

From: [Matthew Reckard](#)
To: [Bennett, John F \(DOT\)](#)
Subject: Re: Ester Creek Road
Date: Tuesday, June 18, 2013 5:10:58 PM

John: Wow. I am stunned by your lengthy, thorough, thoughtful and rapid response. Thanks a heap. You help clarify much of the issue. I recently contacted DNR and have heard nothing back so far. Others from around here have talked to the borough which, like the state, owns land on the north side of the creek whose access is restricted by this closure. Right now, it looks like one or more private individuals are going to pursue prescriptive and/or RS2477 rights.

As you may know this isn't the only place where people are trying to close long established roads and trails in my neighborhood. There's a spate of these recently. At least one is already under litigation.

Cheers, and thanks again.

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From: "Bennett, John F (DOT)" <johnf.bennett@alaska.gov>
To: Matthew Reckard <mkreckard@yahoo.com>
Sent: Tuesday, June 18, 2013 3:54 PM
Subject: RE: Ester Creek Road

Matt, I may be able to tell you why DOT is not doing anything but I should start by saying that this is the first I have heard of this issue. I'm not sure if you or others have been talking to others at DOT but if so, they have not mentioned it to me. You are correct that this road has quite a bit of history but that may not be helpful for a couple of reasons. I looked at a 1952 edition of the USGS Quad Fairbanks D-3 (based on 1949 photography) On that map what I perceive as the Ester Creek road was at the time an improved road heading almost due west from Ester along the north side of the Ester creek tailings for about two miles and then splitting into two short trail segments heading up Willow Creek and Moose Gulch. Let me know if I'm looking at the wrong road because they are not labeled on the USGS Quad. The Ester Creek road is noted in the Alaska Road Commission Annual reports from 1907 to 1937. It is also noted as one of several Ester Area roads and referred to as Route 7D. Until Public Land Order No. 601 was issued in August of 1949, the only legal mechanism to secure a public road ROW was by RS2477. The PLOs didn't have much of an impact in the developed mining areas as the PLO ROW were subject to prior existing rights. While the PLO would apply to any road constructed or maintained by the Alaska Road Commission, it could only take effect over unreserved public lands. So if the road in 1949 crossed over previously located and eventually patented claims, there would be no ROW under the PLOs. At statehood all of the roads that were considered to be in the territorial highway system were conveyed to the State through the 1959 Omnibus Act Quitclaim Deed. However, the conveyance document did not convey title to every road ROW that the Alaska Road Commission ever worked on, only those that were on the current highway system at statehood. What we have

found is that roads that may have been active in the teens, 20's, 30's and so on due to mining activity, may have fallen off the inventory if mining activity was such that ARC involvement was no longer required. This is likely why there is no line item for the Ester Creek Road in the QCD. The only Ester related road listed in the deed is Federal Aid Secondary Route No. 6491 "Ester Dome/St. Patricks" road. So the other alternative could be either an RS2477 ROW or an easement by prescription. In the regulations that govern jurisdiction between DOT and DNR the rule is that the only RS2477 trails that are under DOT's jurisdiction are those that are listed on the State Highway System inventory. If you don't count section line easements, these are very few such as the Rampart Road or the Klutina Lake Road. All other RS2477 rights of way not on the State Highway System Inventory are under the jurisdiction of DNR. Any road that DOT maintains is supposed to be on the state highway inventory. I suspect that unless you see DOT graders maintaining the Ester Creek road/trail, that it is not on the DOT highway system and so the point of contact for RS2477 issues would be the local DNR office. I looked at the DNR RS2477 case files online and they had a route named RST 769 "Ester Mining Area & Bonanza Creek System" that was nominated but was never asserted due to what DNR claimed was insufficient documentation. I looked at the old 1973 Dept. of Highways RS2477 assertion maps and noted that the portion of Ester Creek road to the West of Ester was not noted as a potential RS2477. You may want to contact the DNR PAAD unit (Public Access Assertion and Defense) see their website at <http://dnr.alaska.gov/mlw/trails/paad/index.cfm>

- Alaska Department of Natural Resources
- Public Access Assertion and Defense Unit
- 550 W. 7th Ave, Suite 1420
- Anchorage, AK 99501
- (907) 269-4755

They have in the past pursued new RS2477 cases based on public use and good documentation so that might be an option for you to look at. Hope it all works out. At this point while we often assist PAAD in dredging up historical info to support an RS2477 case, for the most part it doesn't appear that DOT has a dog in this fight. JohnB

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From: Matthew Reckard [mailto:mkreckard@yahoo.com]
Sent: Monday, June 17, 2013 11:10 PM
To: Bennett, John F (DOT)
Subject: Ester Creek Road

Dear John:

Why is the DOT&PF doing nothing about the closure of Ester Creek Road, upstream from the village of Ester? The closure is a brazen grab for established public property rights by private individuals. I'd think that alone would be sufficient to get a rapid and strong reaction from the state. But it is more than that. The road and branching trails are the primary established access to state lands in the Ester Creek Valley.

Perhaps it's politics; perhaps you fear those who squawk so loud these days about private property rights. But what about those who squawk about waste in government? Talk about government waste: by doing nothing my government is giving away public assets without

compensation. Not to mention giving in to coercion.

The road goes through private property, it's true: patented mining claims. Miners qualified for patents by doing sufficient development work on them. And the only way they were able to do the necessary development was because there was a road – a road maintained by the Alaska Road Commission - running to and through their claims, every one of them

That road was and is the Ester Creek Road, and for the first century after the claims were patented it never occurred to anyone, including the property owners, that there was somehow not a right for the road to be there and for the public to use it. I've been using the Ester Creek Road and what are known as the Tri-Con Road and the Fireplug Trail for more than thirty years.

Their closure is a theft of public property rights.

The state owns land on the south facing slopes above Ester Creek out there. Big trees. Nice. What happens when the state decides to sell the land? How do you plan for buyers to get there? Do you plan on using eminent domain to buy back the right of way you are abandoning now?

If you are not the right branch of government to defend these public rights, would you please tell me who you think is?

Thanks for your attention. Sincerely,

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