

MEMORANDUM OF UNDERSTANDING
BETWEEN ALASKA DEPARTMENT OF NATURAL RESOURCES AND
ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
AND
BUREAU OF LAND MANAGEMENT

PURPOSE

1. The purpose of this agreement is to establish the procedures for the assertion of RS 2477 rights-of-way by the Alaska Department of Natural Resources (DNR) and the Alaska Department of Transportation and Public Facilities (DOT&PF) to the Bureau of Land Management (BLM). Federal, state, and local officials need to know locations of RS 2477 public right-of-way assertions in order to assist such officials in their land and resource management decisions. The public needs to know the location of RS 2477 public right of way assertions to avoid unauthorized uses on private lands. This Memorandum of Understanding (MOU) will establish procedures that will enable RS 2477 rights-of-way assertions to be placed on land status plats.

BACKGROUND

2. RS 2477, formally codified as 43 U.S.C. 932 repealed by P.L. 94-579, Federal Land Policy and Management Act of October 21, 1976), provides:

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

3. By regulation found in 43 C.F.R. 2802.5 (b), the Bureau of Land Management has provided:

In order to facilitate management of the public lands, any person or state or local government which has constructed public highways under the authority of RS 2477 (43 U.S.C. 932, repealed October 21, 1976) may file a map showing the location of such public highways with the authorized officer.

4. In Hamerly v. Denton, 359 P. 2d 121, 123 (Alaska 1961), the Alaska Supreme Court stated that the general rule regarding acceptance of the RS 2477 federal grant:

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

5. The United States Department of the Interior, Office of the Solicitor, stated in a memorandum dated July 7, 1983:

"[(T)he Department of the] Interior has long recognized that State law controls what constitutes a (R.S. 2477) highway within each state;" and

6. Alaska Statute 19.45.001(8) states:

"Highways includes a highway (whether included in the primary or secondary systems), road, street, trail, walk, bridge, tunnel, drainage structure and other similar or related structure or facility, and right-of-way thereof, and further includes a ferry system, whether operated solely inside the state or to connect with a Canadian highway, and any such related facility;" and

7. WHEREAS by statute, AS 19 SLA 1923; 123 SLA 1951; 35 SLA 1953; AS 19.10.010, the State of Alaska has accepted the RS 2477 grant.

8. The RS 2477 grant has also been accepted in many cases by actual public use or expenditure of public monies on unreserved public lands for highway purposes.

POLICIES AND PROCEDURES

9. DOT&PF shall have responsibility for asserting and for identifying and submitting maps to BLM of all RS 2477 rights-of-way established before October 21, 1976, identified on the list of state maintained highways. DOT&PF's responsibility under this paragraph includes both state and non state lands.

10. DNR or DOT&PF may identify, assert, and submit maps and evidence of use to BLM for all other RS 2477 rights-of-way established before October 21, 1976, situated upon any land within the State of Alaska.

11. DNR or DOT&PF shall accept evidence of use on any right-of-way established before October 21, 1976, from other state agencies, local governments, and members of the public. For all claims of RS 2477 rights-of-way which involve state land or provide access to state land or public water an ADL/LAS case file will be established.

12. DNR or DOT&PF may maintain duplicate sets of all files regarding RS 2477 rights-of-way. All newly created RS 2477 files, or any documents to be added to an existing file, will be duplicated and forwarded from one agency to the other.

13. All maps showing the location of RS 2477 rights-of-way established before October 21, 1976, submitted to BLM shall be the best maps possible but not of lesser detail than standard USGS maps at a scale 1:63,360. Maps and supporting documentation shall be submitted by both agencies concurrently. The submission of such maps showing the location of RS 2477 rights-of-way on public lands shall not be conclusive evidence as to their existence. Similarly, a failure to show the location of RS 2477 rights-of-way on any map shall not preclude a later finding as to their existence.

14. There shall be established an RS 2477 coordinating committee in the Northern Region of Alaska composed of DNR, DOT&PF and BLM. The purposes for this committee are as follows:

(a) coordination of agency priorities for identifying, locating, and asserting RS 2477 rights-of-way;

(b) coordination of RS 2477 processing procedures for identifying, locating, establishing case files, making assertions, and platting claims on both federal and state land status plats; and

(c) coordination of requests made to and by the agencies.

15. Each assertion of the existence of an RS 2477 right-of-way made pursuant to this agreement and the submissions to BLM will be reviewed by BLM to ensure the land was unreserved public land as of the date claimed and was established prior to the repeal of the law on October 21, 1976. BLM will not adjudicate the validity of RS 2477 assertions.

16. BLM, DNR, and DOT&PF shall each issue a serial number and establish a case file for each claim made pursuant to this agreement. All correspondence shall reference all agencies' file numbers.

17. BLM shall plot each RS 2477 right-of-way asserted on their Master Title Plats when the following criteria are met (BLM Manual 2801.24 B.1, Rel. 2-152, 9/10/82):

1. Criteria for identification of R.S. 2477 Public Highways, include four elements:

a. In order for a valid right-of-way to come into existence, there must have been the actual building (construction) of a highway. Mere use, planning, or surveying, does not equal construction. However, construction may not have occurred all at once. Road maintenance often equals improvement, or even construction.

Increments of maintenance over several years may equal construction. When public funds have been spent on the road it may be a public road. When the history of a road is unknown or questionable, its mere existence in a condition adequate for public use may be evidence that construction has taken place.

b. A highway is freely open to everyone. Roads that have had access restricted to the public by locked gates or other means may not be public highways.

c. The construction of a public highway on unreserved public land must have occurred prior to October 21, 1976.

d. A State has to have a procedure to confirm the R.S. 2477 public highway right-of-way permit.

18. This MOU establishes the state's procedure to confirm the RS 2477 and thereby fulfills item d in paragraph 17 above.

19. DNR shall plot each RS 2477 right-of-way asserted on their land status plats.

20. Nothing in this Memorandum of Understanding shall obligate any party in the expenditure of funds, or for future payments of money, in excess of appropriations authorized by law.


21. Each party agrees that it will be responsible for its own acts and the results thereof and each party shall not be responsible for the acts of the other parties; and each party agrees it will assume to itself risk and liability resulting in any manner under this agreement.

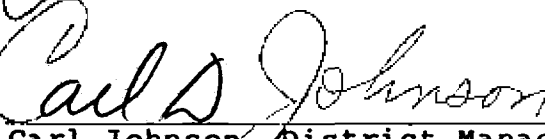
22. Nothing in this MOU is intended to limit agency or individual rights to normal administrative or judicial appeal processes.


23. Nothing herein is intended to conflict with Federal, State or local laws or regulations. If there are conflicts, this agreement will be amended as soon as practical to bring it into conformance with conflicting laws or regulations.

24. It is understood by all parties that individual citizens may be entitled to assert rights-of-way under RS 2477 notwithstanding this agreement. Nothing in this Agreement shall affect the right of private citizens to assert rights-of-way under RS 2477 in conformance with applicable law.

25. The effective date of this agreement shall be from the date of final signature. The agreement shall remain in effect until the parties jointly agree otherwise.


Date 9-28, 1984
Jerry L. Brossia, District Manager,
Northcentral District Office, Alaska Department of Natural Resources


Date 9/28, 1984
Carl Johnson, District Manager,
Fairbanks District Office, Bureau of Land Management


Date 28 Sept 1984
H. Glenzer, Deputy Commissioner,
Northern Region, Alaska Department of Transportation & Public
Facilities