

If you would like to be on any mailing list concerning this issue or potential projects arising from it, please fill out the information below and send it to CHARITY FECHTER, ADOT&PF, DIVISION OF PLANNING, 600 UNIVERSITY AVENUE, SUITE B, FAIRBANKS, ALASKA 99701

NAME: Patrick & Tobi Campanella

ADDRESS: 121 Bonnie St.
Fbks 99701

COMMENTS: we are interested in the 2A (Seekins)
combined w/ 2B & the road continuing
to Nordale Rd.

Charity

ACCESS TO PRIVATE PROPERTY

EAST OF FORT WAINWRIGHT

Public Meeting - December 5, 1984
7:00 p.m. Birch School

RECEIVED

DEC 10 1984

DOT & PF Planning
Northern Region

- I WELCOME
- II INTRODUCTION
 - A. Meeting Purpose - to determine the neighborhood consensus on access to the private property east of Fort Wainwright
 - B. Meeting Format
 - C. Possibilities for funding a project
- III PRESENTATION
 - A. History of Problem
 - B. Alternatives Identified
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 - c. from Montgomery Road
 - 3. Construct new alternate access around the military reservation
 - a. bridge the Chena River
 - b. from Chena Hot Springs Road
 - c. from Nordale Road
- IV QUESTIONS
- V BREAK
- VI PUBLIC COMMENT

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NAME: Terry C. and Pamela G. Noble

ADDRESS: P. O. Box 142

Fairbanks, Alaska 99707

COMMENTS: _____

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NAME: Paul G. Shultz

ADDRESS: Box 2233

Fairbanks, Alaska 99707

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NAME: Carol Moore

ADDRESS: P.O. Box 73278
Fairbanks, Alaska 99707

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NAME: John Lundgren

ADDRESS: P.O. Box 73278

Fairbanks, Alaska 99707

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 - b. from Chena Hot Springs Road *10.6 miles*
 - c. from Nordale Road *18.8 miles*
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NAME: Toby + Ruth Mosley
ADDRESS: 1200 16th Ave
Fairbanks ALASKA 99701

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NAME: Randall Zarnke
ADDRESS: 219 Slater Dr. W.
FBX, AK 99701

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NAME: Walter Roth

ADDRESS: 220 Haines ave.
Fairbanks, Ak. 99701

COMMENTS: Meeting was informative

MEMORANDUM

State of Alaska

Department of Transportation & Public Facilities

TO: FILE

DATE: December 11, 1984

FILE NO: 300N

TELEPHONE NO: 479-4281

FROM: Barbara Shepherd *cf*
Planner
Area & Local Planning
Northern Region

SUBJECT: Public Meeting
Ft. Wainwright Access

On December 5, 1984, DOT&PF held a public meeting at Birch School on Ft. Wainwright. Approximately 30 people attended. The purpose of the meeting was to determine public sentiment regarding access to private property east of Ft. Wainwright. Presently this property is reached by restricted road access through Ft. Wainwright military base.

John Martin, DOT&PF, outlined the history of access problems and then identified options for access. These options were divided into three categories: a. continue restricted access, b. unrestricted access provided on existing rights-of-way, and c. unrestricted access provided by construction of new rights-of-way, bypassing the military base.

1. Continue Restricted Access:

Public Comment

This option would maintain the existing restricted access. Passes would continue to be required.

- Property owners and their guests are subject to regular search procedure and vehicle checks. Some object to the spot check procedure that the military uses. The general feeling was that either every car entering Fort Wainwright should be checked, or no vehicle should be subject to the search procedure.
- The military is inconsistent in applying restrictions and rules regarding access through the base. The rules change with base command.
- Current policy is a form of discrimination because it makes development difficult.
- At rush hours the traffic at the Gaffney entrance is backed up to Cushman Street because of the military policy of checking vehicles before they are allowed to enter Fort Wainwright. This also contributes to air pollution build-up. Traffic and pollution problems will worsen when 3000 more troops move into the area.
- When the military gates need to be opened to let in property owners with special loads/deliveries, there are sometimes delays due to the military bureaucracy which can be costly in time and money (when rented equipment is involved). One person said that his recent experience with the military had been good, but in the past delays were common.

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- When the military gates need to be opened to let in property owners with special loads/deliveries, there are sometimes delays due to the military bureaucracy which can be costly in time and money (when rented equipment is involved). One person said that his recent experience with the military had been good, but in the past delays were common.

2. Unrestricted Access via Existing Rights-of-Way:

The three routes described were:

- A. Lazelle Road - This road starts at the Steese Highway in the vicinity of Seekins Ford, then follows the base of Birch Hill to Sage Hill and the private property.
- B. Old River Road - This road starts at Trainor Gate and generally follows the river to Approach Hill and the private property.
- C. Montgomery Road/Golf Course - This road starts at Badger Road gate, goes through the golf course, crosses the river west of Approach Hill and then connects to Old River Road.

Public Comment:

- Use of the Old River Road would be a good compromise until other access could be made available. This option would be low cost as well.
- It was felt that Trainor Gate Road should not be considered because of increased congestion at the Steese Expressway.
- Trainor Gate access would be more efficient than an access point on the east side of the base (e.g., the distance from one man's property to town via Trainor Gate would be 5.8 miles, whereas via a Nordale connection the distance to town would be 23 miles).
- DOT&PF cited the problems of using Trainor Gate as a free access route. The military sees open access as a security problem. Alternatively, if the road were fenced, north/south military movement would be hampered.
- One person felt restricted access was the military's problem and they should be the one to come up with a solution.
- Of the existing right-of-way alternatives, Montgomery Road would be the shortest and cheapest. The bridge is limited to 5 tons, but carried more during the pipeline. This restriction should be changed so public doesn't have to cross illegally or have Trainor Gate opened.
- Martin Gutoski, FNSB, said that Borough standards probably would require that a new two-lane bridge be built.
- One person suggested that the military bridge could be moved downstream. DOT&PF said they would make note of the suggestion, but reconstruction would have few cost advantages in comparison to other options. Such a move requires new piers and abutments which are a substantial part of the cost of a new bridge.

3. New Construction:

Access provided by new road construction was discussed. The three options included: a. bridge the Chena River (\$3.3 million), b. a road connection to Chena Hot Springs Road (\$825,000), and c. a road connection to Nordale Road (\$550,000).

Public Comments:

- One person felt option (b) would increase congestion and traffic safety problems on Chena Hot Springs Road, especially for school buses. Another person felt there would be similar traffic problems on Badger Road if option (a) were pursued, coupled with the problem of ice fog on the Richardson Highway. Option (a), however, would be a shorter route.
- Residents were concerned with the quality of new road construction. They did not want to drive on roads of lesser quality than their existing roads. If the State builds a new road, it will be built to State standards. DOT&PF is not responsible for the construction of local subdivision roads.
- Someone asked if DOT&PF had sought any appropriation yet. Martin said no, and explained that DOT&PF must first know what the majority of people want. At that point, an appropriation can be requested, but must then compete against many other projects. State policy is to first commit monies to the existing system, rather than new projects.

After the discussion of identified alternatives, there was a poll vote taken to determine which alternative or combination of alternatives was desired. Following are the results of the vote:

1. Continue restricted access through Fort Wainwright: yes-2, no-16.

2. Unrestricted free access via existing right-of-way:

2A - from Steese Expressway - 4

2B - from Trainor Gate Road - 1

2A & 2B combination - 14

2C - from Montgomery Road - 0

There was one person that didn't agree with any of the 6 alternatives that would use existing rights-of-way. John Martin asked, "Why does 2A & 2B (combination) appeal to most?" Residents responded that they would prefer a route that would begin in the area of Seekins Ford and continue southeast to the old River Road. Residents stated that traffic congestion would decrease with the combination of alternatives 2A & 2B.

In a separate poll, alternatives 2A & 2B & 3C were considered. This combination of alternatives would create a route from Seekins Ford to Nordale Road. There were 19 people in favor of this combination.

3. Construct new alternate access around the military reservation:

3A - bridge the Chena River - 6

3B - from Chena Hot Springs Road - 0

3C - from Nordale Road - 1

There were 11 people that didn't agree with any of the above alternatives. John Martin asked, "If there were no other options except 3A, 3B or 3C how would you vote."

3A - 19

3B - 0

3C - 1

There was one person that didn't agree with any of the three alternatives.

General Concerns

- It was stated by one of the residents that the military is opposed to subdivision/development. The military responded by saying that they don't oppose subdivision/development, but that they are concerned about development near the airstrip. Because of noise caused by aircraft, the military may oppose development for that reason.
- There was a general feeling that since there are existing rights-of-way on Fort Wainwright, the public has the right to use them and shouldn't be hindered by the military.
- Military's position on alternatives. (Military officials) stated that they came to be silent and that the group here tonight cannot speak for the army. They said that they were present just to gather information.

Of the people present, 16 own property in the area east of Fort Wainwright, 6 are area residents, and 6 people visit in that area.

The meeting ended at 8:55 p.m.

Comments Received from People Attending the Meeting:

Citizens Advisory Committee on Federal Areas: Requested copy of issue analysis and list of attending public.

"I hope the military will reevaluate the problems and consider that there has to be a large step forward towards greater freedom of access economies, lesser of several evils access distance be considerably modified. We need the military, but they also need us."

"It seems as though, considering the rapid growth in the area now, a route from Steese through to Nordale would serve to address a long-term need."

"Route 2A or a combination of 2A and 2B is by far the best alternatives. It would provide the most direct access and cost would be lower because there is already a road. I recognize the traffic congestion at Trainor Gate Road."

"Open Trainor Gate."

"Informative - would like to incorporate 3A, 2B, and 2A."

"We are interested in the 2A (Seekins) combined with 2B and the road continuing Nordale Road."

"Our property lies north of the line about 2 to 3 miles west of Nordale Road. Access off Nordale Road seems best to us. The military must be able to control their property. Access should be on public land not on military property."

"Platting section would like to be kept abreast."

"My interest is to see a through road connecting Steese, along Lazelle Road then lands to Nordale Road north of river. Also to release traffic in Chena Hot Springs Road, population and traffic will increase with access. Development in this area has been retarded by Wainwright blockade."

"Meeting was informative."

BSS/crm

WTH (R)

Daily News-Miner, Fairbanks, Alaska, Thursday, December 6, 1984—3

Going through Ft. Wainwright major problem for neighbors

By JOHN CREED
Staff Writer

One option is to construct a \$3.3 million bridge across the Chena River. Another is a \$825,000 tie-in to Chena Hot Springs Road. A third is a \$550,000 artery from Nordale Road.

The issue? Access for private property owners just east of Fort Wainwright, who presently drive across the base to get to their land and homes. Residents discussed access alternatives at an informal Department of Transportation public hearing Wednesday evening at Birch School on Fort Wainwright.

"Chances are pretty slim for the administration highly prioritizing any of those three options," said John Martin, DOT manager of systems and project development. "If a lot of people lived there it would be easier to justify."

Alternatives for access across Fort Wainwright also included:

- Continue "status quo" restricted access through Fort Wainwright, where visitors and residents are subject to search, filling out forms and inconsistent gate hours, according to residents.

- Unrestricted free access via existing rights-of-way from the Steese Expressway, Trainor Gate Road, and Montgomery Road. The military contests these rights of way and has fenced them off, according to DOT officials. Military officials say they've done this for security reasons to protect ammunition caches, fuel storage, and a nearby sanitary landfill.

Access across Fort Wainwright was "freer" in the 1970s, according to DOT officials.



JOHN MARTIN
DOT manager

"The post used to be open access. No one manned the gates," Martin said. "Then after construction of the pipeline, the military reinstated its closed-gate policy. But the military says that as a result there's been a marked reduction in crime such as burglary and vandalism. And the military feels a need for security. I think the military has that prerogative."

Military officials at the hearing said they came "to be silent. We came to listen" to resident concerns, adding that "the group here tonight cannot speak for Army."

Martin said "the military is not asking us to do anything." He said the

residents asked DOT to assert the old right of ways through the post—though some DOT officials question that claim's validity—and to take a look at alternative access.

The main issue with the present arrangement, according to Martin, is "the military keeps changing their access requirements on a day-to-day basis."

Residents Wednesday evening said the post's recent change of command meant an altering of rules and gate hours.

"Since we've been traveling across the base," one woman resident said, "we've been pulled over three times during regular hours and searched."

"I object to being searched going to my own private property," another resident said. "If they maintained a search of each vehicle, fine, but a spot check is illegal."

Many residents support the present system.

"I myself have appreciated their position once a property owner is recognized and a limited pass has been allowed," a resident said.

"One resident told me he kind of likes the security," Martin said. "It's a secure, remote area, but still close to town. Other people want to develop their property. And there's problems with the borough, which requires unrestricted access to do so."

Martin described the most of the property in question as "well-drained, some nice knolls, big trees, some river frontage property. As the community grows, there'll be increased demand for development from Fairbanks."

ACCESS TO PRIVATE PROPERTY

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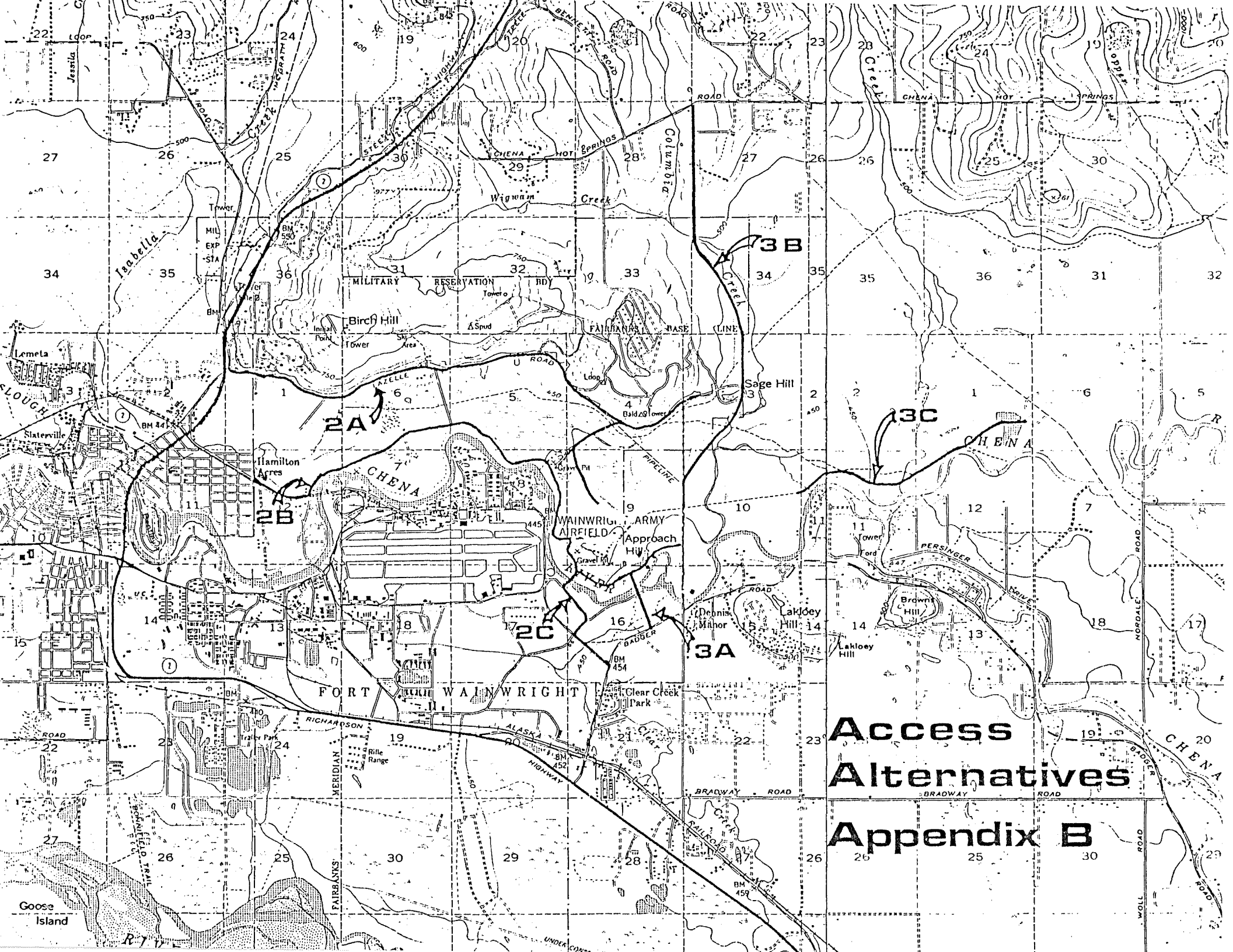
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NAME: _____

ADDRESS: _____

COMMENTS: _____



Access Alternatives

Appendix B

Ft. Wainwright Access

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ADDRESS: _____

COMMENTS: _____

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

DIVISION OF PLANNING, NORTHERN REGION

BILL SHEFFIELD, GOVERNOR

600 University Avenue, Suite B
Fairbanks, Alaska 99701
(907) 479-4281

November 21, 1984

Re: Public Meeting
Access to Property East
of Ft. Wainwright

[ADR]

The Department of Transportation and Public Facilities will be holding a public meeting on December 5, 1984, to discuss access to private property east of Fort Wainwright.

A notice of the meeting is enclosed. We would appreciate it if you would include this in your public service announcements and community information broadcasts. This spot should take about 20 seconds.

Sincerely,

Charity Fechter
Project Manager

BES:tc
Enclosure

STATE OF ALASKA

FT. WAINWRIGHT ACCESS

The Department of Transportation and Public Facilities will hold an informal public meeting to discuss access to private properties east of Ft. Wainwright. Area residents are urged to attend.

**WEDNESDAY,
DECEMBER 5th
BIRCH SCHOOL
BUILDING 1031,
FORT WAINWRIGHT**

7:00 p.m.

For further information, please contact Charity Fechter at 479-4281.

AO-25N AL 11

News-diner

11-27-84

November 21, 1984

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
& PUBLIC FACILITIES

PUBLIC MEETING

THE DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES WILL HOLD AN INFORMAL PUBLIC MEETING TO DISCUSS ACCESS TO PRIVATE PROPERTY EAST OF FORT WAINWRIGHT. AREA RESIDENTS ARE ENCOURAGED TO ATTEND 7:00 PM ON WEDNESDAY, NOVEMBER 5TH, AT BIRCH SCHOOL ON FORT WAINWRIGHT.

AGAIN, THAT MEETING WILL BE AT 7:00 PM ON WEDNESDAY, NOVEMBER 5th,
AT BIRCH SCHOOL.

FOR FURTHER INFORMATION, PLEASE CALL CHARITY FECHTER AT 479-4281.

November 21, 1984

Re: Public Meeting - Ft. Wainwright
Access

Fairbanks Daily Newsminer
200 North Cushman
Fairbanks, AK 99701

Attention: Display Advertising

Please publish the enclosed advertisement on the dates indicated. The size of this block advertisement should cover approximately six (6) column inches and include graphics and a black border.

Your invoice for advertisement should be forwarded in triplicate to the Department of Transportation & Public Facilities, Division of Planning, 600 University Avenue, Suite B, Fairbanks, AK 99701.

Also, please forward in triplicate the publisher's affidavit (Part 2 of the Advertising Order) with a copy of the advertisement and a dateline showing when it was run.

Sincerely,

Charity Fechter

Charity Fechter
Area Planner

BES:tc
Enclosure

ADVERTISING ORDER

NOTICE TO PUBLISHER

INVOICE MUST BE IN TRIPLICATE SHOWING ADVERTISING ORDER NO., CERTIFIED AFFIDAVIT OF PUBLICATION (PART 2 OF THIS FORM) WITH ATTACHED COPY OF ADVERTISEMENT MUST BE SUBMITTED WITH INVOICE.

5. DEPARTMENT

DEPT. NO. A.O. NO.

A0- 25-W A/L 11

PUBLISHER	Fairbanks Daily Newsminer 209 North Cushman Fairbanks, AK 99701	VENDOR NO.	DATE OF A.O.
	FROM	Department of Transportation & Public Facilities 600 University Ave., Suite B Fairbanks, AK 99701	DATES ADVERTISEMENT REQUIRED: November 21, 1984 November 23, 28, 1984 December 1, 4, 1984
		THE MATERIAL BETWEEN THE DOUBLE LINES MUST BE PRINTED IN ITS ENTIRETY ON THE DATES SHOWN.	
		BILLING ADDRESS: Dept. Of Transportation & Public Facilities 600 University Ave., Suite B Fairbanks, AK 99701	

Type of Advertisement: Legal Display Other (Specify)

STATE OF ALASKA

Ft. WAINWRIGHT ACCESS

The Department of Transportation and Public Facilities will hold an informal public meeting to discuss access to private properties east of Ft. Wainwright. Area residents are urged to attend.

WEDNESDAY, DECEMBER 5th
BIRCH SCHOOL
BUILDING 1031, FORT WAINWRIGHT
7:00 pm

For further information, please contact Charity Fechter at 479-4281.

TO BE COMPLETED BY ORDERING DEPARTMENT									PAGE NO.	OF	PAGES	TOTAL ALL PAGES	\$
TRANS.	DEPT.	DIV. & PROG.	FUNCTION	SUB-FUNCTION	OBJECT RECEIPT	HWY. FUNCT.	PROJECT LEDGER	PER CENT OR ITEM NO.	1	1			
27	80	2	555		325	801	F25541						
									REQUISITIONED BY		I HEREBY CERTIFY THAT THE UN-ENCUMBERED BALANCE IN THE APPROPRIATION CITED HEREON IS SUFFICIENT TO COVER THIS PURCHASE AND THAT THIS PURCHASE IS AUTHORIZED HEREUNDER.		
									DIVISIONAL APPROVAL				
									DATE ENTERED				
											CERTIFYING OFFICER		
											VOUCHER NUMBER		

November 21, 1984

Re: Public Meeting - Ft. Wainwright
Access

All Alaska Weekly
419 Second Avenue
Fairbanks, AK 99701

Attention: Display Advertising

Please publish the enclosed advertisement on the date indicated. The size of this block advertisement should cover approximately six (6) column inches and include graphics and a black border.

Your invoice for advertisement should be forwarded in triplicate to the Department of Transportation & Public Facilities, Division of Planning, 600 University Avenue, Suite B, Fairbanks, -AK 99701.

Also, please forward in triplicate the publisher's affidavit (Part 2 of the Advertising Order) with a copy of the advertisement and a dateline showing when it was run.

Sincerely,

Charity Fechter

Charity Fechter
Area Planner

BES:tc
Enclosure

TELEPHONE/CONFERENCE DATA

PEOPLE INVOLVED

REPRESENTING

Date: 10/24/84

Time: 4:45

Project No./Name

- ① Ft. Wainwright ^{Access}
- ② FMATS Update
- ③ Keith Meyer
- ④ ~~Proposed~~

Robert H. Gamble Box 1104, Fly 99707

488-6979

Clyde Shover

112 Farmers Loop 99701

TOPICS:

Would like to see an east-west road south of Chena Hot Springs Road and south of Bird Hill.

Suggested Lazelle Road be extended from Sage Hill east to Nordale Road and then east toward Potlatch Ponds. ~~East~~ At that point the road would fork with one leg going north to CHSR and the other going east towards the dike.

ACTION ITEMS: Lynne - Add names to FMATS Mailing List
Start mailing list for Ft. Wainwright Access

Copies To: Sharon - Prepared projects

Signature: Charity Fekete

MEMORANDUM

State of Alaska
Department of Transportation & Public Facilities

TO: FILE

DATE: August 6, 1984

FILE NO: 30FW3

TELEPHONE NO: 479-4281

FROM: John D. Martin
Manager
Systems & Programs
Northern Region Planning

SUBJECT: Ft. Wainwright Access

On Monday, August 6, at 10:30 a.m. there was a meeting to discuss the Ft. Wainwright Access issue in Colonel Cox's office. In attendance were Major Al Schon (Judge Advocate General's Office), Colonel Cox, Glen Glenzer and John Martin.

Colonel Cox has been out in the field and looked at the proposed bridge crossings from Badger Road. He feels that, 1) the military does not want to give up any more right-of-way than necessary, 2) that the best bridge site would be along the extension of Dennis Road, and 3) that the military would be willing to provide an easement along the military boundary at that location. Colonel Cox and Major Schon both were of the opinion that there was absolutely no possibility of acquiring a military bridge for use in this project.

Glen Glenzer stated that DOT/PF would hold a public meeting on the access issue. After the meeting he asked me to be sure there are representatives from the military and the banking industry at this meeting as well as the general public.

Glen also volunteered the falling weight deflectometer for use in evaluating the runway of Ft. Wainwright if it was requested.

JM/crm

cc: Mim Dixon, Director, Planning, Northern Region
Larry Sweet, Manager, Research, Northern Region
Jonathan Widdis, Manager, Area & Local Planning, Northern Region

MEMORANDUM

To: Rick Smith
From: Kathleen (Mike) Dalton MD
Subj: Shultz case status
Date: June 27, 1994

I talked to the Ninth Circuit Court of Appeals clerk's office today about the Paul Shultz case.

The Court has not yet granted a re-hearing of the Shultz case before an expanded "en banc" panel.

In other words, the case is still pending.

If you need to contact the court, a number for information is (415) 744-9800. For docket information call (415) 744-9805.

The Nevada Public Lands Alliance contacted me last week about the Shultz case. I have responded to the Alliance with the above information and with the names of the plaintiffs who have filed briefs.

cc: Anna Plager
Joe Sullivan
Norm Piispanen
Commissioner Campbell

BRUCE M. LANDON
Department of Justice
Environment & Natural Resources Division
Room 217
222 West Seventh Avenue #69
Anchorage, Alaska 99513
(907) 271-5452

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

AUG 5 1991

PAUL G. SHULTZ,

Plaintiff,

v.

DEPARTMENT OF ARMY, UNITED
STATES OF AMERICA,

Defendant.

Case No. F86-030 Civil

NOTICE OF LODGING OF
PROPOSED
FINDINGS OF FACT

Pursuant to this court's order of July 12, 1991,
defendant gives notice of the lodging herewith of the proposed
Findings of Fact.

RESPECTFULLY SUBMITTED this 18th day of August, 1991
from Anchorage, Alaska.



BRUCE M. LANDON

Attorney for Defendant

NOT OF LDG OF
PROPOSED FIND-
INGS OF FACT

BRUCE M. LANDON
Department of Justice
Environment & Natural Resources Division
Room 217
222 West Seventh Avenue #69
Anchorage, Alaska 99513
(907) 271-5452

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

PAUL G. SHULTZ,)	
)	
Plaintiff,)	Case No. F86-030 Civil
)	
v.)	
)	
DEPARTMENT OF ARMY, UNITED)	<u>FINDINGS OF FACT</u>
STATES OF AMERICA,)	
)	
Defendant.)	
<hr/>		

I. FINDINGS RELATING TO PLAINTIFF AND HIS PROPERTY.

1. Plaintiff owns land east of Fort Wainwright.
2. The only existing road access between Fairbanks and plaintiff's property is through Fort Wainwright.
3. Plaintiff's southern property line is the north bank of the Chena River.
4. The closest public highway to plaintiff's property is Badger Road which is on the south side of the Chena River.
5. There is no bridge across the Chena River in the vicinity of plaintiff's property.

6. Plaintiff and other property owners obtain road access to their property through Fort Wainwright generally using a route consisting of Trainer Road, River Road and Homestead Road.

7. The Trainer Road/River Road/ Homestead Road route does not correspond to routes which plaintiff claims pre-dated the creation of Fort Wainwright.

8. The Department of Army issues decals to civilian property owners east of Fort Wainwright allowing them to traverse Fort Wainwright.

9. Plaintiff is currently barred from Fort Wainwright pursuant to a probation order filed October 16, 1990.

10. The Fairbanks NorthStar Borough will not permit plaintiff to subdivide his property unless he has unrestricted legal access to his property constructed to Borough standards.

II. FINDINGS RELATING TO THE GENERAL HISTORY OF FAIRBANKS AND FORT WAINWRIGHT.

11. Fairbanks came into existence around the turn of the century.

12. During the period 1902-1920, a significant number of agriculture homesteads developed along the Chena River.

13. During the period 1902-1920, there was traffic to other mining settlements east of Fairbanks including Smallwood Creek.

14. Firewood was the dominant form of heating in Fairbanks in the early part of the twentieth century and numerous wood roads existed throughout the Fairbanks area.

15. Fort Wainwright (previously also known as Ladd Field and Ladd Air Force Base) is a military installation established through a series of land orders and land acquisition actions, the first of which was Executive Order (EO) 7596 dated March 31, 1937. The land orders and acquisitions were made subject to valid existing rights.

16. Many trails and roads came into existence prior to the creation of Fort Wainwright.

III. FINDINGS RELATING TO WIEST ROAD.

17. A road commonly called Wiest Road existed prior to the establishment of Fort Wainwright.

18. Wiest Road terminated at the Wiest Homestead (S 1/2 of NW 1/4 and SW 1/4 Sec. 9, and lots 4 and 5 of Sec. 16, T1S, R1E, Fairbanks Meridian) inside what is now Fort Wainwright and to the west of plaintiff's property. Wiest Road does not reach plaintiff's property.

19. Wiest Road has been obstructed by the Fort Wainwright sanitary landfill since a time prior to 1974 and continuously thereafter.

When the landfill shouldn't be there.

Look for support

Statements
no statute of limitations
Especially by

20. By virtue of the landfill obstruction, plaintiff and his predecessors in title knew or should have known of the government's claim, and if Wiest Road ever was an RS 2477 right-of-way, the statute of limitations in 28 U.S.C. § 2409a(g) bars its adjudication.

It has been commonly understood that disuse does not dissolve an RS2477 right of way.

21. The appearance of Wiest Road on aerial photos dated 1979 indicates that Wiest Road had fallen into disuse long prior to 1974.

22. The disuse does not establish abandonment but is circumstantial evidence which leads the court to infer that Wiest Road had been blocked by the military for a period beginning prior to twelve years before the filing of the complaint in this action.

23. Homestead Road does not overlap Wiest Road.

24. Wiest Road does not correspond to the location of River Road (also known as Tank Road). At points, the routes overlap, but particularly west of the Fort Wainwright sanitary landfill the two routes diverge markedly.

IV. FINDINGS RELATING TO HOMESTEAD ROAD AND ACCESS TO NISSEN HOMESTEAD.

25. Plaintiff's earliest predecessor in interest was George Nissen whose homestead (SE 1/4 of SW 1/4 Sec. 3 and SW 1/4 of SE 1/4 Sec. 3 and E 1/2 of N 1/4 and W 1/2 of NE 1/4 and Lots 2 and 3 of Sec. 10, T1S, R1E, Fairbanks Meridian) is on the north

routes may have been blocked but access was not. military offering of all access implies ROW.

bank of the Chena River approximately 2 miles upriver (east) of the Wiest homestead.

26. George Nissen raised a substantial vegetable crop.

27. The size of the Nissen crop far exceeds that needed for personal consumption and was produced for sale in Fairbanks.

28. Nissen built his cabin on the Chena River. The court infers from this circumstantial evidence that Nissen used the Chena River to get his crops to market.

29. If Nissen had taken his crops to market by wagon overland, a clear road should have been visible on the 1938 aerial photos, but was not. *not even to Lazelle Rd or CHS trail*

30. There is no bridge or other crossing of Columbia Slough visible on aerial photos taken in 1938.

must have been a lot more water then than there is today

31. During the 1920's, Mr. Buzby swam horses across Columbia Slough.

32. Columbia Slough flows from north to south into the Chena River at a point between the Wiest and Nissen homesteads.

33. It would not be possible for a wagon to cross Columbia Slough without a bridge or fill. *bunk! People crossed much bigger water than this!*

It was probably easier to go overland, so ice collapse & aifies

34. Some individuals went to the vicinity of Nissen's property in the winter from the Fairbanks Chena Hotsprings Winter Sled Road by travelling along Columbia Slough when frozen.

35. A trail and foot bridge identified by Professor Mendenhall on a 1938 aerial photo were built on land that was at one time part of Nissen's homestead and do not constitute an RS

2477 right-of-way extension from the Wiest homestead to Nissen's homestead.

good

why not?
36. By 1918, Nissen sometimes used Wiest Road to get to Fairbanks, but not for regular transport of his crops. By 1918, Wiest and a number of other homesteaders along Wiest Road had already taken up their homesteads.
so what?

37. In approximately 1949, a Mr. Whipple, whose homestead was on the north bank of the Chena River just east of the Nissen homestead, had an automobile on his property. Mr. Whipple did not enter his homestead until 1947, by which time Fort Wainwright and a number of homesteads prevented the creation of any RS-2477 right-of-way to Whipple's property. Mr. Whipple's access was on roads and/or power line clearings created by the military.

to replace something else?
38. If a trail or road had existed to Nissen's homestead in 1911, it is unlikely that the section line calls of the survey of T1S, R1E, Fairbanks Meridian (accepted in 1913), would have missed it.

so?

39. Prior to the establishment of Fort Wainwright, no route susceptible to wagon or motor vehicle use existed between the Wiest and Nissen homesteads.

40. Nissen used the Chena River to get his crop to town.

41. Homestead Road was constructed at some time between 1938 and 1948.

42. Within Fort Wainwright, Homestead Road traverses Lots 3, 4, 5 of Sec. 16, T1S, R1E, Fairbanks Meridian.

43. Lot 3 of Sec. 16, T1S, R1E, Fairbanks Meridian was withdrawn for territorial school purposes in 1915 and has been in a withdrawn status continuously up to the present.

44. James Wiest filed a homestead application with the General Land Office on July 23, 1914 which includes Lots 4 and 5, Sec. 16, T1S, R1E, Fairbanks Meridian and those lots have been continuously out of public domain status since at least that date.

45. No public highway easement exists for that portion of Homestead Road on Fort Wainwright under RS 2477 or otherwise.

V. FINDINGS RELATING TO ACCESS TO THE VICINITY OF CORTNEY RANCH.

46. There was no established trail of fixed location from the Fairbanks Chena Hotsprings Winter Sled Road, LaZelle Road or Wiest Road to the vicinity of Cortney Ranch (SE 1/4 of SW 1/4 and Lots 4, 5, 6 of Sec. 6, T1S, R2E, Fairbanks Meridian) prior to the time that portions of the intervening land now within Fort Wainwright had been taken up by homestead entries or acquired by the military.

47. Overland travel to Cortney Ranch from Fairbanks traversed swamp land and wooded areas with numerous wood roads. Consequently, it was not necessary to establish a definite route to Cortney Ranch.

48. A summer road to Cortney Ranch was infeasible because of the swamp land.

*so?
winter const. use is enough.*

49. No summer road appeared in the vicinity of Cortney Ranch on the 1938 aerial photos. If a summer road had existed in 1938, it would have been clearly visible.

50. Travel in winter to Cortney Ranch occurred opportunistically anywhere across the frozen, treeless swamp.

51. No individual route to Cortney Ranch ever experienced sufficient use to create an RS 2477 right-of-way by public users.

52. During the 1920's, Mr. Buzby travelled to Cortney Ranch, at which time the whole area was criss-crossed with wood trails.

53. Wood haulers moved wood using Wiest Road and other roads and then took off to the east along wood trails on various changing routes.

54. The 1938 aerial photos indicate trail fragments to the vicinity of Cortney Ranch which traverse the northernmost portion of the Nissen homestead. Nissen did not use that route to get to Fairbanks.

55. In the 1938 aerial photos, the Fairbanks Chena Hotsprings Winter Sled Road is cleared to a width of 12' to 16'; Wiest Road is 10' to 12' wide, while the fragments of trails leading to the vicinity of Cortney Ranch are considerably thinner and less distinct.

56. By the time Mr. Wigger observed regular traffic on the trail to the vicinity of Cortney Ranch, the military reservation had already come into existence.

if looks like routes existed. All that is missing are witnesses. somebody used those routes (thin or thick) that show up in 1938 photo. they could be RS 2477's without any use by Nissen.

57. No right-of-way under RS 2477 or otherwise exists across Fort Wainwright to the vicinity of Cortney Ranch.

VI. FINDINGS RELATING TO LAZELLE ROAD.

58. LaZelle Road has been continuously blocked by a locked gate and fence surrounding the Fort Wainwright oil tank farm and by the tank farm itself at a point on the western boundary of Fort Wainwright for a period of time exceeding twelve years prior to the institution of this action.

59. LaZelle Road has been blocked by a ski tow cable at the Fort Wainwright ski area for a period in excess of twelve years prior to the institution of this action.

60. By virtue of these blockages, plaintiff and his predecessors knew or should have known of the military's claim, and adjudication of LaZelle Road is barred by the statute of limitations in 28 U.S.C. § 2409a(g).

61. LaZelle Road was built in stages. An extension of LaZelle Road in Sections 3 and 4, T1S, R1E, Fairbanks Meridian was constructed by the military in 1950 or 1951 after most of the land in the extension was unavailable for the creation of an RS 2477 right-of-way either because it had been withdrawn or acquired by the military, or because it had been taken up by homesteads.

62. LaZelle Road does not overlap the Fairbanks Chena Hotsprings Winter Sled Road and is located in excess of 100' from the sled road.

63. In Sections 3 and 4, T1S, R1E, Fairbanks Meridian, Lazelle Road is cut into the hillside.

64. The cut does not appear on aerial photos until after 1949.

65. Mr. Kalen confirmed with a tape measure, by measuring from LaZelle Road to the Fairbanks Chena Hotsprings Winter Sled Road, that the latter is in the flats more than 100' from LaZelle Road. *for its entire length? no overlap? or only where he measured.*

66. A sled trail could not have existed in the location of LaZelle Road in the absence of a cut because the natural slope is such that sleds could not stay on a trail without the cut.

67. Neither LaZelle Road nor the Fairbanks Chena Hotsprings Winter Sled Road went to plaintiff's property.

68. In order for there to be an RS 2477 right-of-way to plaintiff's property, plaintiff would have to establish the existence of an RS 2477 right-of-way from LaZelle Road or the Fairbanks Chena Hotsprings Winter Sled Road to plaintiff's property.

69. There was no trail or road right-of-way from LaZelle Road or Fairbanks Chena Hotsprings Winter Sled Road to plaintiff's property established under RS 2477 or otherwise.

VII. FINDINGS RELATING TO FAIRBANKS
CHENA HOTSPRINGS WINTER SLED ROAD.

70. A "sled road" is a winter trail wide enough to accommodate a large horse drawn bob sled such as might be used to haul wood or passengers.

71. Fairbanks Chena Winter Sled Road acquired its present location in approximately 1923.

72. Tree ring counts indicate that the Fairbanks Chena Hotsprings Winter Sled Road has not been used since approximately 1950-1951. This is circumstantial evidence from which the court infers blockage of the winter sled road for a period in excess of twelve years prior to the filing of the complaint in this case.

73. Fairbanks Chena Hotsprings Winter Sled Road has been continuously blocked for several hundred feet by the Fort Wainwright sanitary landfill for a period of time in excess of twelve years prior to the filing of the complaint in this action.

74. By virtue of this blockage, plaintiff and his predecessors in interest knew or should have known that the government claimed the right to restrict access along the Fairbanks Chena Hotsprings Winter Sled Road for a period in excess of twelve years prior to the filing of the complaint in this action.

75. Adjudication of the Fairbanks Chena Hotsprings Winter Sled Road is barred by the statute of limitations in 28 U.S.C. § 2409a(g).

*no body minded
since alternative
access was
provided!*

VIII. FINDINGS RELATING TO FAIRBANKS SMALLWOOD ROAD.

76. Fairbanks Smallwood Road has been continuously blocked by a fence near the western boundary of Fort Wainwright for a period in excess of twelve years prior to the filing of the complaint in this action.

77. The Fairbanks Smallwood Road does not overlap or come within 100' of the Trainer Road/River Road/Homestead Road route used by plaintiff to access his property.

78. By virtue of the blockage by the fence, plaintiff and his predecessors in interest knew or should have known of the government's claim and adjudication of the Fairbanks Smallwood Road is, therefore, barred by the statute of limitations in 28 U.S.C. § 2409a(g).

IX. FINDINGS RELATING TO SAGE HILL ROAD.

79. Sage Hill Road is a road running in a northeasterly direction from River Road in Sec. 8, T1S, R1E, Fairbanks Meridian to LaZelle Road in Sec. 4, T1S, R1E, Fairbanks Meridian.

80. Sage Hill Road was built by the military after the military had acquired the land traversed thereby and is not a public right-of-way established under RS 2477 or otherwise.

81. Aerial photos taken in 1938 reveal a number of trail fragments in the vicinity of the present location of Sage Hill Road. None of the trail fragments constitute an established route of travel with sufficient use to establish an RS 2477 right-of-way.

X. FINDINGS RELATING TO TRAINER ROAD.

82. Government control of Trainer Gate during the period from 1974-76 was intermittent and insufficient to put plaintiff or his predecessors in interest on notice that the United States claimed an interest in controlling access on the road.

83. During the period from 1974-76, security measures by Alyeska at Trainer Gate were designed to protect Alyeska's private property kept on Fort Wainwright.

84. During the period 1974-1976, there existed long periods of time when one could drive through an open gate with no guards and an apparently boarded up guard house.

85. Trainer Road was built by the military after acquisition of the land traversed.

86. Trainer Road does not appear on the 1938 aerial photos of Fort Wainwright.

87. Trainer Road is neither congruent with nor within 100' of the location of roads or trails pre-existing the creation of Fort Wainwright.

88. In 1944, the military blocked a number of routes across Fort Wainwright and suggested two alternate routes to Steele Creek and vicinity. One of those alternate routes included the present location of Trainer Road.

89. In rerouting traffic along the alternate routes, the military neither dedicated the alternate routes as public

should not offer an alternative and then close it, and everything else, 12 years later!

rights-of-way nor offered to create a public right-of-way along either of the alternate routes.

90. Trainer Road is not a public right-of-way under RS 2477 or otherwise.

XI. GENERAL FINDINGS.

91. Plaintiff has failed to prove the existence of any RS 2477 right-of-way or other right-of-way across Fort Wainwright which either alone or in combination with other rights-of-way provide access to plaintiff's property east of Fort Wainwright.

92. In the alternative, the interest claimed by plaintiff to use public highways to his property is not an interest within the scope of 28 U.S.C. § 2409a(g), and this court is without jurisdiction under the Tenth Circuit's holding in Kinscherff v. United States, 586 F.2d 159 (10th Cir. 1978).

DATED this ____ day of _____, 1991.

ANDREW J. KLEINFELD
United States District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of August, 1991
a copy of the foregoing NOTICE OF LODGING OF PROPOSED FINDINGS OF
FACT with (proposed) FINDINGS OF FACT was served by United States
mail, first class, postage paid, to the following counsel of
record:

Joseph W. Sheehan
P.O. Box 906
Fairbanks, AK 99707

Bonita R. Dotter
BONITA R. DOTTER
Paralegal Specialist
Department of Justice
Environment & Natural
Resources Division
Anchorage, Alaska

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

RS 2477
File
RECEIVED

April 19, 1988

APR 23 1988

GREATER FAIRBANKS
CHAMBER OF COMMERCE

Mr. W. R. Cox
President and CEO
Greater Fairbanks
Chamber of Commerce
P.O. Box 74446
Fairbanks, AK 99707

Dear Wally,

Thank you for your recent letter regarding rights-of-way across military land. I appreciate your concern and feel you have raised an issue which warrants further study.

My Washington, D.C., staff has recently engaged in discussions with federal agency officials about RS 2477 rights-of-way. They report making considerable progress in finding solutions to long-standing disagreements. I expect to see written documentation of these new agreements in the near future.

There are still unresolved issues of importance to Alaskans, including the 12-year statute of limitations you mentioned. Therefore, this office has requested that Attorney General Grace Schaible prepare a formal opinion on a potential test case which might address these remaining questions. If you have information which might assist the Attorney General in her investigation, or have other concerns, please feel free to share them.

Thank you, too, for the Chamber's resolution regarding food irradiation. I appreciate your sharing your comments with me, and have taken them into consideration. I have taken the liberty of sharing your resolution with my Commissioner of the Department of Environmental Conservation.

I regret that I was unable to meet with you while I was visiting Fairbanks. As is usually the case, my schedule was arranged a couple of weeks before I came up and there just wasn't any time available. I'll be making a couple of trips to Fairbanks this summer and will try to get together with you then.

Mr. W. R. Cox

-2-

April 19, 1988

In the meantime, thank you for taking the time to write. I appreciate your keeping me informed of matters of interest to the Chamber.

Sincerely,



Steve Cowper
Governor

cc: The Honorable Grace Schaible
The Honorable Dennis Kelso

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX Z
JUNEAU, ALASKA 99811-2500
PHONE: (907) 465-3900

April 24, 1987

The Honorable John B. Coghill
Alaska State Senate
P.O. Box V
Juneau, AK 99811-3100

Dear Senator Coghill:

This is in response to your April 2, 1987 letter requesting the Department of Transportation and Public Facilities (DOT&PF) to assist with resolution of the public access issue through Ft. Wainwright on Lazelle Road. The only access currently developed to private lands east of Ft. Wainwright and north of the Chena River is through the military post and is restricted by military issued permits. I understand the Army's position has been that access policies are under the control of the Post Commander and that future public access may be totally denied at their discretion.

The January, 1984 issue analysis prepared by the DOT&PF Northern Region Planning still represents a good assessment of the situation. This paper outlines three strategies: negotiations, litigation and construction of alternate access.

Negotiations: In the past, the military has not been willing to make any long-term commitments for public access across the post. With the buildup of the Light Infantry Division, the Army is even more unlikely to discuss any options that could compromise future security. Most likely, negotiations will only result in short-term assurances to maintain the status quo. However, property owners should be encouraged to work through local government to pursue construction of alternate access by the military.

Litigation: Assertion of potential RS 2477 right-of-way should be approached with caution. Since there is little litigation in Alaska claiming prior existing rights on a historic road or trail, we must be prepared for a lengthy legal process that may serve as a test case and establish future precedence for the overall interpretation of RS 2477. Due to the military security issues, it may not be advisable to use Lazelle Road as a test case. Also, the Department is not financially capable of litigating a major test case at this time.

April 24, 1987

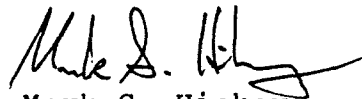
Construction: Construction of a new route is the best long-term solution. The 1984 report identified a number of alternate routes for constructing new access. The cost of constructing an all-season road off Chena Hot Springs Road or Nordale Road approaches \$2 million. The preferred alternate is a Chena River Bridge off Badger Road and is estimated to cost \$3.5 million. These projects would require 100% state funding. Even under better financial situations, we could not promote this project over other higher priority projects that would directly benefit more people.

In an effort to make some headway on this matter, I am directing Mr. Lynn Harnisch, new Regional Director of the Northern Region, to discuss these issues with local Army officials to ascertain their openness to different solutions. We will report back following those discussions.

Also, attached for your files is additional 1986 correspondence between the Department of Natural Resources (DNR) and Paul Schultz. These letters indicate Mr. Schultz' intent to take legal action and they reflect DNR's current position.

We hope this answers your concerns and I offer the department's assistance if you need further information.

Sincerely,



Mark S. Hickey
Commissioner

Attachments

cc: George Sullivan, Legislative Lobbyist, Office of
the Governor
Susan Fleischhauer, Legislative Liaison, Headquarters
Judith A. Brady, Commissioner, Department of Natural
Resources
Lynn J. Harnisch, P.E., Regional Director, Northern Region
John D. Martin, Chief of Planning & Research, Northern
Region

Shultz Excavating

BOX 2233 - FAIRBANKS, ALASKA 99707 - (907) 479-2089

Bus - pls. review + discuss w/ Jerry B. + Rick T. Also AG. Then a dry response from CW. TA AF

March 13, 1986

Esther Wunnicke, Commissioner
Department of Natural Resources
Pouch M
Juneau, Alaska 99811

DEPARTMENT OF NATURAL RESOURCES

MAR 28 1986

COMMISSIONER'S OFFICE JUNEAU

Dear Commissioner Wunnicke:

I am writing this letter to notify the Department of Natural Resources that I will initiate civil action against the U.S. Army within thirty days to assert the right of the public to use public roads crossing Ft. Wainwright.

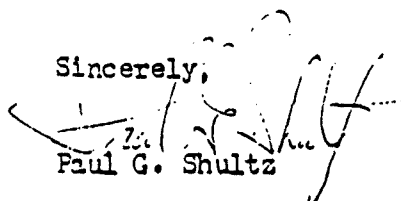
The Army continues to interfere with my rights of access and, though I have tried for several years to get the State of Alaska to see that the interests of the public to the free and unrestricted use of these roads are protected, the State has refused to take any action. I have no choice but to take the Army to court to protect my rights and the rights of the public.

In the event that I am unable to recover damages from the Army, or if the amount I recover is not equal to the damages incurred, I will ask the State of Alaska to pay the balance. If it is necessary to go to court to recover damages from the State I will.

Enclosed is a copy of a letter I wrote to the Department of Natural Resources in January. I have not received a reply to this letter, although Mr. Joseph Sullivan and Mr. Richard Smith of DNR have informed me verbally that the State will not enter into litigation to defend this public road. I have also enclosed a letter from William Copeland dated May 14, 1980, explaining that the State was closing my right-of-way application because access was provided via LaZelle Rd., one of the roads with which I am concerned, and section line easements off LaZelle Rd.

I believe that the maintenance of this access would work to the benefit of private property owners, the Department of Transportation, the Department of Natural Resources, and even the Army. The Department of Transportation envisions a day when a highway through this area will provide an alternate transportation corridor to the Badger Rd. and Richardson Highway area and they have taken this into consideration in their planning of the Geist Rd. Extension. These roads provide access to many acres of State land. The Army could use these roads for access to its new housing area which would greatly reduce traffic at the Gaffney Rd.- Steese Highway intersection. Instead of working together to accomplish something that will benefit all, we are fighting. I wish we could work together, and I regret that this action is necessary.

Sincerely,


Paul G. Shultz

enclosures/ 2

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

for S.
BILL SHEFFIELD, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-495-2400

May 5, 1986

Department of Natural Resources

MAY 13 1986
COMMISSIONER'S OFFICE
FAIRBANKS

Mr. Paul G. Schultz
Box 2233
Fairbanks, AK 99707

Dear Mr. Schultz:

I am in receipt of your March 13, 1986 letter outlining plans to initiate civil action against the U.S. Army in order to assert public access rights across roads within Fort Wainwright.


As a private citizen, you have the ability to initiate legal action to protect your rights of access if they have been illegally denied by the military. However, please recognize that the State of Alaska is under no corresponding obligation to assert or protect an access route on behalf of a private citizen.

There are many important historical roads and trails in Alaska which may qualify as valid existing rights under federal Revised Statute 2477 (RS 2477). The state has recently taken important steps towards the adoption of an affirmative RS 2477 policy that will help identify which roads and trails should be asserted in the public interest.

I have been informed that your earlier letter to Rick Thompson, Northern Regional Manager, Division of Land and Water Management, did not receive a response as Mr. Thompson's staff met with you individually shortly thereafter to discuss the situation and believed your questions to have been answered. It is my understanding, however, that Mr. Thompson will shortly respond to your letter and may propose an alternative method of dealing with your problem.

Thanks for sharing your views.

Sincerely,


Esther C. Wunnicke
Commissioner

cc: Rick Thompson, NRO
Jerry Brossia, NRD

RECEIVED
MAY 13 1986
COMMISSIONER'S OFFICE
FAIRBANKS

TELEPHONE/CONFERENCE DATA

PEOPLE INVOLVED

REPRESENTING

Date: 12/21/84

Russel Rebel
3045 Westgate
99701

Time: 9:30

Project No./Name

FILE → Ft. WW access

TOPICS:

He snowmachines in area east of Fort Wainwright and
uses trail(s) at base of Bird Hill to get through
Fort.

Last year MP's stopped them for first time since 1969
when he started going in that area.

Has used river but feels it is too dangerous
Would like a standing ok to go through (to dog
trail area) so he doesn't have to constantly
go to Provost Marshall each time.

He will write us a letter. I suggested he also
contact the DNR & Boro Trails Planning people.

Would like a copy of the Ft. Wainwright minutes.

ACTION ITEMS: Send copy of minutes

Copies To: John Martin
Tarana Basin Trails Plan

Signature: Charity Feltz

ACCESS TO PRIVATE PROPERTY

EAST OF FORT WAINWRIGHT

Public Meeting - December 5, 1984.
7:00 p.m. Birch School

- I WELCOME
- II INTRODUCTION
 - A. Meeting Purpose - to determine the neighborhood consensus on access to the private property east of Fort Wainwright
 - B. Meeting Format
 - C. Possibilities for funding a project
- III PRESENTATION
 - A. History of Problem
 - B. Alternatives Identified
 - 1. Continue restricted access through Fort Wainwright
 - 2. Unrestricted free access via existing rights-of-way
 - a. from Steese Expressway
 - b. from Trainor Gate Road
 - c. from Montgomery Road
 - 3. Construct new alternate access around the military reservation
 - a. bridge the Chena River
 - b. from Chena Hot Springs Road
 - c. from Nordale Road
- IV QUESTIONS
- V BREAK
- VI PUBLIC COMMENT

If you would like to be on any mailing list concerning this issue or potential projects arising from it, please fill out the information below and send it to CHARITY FECHTER, ADOT&PF, DIVISION OF PLANNING, 600 UNIVERSITY AVENUE, SUITE B, FAIRBANKS, ALASKA 99701

NAME: _____

ADDRESS: _____

COMMENTS: _____

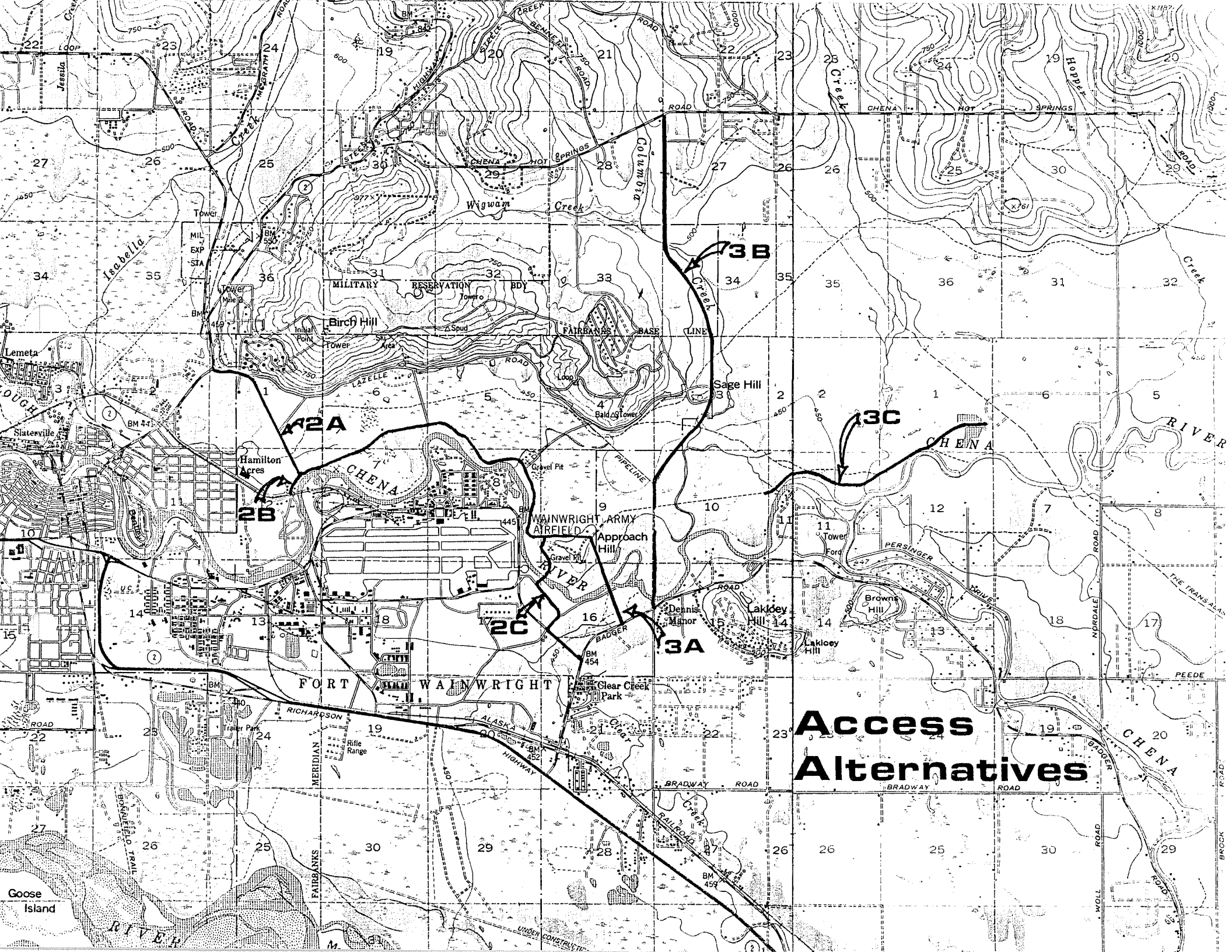
Fort Wainwright back road. The Post Commander offered a long term easement to the state across Fort Wainwright near the eastern boundary outside of the blast area from the ammunition storage but it would require the state to construct and maintain the road. At the close of the meeting, the state representatives indicated they planned to prepare engineering estimates on alternatives and would provide a copy of these estimates to the Deputy Post Commander. (Not received).

(6) On 9 December 1982 a meeting was held with the "Citizens' Advisory Committee on Access to Federal Land" (Incl 8)?

(7) On 18 November 1983 a meeting was held with Mr. John Martin from the State of Alaska, Department of Transportation, again to discuss access to the area behind post. The Post Commander agreed to look into the possibility of getting military land and a bridge for the proposed access. On the 5th of December, Major Shelton, Post Judge Advocate, notified Mr. Martin's office that General Bethke was not favorably disposed to the Army building a Bailey bridge across the Chena River and discussed the legal problems with the proposal.

c. Action Required: None. The state must come forward with concrete proposals before further action can be taken.

7 Incl
as



Access Alternatives



DEPARTMENT OF THE ARMY
HEADQUARTERS, 172D INFANTRY BRIGADE (ALASKA)
FORT RICHARDSON, ALASKA 99505

REPLY TO
ATTENTION #:

APZT-CG

May 24, 1984

Mr. Richard J. Knapp
Commissioner
Department of Transportation
and Public Affairs
Pouch Z
Juneau, Alaska 99811

Dear Dick:

This responds to your letter of 16 April 1984 concerning public access to private land adjacent to Fort Wainwright.

We agree with you and your staff regarding the Chena River crossing/Badger Road access as the most desirable alternative. In my opinion, this access route will meet the needs of both our civilian and military communities.

With land values escalating in the Fairbanks/Fort Wainwright area, it is considered to be in the best interest of our state and Army to resolve this matter and "get on" with the construction. We are prepared to meet with you or your staff in order to discuss any unresolved issues.

Sincerely,

G. H. Bathke
Brigadier General, U.S. Army
Commanding

NOTED

MEMORANDUM

State of Alaska Department of Transportation & Public Facilities


TO: FILE

DATE: August 6, 1984

FILE NO: 30FW3

TELEPHONE NO: 479-4281

FROM:


John D. Martin
Manager
Systems & Programs
Northern Region Planning

SUBJECT: Ft. Wainwright Access

On Monday, August 6, at 10:30 a.m. there was a meeting to discuss the Ft. Wainwright Access issue in Colonel Cox's office. In attendance were Major Al Schon (Judge Advocate General's Office), Colonel Cox, Glen Glenzer and John Martin.

Colonel Cox has been out in the field and looked at the proposed bridge crossings from Badger Road. He feels that, 1) the military does not want to give up any more right-of-way than necessary, 2) that the best bridge site would be along the extension of Dennis Road, and 3) that the military would be willing to provide an easement along the military boundary at that location. Colonel Cox and Major Schon both were of the opinion that there was absolutely no possibility of acquiring a military bridge for use in this project.

Glen Glenzer stated that DOT/PF would hold a public meeting on the access issue. After the meeting he asked me to be sure there are representatives from the military and the banking industry at this meeting as well as the general public.

Glen also volunteered the falling weight deflectometer for use in evaluating the runway of Ft. Wainwright if it was requested.

JM/crm

cc: Mim Dixon, Director, Planning, Northern Region
Larry Sweet, Manager, Research, Northern Region
Jonathan Widdis, Manager, Area & Local Planning, Northern Region

FILE

August 6, 1984

30FW1, 2 or 3 ~~1~~

479-4281

John D. Martin
Manager
Systems & Programs
Northern Region Planning

Ft. Wainwright Access

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Colonel Cox has been out in the field and looked at the proposed bridge crossings from Badger Road, ~~to the private property.~~ He feels that the military does not want to give up any more right-of-way than necessary, ²⁾ that the best bridge site would be along the extension of Dennis Road, and ³⁾ that the military would be willing to provide an easement along the military boundary at that location. Colonel Cox and Major Schon both were of the opinion that there was absolutely no possibility of acquiring a military bridge for use in this project. ~~Glen Glenzer stated that DOT/PF would hold a public meeting on the access issue. Subsequent to the meeting he requested that we make sure there are representatives from the military and the banking industry at this meeting as well as the general public.~~ ^{asked me to be sure}

Glen also volunteered the falling weight deflectometer for use in evaluating the runway of Ft. Wainwright if it was requested.

JM/crm

J. Widdis
cc: L. Sweet
MIM

DEP. COMM
INTERIOR REGION
DOT/PF

84 JUN 8 A10:04

May 31, 1984

G.H. Bethke
Brigadier General
172D Infantry Brigade
Department of the Army
Fort Richardson, AK 99505

Dear Jerry:

I appreciate your position on the Chena River crossing/Badger Road alternative. Agreed, let's move! By copy hereof H. Glen Glenzer, Deputy Commissioner, Northern Region, will be my contact on the project.

Sincerely,

R. J. Knapp
Commissioner

RJK:mhc

NORTHERN REGION	
<input checked="" type="checkbox"/>	Deputy Commissioner
<input type="checkbox"/>	D & C Director
<input checked="" type="checkbox"/>	Planning Director <i>sc</i>
<input type="checkbox"/>	Admin. Serv. Director
<input type="checkbox"/>	Interior M & O Director
<input type="checkbox"/>	Western District Director
<input type="checkbox"/>	So. Central Dist. Director
<input type="checkbox"/>	Pbks. Intern'l Airport Dir.
RETURN _____	

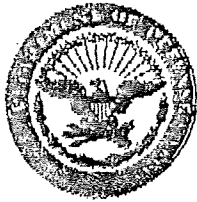
DOT&PF Planning
Northern Region

JUN 8 '84

called Comm. office 6-11-84 to get copy of Bethke's letter

- Director
- Systems
- Area/Local
- Res. Impl.
- Supp't Svc.
- Fac. Res.
- Hwy. Res.
- Dep. Com.
- Adm. Svc.
- D & C
- M & O
- Log
- File
- Ret. to

30FW3



DEPARTMENT OF THE ARMY
HEADQUARTERS, 172D INFANTRY BRIGADE (ALASKA)
FORT RICHARDSON, ALASKA 99505

REPLY TO
ATTENTION 071

AFZT-CG

May 24, 1984

Mr. Richard J. Knapp
Commissioner
Department of Transportation
and Public Affairs
Pouch Z
Juneau, Alaska 99811

NOT REPLY

Dear Dick:

This responds to your letter of 16 April 1984 concerning public access to private land adjacent to Fort Wainwright.

We agree with you and your staff regarding the Chena River crossing/Radger Road access as the most desirable alternative. In my opinion, this access route will meet the needs of both our civilian and military communities.

With land values escalating in the Fairbanks/Fort Wainwright area, it is considered to be in the best interest of our state and Army to resolve this matter and "get on" with the construction. We are prepared to meet with you or your staff in order to discuss any unresolved issues.

Sincerely,

G. H. Bethke
G. H. Bethke
Brigadier General, U.S. Army
Commanding

MEMORANDUM

State of Alaska Department of Transportation & Public Facilities

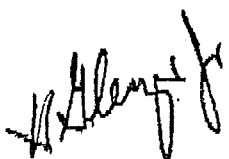
TO: Richard L. Knapp
Commissioner
Headquarters

DATE: April 13, 1984

FILE NO: 300N30FW

TELEPHONE NO: 479-4281

FROM: H. Glenzer, Jr.
Deputy Commissioner
Northern Region



SUBJECT: Fort Wainwright
Access Letter
Transmittal

RECEIVED

APR 16 1984

Per our discussion on the telephone yesterday, attached is a letter to General Bethke, for your signature, giving the Department's appraisal of the situation and requesting their input.

DOT/PF
COMMISSIONER'S OFFICE

bcl

Attachment

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

POUCH Z
JUNEAU, ALASKA 99811
PHONE: (907) 465-3900

OFFICE OF THE COMMISSIONER

April 16, 1984

RE: Fort Wainwright Access

BG Gerald H. Bethke
Commander HQ 172d Infantry Brigade
Fort Richardson, Alaska 99505Dear General ~~Bethke~~ ^{Gerry}:

Thank you for meeting with Acting Commissioner Glen Glenzer on March 14, 1984 to discuss the problems of public access to private land adjacent to Ft. Wainwright. He has reported the details of the situation to me and we concur on the following appraisal.

In our view, free public access must be restored to private lands presently restricted by Fort Wainwright. This can be achieved in two ways. The alternative preferred by the property owners is to allow unrestricted access along the existing post roads such as Lazelle and River Roads. At our recent meeting you provided a convincing argument for not compromising security by allowing this type of access. This argument seems to have been underscored by Senator Steven's recent announcement that Ft. Wainwright is being evaluated as a location for additional troops.

The second alternative is the construction of new access. The preferred new access route is crossing the Chena River from Badger Road. It is the most direct new access route available. It will require right-of-way, approximately one mile of new road, and a bridge.

Another route is to the north to Chena Hot Springs Road. From downtown Fairbanks this is approximately 50% longer than the existing means of access. It will require right-of-way and nearly four miles of new road.

A final route considered is from Nordale Road west along the north side of the Chena River. Because this is the most indirect route, it is the least preferred. It would more than double present travel distance to the city center. It will require right-of-way and approximately 1.5 miles of new road. A pipeline crossing and environmentally sensitive wetlands pose additional problems for this route.

General Gerald H. Bethke

-2-

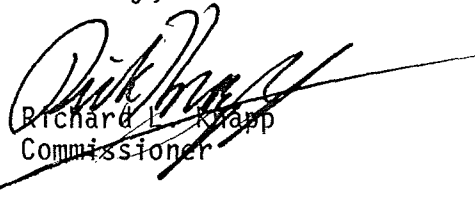
April 16, 1984

At the suggestion of Ken Swanson, Director of Engineering and Housing, Fort Wainwright, we are formally requesting that the Army provide us with its official position and identify further options for each of the access alternatives developed by the Department.

A formal agreement between the Army and DOT&PF would be desirable to define the extent of participation in the preferred solution by each agency.

We are anxious to proceed toward a resolution of the Fort Wainwright access problem and we are optimistic about developing a solution acceptable to all parties.

Sincerely,



Richard L. Krapp
Commissioner

GR:lat

cc: Mim Dixon, Director, Division of Planning, Northern Region
Colonel Driver, Infantry Post Commander, 172D Infantry Brigade,
Ft. Wainwright
H. Glenzer, Jr., Deputy Commissioner, Northern Region
John Horn, Director, Maintenance & Operations, Northern Region
John Martin, Manager, Systems & Program Development, Northern Region
William B. McMullen, Director, Design & Construction, Northern Region
Ken Swanson, Director of Engineering and Housing, Fort Wainwright

30FW3

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

POUCH Z
JUNEAU, ALASKA 99811
PHONE: (907) 465-3900

OFFICE OF THE COMMISSIONER

April 16, 1984

RE: Fort Wainwright Access

BG Gerald H. Bethke
Commander HQ 172d Infantry Brigade
Fort Richardson, Alaska 99505

Dear General ^{Gerry} Bethke:

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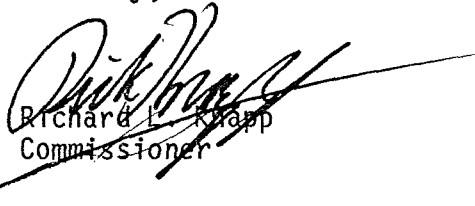
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Sincerely,



Richard L. Krapp
Commissioner

GR:lat

- cc: Mim Dixon, Director, Division of Planning, Northern Region
Colonel Driver, Infantry Post Commander, 172D Infantry Brigade,
Ft. Wainwright
H. Glenzer, Jr., Deputy Commissioner, Northern Region
John Horn, Director, Maintenance & Operations, Northern Region
John Martin, Manager, Systems & Program Development, Northern Region
William B. McMullen, Director, Design & Construction, Northern Region
Ken Swanson, Director of Engineering and Housing, Fort Wainwright

MEMORANDUM

State of Alaska Department of Transportation & Public Facilities

TO: File

DATE: March 29, 1984

FILE NO: 30FW

TELEPHONE NO: (907) 452-4281

FROM:

John D. Martin
John D. Martin, P.E., Manager
Systems & Program Development
Division of Planning
Northern Region

SUBJECT: Ft. Wainwright Access

Today I met with Ken Swanson, Director of Engineering & Housing, Ft. Wainwright. He stated that he would be unable to make any formal response on any of the options that the Department of Transportation & Public Facilities (DOT&PF) is proposing; that his role in this effort would be to pursue the development of a new access route and that he would coordinate the following activities:

1. Provide technical engineering assistance.
2. Pursue the acquisition of a bailey bridge for the project.
3. Take care of any land transfer arrangements.

He suggested that I send a formal request from the Department to the Post Commander, Colonel Driver, to get an official position on each of the alternatives that have been developed by DOT&PF. He stated that he would not be in a position to comment on legal issues such as public access north of the Chena River.

JDM:lat

cc: H. Glenzer, Jr., Deputy Commissioner, Northern Region
John Horn, Director, Maintenance & Operations, Northern Region
Bill McMullen, Director, Design & Construction, Northern Region
Jonathon Widdis, Manager, Area & Local Planning, Northern Region

MEMORANDUM

State of Alaska Department of Transportation & Public Facilities

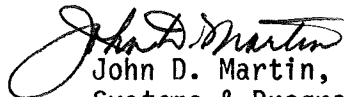
TO: File

DATE: March 28, 1984

FILE NO: 30FW

TELEPHONE NO: (907) 479-4281

FROM:


John D. Martin, P.E., Manager
Systems & Program Development
Division of Planning

SUBJECT: Ft. Wainwright Access
Issue

At 2:00 p.m. on Wednesday, March 14, there was a meeting to discuss the Ft. Wainwright Access Issue. In attendance were:

General Bethke
Colonel Driver
Colonel Froehle
Major Shelton
Major Wheeler
Major Williams
Major Estridge
Ken Swanson

Glen Glenzer
John Horn
Bill McMullen
John Martin

Glen Glenzer opened the meeting presenting the background on the access issue. He also presented the Fairbanks North Star Borough's position and the potential of Borough litigation.

General Bethke stated that he felt that at issue was Mr. Schultz' desire to subdivide versus control of the Post. He stated that since the closure of the gates there has been a 67% reduction in larceny and vandalism on Post. He also mentioned that the closure of the Post restricts truckers from bypassing the scales. He felt that the options were to open the Post or to provide land for a bypass.

Glenn suggested that the staff prepare a joint list of options. One option that was discussed was the preparation of an agreement between the U.S. Army and the Department of Transportation & Public Facilities (DOT&PF) to provide for alternate access to such time as funding was available. It was felt that this agreement in conjunction with the existing access arrangement would satisfy the requirements for financing and subdivision.

One issue that Colonel Froehle brought up was that in order to give land to the DOT&PF, the Army would have to excess the land. At that time Cook Inlet Regional Corporation would have an opportunity to claim that land. Any transfer of land would have to be done extremely carefully. General Bethke said that such an agreement would be signed by high level officials within the Department of the Army so that his successors would be firmly bound by the agreement.

General Bethke appointed Ken Swanson (Director of Engineering and Housing, Ft. Wainwright) to be the primary contact on this issue and Glen Glenzer appointed John Martin to be the primary contact for DOT&PF.

Colonel Driver expressed concern that Mayor Allen had not contacted him regarding the potential of a suit between the Fairbanks North Star Borough and the Military.

The meeting adjourned after approximately 1/2 hour.

JDM:lat

PAUL G. SHULTZ v. DEPT. OF ARMY

EXCERPTS FROM NINTH CIRCUIT COURT OF APPEALS OPINION

filed 11/30/93

Schultz has a "particularized" interest in crossing the base to reach roads that lead to his property. Not to have access to those roads would "affect (him) in a personal and individual way" by sealing him off from his property. Lujan, 112 S. Ct. at 2136 n.l.

In Alaska, more than in most locations, the season dictates the nature and means of passage.

Alaska's "highways" frequently have been no more than trails and they have moved with the season and the purpose for the transit. . . . By necessity routes shifted as the season shifted and as the uses shifted. What might be considered sporadic use in another context would be consistent or constant use in Alaska. . . . as long as the termini of the right of way are fixed (the homesteaders' cabins on one end, Fairbanks on the other), to establish public right of way the route in between need not be absolutely fixed (as it might be in other settings).

Right of access is the issue, not the route. A decision finding a public right of way to cross Ft. Wainwright, though grounded in the recognition of various historical routes, should not preclude a limitation on that right to the single recognized route currently in use.

Whether a right of way has been established is a question of state law.

The resolution of any particular claim turns upon a highly factual inquiry.

Alaska law, consistent with Alaska's circumstances, does not place a burdensome requirement on RS 2477 claimants regarding the nature of the "highway," whether established by dedication or public use. It broadly defines "highway" to include a "road, street, trail, walk, bridge, tunnel, drainage structure and other similar or related structure or facility, and right-of-way thereof."

Thus, when Congress set aside land for the support of territorial schools, the sections it named from each township no longer were available public lands. Act of March 4, 1915 . . . (withdrawing all township sections numbered 16 and 36 for schools. . . .

A quiet title action will "be deemed to have accrued" at the time a claimant received or had actual or constructive notice of the U.S.' claim on the land.

We apply a reasonableness test.

It would not be reasonable to require civilians to monitor the Army's obstruction of historical routes in order to preserve the right to use the modern throughway.

The Army cannot now claim that the users of the modern day roadways cross "merely with (its) permission".

Having found that Shultz is entitled to cross Ft. Wainwright, we note, however, that the Army may reasonably regulate his passage.

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PAUL G. SHULTZ,)	
Plaintiff-Appellant,)	Nos. 92-35197
v.)	92-35580
DEPARTMENT OF ARMY, UNITED STATES)	D.C. No. CV-86-30-AJK
OF AMERICA,)	
Defendant-Appellee.)	OPINION

Appeal from the United States District Court
for the District of Alaska
Andrew J. Kleinfeld, District Judge, Presiding

Argued and Submitted August 3, 1993
Anchorage, Alaska

Filed: November 30, 1993

Before: SCHROEDER, FLETCHER and ALARCON, Circuit Judges

Opinion by Judge Fletcher

FLETCHER, Circuit Judge:

Paul G. Shultz appeals the district court's judgment in favor of the government in his action to quiet title under 28 U.S.C. 2409a to a public right (or rights) of way across Fort Wainwright. He argues that the district court erred in finding that no rights of way existed within the meaning of 43 U.S.C. 932 ("RS 2477 rights of way"),¹ or that, if they did exist, his

¹ 43 U.S.C. 932 reclassified R.S. 2477 as first enacted by the Act of July 26, 1866, Ch. 262, 8, 14 Stat. 251, 253 (1866) (repealed 1976).

cause of action, nonetheless, was barred under 28 U.S.C. 2409a(g) (the statute of limitations for quiet title actions). In the alternative, Shultz contends that even if no RS 2477 right of way existed prior to the Army's acquisition of land, the Army took the land subject to other forms of easements that provided public passage. The district court had jurisdiction under 28 U.S.C. 2409a (Quiet Title) and 28 U.S.C. 1331 (Federal Question). Our jurisdiction rests on 28 U.S.C. 1291 (Final Judgments).²

As a threshold matter, the Army appears to press a challenge to the district court's jurisdiction by questioning Shultz's standing to litigate all but the roads abutting his property. Tr. I at 28, 30. It disputes whether Shultz has a "special and vital interest" in roads that do not abut his property. See *State v. Nolan*, 191 P. 150 (Mont. 1920); see also *Hudson v. American Oil Co.*, 152 F. Supp. 757, 767-68 (E.D. Va. 1957), *aff'd*, 253 F.2d 27 (4th Cir. 1958) ("[a]s complainants are not abutting landowners, it is difficult to conceive how any special injury may be shown, as contrasted with an injury to the general public"); *Wernberg v. State*, 516 P.2d 1191, 1201 (Alaska 1974) ("a landowner has a private property right of access to an abutting public street"). The argument is without merit. Shultz clearly meets the criteria for standing outlined in *Lujan v. Defenders of Wildlife*, 112 S.

² Shultz filed two notices of appeal. The first, docketed as No. 92-35197, appealed the district court's judgment of January 13, 1992. The second, No. 92-35580, appealed the amount of costs assessed against him by the district court's clerk. We make no determination regarding our jurisdiction to hear Shultz's costs appeal. Our decision renders that appeal moot.

Ct. 2130, 2136 (1992). See also Central Arizona Water Cons. Dist. v. EPA, 990 F.2d 1531, 1537 (9th Cir. 1993). First, he has a "particularized" interest in crossing the base to reach roads that lead to his property. Not to have access to those roads would "affect [him] in a personal and individual way" by sealing him off from his property. Lujan, 112 S. Ct. at 2136 n.1. Second, Shultz seeks to quiet title as against the Army which asserts an unrestricted right to regulate access to Fort Wainwright's roads.³ A clear causal connection exists between his claim and the restrictions he challenges. Finally, were Shultz able to prove that the combination of roads leading to his property do constitute public rights of way the "favorable decision" would redress the injury he asserts. The district court correctly permitted the record to be developed fully.

A district court's factual findings are reviewed for clear error. Fed. R. Civ. P. 52(a). Its conclusions of law are subject to de novo review. Factual findings and conclusions concerning the events that may trigger the running of the statute of limitations present "a mixed question of fact and law reviewed for clear error." Shultz, 886 F.2d at 1159. We must accept the district court's factual findings unless upon reviewing "the entire evidence [the court] is left with the definite and firm conviction that a mistake has been committed." Anderson v. City of Bessemer, 470 U.S. 564, 573 (1985); United States v. Ramos, 923

³ In a letter of August 24, 1991, the Acting Provost Marshall of Fort Wainwright threatened to bar Shultz from crossing the base. Defendant's Exhibit AQ ("Any deviation from this route or procedures without prior approval will result in total barment from post").

F.2d 1346, 1356 (9th Cir. 1991).

I.

Shultz owns property to the northeast of Fort Wainwright and east of Fairbanks. To get to Fairbanks, he must cross of the base. Fort Wainwright is situated on land acquired by the federal government in a series of purchases and withdrawals beginning in 1937. All of the acquisitions were made "subject to valid existing rights." Shultz traces his title through George Nissen who homesteaded in the first half of the century and through Nissen's successors. Nissen was a German immigrant who made entry on the property in October 1907, built his cabin the following month and, by February 1908, established residency. He was among a handful of homesteaders occupying land along the Chena River and for a while raised potatoes and other vegetables with great success. He transported a portion of his crop to market in Fairbanks every year. Nissen left the area in 1918. The homestead patent, for which he had filed in 1914, was issued in 1924.

In the early days of homesteading the routes to Fairbanks across present day Fort Wainwright were difficult to travel. At trial one witness described swimming horses in the summer across sloughs lacking bridges. These same sloughs served as frozen highways in the winter. Much of the land surrounding Shultz' property, especially to the north, is swampy, due to the underlying permafrost that prevents the melted snow from draining. In Alaska, more than in most locations, the season dictates the nature and means of passage. The trial involved the introduction

of extensive evidence of the various historical routes across the land now occupied by the Army. The routes particularly examined by the district court essentially follow along two physical features of the land, the Chena River to the south, and the hills (Beacon, Bald, Sage) to the north. Trainer Gate Road feeds into the network from Fairbanks. River Road, also known as Tank Road, continues from Trainer Road along the northern bank of the Chena River, ultimately to Homestead Road which leads to Shultz's property. These roads make up the modern route that follows roughly the river from Fairbanks across Fort Wainwright.⁴ In part they follow the same course as the trails and wood paths used by early settlers in the Chena River area. While roads skirting the hills to the north also afforded settlers access to Fairbanks, only the river route is travelled today.

In 1981 the Army instituted a pass system for vehicles entering or crossing the base, requiring passes at Trainer Gate Road. When Shultz did not present a pass, the Army refused him entry. No other land route is available. Without access through Fort Wainwright, Shultz is landlocked. Hemmed in by Fort Wainwright to the east and the Chena River to the south, the property cannot be developed or subdivided.

⁴ The parties disagreed at trial and again on appeal as to how to describe and name the roads making up this route. The district court made separate findings regarding Wiest Road, which no longer forms a distinct part of the Trainer-River-Homestead Roads network. District Court's Findings (DCF) 7-24. On cross-examination, a government witness explained that River Road makes a bend north of the Chena river and "Homestead Road . . . takes off from that bend and goes to the east." Tr. III at 97. A sign marked "Homestead Road" stands at the intersection. Id.

Shultz filed a complaint in 1986 seeking access across Fort Wainwright as a matter of right. (First Amended Complaint). The district court granted the Army summary judgment on statute of limitations grounds, 43 U.S.C. 2409a(g). We reversed and remanded. Shultz v. Department of Army, 886 F.2d 1157 (9th Cir. 1989). We concluded that further factual development was required to determine whether the statute of limitations had run on Shultz's quiet title action. Id. at 1161. On remand, the judge held a bench trial during which he questioned the parties' expert witnesses extensively, and pored over maps of the area as they were explained to him. Ultimately finding that none of the six roads Shultz put forward were RS 2477 public rights of way, or public easements otherwise established, the district court entered judgment in favor of the Army. He also found that the quiet title actions on four of the roads were barred by Section 2409a(g). Shultz appealed.⁵

II.

The Army withdrew the land now occupied by Fort Wainwright "subject to valid existing rights" including any then-existing easements. Shultz, 886 F.2d at 1159. Before the district court, Shultz sought to show that an easement, whether of RS 2477 or common law origin, predated the Army's acquisition of the Fort Wainwright landholding. He argued that under one theory or another, or several combined, he was entitled to cross the base to reach his property.

⁵ See supra note 2.

We must determine whether the district court was correct in holding that the property owners who must cross Fort Wainwright to reach their property have no right of passage either because none existed at the time of the Army's acquisition of the military reserve or because the Army's subsequent actions cut off the right. Our decision must take into account the fact that conditions in Alaska present unique questions, not easily answered.

Due to its geography, its weather, and its sparse and scattered population, Alaska's "highways" frequently have been no more than trails⁶ and they have moved with the season and the purpose for the transit--what travelled best in winter could be impassable knee-deep swamp in summer; what best accommodated a sled was not the best route for a wagon or a horse or a person with a pack. By necessity routes shifted as the seasons shifted and as the uses shifted. What might be considered sporadic use in another context would be consistent or constant use in Alaska. We conclude that as long as the termini of the right of way are fixed (the homesteaders' cabins on one end, Fairbanks on the other), to establish public right of way the route in between need not be absolutely fixed (as it might be in other settings). The law recognizes as much. Based on that premise, the questions we must decide are: (1) was there evidence that the homesteaders' usual routes between Fairbanks and the homesteads in 1937 lay across the land that was acquired for Fort Wainwright? (2) If so, did the Army take action and take it at a time that has cut off their

⁶ See R.S. 15.45.001(9).

right to use the routes? We note that the Army and its residents east of the base have coexisted for several decades. Everyone appears satisfied with the single route currently used by the public to cross the base. Right of access is the issue, not the route. A decision finding a public right of way to cross Fort Wainwright, though grounded in the recognition of various historical routes, should not preclude a limitation on that right to the single recognized route currently in use.

With this preamble in mind, we turn to the district court's legal analysis and its application to the evidence.

A. RS 2477 Right of Way

From 1866 until its repeal, 43 U.S.C. 932 (R.S. 2477) granted a "right of way for the construction of highways over public lands, not reserved for public uses." 43 U.S.C. 932 repealed by Federal Land Policy Management Act of 1976, 706(a), Pub. L. No. 94-579, 90 Stat. 2793.7 The grant is "self-executing." *Standard Ventures, Inc. v. Arizona*, 499 F.2d 248, 250 (9th Cir. 1974); see also *Sierra Club v. Hodel*, 848 F.2d 1068, 1083-84 (10th Cir. 1988). An RS 2477 right of way comes into existence "automatically when a public highway [is] established across public lands in accordance with the law of the state." *Standard Ventures*, 499 F.2d at 250; see also *Sierra Club*, 848 F.2d at 1078 (citing 43 C.F.R. 244.55 (1939)). Whether a right of way has been established is a question of state law. *Standard Ventures*, 499 F.2d at 250; *Fisher v. Golden Valley Elec. Ass'n*,

⁷ All rights of way existing on the date of repeal were expressly preserved. 43 U.S.C. 1769.

Inc., 658 P.2d 127, 130 (Alaska 1983) (citing United States v. Oklahoma Gas & Elec. Co., 318 U.S. 206, 209-10 (1943)). The resolution of any particular claim turns upon a highly factual inquiry. Standard Ventures, 499 F.2d at 250. "Any doubt as to the extent of the grant must be resolved in the government's favor." Humboldt County v. United States, 684 F.2d 1276, 1280-81 (9th Cir. 1982).⁸

Under Alaska law, two methods of establishing an RS 2477 right of way have been recognized:

[B]efore a highway may be created, there must either be [1] some positive act on the part of the appropriate public authorities of the state, clearly manifesting an intent to accept the grant, or [2] there must be public user for such a period of time and under such conditions as to prove that the grant has been accepted.

Hamerly v. Denton, 359 P.2d 121, 123 (Alaska 1961); see also Dillingham Commercial Co., Inc. v. City of Dillingham, 705 P.2d 410, 413-14 (Alaska 1985); Alaska v. Alaska Land Title Ass'n, 667 P.2d 714, 722 (Alaska 1983); Girves v. Kenai Peninsula Borough, 536 P.2d 1221, 1226 (Alaska 1975), overruled on other grounds, 618 P.2d 567, 569 n.4 (Alaska 1980). To prove RS 2477 rights by the second of these methods, a claimant must show "(1) that the alleged highway was located 'over public lands,' and (2) that the character of its use was such as to constitute acceptance by the public of the statutory grant." Hamerly, 359 P.2d at 123.

Alaska law, consistent with Alaska's circumstances, does not place a burdensome requirement on RS 2477 claimants regarding the nature of the "highway," whether established by dedication or

⁸ The scope of an RS 2477 grant is also subject to state law. Sierra Club, 848 F.2d at 1079-83.

public use. It broadly defines "highway" to include a "road, street, trail, walk, bridge, tunnel, drainage structure and other similar or related structure or facility, and right-of-way thereof." A.S. 19.45.001(9) (1988); cf. 48 U.S.C. 321d (repealed 1959) (similar definition). It is necessary to establish that the road traverses public land because an RS 2477 right of way may be created only while the "surrounding land [retains] its public character." *Adams v. United States*, No. 91-16762, slip op. at 9366 n.1 (9th Cir. Aug. 31, 1993); see also *Humboldt County*, 684 F.2d at 1281.

If the conditions were such that the lands were not public lands--having been taken up under homestead applications--then the congressional grant was not in effect. Public use of the road would be of no avail since there would be at that time no offer which the public could accept. The fact that the entries were later relinquished or cancelled would not change the condition[s].

Hamerly, 359 P.2d at 124; see also *Dillingham*, 705 P.2d at 414. Valid pre-existing claims upon the land traversed by an alleged right of way trump any RS 2477 claim. As the *Dillingham* court put it, "[i]t is clear that the public may not, pursuant to 932 acquire a right of way over lands that have been validly entered." *Dillingham*, 705 P.2d at 414. Homesteading rights clearly are superior to later established RS 2477 claims. Territory validly withdrawn for other purposes also falls within the *Dillingham* rule. Thus, when Congress set aside land for the support of territorial schools, the sections it named from each township no longer were available public lands. Act of March 4, 1915, ch. 181, 1-2, 38 Stat. 1214, 48 U.S.C. 353 (repealed by Pub. L. No. 85-508, 6(k), 73 Stat. 343 (1958)) (withdrawing all township

sections numbered 16 and 36 for schools unless "settlement with a view to homestead entry ha[d] been made upon any part of the sections reserved hereby before the survey thereof in the field"). Cf. *Mercer v. Yutan Constr. Co.*, 420 P.2d 323, 324, 325-26 (Alaska 1966) (grazing land "public" because grazing permit subordinate to public right of way).

The Hamerly line of cases sets the standard for the other condition: whether a trail has been frequented by "public users for such a period of time and under such conditions as to prove" that a public right of way has come into existence. Hamerly, 359 P.2d at 123; see also *Dillingham*, 705 P.2d at 413-14; *Alaska Land Title*, 667 P.2d at 722; *Girves*, 536 P.2d at 1226. Continuous use is not a requirement. Cf. *McGill v. Wahl*, 839 P.2d 393, 397 (Alaska 1992) ("[t]o establish a prescriptive easement a party must prove that (1) the use of the easement was continuous and uninterrupted"). Although the law of RS 2477 rights of way suggests that "infrequent and sporadic" use is insufficient, Hamerly, 359 P.2d at 125, and that "regular" and "common" use by the public is necessary, *Kirk v. Schultz*, 110 P.2d 266, 268 (Idaho 1941), and that travel across the route may not be "merely occasional," the test is what is "substantial" under the circumstances, *Ball v. Stephens*, 158 P.2d 207, 210 (Cal. 1945). Courts must look to the circumstances as they existed at the time of establishment. In California, a court noted that "travel over [a claimed RS 2477 right of way] . . . was irregular but that was due to the nature of the country and to the fact that only a limited number of people had occasion to go that way." *Ball*, 158

P.2d at 211. Such circumstances are not unlike Alaska's where we conclude a few homesteaders traversing difficult terrain, in difficult climatic conditions may lay claim to an RS 2477. An existing right of way recognized as such, primitive at its conception, may evolve from trail to road as frontier conditions give way to modernization. Id. at 210 ("[t]he route was used first as a trail, later by horse-drawn vehicles, and went through a gradual process of occasional improvement and use until it became a road suitable for automobiles and trucks"). The route, no matter how rudimentary must, however, for RS 2477 purposes, have "definite termini." Dillingham, 705 P.2d at 414. Trails "running into wild, unenclosed and uncultivated country" do not meet the minimum standard of definiteness (they lack one terminus) nor do they suggest sufficient public use. Id. In rejecting claims arising from "desultory" use, the Alaska Supreme Court was influenced by the fact that those particular claimants "had no real interest in lands to which [their claimed RS 2477] gave access". Hamerly, 359 P.2d at 125.

The district court in this case found that Homestead Road⁹

⁹ The parties disagree over how to name or specify this road, see supra note 4. Shultz asserts that Homestead and Wiest Roads must be considered together because they coincide in places or run into each other. Appellant's Opening Br. at 20, 31-32; Tr. I at 4; see also Respondent's Br. at 23. The district court found that the two roads do not "correspond . . . or overlap" and treated them separately. DCF 23; but see DCF 36. Since the law recognizes that routes may evolve, Ball, 158 P.2d at 210, there is no requirement that the historical route and its current location coincide exactly. Here, parts of the historical road were "obliterated" by the construction of the modern throughway. Tr. III at 137; Tr. IV at 69. Other parts of the road disappeared in the face of an encroaching Chena River. Tr. IV at 69-70. Particularly in Alaska, it makes little sense to insist on a formal identity between the modern and historical routes. The

did not amount to an RS 2477 right of way because no road broad enough to accommodate a wagon cut across present day Fort Wainwright before the surrounding land was validly withdrawn from the public domain. DCF 29, 36, 39, 41. Whether factually correct or not, the court imposed an overly stringent standard. An otherwise qualifying trail is all that would be required. Further, to reach this conclusion the district court drew some impermissible inferences. It frequently pointed out that Nissen used the river to transport his crops rather than using an overland trail and, apparently, inferred from this that no trail existed. DCF 28, 40; see also Tr. V at 68. It noted that Nissen, like some other neighboring homesteaders, built his cabin on the river and that the river, in contrast to the alternative available land routes, was the most convenient, and the only viable means to transport his crop to market. DCF 28, 33, 40.

Even under the deferential standard of review due to the finder of fact, we cannot agree that sufficient evidence supports either inference--that Nissen used the river to transport his crop or that there was no overland trail. There was no evidence that Nissen owned a boat or that he ever travelled by boat. The Government Land Office's on-site investigation of his homesteading claim reported no boat or dock on the property. It did report that he had a stable, suggesting he owned a horse. A neighbor across the river said that he himself did not have a boat. There was evidence that Nissen possessed a "garden truck". The Chena

Judge's factual findings regarding the precise relationship between the trail Nissen took and modern Homestead Road are irrelevant under the law.

River flows downstream into Fairbanks, and is very shallow in places. To return upstream seven "river miles" from Fairbanks is problematic. Tr. V at 50. While the district court's inference relies on "the convenience of down river travel," the court acknowledged that the upriver return would be taxing. DCF 28; Tr. V at 50, 68.

The district court's factual findings regarding lack of overland transport, travel and trail at best are based on supposition, not permissible inference from fact. This obviously contributed to its erroneous legal conclusions. But entirely apart from the erroneous factual findings, it misunderstood the requirements to establish a public right of way. The district court seemed to think the transportation of crops, and use of a wagon were crucial to establishing an RS 2477 right of way. In analyzing Nissen's use of Wiest Road, it noted that the use was "not for regular transport of his crops." DCF 38. As a legal matter, the barest foot trail may qualify for RS 2477 status. A.S. 19.45.001(9) (1988); Ball, 158 P.2d at 210 (mountain trail). The condition of the "highway"--whether paved and wagon-worthy, or simply a "minor footpath"--is irrelevant if the claimant can show that the right of way was used no matter for what purpose. A handful of homesteaders pushing the boundaries of the Alaskan frontier in inhospitable territory put a path to substantial use merely by traveling to and from town and each other's homesteads. Ball, 158 P.2d at 211; see also Dillingham, 705 P.2d at 415 (road "may be used for any purpose consistent with public

travel") (emphasis added).¹⁰ Even if Nissen did not use the trail to carry his vegetables into market by wagon, there can be no doubt that he had a "real interest in the lands to which [a trail] gave access," a route between his home, a homesteaders lot under cultivation (not wild country), and Fairbanks, the nearest outpost of civilization. Hamerly, 359 P.2d at 125. The right of way was no less a right of way early on because only later it evolved to accommodate wagons and cars (39, 41. 37). As we have noted the manner of travel (by foot or beast or vehicle) is legally irrelevant to the RS 2477 determination. What matters is that there was travel between two definite points.¹¹

To the extent that the district court's findings collectively suggest that overland travel was so inconvenient as to justify the conclusion that travel was by river only, the conclusion is based on sheer supposition, not evidence, circumstantial or otherwise. The conclusion may be driven in part by the erroneous legal requirement superimposed on the facts. The record discloses that Nissen had available land routes to take his produce to market by

¹⁰ The Army's brief highlights one of the legal confusions at play in this case. It argues that "[t]here plainly is no basis for concluding that there was a road to Nissen's property through Wiest's property that pre-dated Wiest's homestead, given that Wiest himself had to build three miles of road to his homestead." Respondent's Brief at 29. Both the judge and the Army clearly misunderstood the import of A.S. 19.45.001(9) for RS 2477 law. Such a right of way need not be "buil[t]" or "constructed" (DCF 41). Nor need it be "susceptible to wagon or motor vehicle use" (DCF 39). An unimproved, unpaved trail suffices as a "road" for the purposes of this law.

¹¹ The government posed the problem incorrectly. It argued to the court that "if you're going to find an RS-2477, you have to know not only that he got from Fairbanks to his property, but how he did it." Tr. V at 79 (emphasis added) As long as it is clear that Nissen traveled overland, how he did it is immaterial.

wagon, by sled, by cart or on his back. He could avoid crossing the Columbia Slough which lay between the Wiest and Nissen homesteads by taking passage around Approach Hill and there were means even across the slough, over the ice in winter, swimming horses in summer. Why his taking produce to market by wagon should be critical to the establishment of an RS 2477 right of way is never explained, simply assumed.

The court makes a curious finding that simple use (the threshold requirement for RS 2477 claims) of one of the overland trails--Wiest Road--did not occur until around 1918, some 11 years after Nissen entered his homestead (DCF 36). The court does not make the finding that there was no overland travel before 1918, only that "[b]y 1918, Nissen sometimes used Wiest Road to get to Fairbanks, but not for regular transport of his crops." (DCF 36) (emphasis added). Wiest arrived in 1910 and built three miles of road sometime over the next several years. Obviously, Nissen's overland travel would have involved a trail that predated the Wiest Road since he arrived in 1907. The district court's finding does not support an inference that he traveled by river, nor does it justify the presumption that no trail existed.¹²

This is not a case where "[t]here simply was no evidence that would have allowed the [district] court to conclude that before [1937] the public used [historical trails] in such a manner as to accept the 932 grant." Dillingham, 705 P.2d at 415. The evidence was to the contrary. The district court's own factual

¹² This inference of course was critical to the court's holding that no right of way existed. "No road, no R.O.W." was the logic.