

4710

# MEMORANDUM

# State of Alaska

Department of Transportation & Public Facilities  
Engineering and Operations Standards

**TO:** Dan Beardsley, SR/WA  
Regional Chief R/W Agent  
MS 2525

June 4, 1992

**FILE NO:**

JUN 09 1992

**TELEPHONE NO** 465-2985

*Northern Region DOT & PP*

**FAX NUMBER:** 465-2460

**FROM:** Jeffrey C. Ottesen, Chief  
Right-of-Way and Environment  
Headquarters

**SUBJECT:** RS 2477 Rights-of-Way

We have reviewed the Draft Memorandum of Understanding on asserting RS 2477 Rights-of-Way dated May 26. Our one concern with the document is what appears to be overly burdensome language regarding Hazardous Material (item 4 b). "Any Hazardous Material" could include many items we routinely use on projects such as a nuclear densiometer, the lead-acid battery in a vehicle or similiar commonplace items. Certainly some greater clarification that we won't cause any form of pollution as defined by state or federal law would provide the safeguards the university is seeking yet allow us the freedom to operate.

**cc:**

- John Jordan, Chief, ROW Section, Southeast Region, MS 2504
- John Miller, Chief, ROW, Northern Region, MS 2553

CHIEF R/W AGENT	
PRE AUDIT	
✓ ENGINEERING	
TITLE	
PLANS	
MATERIALS	
APPRAISALS	
NEGOTIATIONS	
Relocation/Prop. Mgmt.	
AIRPORTS	
RETURN TO:	
FILE	

*Fairbanks*

# STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

CENTRAL REGION - DIVISION OF DESIGN AND CONSTRUCTION  
RIGHT OF WAY BRANCH

4111 AVIATION AVENUE  
P.O. BOX 196900  
ANCHORAGE, ALASKA 99519-6900  
(FAX 248-9436) (907) 266-1621

\*\*\*\*\* TELECOPY \*\*\*\*\*

TO: John Miller TELEPHONE: \_\_\_\_\_  
Northern Region ROW FAX: #31

FROM: Daniel Bearosky TELEPHONE: \_\_\_\_\_

DATE: 6/8/92

TIME SENT: 9:40

\*\*\*\*\*

THIS FORM PLUS 6 PAGES. PHONE CONTACT IF NOT RECEIVED PROPERLY IS  
(907) 266-1622. ATTENTION: Barb Bennett. THANK YOU.

*Assumed for information only  
did not reply  
B  
6/8/92*

CENTRAL REGION  
DEPARTMENT OF TRANSPORTATION and PUBLIC FACILITIES

## MEMORANDUM


## STATE OF ALASKA

TO: JEFFREY C. OTTESEN  
Chief, Right of Way and  
Environment, EOS

DATE: June 8, 1992

FILE NO:

TELEPHONE NO: 266-1621

  
FROM: DANIEL W. BEARDSLEY, SR/WA  
Chief Right of Way Agent

SUBJECT: RS 2477 Rights  
of Way Assertions  
on Univ. of Alaska  
Lands

Enclosed are a proposed DOTPF second draft of a RS 2477 agreement with the University and a slightly marked up draft provided by the University. Since this is a statewide agreement with the University, Keith Gerken is the delegated party to sign memoranda of understanding with other state entities.

The University is still pushing for a permit fee up front, \$250, if we plan to use the claimed RS 2477 before DNR has completed its assertion review. I have strongly held the line against such a permit fee. The other concern, one you raised, about hazardous or contaminated materials will still require agreement. They do not want any contamination or hazardous material brought onto University lands. As you point out, driving a car can be constituted as bringing such materials onto the property. I have put in indemnification language that gives them our indemnification and agreement to clean up any contamination to the levels required by DEC et. al.

Please review the drafts and give me a call.

CC:

John Jordan, Chief Right of Way Agent, Southeast Region  
John Miller, Chief Right of Way Agent, Northern Region

# DRAFT

## MEMORANDUM OF UNDERSTANDING

This memorandum of understanding entered into this \_\_\_\_ day of \_\_\_\_\_, 1992 by and between the State of Alaska Department of Transportation and Public Facilities, (hereinafter "DOTPF"), whose address is P.O. Box Z, Juneau, Alaska 99811, and the Statewide Office of Land Management of the University of Alaska, (hereinafter "University"), whose address is 2221 East Northern Lights Boulevard, Suite 213, Anchorage, Alaska 99508, for the purpose of addressing the assertion of RS 2477 rights of way across University lands by DOTPF:

1. DOTPF will notify University of any claim of a RS 2477 right of way located on University land prior to submission of an assertion application to the State of Alaska Department of Natural Resources (hereinafter "DNR"). Such notification will contain sufficient documentation to enable UNIVERSITY to reach a decision about the likelihood of success of DOTPF's RS 2477 assertion with DNR.
2. After DOTPF notifies UNIVERSITY of a claim, DOTPF will make a RS 2477 assertion application to DNR within 30 days.
3. In the event UNIVERSITY notifies DOTPF use of a trail requires either a permit or an assertion of a RS 2477 right of way, DOTPF will make timely application for assertion of a RS 2477 right of way or make a permit application to UNIVERSITY.
4. In the event DOTPF makes interim use of a claimed RS 2477 right of way for a capital project prior to either, application for, or a determination on the validity of the RS 2477 by DNR, DOTPF:
  - a) will indemnify the UNIVERSITY, its Board of Regents, officers and employees from all claims, demands, judgments, costs and expenses including reasonable attorney's fees, which may arise as a result of DOTPF's or its agents' use of the claimed RS 2477 right of way.
  - b) DOTPF and its agents will indemnify and hold harmless University from damages, penalties, claims, judgments, fines, costs or losses including reasonable attorney, consultant and expert witness fees, arising from contamination on the claimed RS 2477 right of way, or adjoining property owned by UNIVERSITY for which DOTPF and its agents are liable. This indemnification includes reasonable costs incurred in the investigation of site conditions and any remediation required by local, state and federal law and regulation. In the event DOTPF or its agents' actions result in contamination of adjoining University property, DOTPF or its agent shall take all actions at its sole expense as are necessary to return the property to its condition prior to contamination or

# DRAFT

as approved by federal, state and local regulatory agencies. "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of Alaska or the United States Government.

5. University will notify DNR of its objections or provide DNR with a letter of non-objection in a timely manner after DOTPF asserts a claim of RS 2477 right of way.
6. UNIVERSITY will notify DOTPF when its mapping inventory is complete. Upon request by DOTPF, UNIVERSITY shall agree to provide DOTPF a copy of its Inventory of Investment Property.
7. If the width and/or scope of use based on adjudication by DNR are less than required by DOTPF, DOTPF will immediately apply to UNIVERSTITY for a land use permit or easement, or it may elect to proceed with acquisition of an appropriate title interest to encompass the area not included in the RS 2477. An administration fee or permit fee of \$250 or the fair market value of the land interest will be assessed as of the date of valuation.
8. If DOTPF's RS 2477 assertion is denied the date of valuation for permit, easement or acquisition purposes shall relate back to the date of the assertion application or commencement of interim use. Both parties agree to immediately commence negotiations in good faith with the intent of reaching agreement on what type of future interest, if any, DOTPF desires in the property.
9. Both parties have had the opportunity to seek the review of this agreement by counsel; therefore it shall not be construed for or against either party.
10. This Memorandum embodies the whole agreement between the parties and there are no representations or agreements other than those contained herein.

STATE OF ALASKA  
DEPARTMENT OF TRANSPORTATION  
& PUBLIC FACILITIES

UNIVERSITY OF ALASKA

---

W. Keith Gerken  
Deputy Commissioner, Operations

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Martin Epstein



Statewide Office of Land Management

Interior Alaska Regional Office  
Fairbanks, Alaska  
(907) 474-7421  
FAX: (907) 474-7554

Main Office  
Carlton Trust Building, Suite 213  
2221 E. Northern Lights Blvd.  
Anchorage, Alaska 99508  
(907) 272-5380 FAX: (907) 272-5486

Southeast Alaska Regional Office  
Auke Bay, Alaska  
(907) 789-4551  
FAX: (907) 789-4527

FACSIMILE MESSAGE

DATE: 5-28-92 TIME: 2:00

DELIVER TO:  
NAME: Dan Beardsley  
COMPANY: DOTPF  
LOCATION: Anchorage  
FAX NUMBER: 248-9456 TELEPHONE NUMBER: 266-1621

FROM:  
NAME: Carl Propp

REGARDING/REMARKS:  
Please review this re-draft. Our legal dept. needs to review and to have forwarded it to them. I am still getting some input that no activity should be going on on the project until we have this nailed down.

PROJECT NUMBER/NAME  
TRANSMITTING 3 PAGES (including this cover letter)

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CONTACT: Carl

ORIGINAL DOCUMENT WILL BE MAILED:  YES  NO (10/91)

RECEIVED  
MAY 28 1992

Action	Copy								
RIGHT OF WAY									
Central Region									
Appraisals									
Engineering									
Airports/Seaports									
Pre-Design									
Negotiating									
Relocation									
Other									
File									

RECEIVED  
MAY 28 1992  
D.O.T. & P.E.  
RIGHT OF WAY  
ANCHORAGE

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1992, by and between the State of Alaska Department of Transportation and Public Facilities (hereinafter "DOTPF"), whose address is \_\_\_\_\_, and the Statewide Office of Land Management of the University of Alaska (hereinafter "UNIVERSITY"), whose address is 2221 East Northern Lights Boulevard, Suite 213, Anchorage, Alaska 99508, for the purpose of addressing the assertion of RS-2477 rights-of-way across University lands by DOTPF:

1. DOTPF will notify UNIVERSITY of any claim of a potential RS-2477 right-of-way located on University land prior to submission of an assertion to the State of Alaska Department of Natural Resources (hereinafter "DNR"). Such notification will contain sufficient documentation to enable UNIVERSITY to reach a decision about the likelihood of success of DOTPF's RS-2477 assertion with DNR. *application*

2. Based on the strength of DOTPF's RS-2477 claim, UNIVERSITY may decide to waive its permit fee and issue DOTPF a permit for its proposed use. Should UNIVERSITY be so inclined, it will notify DOTPF of its decision within fifteen (15) days of its receipt of the above notification. In the event UNIVERSITY decides to waive its permit fee, DOTPF will submit its assertion application to DNR within fifteen (15) days of receipt of UNIVERSITY's notice of waiver.

3. Provided that UNIVERSITY has not waived its permit fee and that DOTPF is in need of interim access along the right-of-way for a capital project, DOTPF will immediately make application to UNIVERSITY for a permit to cover any such necessary interim use of the proposed RS-2477 right-of-way during DNR's adjudication of its RS-2477 application. The fee for such a permit shall be the greater of \$250 or the fair market value of the land interest needed. *No*

4. An interim use permit from the UNIVERSITY will include, but not be limited to, the following provisions:

a) DOTPF's indemnification of the University, its Board of Regents, officers and employees from any and all claims, demands, judgments, costs and expenses including reasonable attorney's fees, which may arise as a result of DOTPF's, its employees', contractors' or agents' use of the claimed RS-2477 right-of-way.

b) a prohibition of any Hazardous Material to be brought upon, kept or used in or about the claimed RS-2477 right-of-way, or adjoining property owned by the UNIVERSITY. DOTPF will indemnify and hold harmless UNIVERSITY from damages, penalties, claims, judgments, fines, costs or losses including reasonable attorney, consultant and expert witness fees, arising from contamination from any such Hazardous Material. This Indemnification includes reasonable costs incurred in the investigation of site conditions and any remediation required by local, state or federal law and regulation. In the event DOTPF or its employees', contractors' or agents' actions result in contamination or adjoining UNIVERSITY property, DOTPF shall take all actions at its sole expense as are necessary to return the property to its condition prior to contamination. "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of Alaska or the United States Government.

5. After DOTPF has made timely assertion of its RS-2477 claim to DNR, UNIVERSITY may still notify DNR that it has no objection to DOTPF's claim. If the UNIVERSITY does object to DOTPF's claim, it shall notify DNR of its objection and the reasons therefore in a timely manner.

6. If DOTPF's RS-2477 right-of-way assertion is ultimately granted by DNR, but the width and/or scope of use are less than required by DOTPF for its capital project, then DOTPF will immediately apply to the UNIVERSITY for a land use permit or easement, or it may elect to proceed with the acquisition of an appropriate title interest in the property, to encompass the area not included in the RS-2477. A fee of \$250 or the fair market value of the land interest to be acquired, whichever is greater, will be assessed as of the date of valuation.

7. If DOTPF's RS-2477 right-of-way assertion is ultimately denied by DNR, both parties agree to immediately commence negotiations in good faith with the intent of reaching agreement on what type of future interest, if any, DOTPF desires in the property. A fee of \$250 or the fair market value of the land interest to be acquired, whichever is greater, will be assessed as of the date of valuation.

*University notify*  
8. Upon request of DOTPF, UNIVERSITY shall agree to provide DOTPF a copy of its inventory of Investment Property after such inventory is completed.

9. Both parties have had the opportunity to seek the review of this agreement by counsel; therefore, it shall not be construed for or against either party.

10. This Memorandum embodies the whole agreement between the parties and there are no representations or agreements other than those contained herein.

STATE OF ALASKA  
DEPARTMENT OF TRANSPORTATION  
& PUBLIC FACILITIES

UNIVERSITY OF ALASKA  
STATEWIDE OFFICE OF LAND  
MANAGEMENT

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Daniel Beardsley, Chief Right-of-Way  
Agent

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Martin Epstein, Director