

John Bennett

From: Sprout, Timothy L (DOT) <tim.sprout@alaska.gov>
Sent: Friday, September 25, 2020 11:42 AM
To: John Bennett
Subject: RE: Gulkana CDVs

John –

Between your and Evan’s input, I think I have a path forward.

Thank you!

Have a good weekend.

I have four cords of slab wood to stack. 😊

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From: John Bennett <JBennett@rmconsult.com>
Sent: Friday, September 25, 2020 11:00 AM
To: Sprout, Timothy L (DOT) <tim.sprout@alaska.gov>
Subject: RE: Gulkana CDVs

Tim – My understanding is that the CQCD and CDV are the only tools you have to release these interests. There is a thing referred to as a “Relinquishment” but it implies that a functioning piece of ROW is being transferred to another government entity which is not the case here. And, I don’t even think we have an example of one in our manual. A vacation implies that the interest we hold is an easement of some kind. The vacation releases the easement and unencumbered use returns by operation of law to whomever holds the fee. Historical note: When I started in ROW in the mid-80’s, the CDV did not list a “Grantor” and essentially it was “To Whom it May concern” because as I said all the CDV does is release the easement, it doesn’t convey the easement to another party. The problem was that the Recorder’s updated their regulations about that time and required that every recorded real estate document list both Grantor and Grantee. This became a potential problem because we did not want to certify who in fact held the fee interest particularly when the title was garbled. So you will see in many CDV’s an asterisk at “Grantor” and a note at the bottom stating that the Grantor named is the “ostensible” owner of the fee and that the CDV only returned the unencumbered use of the fee by operation of law to the true owner whomever that might be. A little messy but hopefully it got the point across. You are correct that we don’t have different CDVs according to what kind of easement interest we might have. We know that an RS2477 must be vacated by a plat process as well as Small Tract easements and a dedication by plat (Including Townsite dedications). The CDV can vacate express easements where we have acquired an easement interest by deed, a ’47 Act easement, a PLO easement as well as Title 23 & Title V easements across federal lands and other easements crossing federal lands such as crossing military reservations. As long as we know it is an easement to which Title 19 (AS 19.05.070) Title 35 (AS 35.20.070) applies we can use a CDV. Note that the language of both of those statutes creates some confusion by using the term “vacate” to suggest that the CDV could be used to convey a greater interest such as fee. But generally the rule was QCD for fee and CDV for easement.

You could use a single CDV to vacate the PLO across several lots but only if the named "Grantor" was the same. Even though our "release" and "ostensible owner" terms suggest that we could put Mickey Mouse in as Grantor and by operation of law, the unencumbered use will return to the owner of the fee, to do so will just cause confusion. Where we in fact hold the fee to the ROW we want to use the QCD because we are not releasing an easement, but actually conveying the fee to a specific grantor.

Arguably, where we hold both an area of fee ROW in addition to PLO ROW within a specific Lot, you technically could lump them all together and use a QCD because the QCD really isn't conveying anything, it is just disclaiming any interest we have be it fee or easement. I'm not sure if we have done that before but the risk is less than what I stated above because if you have named the wrong grantor, the transaction is screwed up for both the fee and easement anyway.

Probably caused more confusion than helped. Let me know if you need more. JohnB

From: Sprout, Timothy L (DOT) [<mailto:tim.sprout@alaska.gov>]

Sent: Thursday, September 24, 2020 11:35 AM

To: John Bennett <JBennett@rmconsult.com>

Subject: Gulkana CDVs

Hi John –

We have DNR final approval on the three Gulkana Subdivision plats and are going to Mylar. We are all rushing to meet an October 2 deadline established by the Governor, and I am writing legal descriptions to vacate our PLO and deeded ROW easement interests over lots within the corridor shown on the attached exhibit. The pink areas are now subdivisions and those new subdivision lots will be conveyed by Commissioner Quit Claim deeds.

The next step is vacating our PLO interest east and west of the Gulkana River, and also vacating a separate deeded ROW interest east of the river, over lots in Gulkana.

I have been talking to Evan Rainey and Brian Roberts am scratching my head over the process.

It would be simplest to do one generic Commissioner's Deed of Vacation vacating PLO interest over named lots. However, the CDV's I have looked at do not specify the interest we are vacating, they quitclaim any interest the State has in a particular property to a particular owner, which would require the CDV's being broken down by specific ownership, with the owners being the Grantee.

Lot 9, Lot 10, and Lot 11 east of the river are encumbered by a deeded ROW easement in addition to (possibly) a PLO interest, so I assume both could be vacated by a single CDV as the specific interests the State is vacating is not named.

Is this the correct process? Is there an alternate Release or Relinquishment document that could be used to make the conveyance more generic?

Thank you.

Hope you are well.

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