STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

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

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ANCHORAGE, ALASKA 99519-6900
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February 10, 1993

Re: Project No. IR-0A1-4(3)/62982
Glenn Highway, MP 135
Nelchina Farm

	CHIEF R/W AGENT	RECEIVED R/W
	PRE AUDIT	
	ENGINEERING	
	TITLE	FEB 17 1993
	PLANS	
	APPRAISALS	
	NEGOTIATIONS	
✓	Relocation/Prop. Mgmt.	
	AIRPORTS	
	RETURN TO:	
✓	FILE	

Mr. Herb Simon
Little Nelchina Farm
Mile 135 Glenn Highway
Star Route C 8591
Palmer, Alaska 99645

Dear Mr. Simon:

Please accept my apology for not getting in contact with you earlier. Mr. Jeffery Ottesen requested that I contact you regarding concerns over the validity of a highway easement across your property.

A letter does not provide the opportunity for any dialogue, but I'll offer you my interpretation of the status of the highway easement across Nelchina Farm based on information I have received from the Northern Region. My information is based primarily on the January 10, 1991 letter from Mr. Daniel Baum to you. If there are any inaccuracies or any missing information, please discuss it with me. I am presently out of State and will return Tuesday, February 16, 1993.

As to the validity of the highway easement, I concur with Mr. Baum's analysis that there is a 300-foot wide right of way easement for the Glenn Highway across your property, U.S. Survey 5634. Executive Order (EO) 9145 and Public Land Orders (PLO) 601 and 1613 were published in the Federal Register prior to the initial Trade and Manufacturing site claim. Enclosed is a copy of the State of Alaska v. Alaska Land Title Association, Pacific Second Volume 667, Page 714 through 731, which examines the application and validity of PLO Rights of Way based on original entry (or claim) dates. The case stands for the proposition that, if the date a PLO was published in the Federal Register is before the entry or claim by an individual, then there is a valid highway easement. In particular, that case dealt with various homestead entries that proceeded to Patents. It was decided that

when the PLO was published prior to the homestead entry, the easement was valid, even though a reservation in the Patent and subsequent deeds did not mention the easement. Although some of the properties were subdivided without showing the full width of the highway easement, the Alaska Supreme Court ruled the easement still was valid.

Even if the patent to Mr. Gilcrease did not list the reservation, the easement would be valid; however, its validity is even stronger due to the reservation in the patent. Because your deed did not contain a reservation for the easement does not terminate the easement. Alaska Statute 40.17.080 specifies that a recorded document is constructive notice to all subsequent purchases. Constructive notice means the law considers an individual to have knowledge of that fact, whether or not they actually know about it. The same is true of a PLO published in the Federal Register (see page 725 of the Alaska Land Title case). Consequently, even though you may not have had personal knowledge of the highway easement, both the Federal Register publication and the recording of the Patent gave constructive notice.

As I understand it, you also have a concern about different rights involved between the State and yourself. On April 7, 1958, PLO 1613 established an easement 150 feet on each side of the centerline of the Glenn Highway across lands that were not subject to claims. The Patent reservation is for an easement for highway purposes. In general terms, an easement is the right to use the land of another for a particular purpose, in this case highway purposes.

Between private owners, the general rule of law is that the owner of an easement can use the easement area for the purposes it was granted. However, unless the terms of the easement prevent it, the owner of the land subject to the easement may also use it for any purpose that does not interfere with the easement owner's rights.

With a public easement, the law differs from an easement between private parties. First, the rights of the sovereign or the public (the public trust doctrine) are to be interpreted in favor of the sovereign to protect the public trust. Secondly, and more significantly, by Alaska Statute, the Department has the authority to regulate roadside development (Alaska Statute 19.05.040(6)) and to prohibit encroachments or improvements that are not authorized by a written permit issued by the Department (Alaska Statute 19.25.200). A copy of A.S. 19.05.040 is enclosed and A.S. 19.25.200 is in the sign booklet provided. The premise behind these statutes is the protection of the travelling public by regulating the types of improvements that may be placed in a highway easement. Although you own U.S. Survey 5634, the

Department has the right to use the 300-foot wide area for highway purposes as well as control other uses of that easement.

The traffic signs that the Department installs must meet specific safety and other standards as set forth in the Federal Highway Administration's Manual on Uniform Traffic Control Devices. Signs or improvements within the highway easement or right of way, other than those approved by the Manual on Uniform Traffic Control Devices, must be reviewed to assure that they meet safety standards and must be placed under a written permit to comply with State and Federal laws. Technically, according to Alaska Statute 19.25.105 and Volume 23 of the Code of Federal Regulations (CFR), Section 750.704, a sign outside the highway easement/right of way that is visible to the public is not allowed unless it is advertising a business located on the property or advertising that property for sale or lease. There are exceptions under the Federal law but they are not allowed under State law.

In December of 1991, the Department, with approval from the Federal Highway Administration, began a program to lease its highway right of way or easement interest to the abutting or underlying property owner for a sign advertising a business on the owner's adjacent property. The decision making process for that program occurred during the time of Mr. Baum's correspondence to you and consequently was the reason you got mixed signals (Mr. Baum saying no - Mr. Ottesen saying yes).

The result of all this, based on the information I have, is that the Department has a 300-foot wide easement across U.S. Survey 5634. Any improvements, which includes signs, placed within that right of way must be under a permit authorized by the Department. The booklet has a section on the Department's new leasing policy to allow a sign (other than one approved by the Manual on Uniform Traffic Control Devices) to be placed within the highway easement. If the sign is not placed under a permit, State and Federal law obligates the Department to remove it.

Unless you have information which indicates a series of events different than that stated in Mr. Baum's January 10, 1991 letter, I urge you to work with the Northern Region staff to place your sign under permit. If you have other information, please provide it to me.

Once again I apologize for not getting in contact with you sooner. I hope that is letter provides you with a better understanding of why our Northern Region Right of Way staff has

taken the position it has. Please call me after February 16th if you have any information, comments or questions.

Sincerely,

Daniel W. Beardsley, SR/WA
Chief Right of Way Agent
Central Region

Enclosures

cc: John Miller, Chief Right of Way Agent, Northern Region
Jeffery C. Ottesen, Chief of Right of Way and Environmental, Headquarters

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