

CENTRAL REGION
DEPARTMENT OF TRANSPORTATION and PUBLIC FACILITIES

MEMORANDUM


STATE OF ALASKA

TO: DISTRIBUTION

DATE: May 26, 1992

FILE NO:

TELEPHONE NO: 266-1621

FROM:  DANIEL W. BEARDSLEY, SR/WA
Chief Right of Way Agent

SUBJECT: RS 2477 Rights
of Way Assertions
on Univ. of Alaska
Lands

Central Region is preparing to assert an RS 2477 right of way through the new DNR process (copy of regulations and application enclosed) for a road across University of Alaska lands near Jap Creek in the Seward area. I have been meeting with Carl Propes of the University's land management office to determine how we, Central Region, and the University will handle assertions of RS 2477 rights of way. The University's concerns are primarily what will happen during the assertion process and what liabilities they will have for allowing us to operate on their lands until the RS 2477 assertion process is complete. This is particularly the case when, such as at Jap Creek, we are using the property in the interim.

Since this is a statewide issue I need your input on how we should handle such interim use. I have included a draft which Carl and I discussed. It sets out a position, that in the event we do not have a valid assertion, we will relate the time for determining any compensation relate back to the date we asserted the RS 2477 claim or initiated interim use. Since my meeting with Carl, I have limited interim use to mean use in connection with a capital project. I think we will have that obligation and it will avoid wrangling with the University about an interim use permit if we believe we have a valid RS 2477 assertion. Feel free to shoot holes in it.

Distribution:

Jeffrey C. Ottesen, Chief Right of Way and Environment, EOS
John Jordan, Chief Right of Way Agent, Southeast Region
John Miller, Chief Right of Way Agent, Northern Region

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MEMORANDUM OF UNDERSTANDING

This memorandum of understanding entered into this ____ day of _____, 1992 by and between the State of Alaska Department of Transportation and Public Facilities, hereinafter DOTPF, (appropriate address) and the University of Alaska, hereinafter University, (appropriate address) (appropriate address) to address the assertion of RS 2477 Rights of Way across University lands by the DOTPF:

1. DOTPF will notify University of any claim of an RS 2477 right of way prior to submittal of an assertion to the State of Alaska Department of Natural Resources, hereinafter DNR.
2. After notice of a claim DOTPF will make a timely RS 2477 assertion application to DNR.
3. In the event University notifies DOTPF use of a trail requires either a permit or an assertion of an RS 2477, DOTPF will make timely application for assertion of a RS 2477 right of way or make a permit application to University.
4. In the event DOTPF makes interim use of a claimed RS 2477 right of way for a capital project prior to either, application for, or a determination on the validity of the RS 2477 by DNR, DOTPF:
 - a) will indemnify the University, its Board of Regents, officers and employees from all claims, demands, judgments, costs and expenses including reasonable attorney's fees, which may arise as a result of DOTPF's or its agents' use of the claimed RS 2477 right of way.
 - b) or its agents will not cause or permit any Hazardous Material to be brought upon, kept or used in or about the claimed RS 2477 right of way, or adjoining property owned by University. DOTPF and its agents will indemnify and hold harmless University from damages, penalties, claims, judgments, fines, costs or losses including reasonable attorney, consultant and expert witness fees, arising from contamination for which DOTPF and its agents are liable. This indemnification includes reasonable costs incurred in the investigation of site conditions and any remediation required by local, state and federal law and regulation. In the event DOTPF or its agents' actions result in contamination of adjoining University property, DOTPF or its agent shall take all actions at its sole expense as are necessary to return the property to its condition prior to contamination. "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of Alaska or the United States Government.

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5. University will notify DNR of its objections or provide DNR with a letter of non-objection in a timely manner after DOTPF asserts a claim of RS 2477 right of way.
6. University will provide DOTPF a copy of its mapped inventory once the mapping is complete for DOTPF's review.
7. If the width and/or scope of use based on adjudication by DNR are less than required by DOTPF, DOTPF will apply for a land use permit, easement, or proceed with acquisition of an appropriate title interest.
8. If DOTPF's RS 2477 assertion is denied the date of valuation for permit, easement or acquisition purposes shall relate back to the date of the assertion application or commencement of interim use. An administration fee or permit fee of \$250 or the fair market value of the land interest will be assessed as of the date of valuation.
9. Both parties have had the opportunity to seek the review of this agreement by counsel; therefore it shall not be construed for or against either party.
10. This Memorandum embodies the whole agreement between the parties and there are no representations or agreements other than those contained herein.

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
& PUBLIC FACILITIES

UNIVERSITY OF ALASKA

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