

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

#16.4

JAY S. HAMMOND, GOVERNOR

TRANSPORTATION SECTION
STATE OF ALASKA
604 Barnette St., Room 216
Fairbanks, Alaska 99701
(907) 456-2395

April 7, 1981

Mr. Gerald Grill
S. R. Box 40513
Fairbanks, AK 99701

Re: Gilmore Trail Right-of-Way

Dear Mr. Grill:

On March 16, 1981, you wrote me a letter, the concluding paragraph of which requested "copies of all documents and the specific interpretation within them that allows the State to expand 66 feet of Gilmore Trail right-of-way to 100 feet without compensating the adjacent owners. At the outset, I would like to make it unequivocally clear that the State is in no way increasing the width of its legal right-of-way for that portion of Gilmore Trail bordering your property. The State's right-of-way is, and always has been, 100 feet.

Gilmore Trail has been in existence since sometime around the turn of the century. In 1949, the U. S. Secretary of Interior in Public Land Order 601 withdrew from all forms of appropriation, e.g., homesteading, 50 feet on each side of any local road's center line. Gilmore Trail is by the description set out in P.L.O. 601 a "local road." A couple of years later, in 1951, the U. S. Secretary of Interior took that which he had withdrawn in P.L.O. 601, i.e. 50 feet on each side of the center line, and established legal public highway right-of-ways of the same dimension. As requested, copies of both of these orders are enclosed. The homestead entry date (July, 1962) and the patent date (September, 1965) of your once-removed predecessor in interest post-date by many years both of these land orders. Furthermore, your own warranty deed specifically subjects the breadth of your legal description "to the rights of the public in any portion thereof lying within Gilmore Trail."

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In face of this, you will undoubtedly wonder where your surveyor, Pierre Boutet, came up with the 66 foot right-of-way. To be frank with you, I, too, wonder. Although I have been unable to find Mr. Boutet to ask him, I have heard several grapevine rumors. One rumor is that he was unsure of the right-of-way width and simply treated it as a section line. The second rumor I heard is that you instructed Mr. Boutet to set your boundary markers at 33 feet from the center line. I, of course, have no way of knowing what actually happened.

The bottom line, however, is that your structure does constitute an encroachment on the State's right-of-way. Given the State's intent to widen Gilmore Trail and the necessity of using its entire right-of-way width, your structure will have to be removed. As Mr. Wild stated in his March 9 letter to you, we would like to have this accomplished by June 1, 1981. Some extension beyond that date may be possible, provided two conditions are met. First, you must agree in writing that your structure is an encroachment and that you will move it. At first glance, this condition may seem harsh. It is necessary, however, because should you prove recalcitrant I need ample time to seek injunctive relief from the court before the actual construction begins. Secondly, the construction schedule must be able to accommodate any extension.

I trust that I have answered your questions. I am hopeful that I will hear from you again in the near future and that this matter can be resolved informally.

Sincerely,

STATE OF ALASKA

WILSON L. CONDON
ATTORNEY GENERAL

By: 
Gary Foster
Assistant Attorney General

GF:rir
Enc.
cc: Paul Wild
Pam Lewis