

## Bennett, John F (DOT)

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**From:** Cantor, James E (LAW)  
**Sent:** Wednesday, April 23, 2008 1:57 PM  
**To:** Bennett, John F (DOT); Hartman, James M (DOT); Murphy, Robert B (DOT)  
**Subject:** FW: Unrecorded declarations of taking

FYI - and for what it is worth. The attached letter is interesting. No work or reply necessary.

-----Original Message-----

From: Moore, Colleen J (LAW)  
Sent: Wednesday, April 23, 2008 12:18 PM  
To: Cantor, James E (LAW)  
Subject: Unrecorded declarations of taking

Jim,

Attached is a letter that I received from the Fairbanks North Star Borough, which concerns a case where the Borough failed to record a 1973 declaration of taking until this year. Apparently, the owner of the property subsequently transferred it by warranty deed, and it may have been transferred a second time by warranty deed as well. The current owner is asserting a superior right to the property (which I think is part of the Chena Lakes flood control project).

Because the letter didn't explicitly ask for the State to do anything, I called and talked to the attorney. He is hoping that the State will support his interpretation of AS 40.17.080(b), on the theory that the State could be in the Borough's position some day if it didn't always record declarations of taking. He also was hoping that the recorder's office would include additional information in its index, identifying the year of the documents recently recorded and maybe weighing in on the 40.17.080 interpretation.

I explained to him that I didn't see where the State had an interest in this matter unless someone was attempting to invalidate the statute. I also explained that the purpose of the public record and the index was to give notice of documents, not details, and that the effect of the document was for the persons affected to determine.

Regardless, I thought you might be interested in this, just as an FYI. If you happen to have any particular insight, or if it's come up in the past, I'd be interested to know about it.

Thanks,  
Colleen

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