

Bennett, John F (DOT)

From: Bennett, John F (DOT)
Sent: Friday, December 23, 2011 9:22 AM
To: Jost, Keith R (CED)
Subject: Manley 14c Plat

Keith, thanks so much for bearing the brunt of the unhappiness during Wednesdays teleconference. I thought this was going to be a beat up on DOT session but fortunately, you managed to distract them all to the extent that I think they forgot we were on the line. I did find part of the discussion very interesting regarding the issue of whether an ANCSA 14c plat actually can dedicate a road/trail right of way to the public. I've not thought a lot about this because typically DOT has been on the front end. We have had projects to build roads for landfills, sewage ponds and water supply points where we or the City has obtained a deed/easement for the road ROW from the ANCSA Corp as a part of their 14c3 reconveyance obligation. Once that is done, the subsequent 14c plat reflects the ROW as an existing feature. While some 14c plats have notes specifying the establishment of new road/trail easements, this Manley plat was the first time I realized that the corridors that were intended to be set aside for public ROW had been conveyed to the DCED Trustee as just another tract of land. I don't have a copy of the initial "Map of Boundaries" so I'm not sure how clear the intent was that these be dedicated public ROW (As the Manley representatives seemed to argue). But if they were reconveyed as just another tract of real estate, I see your point that DCED must now dedicate it as public ROW before it can be used as such. This would seem to create additional complexities so I'm wondering if I'm understanding the situation correctly and if so, why DCED decided that this was the way to go. While the ANCSA 14c plat is not subject to State platting authority, any subsequent dedication of public ROW would be. So if DCED is to now dedicate one of these tracts intended for ROW as a public ROW, wouldn't you have to go through a platting action to do so? I was talking to Al Brietzman about this because there are similarities to discussions we have had in the past regarding federal townsites. The federal townsites did not (nor were they required to contain) a certificate of ownership and dedication or certificate of acceptance that would now be required to create a public ROW under state law. But there is sufficient federal case law to support the idea that the townsite plats were intended to have dedicated anything shown as a street or alley to the public. And in following AS 29.40.160 if the townsite street was to be vacated, it would attach to the adjoining townsite lots. If the Manley 14c tracts are eventually dedicated to the public, because fee was conveyed to the municipality, a subsequent vacation would return the fee to the municipality rather than the adjoining lands making it a bit of an anomaly compared to other public street/trail dedications. You mentioned along with dedicating these as public rights of way that DCED could issue a permit. I envision this as a permit to use municipal lands for access. With this you could avoid going through a public dedication process but it could place land owners at risk and prevent them from obtaining conventional financing because it would likely represent a revocable permission rather than a guaranteed right of access via a public ROW. And this is not just Manley. I am also working on a project in the Tanacross village and have noted some of the apparent road corridors noted as "ROW" and others just noted as "Tracts", leaving to question what was the intent and is it really a public ROW. Al said that DCED specifically wanted the Manley plat to reflect tracts rather than ROW so the 14c3 acreage obligation could be accounted for and also to prevent general public access across these road corridors without subsequent permission. In any event, I would really like to hear yours/DCED's position on this. I'm supposed to be writing an update for my paper on Highway ROW for an update of our Surveyor's manual (not started yet), and I thought I should include some thoughts on use and management of 14c3 road/trail ROW as well as federal townsite and 17(b) easements. So anything you can do to educate me would be greatly appreciated. Have a Merry Christmas! JohnB

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