA | 38.0300     |          |
|    |      |      |     |                   | Doc ID: PA0001127095 |    |     |           |          |     |    |    | 23-AUG-1949 | USR: 754 |
| 13 | 001S | 002W | 014 | SWSW              | --                   | -- | --  | --        | 02       | 090 | 11 | PA | 40.0000     |          |
|    |      |      |     |                   | Doc ID: PA0001127095 |    |     |           |          |     |    |    | 23-AUG-1949 | USR: 754 |
| 13 | 001S | 002W | 015 | E2SE              | --                   | -- | --  | --        | 02       | 090 | 11 | PA | 80.0000     |          |
|    |      |      |     |                   | Doc ID: PA0001127095 |    |     |           |          |     |    |    | 23-AUG-1949 | USR: 754 |
|    |      |      |     | Patented:         | 158.0300             |    |     | Conveyed: | 158.0300 |     |    |    |             |          |
|    |      |      |     | Total Case Acres: | 158.03               |    |     |           |          |     |    |    |             |          |

End of Case: AKF 007148

No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of these data. Refer to specific BLM case files for official land status information.

Reports are generated from a replicated database. Information can be one week old.

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## **RS 2477 - Section Line Easements**

The offer of a right of way for highways across unreserved, unappropriated Federal lands provided in the aforementioned Mining Law of 1866 is also the basis for Section line rights of way. The position of Federal agencies suggests that section line easements cannot exist on Federal lands as the construction requirement of the RS 2477 grant was not fulfilled. The State position on section line easements is outlined in the 1969 Opinions of the Attorney General No. 7 dated December 18, 1969 entitled Section Line Dedications for Construction of Highways.

The acceptance of the offer became effective on April 6, 1923, when the Territorial legislature passed Chapter 19 SLA 1923 which provided that "A tract of 4 rods wide between each section of land in the Territory of Alaska is hereby dedicated for use as public highways..."

The section line easement law remained in effect until January 18, 1949. On this date the legislature accepted the compilation of Alaska law which also repealed all laws not included. By failing to include the 1923 acceptance, the section line easement law was therefore repealed.

On March 26, 1951, the legislature enacted Ch. 123 SLA 1951 which stated that "A tract 100 feet wide between each section of land owned by the Territory of Alaska or acquired from the Territory, is hereby dedicated for use as public highways..." The 1953 law was amended on March 21, 1953 by Ch. 35 SLA 1953, to include "a tract 4 rods wide between all other sections in the Territory..." (See Alaska Statute AS 19.10.010 Dedication of land for public highways.)

For a section line easement to become effective, the section line must be surveyed under the normal rectangular system. On large areas such as State or Native selections, only the exterior boundaries are surveyed, therefore no section line easements could attach to interior section lines unless further subdivisional surveys were carried out. The 1969 Opinion of the Attorney General regarding section line easements states that an easement can attach to a protracted survey, if the survey has been approved and the effective date has been published in the Federal Register. The location of the easement is however subject to subsequent conformation with the official public land survey and therefore cannot be used until such a survey is completed.

Land surveyed by special survey or mineral survey are not affected by section line easements since such surveys are not a part of the rectangular net. However, the location of a special or mineral survey which conflicts with a previously established section line easement cannot serve to vacate the easement.

Acceptance of the RS 2477 offer can only operate upon "public lands, not reserved for public uses". Therefore, if prior to the date of acceptance there has been a withdrawal or reservation by the Federal government, or a valid homestead or mineral entry, then the particular tract is not subject to the section line dedication. The offer of the RS 2477 grant was still available until its repeal by Title VII of the Federal Land Policy and Management Act (90 Stat. 2793) on October 21, 1976. However, prior to the repeal, the application of new section line easements was effectively eliminated by a series of public land orders withdrawing Federal lands in Alaska. Public Land Order 4582 of January 17, 1969 withdrew all public lands in Alaska not already reserved from all forms of appropriation and disposition under the public land laws. PLO 4582 was continued in force until passage of the Alaska Native Claims Settlement Act on December 18, 1971. While repealing PLO 4582, ANCSA also withdrew vast amounts of land for native selections, parks, forests and refuges. A series of PLO's withdrew additional acreage between 1971 and 1972. PLO 5418 dated March 25, 1974 withdrew all remaining unreserved Federal lands in Alaska. Therefore it is noted that as of March 25, 1974, there could be no new section line easements applied to surveyed Federal lands.

The Alaska Supreme Court has decided that a utility may construct a powerline on an unused section line easement reserved for highway purposes under AS 19.10.010 Use of rights-of-way for utilities. Alaska Administrative Code 17 AAC 15.031 Application for Utility Permit on Section Line Rights-of-way provides for permitting by the Department of Transportation.

The process for vacating a section line easement is provided in the DNR Administrative Code 11 AAC 53. A section line vacation requires approval from the Departments of Transportation and Natural Resources and the approval of a platting authority, if one exists in the area of the proposed vacation.

### **Research Technique**

1. Review the Federal Status Plat and note the patent number or serial number of any action which affects the section line in question.
2. Using either BLM's land status database or Historical Index determine the date of reserved status or the date of entry leading to patent.
3. From BLM's township survey plats extract the date of plat approval.
4. Review the dates and track the status of the lands involved to determine if they were unreserved public lands at any time subsequent to survey approval and prior to entry or appropriation. Particular attention should be directed towards any applicable Public Land Orders. In order for section line easements to have been created, the lands must have been unreserved public lands at

some time between April 6, 1923 and January 17, 1949, or between March 21, 1953 (March 26, 1951 in the case of lands transferred to the State or Territory) and March 24, 1974.

5. Using the date of entry or reservation and the date of survey plat approval, prepare an analysis of the data as follows:

a. If date of entry predated survey plat approval there is no easement.

b. If entry predates April 6, 1923 (date of enabling legislation for section line easements) there is no section line easement.

c. If survey plat approval predates April 6, 1923 but date of entry is after April 6, 1923 there is a 66 foot section line easement.

d. If survey plat approval is during the period of January 18, 1949 and March 20, 1953 and date of entry also falls within this period, there is no section line easement.

e. If survey plat approval is during the period of January 18, 1949 and March 20, 1953 and date of entry falls after March 21, 1953, there is a 66 foot section line easement.

f. If survey plat approval was prior to January 18, 1949 and the date of entry was during the period of January 18, 1949 and March 20, 1953, there is a 66 foot section line easement.

g. If the land is in State ownership or was disposed of by the State or Territory after March 26, 1951, there is a 100 foot section line easement. University Grant Lands may be an exception as the application of a section line easement may be in conflict with the federal trust obligation.

h. If survey plat approval date and the date land was disposed of by the Territory both fall within the period of January 18, 1949 and March 25, 1951, there is no section line easement.

i. If survey plat approval was prior to January 18, 1949 and the land was disposed of by the Territory during the period of January 18, 1949 and March 25, 1951, there is a 66 foot section line easement.

j. United States Surveys and Mineral Surveys are not a part of the rectangular net of survey. If the rectangular net is later extended, it is established around these surveys. There are no section lines through a U.S. Survey or Mineral Survey, unless the section line easement predates the special survey.

There may be many other situations which will require evaluation and decision on a case by case basis. An attachment is included to demonstrate some of the above points. Any section line easement, once created by survey and acceptance by the State or Territory remains in existence, unless vacated by the proper authority.

## **RS 2477 SECTION LINE EASEMENTS**

The materials provided were authored by John F. Bennett, PLS, SRWA, Right of Way Engineering Supervisor, Alaska Department of Public Transportation and Public Facilities, Northern Region and originally published in Mr. Bennett's paper, "Highway Rights of Way in Alaska" published through Chapter 49 of the International Right of Way Association in Access Law and Issues Affecting Public and Private Lands and subsequently by the Alaska Society of Professional Land in Surveyors Standards of Practice for Professional Land Surveyors with Relevant State Statutes and Administrative Codes, Fourth Edition.

### Section Line Easement Determinations

In order for easements to exist, the survey establishing the section lines must have been approved or filed prior to entry on Federal lands or disposal of State or Territorial lands. The Federal lands must have been unreserved at some time subsequent to survey and prior to entry.

| 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. (University Grant lands may be an exception.) |
|---|--|---|
| none  | April 5, 1923                            | none  |
| 66'   | April 6, 1923<br>to<br>January 17, 1949  | 66'   |
| none  | January 18, 1949<br>to<br>March 25, 1951 | none  |
|   | March 26, 1951<br>to<br>March 20, 1953   | 100'  |
| 66'   | March 21, 1953<br>to<br>March 24, 1974   |   |
| none  | March 25, 1974<br>to<br>Present          |   |

Note: This table assumes the same land status on both sides of the section line. A review of the land status can result in total easement widths of 0', 33', 50', 66', 83', and 100'. A section line easement, once created by survey and accepted by the State, will remain in existence unless vacated by proper authority.

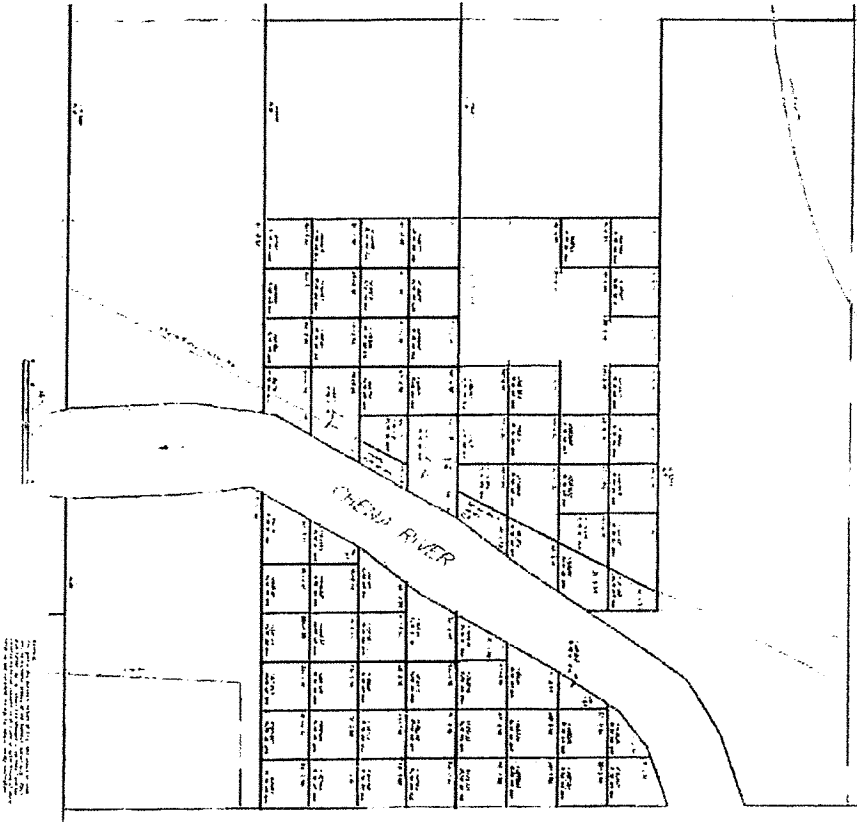
## SECTION LINE EASEMENT RESEARCH

| aliquot parts       | Legal Description |     |     | Patent Serial Number | Date of Entry | Date of Survey | Patent from US or AK? |
|---------------------|-------------------|-----|-----|----------------------|---------------|----------------|-----------------------|
|                     | Sec               | Twn | Rng |                      |               |                |                       |
| SW1/4 SW1/4 & LOT 6 | 14                | 1S  | 2W  | UNPATENTED           | 04/09/1915    | 6/7/1913       |                       |
| " "                 |                   |     |     | UNPATENTED           | 10/20/1943    | " "            |                       |
|                     |                   |     |     | 1127095 (HOLLIST)    | 8/23/1949     | " "            | US                    |
|                     |                   |     |     |                      |               |                |                       |
|                     |                   |     |     |                      |               |                |                       |
|                     |                   |     |     |                      |               |                |                       |
|                     |                   |     |     |                      |               |                |                       |
|                     |                   |     |     |                      |               |                |                       |
|                     |                   |     |     |                      |               |                |                       |
|                     |                   |     |     |                      |               |                |                       |
|                     |                   |     |     |                      |               |                |                       |

Compiled by JEREMY STARK date 6/12/2018

- NOTES: 1. Please research section line easement to the nearest dedicated right-of-way.  
 2. Please include a copy of the status plat with this research.

SURVEYED TOWNSHIP 1 SOUTH RANGE 2 WEST OF THE FAIRBANKS MERIDIAN, ALASKA



STATUS OF PUBLIC DOMAIN  
 AND PRIVATE TITLES

MTP  
 SUPPL. SECS. 14

FOR FURTHER INFORMATION, SEE MAPS OF THE  
 SURVEYED TOWNSHIP 1 SOUTH RANGE 2 WEST OF THE  
 FAIRBANKS MERIDIAN, ALASKA, AND THE  
 ADJACENT TOWNSHIPS.

THE STATE OF ALASKA  
 DEPARTMENT OF NATURAL RESOURCES  
 DIVISION OF LAND MANAGEMENT

FAIRBANKS, ALASKA  
 1980

|   |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |     |
|---|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|-----|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 | 41 | 42 | 43 | 44 | 45 | 46 | 47 | 48 | 49 | 50 | 51 | 52 | 53 | 54 | 55 | 56 | 57 | 58 | 59 | 60 | 61 | 62 | 63 | 64 | 65 | 66 | 67 | 68 | 69 | 70 | 71 | 72 | 73 | 74 | 75 | 76 | 77 | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 100 |
|---|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|-----|

ACAD



Historical Index Report  
for  
15 2M FAJEBANKS MER

15-DEC-2000

| Sec. Aliquot Parts | Lots     | Other desc.         | Acres     | Kind of Entry | Doc. I.D. | Date       | Remarks  |
|--------------------|----------|---------------------|-----------|---------------|-----------|------------|--|
| 29                 | SESM, SE | MS 792              | 8.130     | ME PAT        | 225812    | 04/13/1913 | SEE F 280  |
|                    |          | MS 356              | 20.090    | ME PAT        | 398113    | 04/14/1914 | SEE F 164  |
| 32                 | NONE     | SEE RMS             | 319.480   | FE            | F 334     | 04/20/1914 | CMNC 2/13/1922   |
| 22                 |          | ALL                 |           | EO            | 1819      | 04/21/1914 |  |
| 23                 |          | ALL                 |           | EO            | 1919      | 04/21/1914 |  |
| 24                 | MESW     |                     |           | EO            | 1919      | 04/21/1914 |  |
| 25-26              |          | ALL                 | 4,383.190 | EO            | 1919      | 04/21/1914 | TMS VOL # 1;<br>PARTIALLY REV EO<br>2773 12/12/1917;<br>PARTIALLY REV EO<br>3515 7/18/1921         |
| 28                 |          | ALL                 |           | EO            | 1967      | 06/23/1914 |  |
| 32                 |          | ALL; 19 1M FM       | 5,675.730 | EO            | 1967      | 06/23/1914 | TMS & RR VOL #2;<br>PARTIALLY REV EO<br>2877 8/4/1917; EO<br>2773 12/12/1917, EO<br>3515 7/18/1921 |
| 16.33              |          | MS 357; 1S 3M<br>FM | 19.760    | ME PAT        | 424662    | 08/04/1914 | SEE P 187  |
|                    |          | MS 795              | 57.600    | ME PAT        | 431008    | 09/14/1914 | SEE F 292  |
|                    |          | MS 800              | 99.480    | ME PAT        | 431011    | 09/14/1914 | SEE F 297  |
|                    |          | MS 349              | 8.220     | ME PAT        | 434446    | 10/08/1914 | SEE F 146  |
|                    |          | MS 796              | 71.110    | ME PAT        | 443604    | 11/19/1914 | SEE F 291  |
| 16.33              |          |                     |           | ACT OF CONG   |           | 03/04/1915 |  |
| 36                 |          |                     |           | ACT OF CONG   |           | 03/04/1915 | SEE MOI  |
| 14                 | SM5H     | MS 801              | 152.740   | ME PAT        | 464301    | 03/22/1915 | SEE F 299  |
| 15                 | S2SE     |                     |           | ME            | F 367     | 04/09/1915 |  |
|                    |          |                     |           | ME            | F 367     | 04/09/1915 |  |

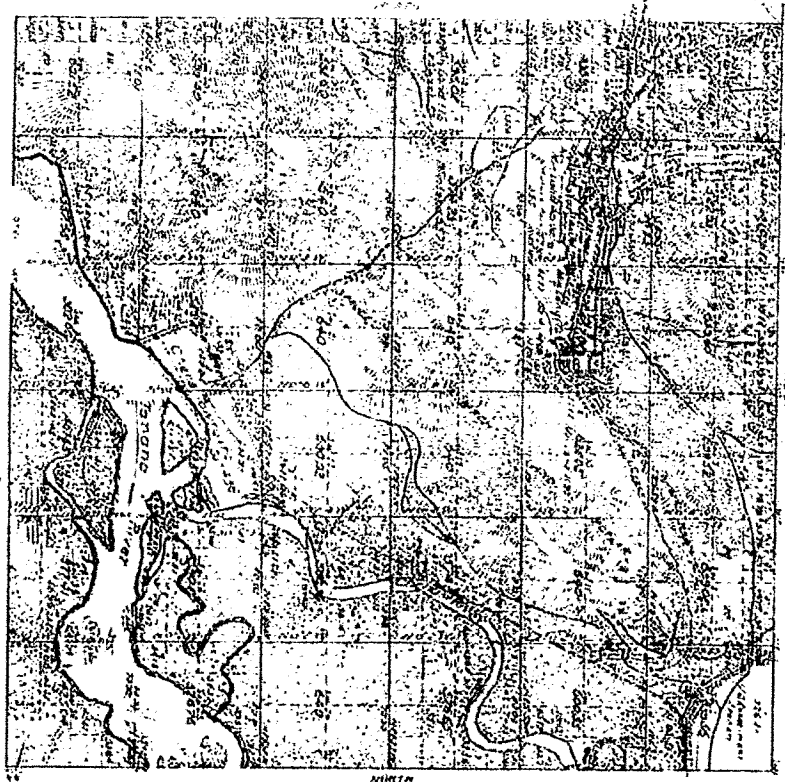
Historical Index Report  
for

15-DEC-2000

LS 2W FAIRBANKS MER

| Sec. | Aliquot Parts  | Lots | Other Desc.          | Acres   | Kind of Entry | Doc. I.D. | Date       | Remarks                                  |
|------|----------------|------|----------------------|---------|---------------|-----------|------------|--|
| 26   | SEW            | 2-4  | SEE RMXS             | 165.170 | HE            | F 5064    | 09/29/1942 | REL 8/27/1946                            |
|      |                |      | MS 2062; IN 2W<br>FM | 38.140  | ME PAT        | 1115054   | 10/26/1942 | SEE F 4569                               |
| 26   | NE             |      | SEE RMXS             | 160.000 | HE            | F 5108    | 11/02/1942 | REL 2/19/1945                            |
| 25   | N2NW,SWNW      | 3    | SEE RMXS             | 178.370 | HE            | F 5109    | 11/02/1942 | REL 1/15/1945                            |
| 23   |                | 5    | SEE RMXS             | 34.090  | HE            | F 5134    | 11/24/1942 | CANC 1/23/1945                           |
| 23   |                | 4    | SEE RMXS             | 56.160  | HE            | F 5135    | 11/24/1942 | REL 12/10/1947                           |
| 23   |                | 1    | SEE RMXS             | 21.820  | HE            | F 5143    | 12/01/1942 | CLOSED 1/23/1945                         |
|      |                |      | LS 1W FM             | 388.770 | DO            |           | 12/23/1942 | ENLARGED MS 186 8/<br>15/1942            |
| 24   | NE             |      | MS 2064              | 19.030  | ME PAT        | 1116061   | 01/23/1943 | SEE F 4680                               |
|      |                |      | SEE RMXS             | 160.000 | PLD           | 92        | 02/19/1943 | MDL ADM SITS; REV<br>PLD 1238 10/19/1955 |
| 23   | NESE,SESE      |      | SEE RMXS             | 120.000 | HE            | F 5240    | 03/04/1943 | REL 7/18/1947                            |
|      |                |      | MS 2083              | 14.956  | ME PAT        | 1116513   | 03/26/1943 |  |
| 13   | NEEW           |      | SEE RMXS             | 40.000  | HE            | F 5309    | 06/07/1943 | REL 6/1/1945                             |
| 13   |                | 6    | SEE RMXS             | 30.170  | HE            | F 5313    | 06/14/1943 | CLOSED 1/23/1945                         |
| 13   | N4SW           |      | SEE RMXS             | 40.000  | HE            | F 5314    | 06/14/1943 | REL 7/10/1945                            |
| 13   |                | 5    |                      |         | HE            | F 5315    | 06/14/1943 |  |
| 14   |                | 3    | SEE RMXS             | 72.240  | HE            | F 5315    | 06/14/1943 | REL 5/13/1946                            |
| 14   |                | 4    | SEE RMXS             | 51.970  | HE            | F 5324    | 06/26/1943 | CLOSED 4/2/1945                          |
| 14   |                | 7    | SEE RMXS             | 64.290  | HE            | F 5325    | 06/26/1943 | CANC 6/23/1950                           |
| 12   |                | 4    | SEE RMXS             | 33.120  | HE            | F 5430    | 09/16/1943 | REL 4/25/1944                            |
| 13   |                | 2    | SEE RMXS             | 54.350  | HE            | F 5448    | 09/22/1943 | CANC 10/27/1947                          |
| 15   | NESE,SESE      |      |                      |         | HE            | F 5521    | 10/20/1943 |  |
| 14   | SWSW           | 6    | SEE RMXS             | 158.030 | HE            | F 5521    | 10/20/1943 | CANC 5/17/1948                           |
| 15   | N2NE,SENE,NENW |      | SEE RMXS             | 160.000 | HE            | F 5522    | 10/20/1943 | CANC 7/28/1949                           |
| 14   | S2NW,N4SW      |      |                      |         | HE            | F 5523    | 10/20/1943 |  |

Township No. 1 South Range No. 2 West of the Fairbanks Meridian, Alaska



| Section | Area (Acres) | Owner |
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| 1       | 360          | ...   |
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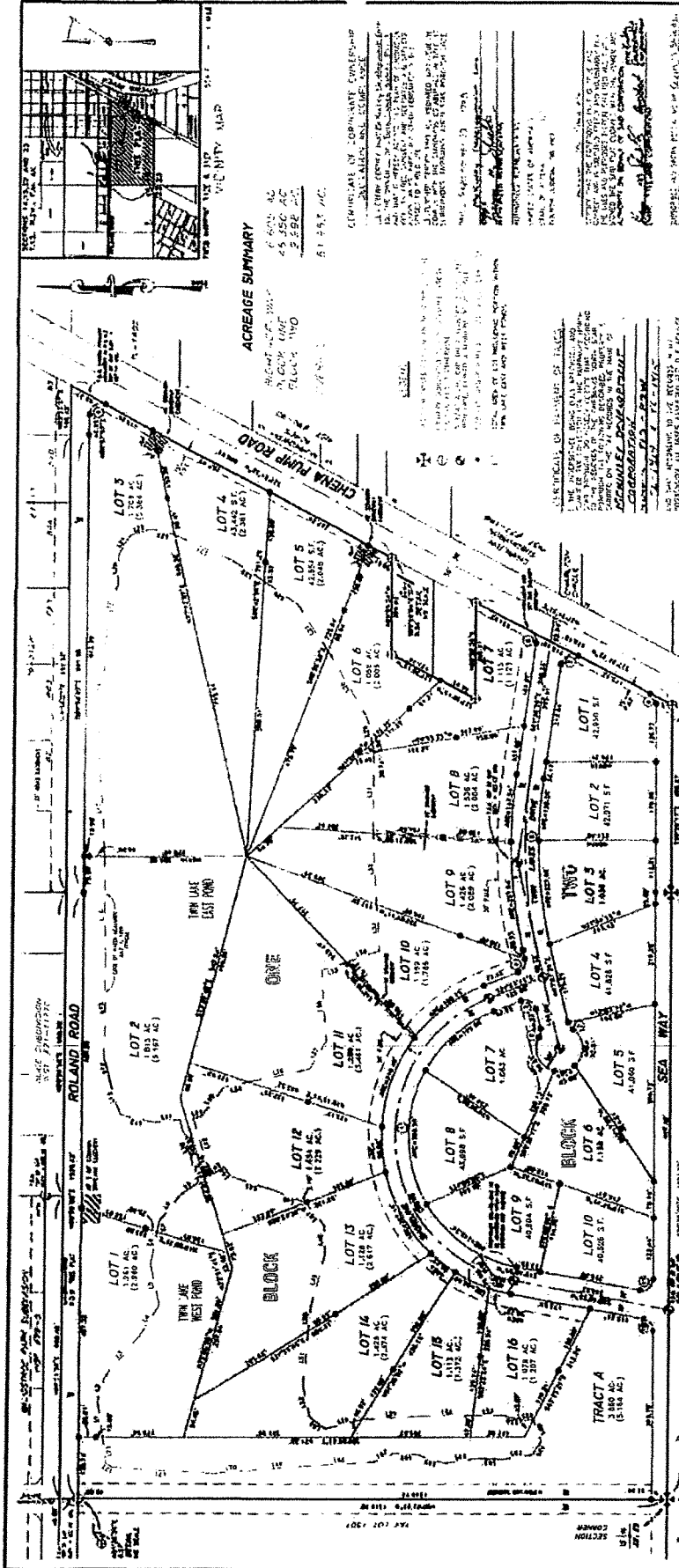
The map is subject to change for details. Range No. 2 West of the Fairbanks Meridian, Alaska. Section 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50.

*[Signature]*

| Section | Area (Acres) | Owner |
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| 49      | 360          | ...   |
| 50      | 360          | ...   |





**ACREAGE SUMMARY**

Block One: 16 lots, 1.195 AC

Block Two: 16 lots, 1.195 AC

Tract A: 1 lot, 2.840 AC

Tract B: 1 lot, 2.840 AC

**TOTAL ACREAGE: 16.000 AC**

**GENERAL NOTES:**

1. THE SUBDIVISION IS SHOWN AS BEING IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION ACT, AS AMENDED.
2. THE LOTS ARE SHOWN AS BEING SEPARATELY OWNED AND THE BOUNDARIES ARE SHOWN AS BEING ACCURATELY SURVEYED.
3. THE SUBDIVISION IS SHOWN AS BEING IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION ACT, AS AMENDED.
4. THE LOTS ARE SHOWN AS BEING SEPARATELY OWNED AND THE BOUNDARIES ARE SHOWN AS BEING ACCURATELY SURVEYED.

**PLATTING DATA:**

1. THE SUBDIVISION IS SHOWN AS BEING IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION ACT, AS AMENDED.

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**FAIRBANKS RECORDING DISTRICT**

99-177

**FAIRBANKS RECORDING DISTRICT**

99-177

**FAIRBANKS RECORDING DISTRICT**

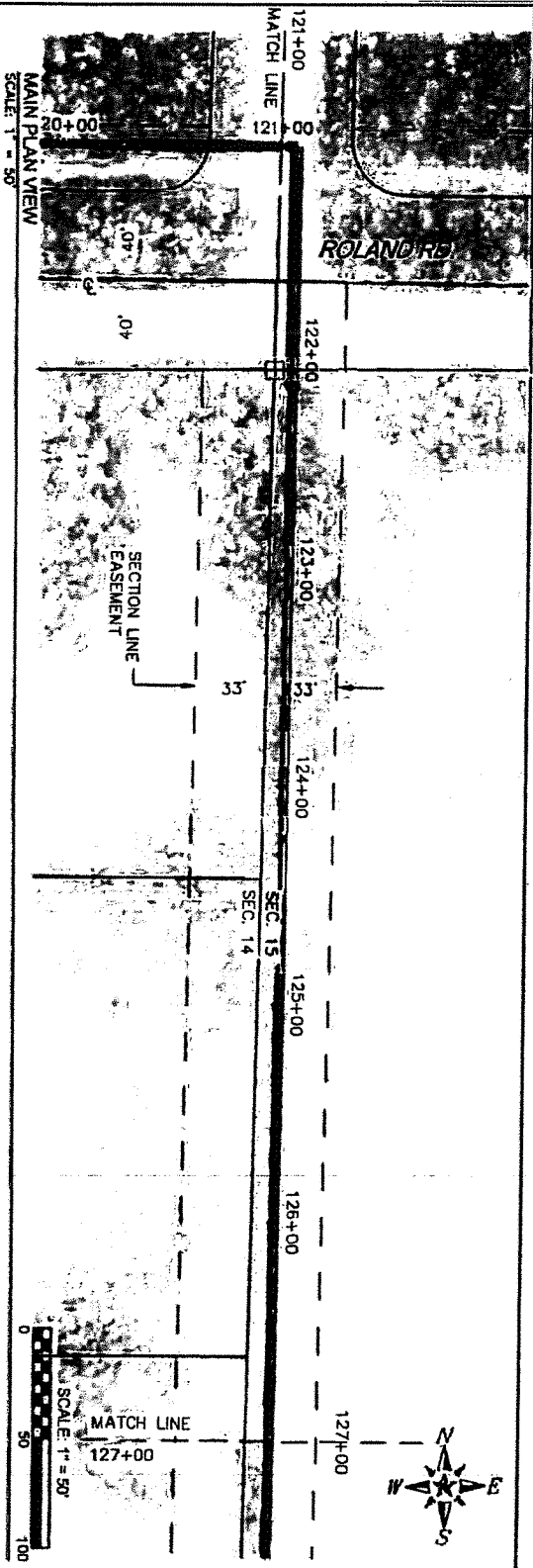
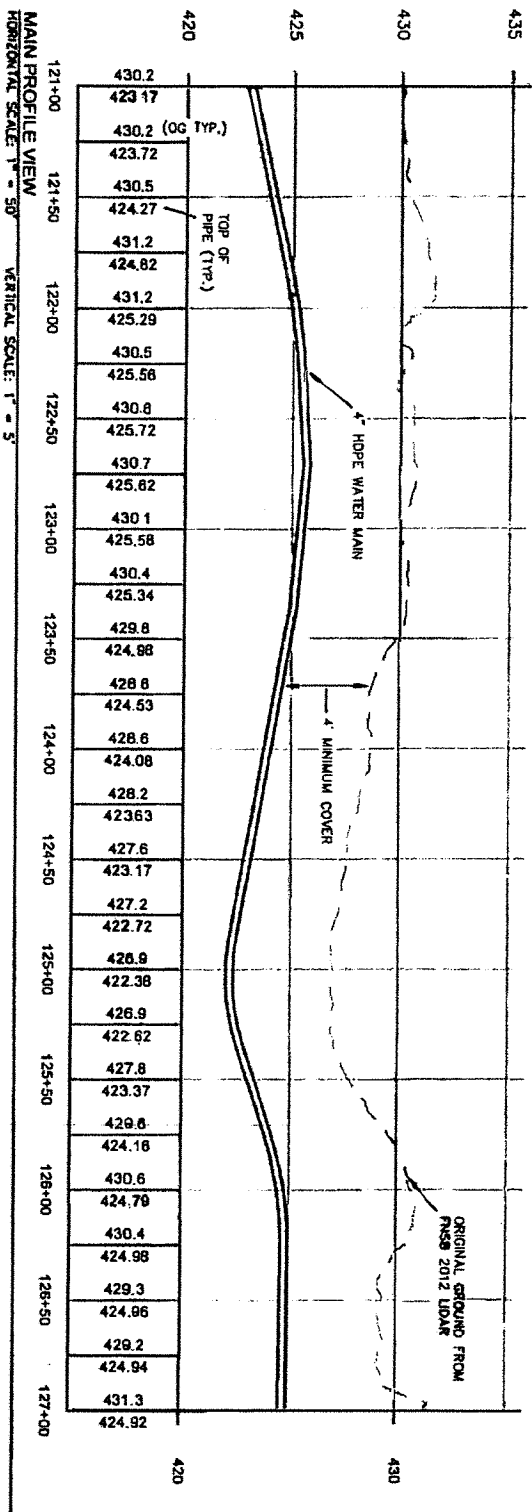
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**FAIRBANKS RECORDING DISTRICT**

99-177



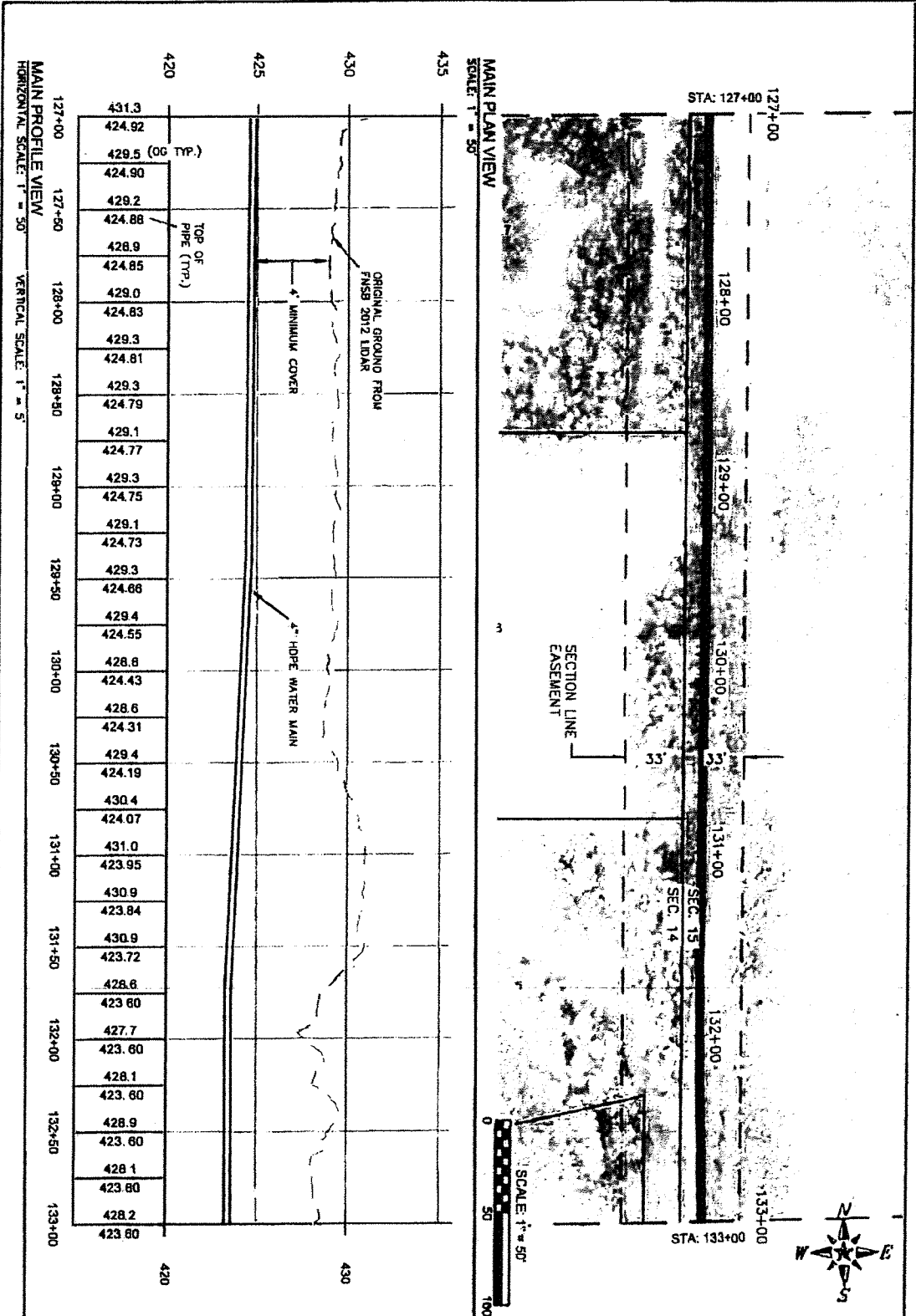
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**Construction**

|            |                 |              |               |  |  |   |
|------------|-----------------|--------------|---------------|--|--|---|
| <b>M21</b> | DATE: 5/11/2018 | CHECKED: SEA | DESIGNED: JDS | Chena Marina Area Water Main<br>Installation<br><b>MAIN</b><br><b>PLAN &amp; PROFILE</b><br>FOR: COLLEGE UTILITIES | LOCATION:<br>CHENA MARINA AND VICINITY | STUTZMANN<br>ENGINEERING<br>ASSOCIATES, INC.<br>P.O. BOX 71429, FAIRBANKS, AK 99707<br>9 ADAK AVENUE, FAIRBANKS, AK 99701<br>(907) 452-4094 (C 627) |
|            | Construction    |              |               |  |  |   |

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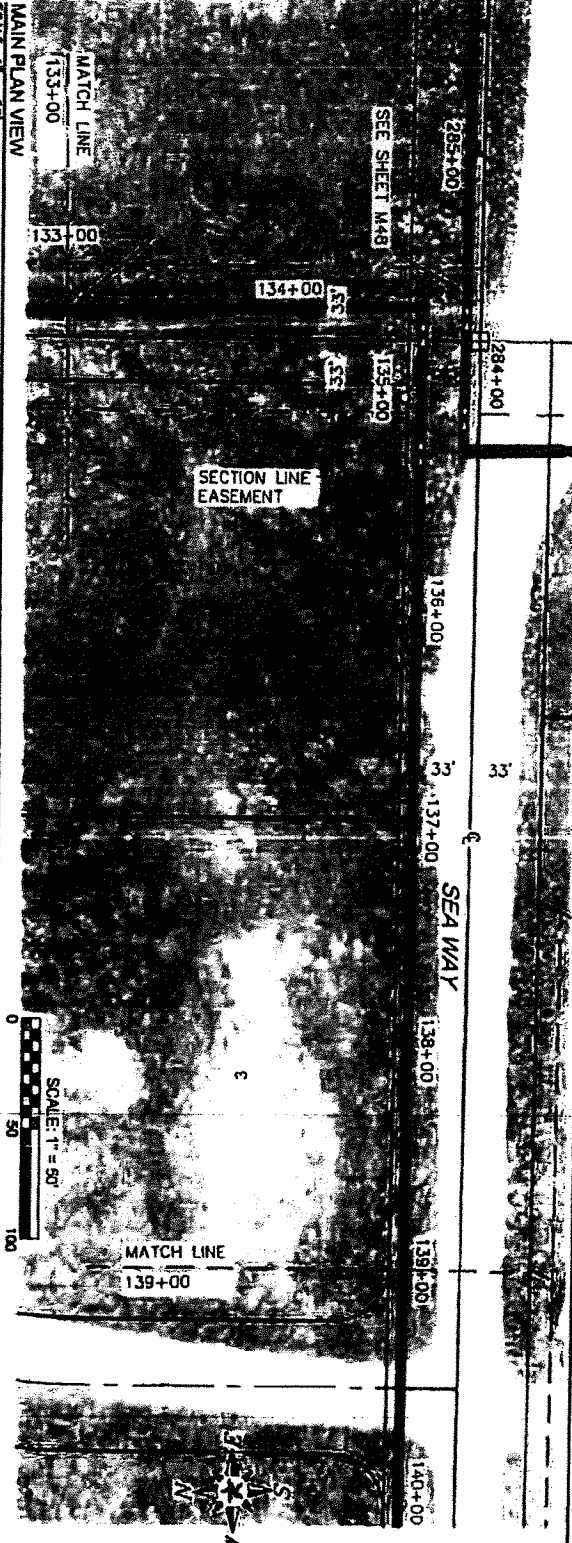
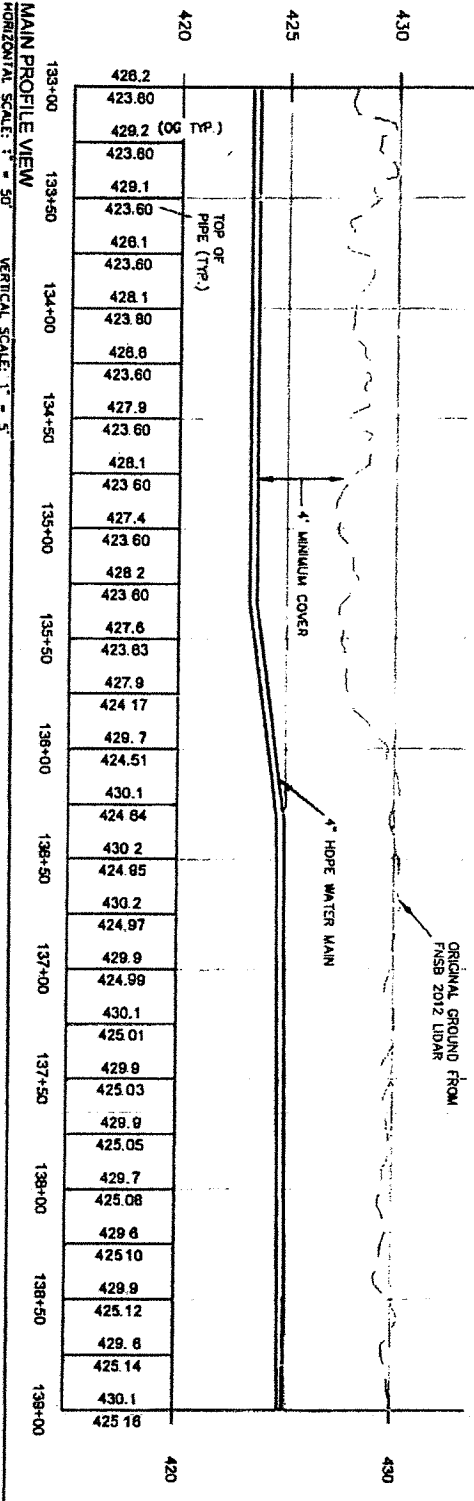


**Construction**

|   |  |   |  |
|---|--|---|--|
| <b>M22</b><br>DATE: 5/11/2018<br>CHECKED: SEA<br>DRAWN: JDS | Chena Marina Area Water Main<br>Installation<br><b>MAIN</b><br><b>PLAN &amp; PROFILE</b><br>FOR: COLLEGE UTILITIES | LOCATION:<br><b>CHENA MARINA AND VICINITY</b> | <b>STUTZMANN ENGINEERING ASSOCIATES, INC.</b><br>P.O. BOX 71429, FAIRBANKS, AK 99707<br>9 ADAM AVENUE, FAIRBANKS, AK 99701<br>(907) 452-4094 (C 627) |
|   | Construction   |   |  |



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**Construction**

|            |                            |  |  |  |
|------------|----------------------------|--|--|--|
| <b>M23</b> | DATE: 5/11/2018            | CHINA MARINA AREA WATER MAIN<br>INSTALLATION<br>MAIN<br>PLAN & PROFILE<br>FOR: COLLEGE UTILITIES | LOCATION:<br><br>CHENA MARINA AND VICINITY | <p><b>STUTZMANN ENGINEERING ASSOCIATES, INC.</b><br/>P.O. BOX 71429, FAIRBANKS, AK 99707<br/>9 ADAM AVENUE, FAIRBANKS, AK 99701<br/>(907) 452-4084 (C 827)</p> |
|            | BRANK: JDS<br>CHECKER: SEA |  |  |  |

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
2 FOURTH JUDICIAL DISTRICT AT FAIRBANKS

3 PUMPKIN, LIMITED, )  
4 )  
5 Plaintiff, )  
6 vs. ) Case No.: 4FA-18-02118 CI  
7 )  
8 UTILITY SERVICES OF ALASKA D/B/A )  
9 COLLEGE UTILITIES CORP., )  
10 )  
11 Defendant. )

12 ORDER DENYING PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING  
13 ORDER AND PRELIMINARY INJUNCTION

14 THIS COURT, having duly considered the matters presented,  
15 hereby orders that Plaintiff's Motion for Temporary Restraining  
16 Order is DENIED. The Court finds that Plaintiff has not meet  
17 his burden to show immediate and irreparable harm or probable  
18 success on the merits. The Court also finds that CUC's main  
19 installation is entirely consistent with its lawful use of the  
20 section line easement and the intent of section line easements  
21 in general. Therefore, the Plaintiff's action is dismissed  
22 with prejudice.

23 //

24 ORDER DENYING PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND  
25 PRELIMINARY INJUNCTION  
26 *Pumpkin Limited v. Utility Services of Alaska, Inc., d/b/a College Utilities Corporation, Case No. 4FA-18-02118CI*  
MSB/4FA-18-02118CI (Pumpkin Limited v. USA dba CUC)/Order Denying Pl.'s Mtn  
for Temporary Restraining Order and Preliminary Injunction.doc  
Page 1 of 2

COLLEGE UTILITIES CORP.  
P.O. Box 80370, Fairbanks, Alaska 99708  
Telephone: (907) 455-3118  
Fax: (907) 479-2699

LODGED  
JUL 02 2018

COLLEGE UTILITIES CORP.  
P.O. Box 80370, Fairbanks, Alaska 99708  
Telephone: (907) 455-3118  
Fax: (907) 479-2699

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DATED at Fairbanks, Alaska this \_\_\_\_ day of July, 2018.

JUDGE DOUGLAS L. BLANKENSHIP

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was emailed on this 27<sup>th</sup> day of June, 2018 to:

Robert John  
Kramer and Associates  
542 2<sup>nd</sup> Avenue, Suite 207  
Fairbanks, Alaska 99701

rjohn@gci.net

By: Maura S. Brennan

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

FILED in the Trial Courts  
State of Alaska Fourth District

JUL 02 2018

By \_\_\_\_\_ Deputy

Case No.: 4FA-18-02118 CI

PUMPKIN, LIMITED, )  
)  
Plaintiff, )  
)  
vs. )  
)  
UTILITY SERVICES OF ALASKA D/B/A )  
)  
COLLEGE UTILITIES CORP., )  
)  
Defendant. )

AMENDED CERTIFICATES OF SERVICE

College Utilities Corp. ("CUC"), through counsel of record, hereby certifies that copies of CUC's July 2, 2018 Opposition to Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction, CUC's proposed order, and all related attachments were emailed and mailed to Plaintiff via certified first class mail on July 2, 2018. CUC's Counsel hereby also certifies that copies of CUC's Opposition to Plaintiff's Motion for Expedited Consideration of Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction and CUC's proposed order related to that motion for expedited consideration were also mailed to Plaintiff on July 2, 2018, via certified first class mail.

COLLEGE UTILITIES CORP.  
P.O. Box 80370, Fairbanks, Alaska 99708  
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Fax: (907) 479-2699

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DATED at Fairbanks, Alaska this 2<sup>st</sup> day of July, 2018.

COLLEGE UTILITIES CORP.

By: Mamie S. Brown  
Mamie S. Brown  
3691 Cameron Street, Suite 201  
Fairbanks, Alaska 99709  
Phone: (907) 479-3118  
Email: mamie@akwater.com  
Alaska Bar No. 1210076

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document  
was mailed via certified first class mail on this 1<sup>st</sup> day of July, 2018 to:

Robert John  
Kramer and Associates  
542 2<sup>nd</sup> Avenue, Suite 207  
Fairbanks, Alaska 99701

By: Mamie S. Brown

JUN 27 2018

By \_\_\_\_\_ Deputy

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

|   |                                  |   |                           |
|---|----------------------------------|---|---------------------------|
| 1 | PUMPKIN, LIMITED,                | ) |                           |
| 2 |                                  | ) |                           |
| 3 | Plaintiff,                       | ) |                           |
| 4 |                                  | ) |                           |
| 5 | vs.                              | ) | Case No.: 4FA-18-02118 CI |
| 6 |                                  | ) |                           |
| 7 | UTILITY SERVICES OF ALASKA D/B/A | ) |                           |
| 8 | COLLEGE UTILITIES CORP.,         | ) |                           |
| 9 | Defendant.                       | ) |                           |

**COLLEGE UTILITIES CORP.'S OPPOSITION TO PLAINTIFF'S MOTION FOR EXPEDITED CONSIDERATION OF HIS MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

College Utilities Corp., through counsel of record, hereby files this Opposition to Plaintiff's Motion for Expedited Consideration of his Motion for Temporary Restraining Order and Preliminary Injunction. At this time, the underlying Motion need not be expedited; a decision is not needed by close of business on Friday, June 29, 2018. CUC agrees to take no action until after it has filed its opposition and either the Court holds oral arguments regarding Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction or the Court denies Plaintiff's request for oral argument.

COLLEGE UTILITIES CORP.'S OPPOSITION TO PLAINTIFF'S MOTION FOR EXPEDITED CONSIDERATION OF HIS MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION  
*Pumpkin Limited v. Utility Services of Alaska, Inc., d/b/a College Utilities Corporation, Case No. 4FA-18-02118CI*  
MSB/4FA-18-02118CI (Pumpkin Limited v. USA dba CUC)/DRAFT Opp to Pl.'s Mtn for Expediated Consideration.doc  
Page 1 of 2

COLLEGE UTILITIES CORP.  
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Fax: (907) 479-2699

COLLEGE UTILITIES CORP.  
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Telephone: (907) 455-3118  
Fax: (907) 479-2699

1 DATED at Fairbanks, Alaska this 27<sup>th</sup> day of June, 2018.

2 COLLEGE UTILITIES CORP.

3 By: Mamie S. Brown

4 Mamie S. Brown

5 3691 Cameron Street, Suite 201

6 Fairbanks, Alaska 99709

7 Phone: (907) 479-3118

8 Email: mamie@akwater.com

9 Alaska Bar No. 1210076

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14 Kramer and Associates

15 542 2<sup>nd</sup> Avenue, Suite 207

16 Fairbanks, Alaska 99701

17 rjohn@gci.net

18 By: Mamie S. Brown

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22  
23 COLLEGE UTILITIES CORP.'S OPPOSITION TO PLAINTIFF'S MOTION FOR EXPEDITED  
24 CONSIDERATION OF HIS MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY  
INJUNCTION

25 *Pumpkin Limited v. Utility Services of Alaska, Inc., d/b/a College Utilities*  
Corporation, Case No. 4FA-18-02118CI

26 MSB/4FA-18-02118CI (Pumpkin Limited v. USA dba CUC)/DRAFT Opp to Pl.'s Mtn for  
Expediated Consideration.doc

Page 2 of 2

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

PUMPKIN, LIMITED, )  
 )  
Plaintiff, )  
 )  
vs. ) Case No.: 4FA-18-02118 CI  
 )  
UTILITY SERVICES OF ALASKA D/B/A )  
COLLEGE UTILITIES CORP., )  
 )  
Defendant. )

ORDER DENYING PLAINTIFF'S MOTION FOR EXPEDITED CONSIDERATION  
OF HIS MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY  
INJUNCTION

THIS COURT, having duly considered the matters presented,  
hereby orders that Plaintiff's motion for expedited  
consideration is DENIED.

DATED at Fairbanks, Alaska this \_\_\_\_ day of June, 2018.

JUDGE DOUGLAS L. BLANKENSHIP



COLLEGE UTILITIES CORP.  
P.O. Box 80370, Fairbanks, Alaska 99708  
Telephone: (907) 455-3118  
Fax: (907) 479-2699

1                   **CERTIFICATE OF SERVICE**

2                   I hereby certify that a copy of the foregoing document  
3                   was emailed on this 27<sup>th</sup> day of June, 2018 to:

4                   Robert John  
5                   Kramer and Associates  
6                   542 2<sup>nd</sup> Avenue, Suite 207  
7                   Fairbanks, Alaska 99701

8                   rjohn@gci.net

9                   By:           Nathan S. Brown          

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23                   ORDER DENYING PLAINTIFF'S MOTION FOR EXPEDIATED CONSIDERATION OF HIS MOTION  
24                   FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION  
25                   Pumpkin Limited v. Utility Services of Alaska, Inc., d/b/a College Utilities  
26                   Corporation, Case No. 4FA-18-02118CI  
                  MSB/4FA-18-02118CI (Pumpkin Limited v. USA dba CUC)/DRAFT Order Denying Pl.'s  
                  Mtn for Expediated Consideration.doc  
                  Page 2 of 2