

Subject: 100 Mile Loop Trail

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From: "John F. Bennett" <johnf_bennett@dot.state.ak.us>

Organization: Alaska DOT&PF

To: Planning@co.fairbanks.ak.us,

"REZEK, JOHN" <JOHN_REZEK@DOT.STATE.AK.US>

To: Jeff Bouton

Jeff, after our meeting I had a chance to take a look at our Tanana Valley Railroad file. I also e-mailed Gerald Jennings who is the lead surveyor at DNR cadastral survey to ask whether they had ever obtained legal advice regarding the railroad as a part of the Vault Subdivision development. He was unable to find a the file for Vault that might have had some information. I ran a search of the Attorney General's opinion database and found no reference to formal opinions regarding the Tanana Valley Railroad. It is possible there was some informal advice provided as a part of Vault Sub., but that appears to be lost to us at this time.

In 1981, Al George of the State Pipeline Coordinators office did quite a bit of research into the history and status of the Tanana Valley Railroad between the Chena Townsite and Chatanika. This was done in order to identify conflicts as a part of the proposed gasline development. A 200 foot wide ROW was secured for the railroad on April 27, 1906 under the provisions of the 1898 Alaskan Railroad Act. Under the terms of the Act, the ROW was an easement with the fee being retained by the USA. After falling on hard times and being sold at a Marshall's sale, the railroad was eventually sold to the USA on December 31, 1917. This was tied into the Alaska Railroad mainline. In 1920 the spur to Chena was removed. Commuter service was still provided out to Fox and was discontinued in about 1930.

George's writings then state that as there has been no track in existence or service rendered on this utility for at least 50 years, the State Attorney General's office in Fairbanks is of the opinion that the Alaska Railroad has abandoned the right of way. This must have been verbal as I have found no writing to this effect. He argued that the US Government only purchased an easement interest and that such utility easements are usually exercised by use.

An argument against abandonment might be made by comparing it to the Copper River & Northwestern Railroad between Cordova and Kennicott. The railroad acquired a similar 200' wide ROW also using the 1898 Alaskan Railroad Act. The records show that in 1939 when the railroad closed, it was required to petition the US Dept of Commerce for a certificate of public necessity and convenience which would allow abandonment of the right of way. Its reasonable to suggest that the same would apply for the Tanana railroad right of way. Also, the USA issued a quitclaim deed to the Alaska Railroad Corp in January of 1985 for "that property aquired by the United States form the Tanana Valley Railroad". (B408/P211 1/9/85 FRD) So its not hard to see why the Alaska Railroad might believe it still has an interest in the 200' wide ROW.

A better argument than abandonment that the ROW is gone might be "merger of title". When the USA acquired the Railroads interest in 1917, it is probable the the easement interest they acquired merged with the fee interest they already held. When federal lands were subsequently patented for homesteads or mining claims, they likely passed without being subject to the railroad ROW.

This is probably more than you want to know although I know you were interested in whether the old corrdior could be used for a trail. If it does still exist, it is under the jurisdiction of ARRC and I don't know how interested they would be in permitting it for trail use. Also, where the ROW conflicts with patented, developed lots, the issue might be how much political heat an agency would want to bear to assert and use the old railroad ROW.

JohnB