



# Fairbanks North Star Borough

Department of Law

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April 22, 2008

**VIA FACSIMILE: (907) 279-2834**

Colleen J. Moore, Assistant Attorney General  
Attorney General's Office, Natural Resources Section  
1031 W. 4th Ave Suite 200  
Anchorage, AK 99501

Re: *FNSB/OIT LLC*

Dear Colleen:

The purpose of this correspondence is to bring to the attention of the State of Alaska that DNR did not place pertinent information (the date of the court filing and a reference to the following cited statutes) into the recording system regarding entry #2008-004033-0 which is a DECLARATION OF TAKING filed by FNSB in Superior Court for the Fourth Judicial District on June 6, 1973; and entry 2008-004034-0 which is an ORDER CONFIRMING AUTHORITY AND NECESSITY and which was filed by the Court in Superior Court for the Fourth Judicial recorded on July 19, 1973.

FNSB is concerned that the public may rely on DNR's entries under the misconception that AS 40.17.080(b) provides "subsequent innocent purchasers in good faith for valuable consideration" protection from Declaration of Taking and Order Confirming Authority and Necessity.

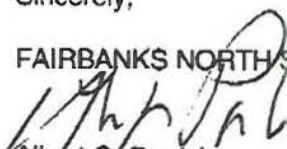
AS 40.17.080(b) does not provide any protection to such purchasers. Transfers of interests in real property by a Declaration of Taking for an Order Confirming Authority and Necessity are transfers by operation of law. See e.g. *AA American Development Corp. v. United States*, 2007 WL 233-0869 (D. Arizona). Consequently, neither a Declaration of Taking nor an Order Confirming Authority and Necessity are "conveyances" within the meaning of AS 40.17.900(3) ("conveyance means a transfer of an interest in real property other than by will or operation of law").

A transfer which is not a conveyance is not void as against a subsequent innocent purchaser for value in good faith for valuable consideration of the property or a part of the property whose conveyance is first recorded. AS 40.17.080(b).

Thank you in advance for your attention to this matter.

Sincerely,

FAIRBANKS NORTH STAR BOROUGH



Albert G. Parrish  
Assistant Borough Attorney