

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

NORTHERN REGION PRECONSTRUCTION, Right of Way Section

**FRANK H. MURKOWSKI,
GOVERNOR**

2301 PEGER ROAD
FAIRBANKS, ALASKA 99709-5399
TELEPHONE: (907) 451-5423
TDD: (907) 451-2363
FAX: (907) 451-5411
1-800-475-2464

May 1, 2006

Re: Section Line Easement
Section 29/20, T.1N., R.2E., F.M.

FAXED to (907) 456-5055

Mr. John Burns
Borgeson & Burns, PC
100 Cushman St. # 311
Fairbanks, AK 99701

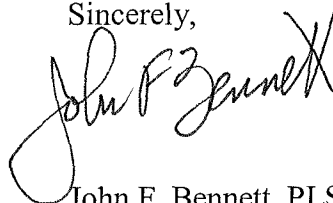
Dear Mr. Burns:

As you requested, I have reviewed the document titled "STIPULATION TO ENTRY OF JUDGEMENT AS TO CASSAIR HEIGHTS PROPERTIES INC, RUDOLF L. GAVORA, JENA D. GAVORA, JAMES K. BUTTON, AND JENNIFER B. BUTTON,". The purpose of my review was to provide an opinion as to the validity of the section line easements identified in the Third and Fourth Causes of Action. The Third and Fourth Causes of Action appear to identify the same section line easements, however, the Third Cause of Action is based upon the federal R.S. 2477 grant while the Fourth Cause of Action is based upon A.S. 19.10.10. My November 1, 2004 letter to Dwane Sykes concluded that a 66-foot wide federal section line easement existed along the quarter mile segment of the line between Section 29 and 20 lying within federal patent No. 1147535. This letter expands that conclusion to state that a 33' wide federal section line easement also exists along the easterly boundary within federal patent No. 1147535.

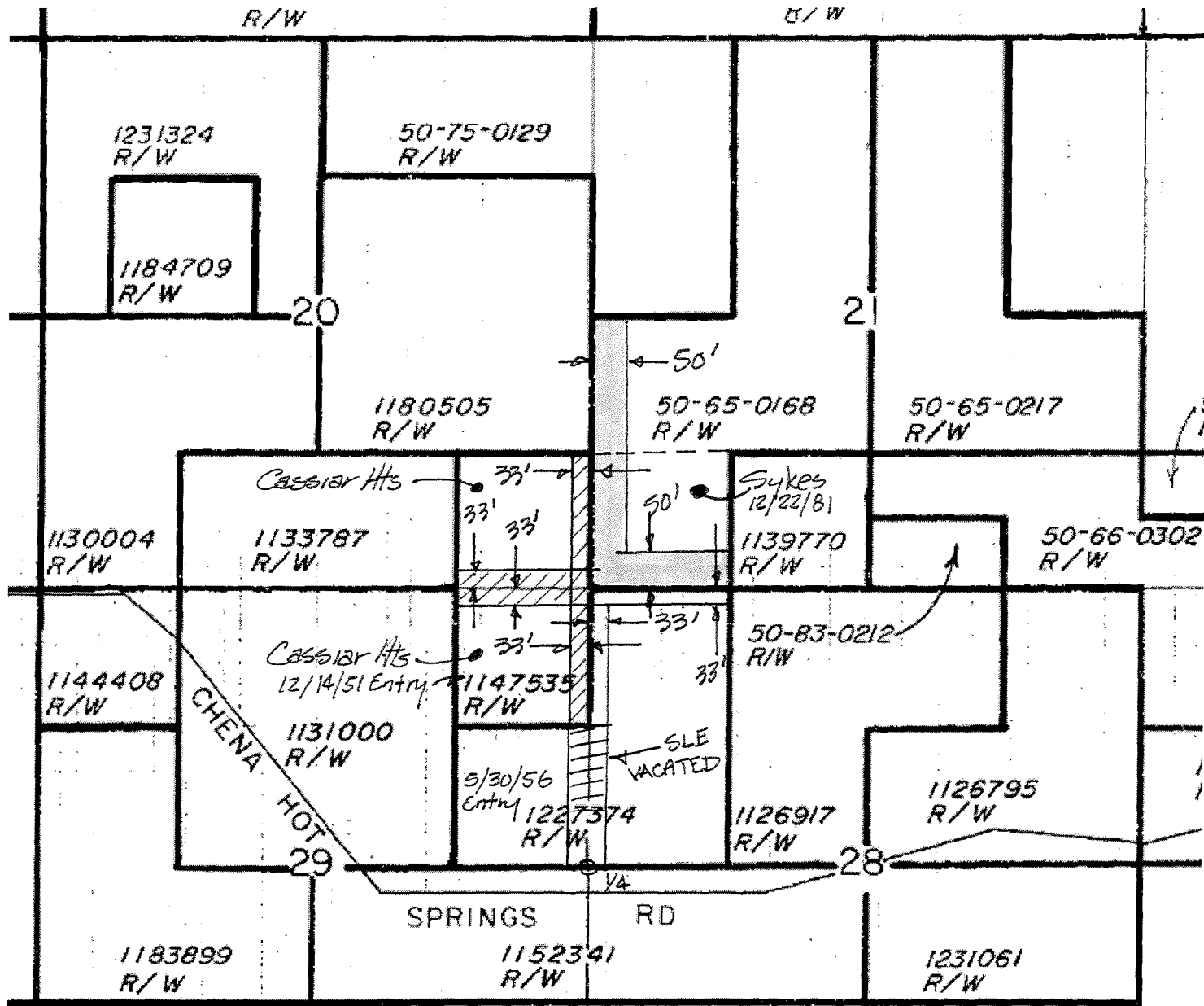
As the specific focus of the Third and Fourth causes of action are the lands lying within federal patent No. 1147535, it is unclear to me why Sykes believed it was necessary to cite A.S. 19.10.10. The purpose of this statute was to assign a minimum right-of-way width to highways established throughout the state. More specifically, it was intended to establish a right-of-way width for trails created by public use under the R.S. 2477 grant.

If you have any further questions regarding this correspondence, please feel free to contact me at (907) 451-5423 or by email at johnf_bennett@dot.state.ak.us.

Sincerely,



John F. Bennett, PLS, SR/WA
Chief, Right of Way



SECTION LINES for Sec 20, 28, & 29 - Survey Appr. March 10, 1947

BORGESON & BURNS, PC

facsimile transmittal

to: John Bennett, DOT
fax #: (907) 451-5411
date: April 24, 2006
time: _____ file name/#: _____
page(s): _____, including cover sheet

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MESSAGE:

John:

Per our conversation, attached is the Public Roadway Easement signed by my clients. Also attached is the Stipulation which Valerie Therrien is asking us to sign acknowledging certain Section Line Easements. As I indicated to you, it is my understanding that a Section Line Easements exists regardless of whether or not it is acknowledged by the property holder. Once you have had an opportunity to review the attached, please give me a call. Thanks.

John Burns

From the desk of...

Anna Marley
Legal Secretary
Borgeson & Burns, PC
100 Cushman St., #311
Fairbanks, AK 99701
Tel: (907) 452-1666
Fax: (907) 456-5055

If you do not receive all pages or encounter any problems,
please contact sender at (907) 452-1666.

PUBLIC ROADWAY EASEMENT

For a valuable consideration, receipt of which is hereby acknowledged, Rudolph L. Gavora and Cassiar Heights Properties, Inc. whose address is P.O. Box 70408, Fairbanks, AK 99707, (hereinafter referred to as the "Grantors"), hereby grant to the general public, a non-exclusive public roadway easement following described premises:

An easement 66 feet in width for public roadway purposes lying within Sections 20 and 29, T.1N., R.2E., Fairbanks Meridian, Fairbanks, Alaska. Said easement lies over and across Lot 12 Block 3 of Cassiar Heights, (which lot is reflected on the plat filed as inst. #94-74 on June 21, 1994 in the Fairbanks Recording District) and Lot 13 Block 3 of Cassiar Heights 2nd Addition, (which lot is reflected on the plat filed as inst. #200-29 on March 15, 2000 in the Fairbanks Recording District) and whose centerline is more particularly described as follows:

Commencing at the Southeast corner of said Lot 12 Block Three common with the Northeast corner of said Lot 13 Block Three and also being common with the Northeast corner of said Section 29 and the Southeast corner of said Section 20 said corner being the TRUE POINT OF BEGINNING; THENCE N.89o50'26"W. along the section line common to said Section 20 and said Section 29 a distance of 399.41 feet more or less to a point on the easterly Right-of-way line of Misty Fjords Court as shown on said plat of Cassiar Heights.

SUBJECT to the requirements of Title 17 of the Fairbanks North Star Borough ordinances and the extension and foreshortening of the sidelines of said 66 foot wide Public Road Easement to meet the easterly boundaries of said Lots 12 and 13 and said easterly Right-of-way of Misty Fjords Court.

See attached EXHIBIT "A".

IN WITNESS WHEREOF, the undersigned have hereunto set his/their hand(s).

[Signature]
Rudolph L. Gavora, Grantor

STATE OF ALASKA)
FOURTH JUDICIAL DISTRICT)
THIS IS TO CERTIFY, that on this 27th day of ~~December~~ FEBRUARY, 2006, before me, the undersigned notary public, personally appeared Rudolph L. Gavora known to me, and he acknowledged to me that he signed the foregoing instrument, as his voluntary act and deed, for uses and purposes therein mentioned.

WITNESS my hand and notary seal on the day and year first above written.

[Signature]
Notary Public in and for Alaska
My commission expires: 5-29-07



[Signature]
Cassiar Heights Properties Inc., Grantor

Authorized Representative

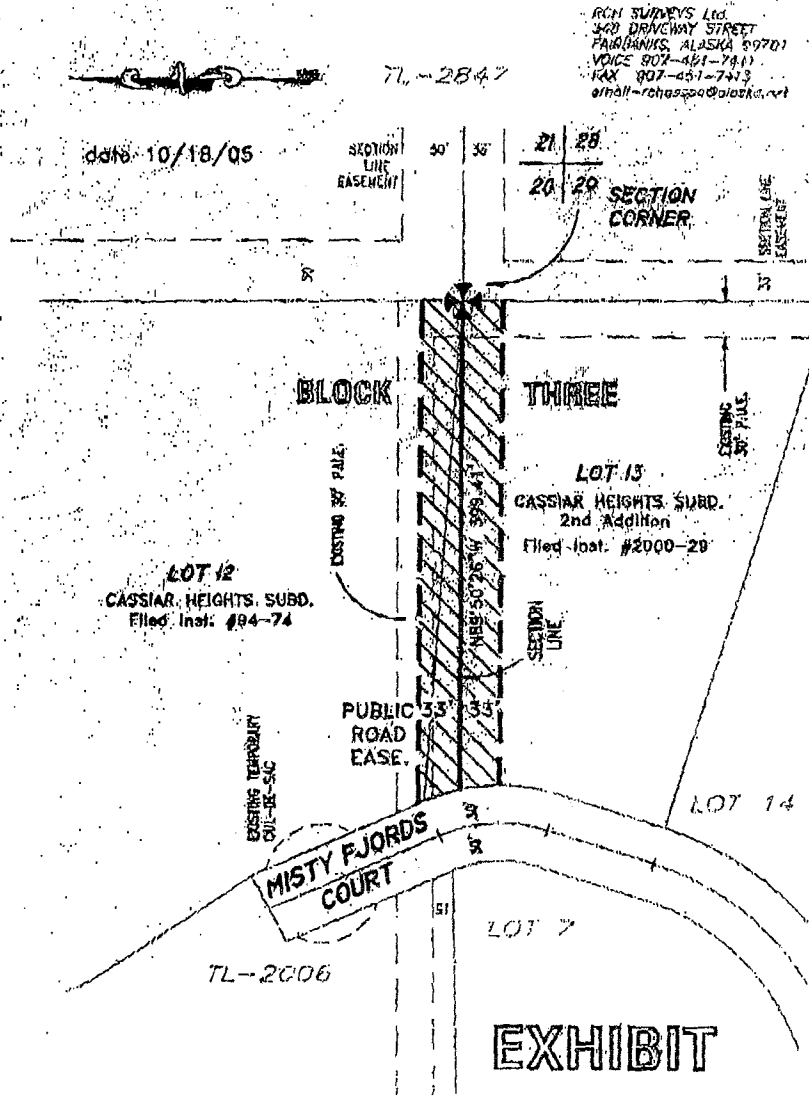
Authorized Representative

STATE OF ALASKA)
FOURTH JUDICIAL DISTRICT)
THIS IS TO CERTIFY, that on this 27th day of ~~December~~ FEBRUARY, 2006, before me, the undersigned notary public, personally appeared DAN GAVORA known to me, and that they acknowledged to me that they signed the foregoing instrument, as their voluntary act and deed, for uses and purposes therein mentioned and they are cloaked with the power and authority to do so.

WITNESS my hand and notary seal on the day and year first above written.

[Signature]
Notary Public in and for Alaska
My commission expires: 5-29-07





Cassiar Heights
Public Roadway Easement

EXHIBIT A

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

E. L. ROY DUCE, individually and as)
 trustee of the Sykes Childrens Trusts, and)
 DWANE J. SYKES, Plaintiffs,)
)
 vs)
)
 CASSIAR HEIGHTS PROPERTIES INC, an Alaskan)
 corporation, RUDOLF L. GAVORA, JENA D. GAVORA,)
 JAMES K. BUTTON, JENNIFER B. BUTTON,)
 CHARLES E. HOLYFIELD, NILDA L. HOLYFIELD,)
 et al,)
)
 Defendants.)

CASE No. 4FA-04-2827 CI

STIPULATION TO ENTRY OF JUDGMENT AS TO CASSAIR HEIGHTS
PROPERTIES INC, RUDOLF L. GAVORA, JENA D. GAVORA, JAMES K.
BUTTON, AND JENNIFER B. BUTTON,

COMES NOW the Plaintiffs, by and through their attorney,
Valerie M. Therrien, and COMES NOW the Defendants, Cassair
Heights Properties Inc, Rudolf L. Gavora, Jena D. Gavora, James
K. Button, Jennifer B. Button, by and through their attorney John
Burns, and hereby stipulate to an entry of an order granting the
relief requested the Motion for Summary Judgment, as to Counts
Third and Fourth and

Further that the parties agree that upon the execution of an
easement signed by the following Defendant parties, namely,
Defendants Cassair Heights Properties Inc, Rudolf L. Gavora, Jena
D. Gavora, James K. Button, Jennifer B. Button, granting
Plaintiff access as set forth below, to a dismissal of Counts
Fifth, Sixth, Seventh, and Eighth of the Plaintiffs' Complaint,

VALERIE M. THERRIEN, ATTORNEY AT LAW, P. C.
779 8th Avenue Fairbanks, Alaska 99701-4498
Phone: 907-452-6195 Fax: 907-456-5949

as to said Defendants only, in the above entitled matter, with prejudice.

1. As to the Third Cause of Action, Plaintiffs are hereby granted Declaratory Judgment, under the U.S. Mining Act of 1866 and R.S. 2477 of Rev. Stat. 1872 (43 U.S.C. 932), against the above named Defendants to this stipulation that there exists a valid Section Line Easements of 33 feet for Federally derived properties, and 50 feet for State of Alaska owned or derived properties, on each side of each section lines in Sections 20, 21, 28 and 29 for public, non-exclusive roadways, including specifically:

that a valid 33-foot Section Line Easement exists on each side of Defendants Cassiar Height Properties, Inc. and Gavoras' properties on the common section line of Sections 20 and 29, running approximately East some 409.49 feet, more or less, to the common section corners of said four Sections, from the East boundary of Misty Fjords Court road, as dedicated for public use in those plats of Cassiar Heights Subdivision, Cassiar Heights 1st ADDITION, and Cassiar Heights 2nd ADDITION, recorded as Fairbanks Plat #94-74, Fairbanks #95-1, and Fairbanks 2000-29-001, respectively, in the Fairbanks Recording District, Fourth Judicial District, State of Alaska, to the common section corners of said four Sections, and including also being over and upon the South 33 feet and the East 33 feet of Lot 12 Block 3, Cassiar

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779 8th Avenue Fairbanks, Alaska 99701-4498
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Heights Subdivision, 1st ADDITION and over and upon the East 33 feet of the present Tax Lot 2065 of said Section 20 within the balance of the SE 1/4 SE 1/4 of said Section 20 (as further described below), and the North 33 feet and the East 33 feet of Lot 13, Cassiar Heights 2nd ADDITION, and over and upon the East 33 feet; of Lot 14, Block 3, Cassiar Heights 2nd ADDITION, and over and upon the East 33 feet of TRACT A, Cassiar Heights 2nd ADDITION, all as recorded as above-said as Fairbanks Plat No. #94-74, Fairbanks Plat #95-1 and Fairbanks 2000-29-001, respectively, in the Fairbanks Recording District.

- a. that a valid 33-foot Section Line Public Easement exists on Defendants Cassiar Height Properties, Inc. and Gavoras' and Burtons' properties over the: East 33 feet and the South 33 feet of the SE1/4 of the SE1/4 of Section 20 and over the East 33 feet and the North 33 feet of the NE1/4 of the NE1/4 of Section 29, T1N, R2E, F.M., and

2. As to the Fourth Cause of Action, Plaintiffs are hereby granted Declaratory Judgment am to the above named Defendants, affirming the validity of the Section Line Easements for non-exclusive public roadways and use in Sections 20, 21, 28 and 29, T1N, R2E, F.M., under A.S. 19.10.010, as follows:

that a valid 33-foot Section Line Easement exists on each side of Defendants Cassiar Height Properties, Inc. and Gavoras'

properties on the common section line of Sections 20 and 29, running approximately East some 409.49 feet, more or less, to the common section corners of said four Sections, from the East boundary of Misty Fjords Court road, as dedicated for public use in those plats of Cassiar Heights Subdivision, Cassiar Heights 1st ADDITION, and Cassiar Heights 2nd ADDITION, recorded as Fairbanks Plat #94-74, Fairbanks #95-1, and Fairbanks 2000-29-001, respectively, in the Fairbanks Recording District, Fourth Judicial District, State of Alaska, to the common section corners of said four Sections, and including also being over and upon the South 33 feet and the East 33 feet of Lot 12 Block 3, Cassiar Heights Subdivision, 1st ADDITION and over and upon the East 33 feet of the present Tax Lot 2065 of said Section 20 within the balance of the SE 1/4 SE 1/4 of said Section 20 (as further described below), and the North 33 feet and the East 33 feet of Lot 13, Cassiar Heights 2nd ADDITION, and over and upon the East 33 feet; of Lot 14, Block 3, Cassiar Heights 2nd ADDITION, and over and upon the East 33 feet of TRACT A, Cassiar Heights 2nd ADDITION, all as recorded as above-said as Fairbanks Plat No. #94-74, Fairbanks Plat #95-1 and Fairbanks 2000-29-001, respectively, in the Fairbanks Recording District.

- b. that a valid 33-foot Section Line Public Easement exists on Defendants Cassiar Height Properties, Inc. and Gavoras' and Burtons' properties over the: East 33

feet and the South 33 feet of the SE1/4 of the SE1/4 of Section 20 and over the East 33 feet and the North 33 feet of the NE1/4 of the NE1/4 of Section 29, T1N, R2E, F.M.

3. That the Plaintiffs are the prevailing party in this matter for summary judgment and may submit their motion for attorney fees within ten days of the date of the execution of the easement.

DATED at Fairbanks, Alaska this 19th day of April, 2006

VALERIE M. THERRIEN, P.C.

Valerie M. Therrien

Valerie M. Therrien ABA # 7610137
Attorney for Plaintiffs

DATED this _____ day of April, 2006, at Fairbanks, Alaska
Borgeson and Burns

John J Burns
Attorney for Cassiar Heights
Properties Inc, Rudolf L. Gavora,
Jena D. Gavora, James K. Button,
Jennifer B. Button

VALERIE M. THERRIEN, ATTORNEY AT LAW, P. C.
779 8th Avenue Fairbanks, Alaska 99701-4498
Phone: 907-452-6195 Fax: 907-456-5949

**FRANK H. MURKOWSKI,
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1-800-475-2464

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

NORTHERN REGION PRECONSTRUCTION, Right of Way Section

November 1, 2004

Re: Section Line Easement
Section 29/20, T.1N., R.2E., F.M.

Mr. Dwane Sykes
1511 S. Carterville Road
Orem, UT 84097

Dear Mr. Sykes:

You have requested that I provide an opinion as to the status of the section line easement between Sections 29 and 20 of Township 1 North, Range 2 East, Fairbanks Meridian. Specifically, you have requested an evaluation of the segment of the section line between the southeast quarter of the southeast quarter of Section 20 and the northeast quarter of the northeast quarter of Section 20. This section line would split the 80 acre parcel of land patented to Robert J. McQuin (Patent # 1147535) on October 28, 1954. Please note that the section line easement in question is not a part of the Alaska Highway System and therefore not within the jurisdiction of DOT&PF. My evaluation is based upon my experience in working with section line easements and should not be considered an official DOT&PF assertion. Any concerns you have about the legal issues related to section line easements or the risk you may incur should be addressed to your attorney or title insurance agency.

For a federal section line easement to exist there are three requirements. First the section line must exist, that is, it must have been surveyed and platted. This is considered to have occurred when the official federal township plat that reflects the survey and monumentation of the section line in question has been approved. The federal plat that relates to the survey of the section line between Sections 29 and 20 was approved on March 10, 1947. Next, there cannot be a federal section line easement unless there has been an offer and acceptance of the right of way grant. The offer for federal section line easements was made under the Mining Law of 1866 and reenacted as Revised Statute 2477 (RS2477). The grant for a 66-foot wide easement between each section of land was initially accepted by the Alaska Territorial Legislature on April 6, 1923. There was a hiatus period between 1949 and 1953 when the grant acceptance was not in place and eventually the RS2477 grant offer was repealed in 1976. However, as the township survey in question was approved prior to the hiatus period, it has no effect on the section line easement evaluation. Finally, for the section line easement to attach, the federal lands crossed by the section line must be unreserved. This status can generally be obtained from the BLM records. The BLM records for the McQuin Homestead entry indicate that the application leading to patent was filed on December 14, 1951. For this application to have been filed, the lands must have been unreserved and open for entry.

At the time of township approval (March 10, 1947), the RS2477 grant offer and acceptance was in place (April 6, 1923 to January 18, 1949) and the land appears to have been unreserved up until the date of the homestead entry that led to patent (December 14, 1951). Therefore, the conditions leading to the establishment of a 66-foot wide section line easement along the quarter mile segment of the line between Sections 29 and 20 lying within patent No. 1147535 were met as of the date of the township survey approval on March 10, 1947.

Presuming that a vacation of the section line easement has not been approved since it's establishment, the full 66-foot wide section line easement still exists.

If you have any further questions regarding this correspondence, please feel free to contact me at (907) 451-5423 or by email at johnf_bennett@dot.state.ak.us.

Sincerely,

John F. Bennett, PLS, SR/WA
Chief, Right of Way

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

NORTHERN REGION PRECONSTRUCTION, Right of Way Section

**FRANK H. MURKOWSKI,
GOVERNOR**

2301 PEGER ROAD
FAIRBANKS, ALASKA 99709-5399
TELEPHONE: (907) 451-5423
TDD: (907) 451-2363
FAX: (907) 451-5411
1-800-475-2464

April 24, 2006

Re: Section Line Easement
Section 29/20, T.1N., R.2E., F.M.

Mr. John Burns
Borgeson & Burns, PC
100 Cushman St. # 311
Fairbanks, AK 99701

Dear Mr. Burns:

Questions and comments I heard in my discussions with you and Valerie Therrien in the last week suggest that I add to or clarify certain issues relating to my November 1, 2004 letter to Mr. Dwane Sykes. In my letter to Mr. Sykes, I offered an opinion as to the status of a section line easement between Sections 29 and 20 of Township 1 North, Range 2 East, Fairbanks Meridian.

It was suggested that a court judgment was necessary to validate the existence of a section line easement and that this validation was required before the easement could be used. The section line easement between Sections 29 and 20 is a 66-foot wide easement based on the federal R.S. 2477 statute. R.S. 2477 was a self-executing congressional offer of a right-of-way that could be accepted by construction, by public user or some positive act of appropriate public authorities. In the case of federal section line easements, the positive act by public authorities was the 1923 acceptance of the grant by the Territorial Legislature. Neither R.S. 2477 nor any case law that I am familiar with requires a public authority to obtain a judgment to perfect an R.S. 2477 right-of-way. Once it can be shown that the R.S. 2477 offer is in place, the acceptance of the grant by the Territory is in effect, the federal survey that established the section line has been approved, and no prior existing rights would prevent the application of the easement – the easement then exists and is available for use.

Once the requirements to establish a section line easement exist, the easement can only be vacated by a competent authority. A valid section line easement may be inadvertently left off a plat or map and may not be called out as an encumbrance in a conveyance document. However, until the easement is vacated, it will continue to exist and be available for use by the general public. Currently, the vacation of a section line easement in the North Star Borough would require public notice, approval by the Platting Board, and approval by the Commissioners of the Department of Natural Resources and Transportation.

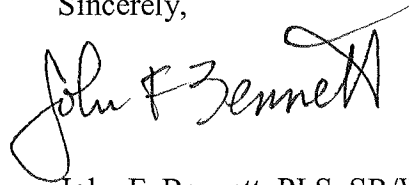
In general, a section line easement is available for use by groups or individuals requiring access or the easement could be incorporated into the road systems managed by a

"Providing for the movement of people and goods and the delivery of state services."

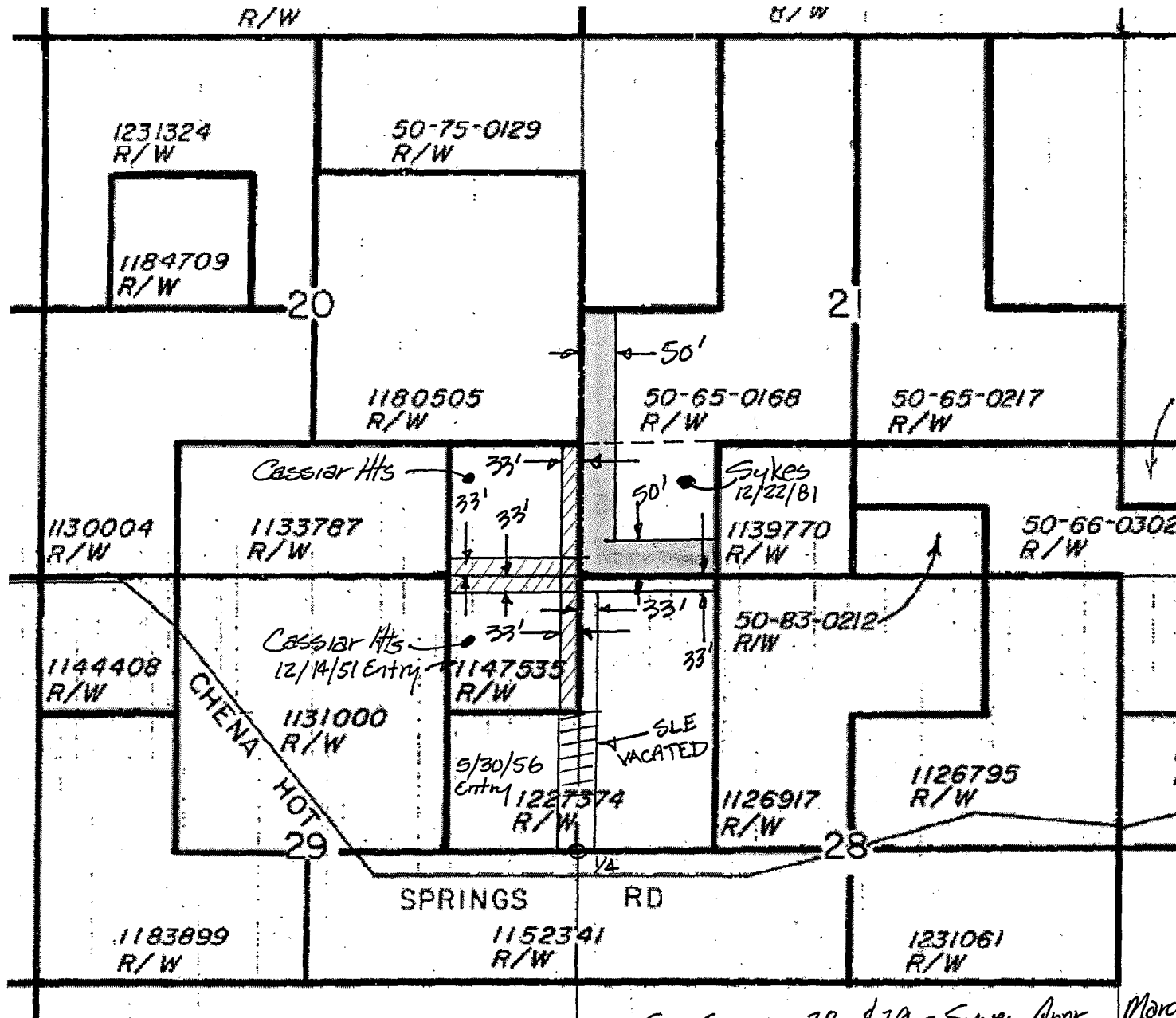
government entity. Although it varies throughout the state, in the North Star Borough it is not necessary for an individual to obtain permission to use a section line easement that crosses private lands unless that easement is a part of the DOT&PF highway system or within the City of Fairbanks boundaries.

If you have any further questions regarding this correspondence, please feel free to contact me at (907) 451-5423 or by email at johnf_bennett@dot.state.ak.us.

Sincerely,

A handwritten signature in black ink that reads "John F. Bennett". The signature is written in a cursive style with a large, looping initial "J".

John F. Bennett, PLS, SR/WA
Chief, Right of Way



SECTION LINES for Sec 20, 28, & 29 - Survey Appr. March 10, 1947

John F. Bennett

From: John F. Bennett [johnf_bennett@dot.state.ak.us]
Sent: Friday, April 21, 2006 12:24 PM
To: Bennett, John F.
Subject: Sykes - Cassiar SLE

Received a call today before noon from Valerie Therrian who is representing Dwayne Sykes in the Cassiar Heights Section Line Easement litigation. She wanted me on their list of expert witnesses. I verified with her that this was not a DOT facility and so I would not testify as a DOT employee and as I was not in private practice I was not offering my services as an expert witness. However, if presented with a subpoena, I would respond to it and appear in court. She asked a few questions about the availability of SLE's for use by the general public and whether there was any prohibition due to the grade. JohnB

John F. Bennett, PLS, SR/WA
Chief, Right of Way, Northern Region, DOT&PF
2301 Peger Road, Fairbanks, Alaska 99709-5399
Phone: 907.451.5423, Fax: 907.451.5411
Toll Free: 1.800.475.2464



Fairbanks North Star Borough

809 Pioneer Road

P.O. Box 71267

Fairbanks, Alaska 99707-1267

907/459-1000

www.co.fairbanks.ak.us

August 5, 2005

RECEIVED
AUG 10 2005

Richard C. Heieren
RCH & Associates
348 Driveway St
Fairbanks, Alaska 99701

Re: VA 001-06

Dear Richard,

At its regular meeting on August 3, 2005, the Platting Board of the Fairbanks North Star Borough considered your request on behalf of Cassiar Heights Properties, Inc., et al, to vacate a portion of the 66' section line easement common to Sections 20 and 29 within Lots 5, 6, 7, and 12, Blk 3, Cassiar Heights; Lot 13, Blk 3, Cassiar Heights 2nd Addn; and TL 2066; to vacate a portion of the 66' section line easement common to Sections 28 and 29 within TL 2047, 2849, Lots 13 and 14, Blk 3, Cassiar Heights 2nd Addn, and Tract A-2, Cassiar Heights 3rd Addn; and to vacate a portion of the section line easement along the north boundary of Section 28 within TL 2847; all within T1N R2E, FM AK (located east off Misty Fjords Ct).

The Board gave preliminary approval to the vacation of that portion of the 66'-wide section line easement common to Sections 20 and 29 lying west of Misty Fjords Court; and vacation of the 66'-wide section line easement common to Sections 28 and 29; and vacation of the 33' section line easement along the north boundary of Section 28 except for a 33' x 33' portion in the northwest corner of TL 2847 as shown on attached Exhibit "A" with the following condition:

1. Any utilities within the section line easements proposed to be vacated be covered by public utility easements, and GVEA and ACS review and comment on the final plat utility easement provisions.

Alaska Statute 29.40.140 states that no vacation of a street within the Borough may be made without the consent of the Borough Assembly. The Assembly shall have thirty (30) days from the date of the Board's decision in which to veto that decision. If no veto is received within the thirty-day period, the consent of the Borough shall be deemed to have been given to the vacation.

Your request is being forwarded to the Borough Assembly. Please contact the Clerk's office (459-1401 or FAX 459-1224) for the meeting date.

Richard C. Heieren
August 5, 2005
Page 2

Upon non-veto by the Borough Assembly, a final plat must be prepared by a registered land surveyor and submitted to this office within 24 months of the Assembly action or the preliminary approval will become void.

If you have any question regarding the matter, please contact the Fairbanks North Star Borough Department of Community Planning at 809 Pioneer Road, 459-1260, or FAX 459-1254.

Sincerely,



Loriann C. Quakenbush
Platting Officer

LQ/r1

Enclosure to Addressee

cc: Cassiar Heights Properties, Inc
Richard Panteleeft / Debra Stringer
John Lowe / Tania Clucas
Charles and Nilda Holyfield
Rudolph and Jena Gavora
James and Deanna Langberg
Micheal Ray / Deanna Lund
Greg Wyman, GVEA
Rick Alford, ACS
Jeff Roach, ADOT Planning
Sig Strandberg, ADOT ROW (Driveway Permits) – w /encl
John Bennett, ADOT, Right-of-Way Chief

(VA 001-06)

2004-028398-0

Recording Dist: 401 - Fairbanks
12/21/2004 10:26 AM Pages: 1 of 11

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NOTICE OF INTEREST

IN, USE OF, AND RELIANCE UPON SECTION LINE EASEMENTS OF COMMON SECTION LINES OF SECTIONS 19, 20, 21 22, 27, 28, and 29, T1N, R2E, F.M., and SECTIONS 35 and 36, T1N, R3E, F.M., FAIRBANKS RECORDING DISTRICT, STATE OF ALASKA

and

OBJECTION TO ANY VACATION OR MODICATION THEREOF

On or about June 17, 1972, Dwane J. Sykes, et. al., purchased at an Alaska State public land auction, conducted in Fairbanks by the Dept. of Natural Recourses, under ADL No. 57643 and ADL No. 57646, the following tracts near 7 mile Chena Hot Springs Road, respectively:

The SW1/4 SW1/4 of Section 21, T1N, R2E, F.M.,
containing 40 acres, more or less, (aka Tax Lot 2120)

The S1/2 S1/2 of Section 29, T1N, R2E, F.M. containing
160 acres, more or less; all in the Fairbanks Recording District,
Fourth Judicial District, State of Alaska.

At that Alaska State land auction, the said land was represented to be served by, burdened by and benefited by Section Line Easements for public roadways for public egress and ingress and utilities, to and from the public Chena Hot Springs Road, the width of each side of the Section Line Easement being either 50 feet or 33 feet on each side of the Section Line, depending on if the land derived from State of Alaska or the Federal Government, respectively.

A Section Line Easement for public roadways 50 feet wide was also reserved by the State of Alaska upon the west and south 50 feet of Sykes' above-said 40 acre tract, and West 50 feet, East 50 feet, & South 50 feet of Sykes' above-said 160 acre tract. Dwane J. Sykes and his family, agents, and contractors relied upon those representations and has used those easements continuously ever since then.

In 1972 Dwane J. Sykes applied to the Alaska Department of Highways ("DOT") for authorization to use and to construct non-exclusive public roads over and upon certain named Section Lines, including those relevant to his above-said purchases.

By letters dated on or about July 11, 1972, from the Alaska Department of Highways Right-Of-Way Agent, Sykes received such authorizations; the one relevant here was recorded on July 13, 1972, as Inst. 72-08512 at MS Book 36 Page 527, Fairbanks Recording District, Fourth Judicial District, State of Alaska (attached and incorporated herein as Exhibit A). He also

After recording mail to Dwane J. Sykes, 1511 So. Carterville Rd., Orem, UT 84097-7244

received, relied upon, and recorded other similar Alaska Dept. of Highways letters for other section line easements in other locations:

Repeatedly from 1969 to date, I, together with our family and our agents and contractors, have personally utilized, relied upon, and driven various passenger cars and sedans, passenger trucks, mechanical equipments, bulldozers, hydro-ax brush cutters, snowmobiles, and walked afoot have continuously, actually used and traveled upon those Section Line Easements without interruption, in good faith and under color claim of title, since 1969 in reliance upon that Alaska DOT authorization and representations of the Alaska Dept. of Natural Resources.. In particular, that includes Section Line Easements which help provide vehicle egress and ingress from the public Chena Hot Springs Road to and from our following family properties:

SW1/4 SW1/4 of Section 21, T1N,R2E, F.M., aka 40-acre Tax Lot 2120 of said Section;

SW1/4 SE1/4, and the N1/2 SE1/4 of Section 20, T1N,R2E, F.M., aka 120-acre Tax Lot 2027 of said Section 20;

and particularly that subject portion of the Section Line Easement discussed immediately below within the Cassiar Heights Subdivision.

Regarding the Section Line Easement
within the Cassiar Heights Subdivision
33 feet on each side of the East one-quarter of the section line
common to Section Lines 20 and 28, T1N, R2E, F.M.:

The above-said continuous, uninterrupted use by Sykes and his agents' particularly included the herein subject ca. 409.49-foot roadway on the segment of the public Section Line easement roadway which takes off east from the point where the present dedicated Misty Fjords Court public road of the Cassiar Heights Subdivision crosses the section line between Sections 20 and 29---going east for some 409.49 feet, more or less, along said section line to the common corners of Sections 20, 21, 28 and 29, as shown on Cassiar Heights plat FRD 1994-74-001.

Since the 1950s the driveway road of Bonita and Kenneth Neiland and their predecessors, from Chena Hot Springs Road, crossed Sections 20 and 29 at approximately the same point as the present Misty Fjords Court does.

The July 11, 1972, AK DOT Section Line Easement letter of authorization was also recorded several other times. But none of its recordings were excepted, discovered nor mentioned in Fairbanks Title Agency's May 18, 1992, title report #29896 MAT nor in its May 6, 1994, PLATTING CERTIFICATE Order No. 35044 RB, preparatory to plating the Cassair Heights and the Cassair Heights 2ND ADDITION.

Thus, the plats of Cassair Heights Subdivision, including Cassair Heights 2ND ADDITION, 3RD ADDITION, and 4TH ADDITION recorded as Fairbanks Plat #94-74 and Fairbanks 2000-29-001, Fairbanks 2003-6 respectively, in the Fairbanks Recording District,



Fourth Judicial District, State of Alaska, neglected to reflect these 33 foot Section Line Easements in Sections 20 and 29, reserved for public use and public highways.

Notwithstanding the lack of Section Line Easements on the Cassiar plats, there is:

A valid 33-foot Section Line Public Easement exists on the East 33 feet and the South 33 feet of the SE1/4 of the SE1/4 of Section 20 and over the East 33 feet and the North 33 feet of the NE1/4 of the NE1/4 of Section 29, T1N, R2E, F.M., in part also now know as and including Cassiar Heights Subdivision Block 2 Lot 1, Block 3 Lots 5 and 12, Block 4 Lot 1, and Cassair Heights 2ND ADDITION Block 3 Lots 13 and 14, and Cassair Heights 3RD ADDITION, Lot A-2 and Tax Lot 2065, and specifically over and upon the South 33 feet and the East 33 feet of Lot 12 Block 3, Cassair Heights Subdivision, and the North 33 feet and the East 33 feet of Lot 13 Block 3, Cassair Heights 2ND ADDITION, all in the Fairbanks Recording District, State of Alaska.

Also, a valid 33-foot Section Line Easement exists on the East 33 feet and the West 33 feet the W1/2 NW1/4 NW1/4 of Section 28, T1N. R2E, F.M. aka Tax Lot 2847, in the Fairbanks Recording District, State of Alaska,

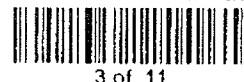
In or about the mid-1990's,---in connection with communications from developers and/or agents of the Cassiar Heights Subdivision---I had occasion to ask the Alaska Dept. of Highways Right-of-Way officials to again re-assess and re-verify that the above-said Section Line Easement 66 feet wide, being 33 feet on each side of the east one-quarter of the section line common to Section Lines 20 and 28, did in fact exist. In response I again received verbal and written re-confirmation that said 66-foot-wide public section line easement was valid on the above-said portion and the homestead Patent No. 1147535, from which it arose.

Again, in late 2004, Fairbanks North Star Borough platting officials referred me to the Bureau of Land Management's Fairbanks office and to Joe Sullivan at the Alaska Dept. of Natural Resources office in Fairbanks.

After detailed investigation and assessment, Alaska Dept. of Natural Resources Right-of-Way specialist Joe Sullivan determined that indeed there was a valid 33-foot Section Line Easement for public roadways on each side of the subject East one-quarter of that section line common to said Sections 20 and 29 within the Cassiar Heights Subdivision. Mr. Sullivan also obtained the same assessment and conclusion independently from DNR Survey Chief Gerald Jennings' office in Anchorage, and from several other colleagues.

Independently, Charles L. Parr, SR/WA, professional land consultant and former Right-of-Way Chief for Golden Valley Electric Association, also rendered the identical opinion and conclusion of its existence and validity.

On November 1, 2004, I received the letter attached hereto as Exhibit "B" from John. F. Bennett, PLS, SR/WA, Chief, Right of Way, Alaska Department of Transportation and Public



Facilities, and well-known and respected Section Line Easement expert, who also re-confirmed the existence and validity that same above-said 66-foot-wide section line easement for public roadways on that subject East quarter of Sections 20 and 29..

I later returned to the Bureau of Land Management, where, after considerable study and reassessment, Susan L. Rangel and Keineta Stenross also acknowledged that said 66-foot-wide easement does indeed exist. They also acknowledged that in their prior assessments (and apparently prior assessments by others), they had erroneously misread the word "and" for "or" in paragraph 6(d) of the "SECTION LINE EASEMENT RESEARCH" worksheet (Exhibit "C" hereto) used by both the BLM and FNSB.

Later, after communication from me, Surveyor Richard Hieron obtained a copy of John F. Bennett's November 1, 2004, letter and sent it to Martin Gutoski and Loriann Quakenbush, platting officials for the Fairbanks North Star Borough.

On or about November 17, 2004, FNSB platting officer, Loriann Quakenbush informed me that in her assessment there indeed was a valid 66-foot-wide section easement for public roadways on the subject east quarter of Sections 20 and 29, even though it was shown not to be there on plats of the Cassiar Heights and Cassiar Heights 2nd Addition.

FNSB Platting officer Quakenbush also told me that she had researched for any vacation, modification or relocation of the above-said Section Line Easement between Sections 20 and 29 and that none have been granted, nor had any formal petition ever been made.

**Relevant slope and gradients pertinent to public
Section Line Easements and public roads
associated with or continued from the
Cassiar Heights and Cassiar Heights 2nd Addition Subdivisions:**

1. From the dedicated public Misty Fjords Court road in Cassiar Heights Subdivision and Cassiar Heights 2nd Addition, where it crosses the Section Line common to Sections 20 and 29, T1N, R2E, F.M., for the 409.49 feet east the 66-foot-wide section line public easement---across Cassiar Heights Lots 12 and 13 of Block three---to the Section Corner common to Sections 20, 29, 21, and 28, F.M. the natural ground-slope or gradient of the 33-foot public easement for public roads and highways on each side of said common section line is as follows, as measured in October 2004 with a hand-held inclinometer along the existing public roadway and the existing GVEA power-line:
 - a. Approximately 0% slope [flat], more or less, for the first approximately 30 feet going East, more or less;
 - b. Then approximately -4% slope, more or less, for the next approximately 190 feet going east, more or less;
 - c. Then approximately -5% slope, more or less, for the last approximately 190 feet east, more or less, to intersect with the Section Line between Sections 20 and 21; that roadway and its -5% slope is shown in Exhibit 4a photo hereto.



- d. From said point where the dedicated public Misty Fjords Court road in Cassiar Heights Subdivision and Cassiar Heights 2nd Addition, crosses the Section Line common to Sections 20 and 29, T1N, R2E, F.M., the natural gradient going west is approximately 0% slope [flat] for the first approximately 80 feet, more or less; then approximately -2% slope, more or less, for the next approximately 700 feet west, more or less.
2. Going West from the Section Corner common to Sections 20, 29, 21, and 28, F.M. the natural ground-slope or gradient of the 33-foot public easement for public roads and highways on each side of the common section line between Sections 28 and 29 is approximately -10% to -12% slope, more or less, for the first approximately 300 feet West, more or less, down the existing access road along the west 33-foot public section line easement of Section 28 presently used by Charles E. and Nilda L. Holyfield, and down the existing GVEA power-line on the East 33 feet of Cassiar Heights 2nd Addition Subdivision, Block 3 Lot 13.
 3. Going North from the said Section Corner common to Sections 20, 29, 21, and 28, T1N, R2E, F.M., the 33-foot public easement for public roads and highways on the east 33 feet of Section 20 over the Cassiar Heights Subdivision Block 3 Lot 12, and the west 50-foot section line public easement on the west 50 feet of the Sykes family's SW1/4 SW1/4 of Section 21, T1N, R2E, F.M., aka 40-acre Tax Lot 2120 of said Section 21, for a total public section line easement 83 feet wide, the natural ground-slope or gradient is:
 - a. Approximately +3% slope, more or less, for the first approximately 250 feet North, more or less, along the said Sykes family's 40-acre tract, TL 2120;
 - b. Then, approximately +1% slope, more or less, for the next approximately 80 feet, more or less, to the top of the ridge where the brushed-out trail departs northeasterly along the ridge-top into the said Sykes family's 40-acre tract, TL 2120.
 - c. Going East from the said Section Corner common to Sections 20, 29, 21, and 28, T1N, R2E, F.M., the natural ground-slope or gradient of the 33-foot easement for public roads and highways on the north 33 feet of Section 28 and the 50-foot-easement for public roads on the South 50 feet of the Sykes family's SW1/4 SW1/4 of Section 21, T1N, R2E, F.M., aka 40-acre Tax Lot 2120 of said Section 21, is approximately -7%, more or less, for the first approximately 200 feet, more or less (as that roadway and its -7% slope is shown in Exhibit 4b photo, attached hereto), to service the Sykes family property; then approximately -12%, more or less, for the next approximately 200 feet, more or less, to service said Sykes family property; then continues East for approximately 920 feet to the SE corner of the Sykes' 40 tract; thence continues East for ¾ mile to connect with the existing public road coming north from Chena Hot Springs Road along the public section line easements common to Sections 28 and 27 and Sections 21 and 22.

**OBJECTION TO ANY VACATION
OF ANY SECTION LINE EASEMENTS**

For the reasons stated above I and my family and agents, including, Joy Sykes Fair, E. L. Roy Duce, individually and/or as Trustees, et. al.. hereby object to any application or attempt by anyone to vacate, to modify or to relocate any of the above-said Section Line



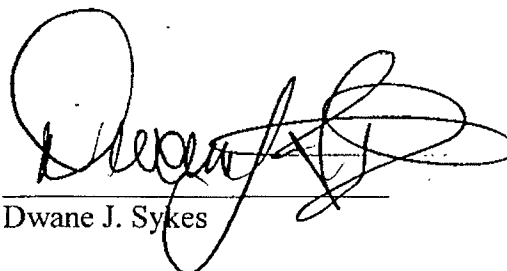
Easements or easements on the common section lines to SECTIONS 19, 20, 21 22, 27, 28, and 29, T1N, R2E, F.M., and SECTIONS 35 and 36, T1N, R3E, F.M.,

By recording this notice and objection, the undersigned expressly states, pursuant to 11 AAC 51.065(d) VACATION OF EASEMENTS, that he and his family members are "parties known or likely to be affected by" any such petition. Further, the undersigned expressly requests that for any application to so vacate, modify or relocate any above-said easements, that we be personally notified by certified mail, with at least 60 days advance notice before reply is due, at:

Dwane J. Sykes and Joy Sykes Fair
1511 So. Carterville Road
Orem, Utah 84097-7244
and
E. L. Roy Duce
P. O. Box 436,
Provo, Utah 84601-0436

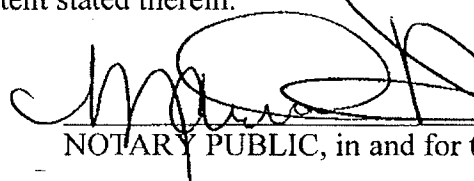
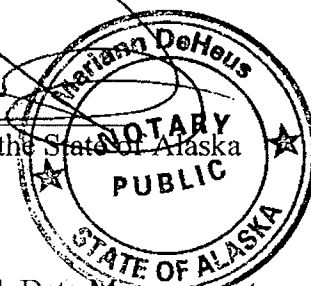
such that he or his family/agents may make reasonable and timely written objections and rebuttal.

Dated this 20th day of December, 2004.


Dwane J. Sykes

STATE OF ALASKA)
) ss
FOURTH JUDICIAL DISTRICT)

SUBSCRIBED AND SWORN TO personally before me this 20 day of December 2004, by Dwane J. Sykes, for the purposes and intent stated therein.

My commission expires 2/14/05 
NOTARY PUBLIC, in and for the State of Alaska 

Cc:

Gerald Jennings, Survey Chief, Alaska Dept. Natural Resources, Tech Data Management & Support, 550 W. 78th Ave, Ste 650, Anchorage, AK 99501-3577 (ph. 907-269-8516)

Joe Sullivan, Right-of-Way Specialist, Alaska Dept. Natural Resources, 3700 Airport Way, Fairbanks, AK 99709.

Benardo Hernandez, Head, Dept. of Community Planning, Fairbanks North Star Borough, P. O. Box 71267, Fairbanks, AK 99707-1267

John F. Bennett, Chief, Right-of-Way, Alaska Dept. of Transportation and Public Facilities, 2301 Pagar Road, Fairbanks, AK 99709-5399



INDEXED

STATE OF ALASKA

Fairbanks Recording District

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF HIGHWAYS

INTERIOR DISTRICT 2301 PEGER ROAD
FAIRBANKS 99701

7208512
3.00

FILED
JUL 13 12 01 PM '72

REQUESTED BY
ADDRESS

July 11, 1972

Re: Section Line Easement
Sec. 20 & 21, T1N, R2E, F.M.
Sec. 35, T1N, R3E, F.M.

*Alvanee J. Sykes
2 mile Old Nenana Rd.
Fairbanks, Alaska
99701*

Mr. Dwane J. Sykes
2 Mile Old Nenana Road
Fairbanks, Alaska

Dear Mr. Sykes:

This is in reference to your request for non-objection to your constructing a road within the section line easement on the following section lines:

- Line between Section 20 & 21,
- Line between Section 21 & 28,
- Portion of line between Section 27 & 28, North of Chena Hot Springs Road
- E 1/2 of line between Section 20 & 29, all in T. 1 N., R. 2 E., F.M.

ALSO

Portion of line between Sections 35 & 36, T. 1 N., R. 3 E., F.M., lying North of Chena Hot Springs Road.

The section line easement for roadway purposes is 33 feet on each side of the section lines except for State owned property where the easement is 50 feet on the State property.

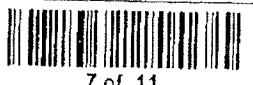
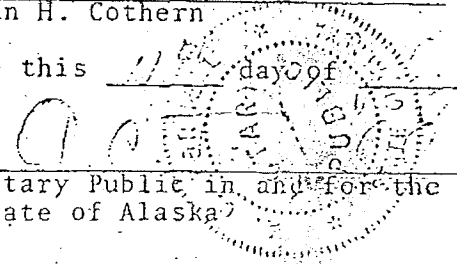
The Department of Highways has no objection to you or your assigns building a road within the easement area, provided that no restrictions are placed on public use of the road.

In issuing this letter of non-objection, the State assumes no responsibility or liability resulting from the proposed construction; and determining the true location of the section line and the preservation of existing section corners or quarter corners are your responsibility.

Van H. Cothern
Van H. Cothern

Subscribed and sworn to before me this 11th day of July, 1972.

My commission expires: 7/21/72
Notary Public in and for the State of Alaska



EXH. A

STATE OF ALASKA

FRANK H. MURKOWSKI,
GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

NORTHERN REGION PRECONSTRUCTION, Right of Way Section

2301 PEGER ROAD
FAIRBANKS, ALASKA 99709-5399
TELEPHONE: (907) 451-5423
TDD: (907) 451-2363
FAX: (907) 451-5411
1-800-475-2464

November 1, 2004

Re: Section Line Easement
Section 29/20, T.1N., R.2E., F.M.

Mr. Dwane Sykes
1511 S. Carterville Road
Orem, UT 84097

Dear Mr. Sykes:

You have requested that I provide an opinion as to the status of the section line easement between Sections 29 and 20 of Township 1 North, Range 2 East, Fairbanks Meridian. Specifically, you have requested an evaluation of the segment of the section line between the southeast quarter of the southeast quarter of Section 20 and the northeast quarter of the northeast quarter of Section 20. This section line would split the 80 acre parcel of land patented to Robert J. McQuin (Patent # 1147535) on October 28, 1954. Please note that the section line easement in question is not a part of the Alaska Highway System and therefore not within the jurisdiction of DOT&PF. My evaluation is based upon my experience in working with section line easements and should not be considered an official DOT&PF assertion. Any concerns you have about the legal issues related to section line easements or the risk you may incur should be addressed to your attorney or title insurance agency.

For a federal section line easement to exist there are three requirements. First the section line must exist, that is, it must have been surveyed and platted. This is considered to have occurred when the official federal township plat that reflects the survey and monumentation of the section line in question has been approved. The federal plat that relates to the survey of the section line between Sections 29 and 20 was approved on March 10, 1947. Next, there cannot be a federal section line easement unless there has been an offer and acceptance of the right of way grant. The offer for federal section line easements was made under the Mining Law of 1866 and reenacted as Revised Statute 2477 (RS2477). The grant for a 66-foot wide easement between each section of land was initially accepted by the Alaska Territorial Legislature on April 6, 1923. There was a hiatus period between 1949 and 1953 when the grant acceptance was not in place and eventually the RS2477 grant offer was repealed in 1976. However, as the township survey in question was approved prior to the hiatus period, it has no effect on the section line easement evaluation. Finally, for the section line easement to attach, the federal lands crossed by the section line must be unreserved. This status can generally be obtained from the BLM records. The BLM records for the McQuin Homestead entry indicate that the application leading to patent was filed on December 14, 1951. For this application to have been filed, the lands must have been unreserved and open for entry.

"Providing for the movement of people and goods and the delivery of state services."



8 of 11

2004-028398-0

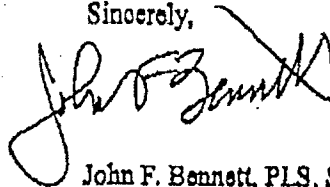
EXH. B

At the time of township approval (March 10, 1947), the RS2477 grant offer and acceptance was in place (April 6, 1923 to January 18, 1949) and the land appears to have been unreserved up until the date of the homestead entry that led to patent (December 14, 1951). Therefore, the conditions leading to the establishment of a 66-foot wide section line easement along the quarter mile segment of the line between Sections 29 and 20 lying within patent No. 1147535 were met as of the date of the township survey approval on March 10, 1947.

Presuming that a vacation of the section line easement has not been approved since it's establishment, the full 66-foot wide section line easement still exists.

If you have any further questions regarding this correspondence, please feel free to contact me at (907) 451-5423 or by email at johnf_bennett@dot.state.ak.us.

Sincerely,



John F. Bennett, PLS, SR/WA
Chief, Right of Way

Post-it® Fax Note	7871	Date	11/1/04	Pages	2
To	Richard Merra	From	John Bennett		
Co./Dept	RCW	Co.	DOT		
Phone #		Phone #	451-5423		
Fax #	451-7413	Fax #			



Section Line Easement Determinations

In order for easements to exist, the survey establishing the section lines must have been approved or filed prior to entry on Federal lands or disposal of State or Territorial lands. The Federal lands must have been unreserved at some time subsequent to survey and prior to entry.

Surveyed Federal lands that were unreserved at any time during the indicated time period.	Effective Dates	Surveyed lands that were under State or Territorial ownership at any time during the indicated time period. (University Grant lands may be an exception.)
none	April 5, 1923	None
66'	April 6, 1923 to January 17, 1949	66'
none	January 18, 1949 to March 25, 1951	None
	March 26, 1951 to March 20, 1953	100'
66'	March 21, 1953 to March 24, 1974	
none	March 25, 1974 to Present	

Note: This table assumes the same land status on both sides of the section line. A review of the land status can result in total easement widths of 0', 33', 50', 66', 83', and 100'. A section line



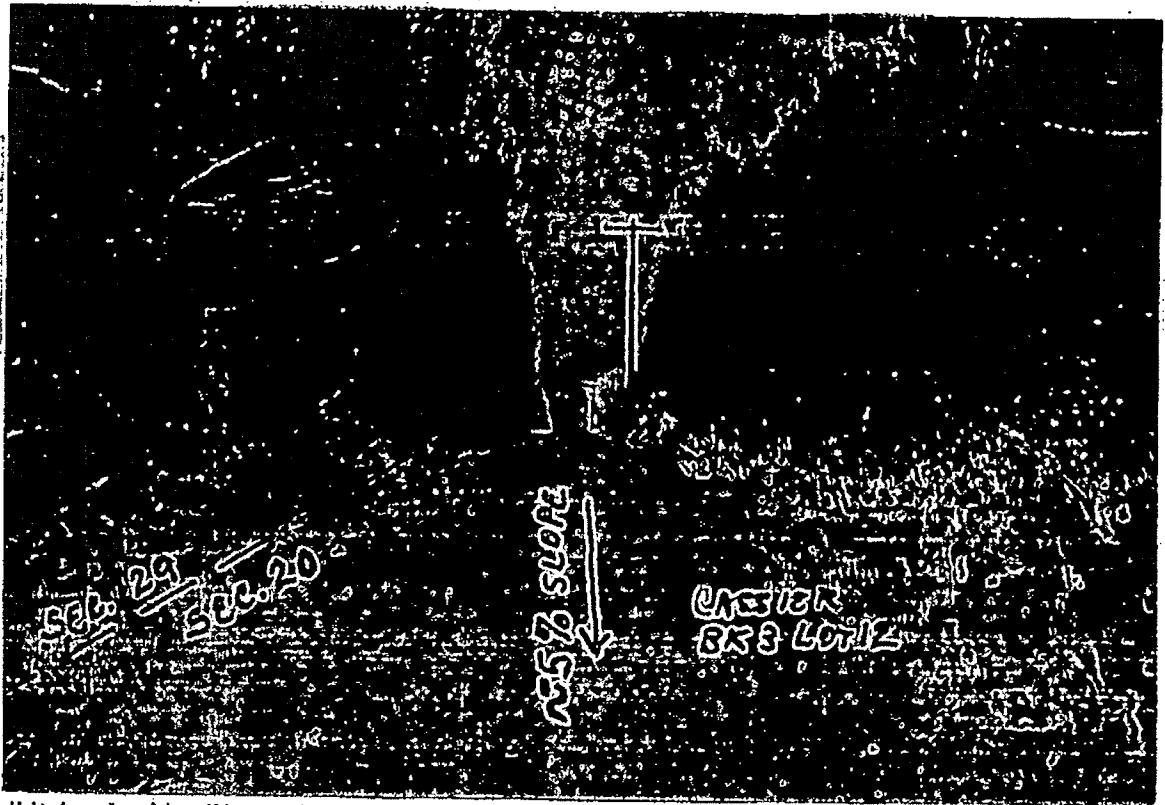


Exhibit 4a: Looking West at the existing -5% slope public roadway on 33' Section Line Easement over the South 33 ft. of Section 20, over Cassier Heights Block 3 Lot 12; photo is taken from Sec. Line between Sections 20 & 21.

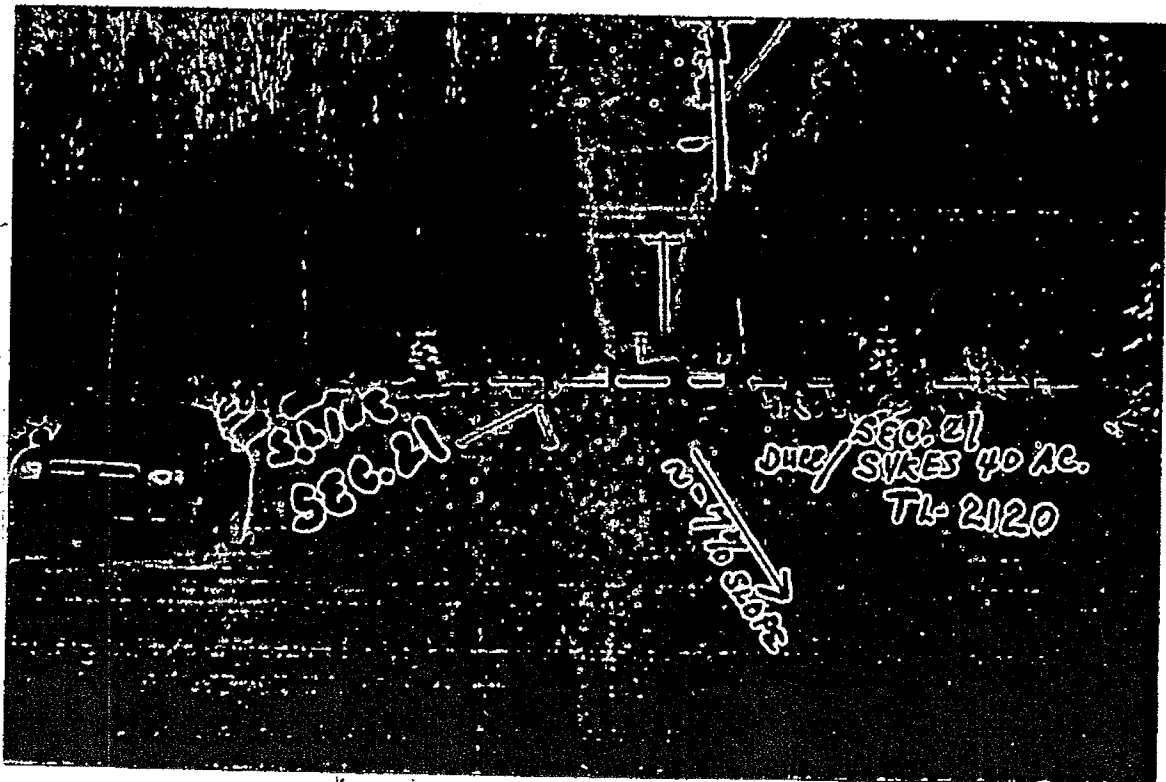


Exhibit 4b: Looking West: Sykes' truck at left is parked on Duce/Sykes' TL 2020, on the existing -7% sloped public roadway on the Section Line Easement over South 50 ft. of Section 21. In background is -5% sloped public road on 33' Section Line Easement on South 33 ft. of Section 20, over Cassier Heights Subdivision Block 3 Lot 12.



List of Parcel Owners Affected by Notice of Interest Filed on December 21, 2004 by:
Dwane J. Sykes

<u>370606</u>	ADAMCZAK STEPHEN JR	2322 BOBCAT CT	LOT 1 BECKER OUT OF TL-1908 SEC 19 T1N-R2E
<u>220370</u>	ALASKA STATE OF MENTAL HEALTH TRUST AUTHORITY		TL-2703 SEC 27 T1N-R2E
<u>220906</u>	ALASKA STATE OF MENTAL HEALTH TRUST AUTHORITY		TL-2806 SEC 28 T1N-R2E
<u>219509</u>	ALASKA STATE OF NATURAL RESOURCES	(20 Acres)	TL-2106 SEC 21 T1N-R2E
<u>220400</u>	ATHERTON WILLIAM LESLIE JR		TL-2706 SEC 27 T1N-R2E OUT OF TL-2104 SEC 21 T1N-R2E
<u>220515</u>	ATHERTON WILLIAM LESLIE JR		TL-2717 SEC 27 T1N-R2E
<u>444898</u>	ATHERTON WILLIAM LESLIE JR		TL-2752 SEC 27 T1N-R2E OUT OF TL-2706 SEC 27 T1N-R2E
<u>220728</u>	BENNETT JOHN F		TL-2739 SEC 27 T1N-R2E
<u>220892</u>	BENSON ELIZABETH		TL-2805 SEC 28 T1N-R2E
<u>219096</u>	BENTE PETER J	802 ALICE RD	TL-2026 SEC 20 T1N-R2E
<u>219886</u>	BERREY DAVID J	746 NINE MILE HILL RD	TL-2212 SEC 22 T1N-R2E
<u>223638</u>	BISHOP BILL A	340 LITTLE CHENA DR	TL-3543 SEC 35 T1N-R3E
<u>219487</u>	BRAASTAD NILS P		TL-2103 SECTION 21 T1N-R2E
<u>219827</u>	BUCKWALTER EUGENE A	754 NINE MILE HILL RD	TL-2206 SEC 22 T1N-R2E
<u>219550</u>	BURNS ROGER B TRUST		TL-2111 SEC 21 T1N-R2E
<u>525090</u>	BUTTON JAMES K		LOT 2B BLOCK 2 CASSIAR HEIGHTS Previously assessed as CASSIAR HEIGHTS 02 02
<u>534749</u>	BUTTON JAMES K		TRACT A-2 CASSIAR HEIGHTS 3RD ADDITION Previously assessed as CASSIAR HEIGHTS 2ND A
<u>218804</u>	CAMPBELL GREGORY S SR	904 RISSE RD	TL-1934 SEC 19 T1N-R2E
<u>220833</u>	CARLEY JAMES E	525 ROBERTS ROOST RD	TL-2829 SEC 28 T1N-R2E OUT OF TL-2803 SEC 28 T1N-R2E
<u>359807</u>	CARNAHAN LINDA GAIL B	683 NINE MILE HILL RD	TL-2836 SEC 28 T1N-R2E OUT OF TL-2824 SEC 28 T1N-R2E
<u>474584</u>	CASSIAR HEIGHTS PROPERTIES INC		LOT 6 BLOCK 1 CASSIAR HEIGHTS OUT OF TL-2004 T1N-R2E
<u>512061</u>	CASSIAR HEIGHTS PROPERTIES INC		LOT 13 BLOCK 3 CASSIAR HEIGHT 2ND ADDN OUT OF TL-2933 SEC 29 T1N-R2E
<u>512079</u>	CASSIAR HEIGHTS PROPERTIES INC		LOT 14 BLOCK 3 CASSIAR HEIGHT 2ND ADDN OUT OF TL-2933 SEC 29 T1N-R2E
<u>219878</u>	CHASE WILMA F		TL-2211 SEC 22 T1N-R2E
<u>485811</u>	COLE HENRY P JR		TL-2138 SEC 21 T1N-R2E OUT OF TL-2119 SEC 21 T1N-R2E
<u>220582</u>	COLE MARTHA JEAN	710 JOHN COLE RD	TL-2725 SEC 27 T1N-R2E OUT OF TL 2700 1N 2E
<u>219835</u>	COOK JOHN P		TL-2207 SEC 22 T1N-R2E
<u>223255</u>	COOK RICHARD H	211 DYNES RD	TL-3505 SEC 35 T1N-R3E
<u>219339</u>	CORLEY MATTHEW O		TL-2050 SEC 20 T1N-R2E
<u>219304</u>	CORLEY MATTHEW OLAN	1037 JOHN KALINAS RD	TL-2047 SEC 20 T1N-R2E
<u>486639</u>	DEMERY THEODORE E		2004 T/R ASSEMBLED NOW KNOWN AS UMB01 SECTION 29 1N 2E TL-2969 SEC 29 T1N-R2E OUT OF TL-2906 SEC 29 T1N-R2E
<u>486647</u>	DEMERY THEODORE E		2004 T/R ASSEMBLED NOW KNOWN AS UMB01 SECTION 29 1N 2E TL-2970 SEC 29 T1N-R2E OUT OF TL-2906 SEC 29 T1N-R2E
<u>486655</u>	DEMERY THEODORE E		2004 T/R ASSEMBLED NOW KNOWN AS UMB01 SECTION 29 1N 2E TL-2971 SEC 29 T1N-R2E OUT OF TL-2906 SEC 29 T1N-R2E

List of Parcel Owners Affected by Notice of Interest Filed on December 21, 2004 by:
Dwane J. Sykes

<u>486663</u>	DEMERY THEODORE E		2004 T/R ASSEMBLED NOW KNOWN AS UMB01 SECTION 29 1N 2E TL-2972 SEC 29 T1N-R2E OUT OF TL-2906 SEC 29 T1N-R2E
<u>219037</u>	DERSHIN HARVEY		TL-2020 SEC 20 T1N-R2E
<u>221163</u>	DOMKE RUDOLPH C		TL-2900 SEC 29 T1N-R2E
<u>221171</u>	DOMKE RUDOLPH C	2391 CHENA HOT SPRINGS RD	TL-2901 SEC 29 T1N-R2E
<u>486787</u>	DOYLE CATHLEEN H		TL-2755 SEC 27 T1N-R2E OUT OF TL-2709 SEC 27 T1N-R2E
<u>219100</u>	DUCE E L ROY	(Vacant 120 Acres)	TL-2027 SECTION 20 T1N-R2E
<u>221376</u>	DUFFEY THELMA LECRECA	2640 CHENA HOT SPRINGS RD	TL-2925 SEC 29 T1N-R2E
<u>219703</u>	ELTERMAN FLOYD L		TL-2121 SEC 21 T1N-R2E
<u>219649</u>	FAIR JOY	(Quit Claim from EL Duce to Intelltech 01/05)	TL-2120 SECTION 21 T1N-R2E
<u>219771</u>	FAIRBANKS NORTH STAR BOROUGH LAND MANAGEMENT		TL-2200 SEC 22 T1N-R2E
<u>219789</u>	FAIRBANKS NORTH STAR BOROUGH LAND MANAGEMENT		TL-2201 SEC 22 T1N-R2E
<u>223751</u>	FINCH DAVID W		TL-3601 SEC 36 T1N-R3E
<u>220426</u>	FORCIER AARON	717 JOHN COLE RD	TL-2708 SEC 27 T1N-R2E
<u>482013</u>	FRANK STEPHEN	5600 CHENA HOT SPRINGS RD	LOT 2 GRANDE DAME RECORD SURVEY 2002-66 8-14-2002 WAIVER 28-95 10/3/95 OUT OF TL-3614 SEC 36 T1N-R3E
<u>223581</u>	FRONTIER INTERNATIONAL LAND CORPORATION		TL-3538 SEC 35 T1N-R3E
<u>373290</u>	GANLEY RICHARD		TL-2748 SEC 27 T1N-R2E OUT OF TL-2746 SEC 27 T1N-R2E
<u>220701</u>	GARRISON BARRY EUGENE	3110 PENGUIN LN	TL-2737 SEC 27 T1N-R2E
<u>219622</u>	GAUTHIER RITA	811 NINE MILE HILL RD	TL-2118 SEC 21 T1N-R2E
<u>221201</u>	GAVORA JOYCE M	2575 SAINT ELIAS DR	TL-2905 SEC 29 T1N-R2E
<u>474657</u>	GAVORA RUDOLPH L	2810 MISTY FJORDS CT	LOT 12 BLOCK 3 CASSIAR HEIGHTS OUT OF TL-2006 T1N-R2E
<u>124168</u>	GEBHARD JAMES G	2635 STELLAR WAY	LOT 9A CLEAR SKY ESTATES 1ST ADD PREV. ASSESSED LOT 9 CLEAR SKY ESTATES PLAT 78-8 1-10-78 OUT OF TL 2909 1N 2E
<u>223531</u>	GILLETTE DOUGLAS E	418 LITTLE CHENA DR	TL-3533 SEC 35 T1N-R3E
<u>221198</u>	GOEDECK ROY		TL-2903 SEC 29 T1N-R2E
<u>221368</u>	GOLDEN VALLEY ELECTRIC ASSOCIATION INC	2659 CHENA HOT SPRINGS RD	TL-2924 SEC 29 T1N-R2E
<u>219762</u>	GREER KARL R	841 NINE MILE HILL RD	TL-2127 SEC 21 T1N-R2E OUT OF TL-2119 SEC 21 T1N-R2E
<u>219665</u>	HARRIS WALTER B		TL-2129 SEC 21 T1N-R2E
<u>220655</u>	HENSLEY MARANVILLE DAWN MARIE	688 NINE MILE HILL RD	TL-2732 SEC 27 T1N-R2E
<u>137359</u>	HERRMAN MICHAEL A	244 DYNES RD	TRACT G KENNY OUT OF TL 3500 1N 3E
<u>218626</u>	HOLLENBECK JAY C	891 ALICE RD	TL-1917 SEC 19 T1N-R2E
<u>442917</u>	HOLYFIELD CHARLES E	1065 ROBERT'S ROOST RD	TL-2847 SEC 28 T1N-R2E OUT OF TL-2807 SEC 28 T1N-R2E
<u>423033</u>	HOWARD HELEN M		TL-2135 SEC 21 T1N-R2E OUT OF TL-2123 SEC 21 T1N-R2E
<u>219347</u>	HOWARD VINCENT F		TL-2051 SEC 20 T1N-R2E
<u>219720</u>	HOWARD VINCENT F		TL-2123 SEC 21 T1N-R2E
<u>219738</u>	HOWARD VINCENT F		TL-2124 SEC 21 T1N-R2E
<u>219746</u>	HOWARD VINCENT F		TL-2125 SEC 21 T1N-R2E
<u>219754</u>	HOWARD VINCENT F		TL-2126 SEC 21 T1N-R2E
<u>423041</u>	HOWARD VINCENT F		TL-2136 SEC 21 T1N-R2E OUT OF TL-2123 SEC 21 T1N-R2E

List of Parcel Owners Affected by Notice of Interest Filed on December 21, 2004 by:
Dwane J. Sykes

<u>369357</u> HOXSEY JEFFREY A	749 NINE MILE HILL RD	TL-2134 SEC 21 T1N-R2E OUT OF TL-2104 SEC 21 T1N-R2E
<u>474533</u> HUFFMAN LESLIE J	755 JAMAL DR	LOT 1 BLOCK 2 CASSIAR HEIGHTS OUT OF TL-2004 T1N-R2E
<u>384305</u> HUGHES ROGER L	753 ALICE RD	LOT A3 TRACT A MORRIS MORGAN OUT OF TRACT A MORRIS MORGAN
<u>219495</u> JAKICIC ROBERT J	770 LODGEPOLE LN	TL-2104 SEC 21 T1N-R2E
<u>219363</u> JOHNSON DIANE C	774 SMALLWOOD TRL	TL-2053 SEC 20 T1N-R2E
<u>221104</u> JOHNSON THOMAS A	718 O'LEARY RD	TL-2823 SEC 28 T1N-R2E
<u>357685</u> JONES TREVOR L	829 ALICE RD	LOT 3 WEVERLY HEIGHTS OUT OF TL-1932 SEC 19 T1N-R2E
<u>218812</u> KAROLY JOHN P	814 RISSE RD	TL-1935 SEC 19 T1N-R2E
<u>219592</u> KINCHELOE ROBERT	765 NINE MILE HILL RD	TL-2115 SEC 21 T1N-R2E
<u>482005</u> KIRSCH COFFMAN JANICE M	5640 CHENA HOT SPRINGS RD	LOT 1 GRANDE DAME WAIVER 28-95 10/3/95 OUT OF TL-3614 SEC 36 T1N-R3E
<u>449318</u> KNUJEPFER GARY R		TL-2204 SEC 22 T1N-R2E
<u>218618</u> KUNZ MICHAEL L		TL-1916 SEC 19 T1N-R2E
<u>474631</u> LANGBERG JEFFREY D	2750 MISTY FJORDS CT	LOT 6 BLOCK 3 CASSIAR HEIGHTS OUT OF TL-2908 T1N-R2E
<u>474649</u> LANGBERG JEFFREY D	2780 MISTY FJORDS CT	LOT 7 BLOCK 3 CASSIAR HEIGHTS OUT OF TL-2908 T1N-R2E
<u>220523</u> LOVEJOY MARK W		TL-2718 SEC 27 T1N-R2E
<u>442941</u> LOWE JOHN E IV		TL-2849 SEC 28 T1N-R2E OUT OF TL-2807 SEC 28 T1N-R2E
<u>474622</u> LUND MICHAEL RAY	2720 ST ELIAS DR	LOT 5 BLOCK 3 CASSIAR HEIGHTS OUT OF TL-2006 T1N-R2E
<u>366404</u> MARANVILLE DAVID W	667 NINE MILE HILL RD	TL-2838 SEC 28 T1N-R2E OUT OF TL-2814 SEC 28 T1N-R2E
<u>124125</u> MARK ANTHONY DON T	2640 Stellar Way	LOT 5A CLEAR SKY ESTATES 1ST ADD PREV. ASSESSED LOT 9 CLEAR SKY ESTATES PLAT 78-8 1/10/78 OUT OF TL-2909 SEC 29 T1N-R2E
<u>220361</u> MAY LIISA	3215 CHENA HOT SPRINGS RD	TL-2702 SEC 27 T1N-R2E
<u>219908</u> MCMILLAN FRED A		TL-2214 SEC 22 T1N-R2E
<u>219916</u> MCMILLAN FRED A		TL-2215 SEC 22 T1N-R2E
<u>219053</u> MCMILLAN VERNON	2344 CHENA HOT SPRINGS RD	TL-2022 SEC 20 T1N-R2E
<u>218529</u> MICHAELS SCOTT W		TL-1909 SEC 19 T1N-R2E
<u>384291</u> MORGAN HERBERT MORRIS	775 ALICE RD	LOT A2 TRACT A MORRIS MORGAN OUT OF TRACT A MORRIS MORGAN
<u>219452</u> NELS JACKSON VENTURES		TL-2100 SEC 21 T1N-R2E
<u>220817</u> NELS JACKSON VENTURES		TL-2801 SEC 28 T1N-R2E
<u>220825</u> OLEARY PATRICK MICHAEL		TL-2802 SEC 28 T1N-R2E
<u>344834</u> PANKRATZ CLAYTON F	761 BOHNET DR	LOT 1 BOHNET
<u>220914</u> PANTELEEFF RICHARD L	695 ROBERTS ROOST RD	TL-2807 SEC 28 T1N-R2E
<u>219843</u> PARKER MICHAEL C	770 NINE MILE HILL RD	TL-2208 SEC 22 T1N-R2E
<u>218936</u> PARR KAREN H TRUST B	909 JOHN KALINAS RD	TL-2010 SEC 20 T1N-R2E
<u>221295</u> RICE STEPHEN K	2637 CHENA HOT SPRINGS RD	TL-2915 SEC 29 T1N-R2E
<u>220795</u> RICH DAVID H	711 JOHN COLE RD	TL-2746 SEC 27 T1N-R2E
<u>219801</u> RIFE MACK REVOCABLE TRUST	803 JOHN COLE RD	TL-2203 SEC 22 T1N-R2E
<u>556637</u> RISSE LEE W		TL 1950 SECTION 19 1N 2E Quitclaim Deed 2004-020146-0 - 9/8/2004 Previously assessed as 1N 2E 19 1905
<u>509159</u> ROBERTSON WILLIAM J		TRACT A ROBERTSON HILLTOP PLAT 99-0070 8/30/99 OUT OF TL-2202 SEC 22 T1N-R2E

List of Parcel Owners Affected by Notice of Interest Filed on December 21, 2004 by:
Dwane J. Sykes

<u>221074</u> ROLAND JAMES	557 ROBERTS ROOST RD	TL-2820 SEC 28 T1N-R2E
<u>219479</u> SAFARI CLUB INTERNATIONAL		TL-2102 SECTION 21 T1N-R2E
<u>124273</u> SCARBERRY DON A	2643 BOREALIS DR	LOT 20 CLEAR SKY ESTATES
<u>219606</u> SCHILL ZONTS MARK	790 LODGEPOLE LN (Formerly Richard Attwood)	TL-2116 SEC 21 T1N-R2E
<u>220388</u> SIMMONS FAMILY TRUST	674 NINE MILE HILL RD	TL-2704 SECTION 27 T1N-R2E
<u>220418</u> SIMMONS FAMILY TRUST		TL-2707 SEC 27 T1N-R2E
<u>220434</u> SIMMONS FAMILY TRUST		TL-2709 SEC 27 T1N-R2E OUT OF TL-2700 SEC 27 T1N-R2E
<u>137341</u> SIMS CANTUES CURTIS JR	251 DYNES RD	TRACT F KENNY
<u>223204</u> SKILBRED PHILIP H	5530 LOETA WAY	TL-3500 SEC 35 T1N-R3E
<u>471755</u> SMITH DURELL	583 ROBERTS ROOST RD	TL-2851 SEC 28 T1N-R2E OUT OF TL-2800 SEC 28 T1N-R2E
<u>384283</u> STONE MARGARET FRANCES TRUST	791 ALICE RD	LOT A1 TRACT A MORRIS MORGAN OUT OF TRACT A MORRIS MORGAN
<u>476871</u> STRAIGHT ROBERT O LIVING TRUST		TL-2932 SEC 29 T1N-R2E OUT OF TL-2803 SEC 28 T1N-R2E
<u>481441</u> STRAIGHT ROBERT O LIVING TRUST	2745 STRAIGHT AVE	LOT 5B ROBERTS ROOST OUT OF LOT 4 ROBERTS ROOST
<u>223263</u> SYKES DWANE J	370 LITTLE CHENA DR	TL-3506 SECTION 35 T1N-R3E
<u>474665</u> TRICKEY JAMES A	2625 ST ELIAS DR	LOT 1 BLOCK 4 CASSIAR HEIGHTS OUT OF TL-2004 T1N-R2E
<u>218995</u> UPESLEJA GIRTS		TL-2016 SEC 20 T1N-R2E
<u>221040</u> WASHELESKI LOURENE M FAMILY TRUST		TL-2834 SEC 28 T1N-R2E
<u>221058</u> WASHELESKI LOURENE M FAMILY TRUST	2964 CHENA HOT SPRINGS RD	TL-2818 SEC 28 T1N-R2E
<u>124222</u> WEATHERBY THOR JR REVOCABLE TRUST	621 ROBERTS ROOST RD	LOT 15A CLEAR SKY ESTATES 1ST ADD PREV.ASSESSED LOT 15 CLEAR SKY ESTATES 99 T/R ASSEMBLED TL-2840 1N-2E W/L-15 PLAT 1978-8 1/10/78
<u>518182</u> WEATHERBY THOR JR REVOCABLE TRUST		LOT 1 CLEAR SKY ESTATES 1ST ADDN REPLAT NUMBER 2001-0023 2/20/2001 Previously assessed as 1N 2E 28 2808
<u>550558</u> WIGGER WALTER P		2005 T/R ASSEMBLED NOW KNOWN AS UMB01 USMS 796 TL 5 USMS 796 ERICKSON FRACTION USMS 796 Previously assessed as 1S 2W 08 806
<u>370622</u> WILCOCK LYNN	2324 JANA CT	LOT 2 BECKER OUT OF TL-1908 SEC 19 T1N-R2E
<u>218987</u> WILDER DOUGLAS T	845 SMALLWOOD TRL	TL-2015 SEC 20 T1N-R2E
<u>220787</u> WINTERS JILL A		TL-2745 SEC 27 T1N-R2E
<u>219517</u> WOHLNBERG DAVID L	743 NINE MILE HILL RD	TL-2107 SEC 21 T1N-R2E OUT OF TL-2104 SEC 21 T1N-R2E

Borgeson & Burns

A Professional Legal Corporation
KeyBank Center • 100 Cushman Street • Suite 311 • Fairbanks, Alaska 99701

(907) 452-1666
facsimile (907) 456-5055

Attorneys

Cory R. Borgeson
John J. Burns
Mary S. Spiers

Legal Assistants

Patrick B. Carroll, CLA

April 27, 2006

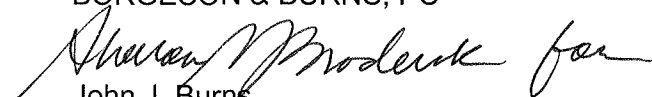
John Bennett
State of Alaska
Department of Transportation & Public Facilities
2301 Peger Road
Fairbanks, AK 99709
Fax: (907) 451-5411

Re: Cassiar Heights/ Section Line Easements Between Sections 20 and 21, 28 and 29

Dear John:

Thank you for graciously agreeing to help us on the Cassiar Heights section line easement issues. Valerie informed me that all of the information you need to determine whether section line easements exist between sections 20 and 21, as well as 28 and 29, running north/south, are included in the exhibits to her Motion for Summary Judgment. I've attached those documents as well as the stipulation that Valerie is proposing. If you could take a look at the documents and tell me whether a valid north-south section line easement exists, I would really appreciate it. If there is more information that you need in order to make a determination, please let me know.

Sincerely,
BORGESON & BURNS, PC



John J. Burns

JJB:smb

Enclosures as stated.

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

E. L. ROY DUCE, individually and as)
trustee of the Sykes Childrens Trusts, and)
DWANE J. SYKES, Plaintiffs,)

vs)

CASSIAR HEIGHTS PROPERTIES INC, an Alaskan)
corporation, RUDOLF L. GAVORA, JENA D. GAVORA,)
JAMES K. BUTTON, JENNIFER B. BUTTON,)
CHARLES E. HOLYFIELD, NILDA L. HOLYFIELD,)
et al,)

Defendants.)

CASE No. 4FA-04-2827 CI

STIPULATION TO ENTRY OF JUDGMENT AS TO CASSAIR HEIGHTS
PROPERTIES INC, RUDOLF L. GAVORA, JENA D. GAVORA, JAMES K.
BUTTON, AND JENNIFER B. BUTTON,

COMES NOW the Plaintiffs, by and through their attorney,
Valerie M. Therrien, and COMES NOW the Defendants, Cassair
Heights Properties Inc, Rudolf L. Gavora, Jena D. Gavora, James
K. Button, Jennifer B. Button, by and through their attorney John
Burns, and hereby stipulate to an entry of an order granting the
relief requested the Motion for Summary Judgment, as to Counts
Third and Fourth and

Further that the parties agree that upon the execution of an
easement signed by the following Defendant parties, namely,
Defendants Cassair Heights Properties Inc, Rudolf L. Gavora, Jena
D. Gavora, James K. Button, Jennifer B. Button, granting
Plaintiff access as set forth below, to a dismissal of Counts
Fifth, Sixth, Seventh, and Eighth of the Plaintiffs' Complaint,

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as to said Defendants only, in the above entitled matter, with prejudice.

1. As to the Third Cause of Action, Plaintiffs are hereby granted Declaratory Judgment, under the U.S. Mining Act of 1866 and R.S. 2477 of Rev. Stat. 1872 (43 U.S.C. 932), against the above named Defendants to this stipulation that there exists a valid Section Line Easements of 33 feet for Federally derived properties, and 50 feet for State of Alaska owned or derived properties, on each side of each section lines in Sections 20, 21, 28 and 29 for public, non-exclusive roadways, including specifically:

that a valid 33-foot Section Line Easement exists on each side of Defendants Cassiar Height Properties, Inc. and Gavoras' properties on the common section line of Sections 20 and 29, running approximately East some 409.49 feet, more or less, to the common section corners of said four Sections, from the East boundary of Misty Fjords Court road, as dedicated for public use in those plats of Cassiar Heights Subdivision, Cassiar Heights 1st ADDITION, and Cassiar Heights 2nd ADDITION, recorded as Fairbanks Plat #94-74, Fairbanks #95-1, and Fairbanks 2000-29-001, respectively, in the Fairbanks Recording District, Fourth Judicial District, State of Alaska, to the common section corners of said four Sections, and including also being over and upon the South 33 feet and the East 33 feet of Lot 12 Block 3, Cassiar

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Heights Subdivision, 1st ADDITION and over and upon the East 33 feet of the present Tax Lot 2065 of said Section 20 within the balance of the SE 1/4 SE 1/4 of said Section 20 (as further described below), and the North 33 feet and the East 33 feet of Lot 13, Cassiar Heights 2nd ADDITION, and over and upon the East 33 feet; of Lot 14, Block 3, Cassiar Heights 2nd ADDITION, and over and upon the East 33 feet of TRACT A, Cassiar Heights 2nd ADDITION, all as recorded as above-said as Fairbanks Plat No. #94-74, Fairbanks Plat #95-1 and Fairbanks 2000-29-001, respectively, in the Fairbanks Recording District.

- a. that a valid 33-foot Section Line Public Easement exists on Defendants Cassiar Height Properties, Inc. and Gavoras' and Burtons' properties over the: East 33 feet and the South 33 feet of the SE1/4 of the SE1/4 of Section 20 and over the East 33 feet and the North 33 feet of the NE1/4 of the NE1/4 of Section 29, T1N, R2E, F.M., and

2. As to the Fourth Cause of Action, Plaintiffs are hereby granted Declaratory Judgment am to the above named Defendants, affirming the validity of the Section Line Easements for non-exclusive public roadways and use in Sections 20, 21, 28 and 29, T1N, R2E, F.M., under A.S. 19.10.010, as follows:

that a valid 33-foot Section Line Easement exists on each side of Defendants Cassiar Height Properties, Inc. and Gavoras'

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properties on the common section line of Sections 20 and 29, running approximately East some 409.49 feet, more or less, to the common section corners of said four Sections, from the East boundary of Misty Fjords Court road, as dedicated for public use in those plats of Cassiar Heights Subdivision, Cassiar Heights 1st ADDITION, and Cassiar Heights 2nd ADDITION, recorded as Fairbanks Plat #94-74, Fairbanks #95-1, and Fairbanks 2000-29-001, respectively, in the Fairbanks Recording District, Fourth Judicial District, State of Alaska, to the common section corners of said four Sections, and including also being over and upon the South 33 feet and the East 33 feet of Lot 12 Block 3, Cassiar Heights Subdivision, 1st ADDITION and over and upon the East 33 feet of the present Tax Lot 2065 of said Section 20 within the balance of the SE 1/4 SE 1/4 of said Section 20 (as further described below), and the North 33 feet and the East 33 feet of Lot 13, Cassiar Heights 2nd ADDITION, and over and upon the East 33 feet; of Lot 14, Block 3, Cassiar Heights 2nd ADDITION, and over and upon the East 33 feet of TRACT A, Cassiar Heights 2nd ADDITION, all as recorded as above-said as Fairbanks Plat No. #94-74, Fairbanks Plat #95-1 and Fairbanks 2000-29-001, respectively, in the Fairbanks Recording District.

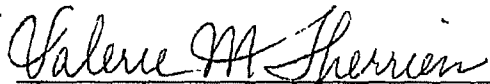
- b. that a valid 33-foot Section Line Public Easement exists on Defendants Cassiar Height Properties, Inc. and Gavoras' and Burtons' properties over the: East 33

feet and the South 33 feet of the SE1/4 of the SE1/4 of Section 20 and over the East 33 feet and the North 33 feet of the NE1/4 of the NE1/4 of Section 29, T1N, R2E, F.M.

3. That the Plaintiffs are the prevailing party in this matter for summary judgment and may submit their motion for attorney fees within ten days of the date of the execution of the easement.

DATED at Fairbanks, Alaska this 19th day of April, 2006

VALERIE M. THERRIEN, P.C.



Valerie M. Therrien ABA # 7610137
Attorney for Plaintiffs

DATED this _____ day of April, 2006, at Fairbanks, Alaska

Borgeson and Burns

John J Burns
Attorney for Cassiar Heights
Properties Inc, Rudolf L. Gavora,
Jena D. Gavora, James K. Button,
Jennifer B. Button

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SERVICE COPY
Burns

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

E. L. ROY DUCE, individually and as trustee of the Sykes Childrens Trusts, and DWANE J. SYKES, Plaintiffs,

vs

CASSIAR HEIGHTS PROPERTIES INC, an Alaskan corporation, RUDOLF L. GAVORA, JENA D. GAVORA, JAMES K. BUTTON, JENNIFER B. BUTTON, CHARLES E. HOLYFIELD, NILDA L. HOLYFIELD, et al,

Defendants.

CASE No. 4FA-04-2827 CI

FILED in the Trial Courts
State of Alaska, Fourth District

APR 05 2006

RECEIVED

APR 04 2006

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CORRECTED
MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT AS TO THE THIRD,
FOURTH, FIFTH, SIXTH, SEVENTH AND EIGHTH CAUSES OF ACTION,
AGAINST DEFENDANTS CASSAIR HEIGHTS PROPERTIES INC,
AN ALASKA CORPORATION, RUDOLF L. GAVORA,
JENA D. GAVORA, JAMES K. BUTTON, JENNIFER B. BUTTON,
CHARLES E. HOLYFIELD AND NILDA L. HOLYFIELD

Come now the Plaintiffs, DWANE J. SYKES, et al by and through their attorney, Valerie M. Therrien and hereby submit their memorandum of law in support of their motion for Summary Judgment, against the defendants, CASSAIR HEIGHTS PROPERTIES INC, AN ALASKA CORPORATION, RUDOLF L. GAVORA, JENA D. GAVORA, JAMES K. BUTTON, JENNIFER B. BUTTON, CHARLES E. HOLYFIELD AND NILDA L. HOLYFIELD, as to the THIRD, FOURTH, FIFTH, SIXTH, SEVENTH, AND EIGHTH CAUSES OF ACTION respectively.

FACTS

As originally set forth in the complaint, there were several Plaintiffs, namely, E. L. ROY DUCE, individually and as trustee

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of the Sykes Childrens Trusts, and DWANE J. SYKES. A motion to amend the complaint to add JOY SYKES FAIR, and FRONTIER INTERNATIONAL LAND CORPORATION to the complaint was denied by the Court, not so much as to the new Plaintiffs, but due to objection to the addition of two defendants, Clinton Davis and John T. Lawless, who are not party to this action.

Subsequently, the interests of E. L. ROY DUCE, individually and as trustee of the Sykes Childrens Trusts, were deeded to Dwane Sykes. See NOTICE OF FILING DEEDS submitted to the court on November 21, 2005. Attached to the Notice were several deeds that transferred the interests of E. L. ROY DUCE, individually and as trustee of the Sykes Childrens Trusts to either Joy Fair or Dwane Sykes. The deeds were not duplicated due to the voluminous set of exhibits to support this motion. Joy Sykes Fair was a partial contract purchaser in all the properties listed in the suit. Joy Fair subsequently deeded her interest in the properties to Dwane Sykes. Frontier Land Corporation also deeded its interest in the property, Tract D, US Land Survey No 80-75 and Tracts A and B, US Land Survey No 74-08, to Dwane Sykes. Thus for all purposes the only remaining Plaintiff is Dwane Sykes and will be referred to as such.

Defendant CASSIAR HEIGHTS PROPERTIES INC, an Alaskan corporation, and RUDOLF L. GAVORA, JENA D. GAVORA, CHARLES E. HOLYFIELD, NILDA L. HOLYFIELD, JAMES K. BUTTON, and JENNIFER B. BUTTON are residents of Alaska, and own real property in the

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Fourth Judicial District, Alaska. Their properties are in issue in this motion. As the Plaintiffs pursue each subject, their property descriptions will be identified.

The allegations regarding Tax Lot 2114, Parcel II, as to the Hernings are no longer in interest in this matter. A judgment granting quiet title as to the Hernings and vacation of the temporary right of way was issued by the Court and resolves any issues to that parcel. Similarly, the allegations regarding Mattice as set forth in Count Two, was resolved by a judgment granting quiet title as to William H. Mattice on October 17, 2005.

The remaining properties in question for this motion for summary judgment are identified as Parcels I, III, and IV. Sykes owns these parcels. They are all located in Fairbanks Recording District, State of Alaska. Their legal descriptions are set forth below:

PARCEL I: All of the NE1/4 of the SW1/4; all of the NW1/4 of the SE1/4; and the North 775 feet of the SE1/4 SW1/4; and, the North 775 feet of the SW1/4 of the SE1/4, all lying and being in Section 21, T1N, R1W, F.M. EXCEPTING THEREFROM, any portion thereof lying within the Farmers Loop Road right of way(f.k.a. Tax Lot 2114),

PARCEL III: The SW1/4 SW1/4 of Section 21, T1N, R2E, F.M., (a.k.a. Tax Lot 2120),

PARCEL IV: TRACT C of Alaska State Land Survey No. 73-116, containing 4.96 acres, more or less, according to the Survey Plat filed in the Fairbanks Recording District on March 28, 1978, as Plat 78-51.

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As set forth in the Affidavit of Patricia Sykes, on or about June 17, 1972, at the Alaska Divisions of Lands' competitive public land auction, Dwane J. and Patricia Sykes out-bid and purchased the subject 40-acres Tax Lot 2120, aka ADL No. 57643 aka the SW1/4 SW1/4 of Section 21, T1N, R2E, F.M., which is the dominant estate basis of this easement suit; said ADL No. 57643 purchase contract was recorded of public record at Book 43 Pages 638-40, Fairbanks Recording District see Exhibit D attached to the Affidavit of Dwane J. Sykes and incorporated herein.

At that Alaska State land auction, the subject land sale was officially represented to be served by, burdened by and benefitted by various Section Line Easements for public roadways for public egress and ingress and utilities, to and from the public Chena Hot Springs Road, the width of each side of the Section Line Easement being either 50 feet or 33 feet on each side of the Section Line, depending on whether the land derived from the State of Alaska or the Federal Government, respectively, including expressly those public Section Line Easements between Sections 20, 21, 28 and 29, the subject of this lawsuit.

Similarly, a Section Line Easement for public roadways 50 feet wide was also reserved by the State of Alaska upon the west and south 50 feet of the Sykes' subject 40 acre Tax Lot 2120 purchase.

In 1972, Plaintiff Dwane J. Sykes applied to the State of Alaska Department of Highways ("DOT") for authorization to use and

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to construct non-exclusive public roads over and upon certain named Section Lines, including those above-said relevant to the subject Tax Lot 2120 purchase, and to this action.

By letter dated on or about July 11, 1972, from the Alaska Department of Highways Right-Of-Way Agent, Sykes received such authorization, which was recorded on July 13, 1972, at MS Book 36 Page 527, Fairbanks Recording District, Fourth Judicial District, State of Alaska, and which covered the above-said subject public Section Line Easements at issue herein (see Complaint Exhibit 1, re-incorporated herein). Said July 11, 1972, DOT Section Line Easement letter authorization was also recorded several other times, including, e.g., at BK 0899 PG 358 as shown on Complaint Exhibit 1.

Since June 1972 purchasers Dwane J. and Patricia Sykes and many others of their family, successors, associates, consultants, representatives, etc., have repeatedly and continuously and without interruption or challenge used and traveled upon those above-said public Section Line Easements between Sections 20, 21, 28 and 29, in reliance upon that 1972 State of Alaska DOT official authorization, and the Alaska Department of Natural Resources' and Federal Bureau of Land Management representations. See the BLM homestead status plat as interlineated by BLM representatives (see Complaint Exhibit 2, re-incorporated herein).

Exhibit A to Patricia Sykes' Affidavit, hereinafter referred to as Exhibit A, is an aerial photo flown on Aug. 19, 1998,

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printed from the Fairbanks North Star Borough's public internet site G.I.S. Ortho Quad map, which shows the subject area and the three access connections onto the two subject access roadways over the Defendant's subject properties to access and reach Plaintiffs' above-said 40-acre Tax Lot 2120 at the Section Corners of Sections 20, 21, 28 and 29.

There are two rural access roadways to reach Plaintiff's 40-acre TL 2120 as shown on Exhibit A, BUT both of which existed on virtually the same alignment since before about 1972, as documented by additional aerial photos, maps and testimony recited below :

a. Robert's Roost Road: A rural, winding, roadway alignment, shown by heavy, solid black (or red) line on 1998 photo Exhibit A:

(1) It departs northerly up the hill from about 9-mile Chena Hot Springs Road and eventually traverses Northwesterly across Defendant Holyfields' 5-acre Tax Lot 2847 (the white rectangle at road's end], Sec. 28, T1N, R2E, F.M ,

(2) As it passes over Holyfields' Tax Lot 2847, said Robert's Roost Road passes to the south and west around a large borrow-pit located thence due north along and within the 33 foot Public Section-Line Easement on the south 33 feet of Holyfields' Tax Lot 2847.

(3) Robert's Roost Road then terminates at the common section corners of Sections 20, 21, 28 and 29, where it intercepts the

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dashed East-West Public Section-Line Easement roadway and the power-pole line.

b. Unnamed East-West Section-Line Easement public roadway:

This road is shown as a straight, dashed line on 1998 photo Exhibit A.

(1) This Section Line road runs a few feet west of and along the GVEA power-line within the 66-foot section line easement between Sections 20, 21, 28 and 29.

As Patricia Sykes states, that public roadway has existed and has been used continuously and uninterrupted by the general public since construction of that GVEA power-line decades earlier, in about the 1950's. It was also so used by the Sykes and their associates since 1972.

In the years prior to construction of Cassiar Heights Subdivision's Misty Fjords Court public road (in the early 1990's)---in addition to the Robert's Roost Road connection---a second and third westerly access entry point were utilized from the driveway of Kenneth and Bonita Nieland (predecessors of Cassiar Heights property) to connect to this East-West Public Section Line Easement roadway between Sections 20 and 29.

(i) The second, mostly westerly connection was off the south-most "dog-leg" of the Nieland's driveway which ran South-by-Southeasterly across the Nieland's SW1/4 SW14 of said Sec. 20 to the south edge of Section 20, before that "dog-leg" turned back north-easterly to reach Nieland's house. That second

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westerly "dog-leg" connection is shown on aerial photo Exhibit A, at the west end of the above-said dashed East-West Public Section-Line Easement roadway.

(ii) The third access came south from the Nieland's house near the SE corner of said section 20 to connect with that East-West Public Section Line Easement roadway between Sections 20 and 29, in the vicinity of where the Misty Fjords Court Road now crosses said Section Line.

Travel was often by driving vehicles from Chena Hot Springs Road north up the Robert's Roost Road to the section corner of Sec. 20, 21, 28 and 29, then West along the above-said East-West Public Section-Line Easement roadway to the Nieland's private road connections and West down to 7 Mile Chena Hot Springs Road---or visa versa by driving in the opposite direction.

A stereo-pair color infrared aerial photograph Nos 3752-3 02800 ALK CO CIR flown in August 1979, which provides three-dimensional depth viewing of the subject area and its roadways, together with a black-and-white enlargement certified by the U.S. Department of Agriculture, A.C.S.S. Aerial Photography Center, Exhibit 4 to the Affidavit of Tom Duncan, which show the physical existence already in 1979 of both the above-said Robert's Roost Road and the East-West Section Line Easement public roadway between Sections 20 and 29, i.e. the solid and the dashed lines, respectively on Exhibit A as shown and recited above.

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Exhibit 4 to the Affidavit of Tom Duncan is a stereo-pair aerial photograph flown on 5-21-1985 (FAIRBANKS 1"=3D2000" contract prints 14-7 14-8) which, when viewed in 3-dimension stereo also show the physical existence in 1985 of both the Above-said Robert's Roost Road and the East-West Section Line Easement public roadway between Sections 20 and 29, i.e. the solid and the dashed lines respectively on Exhibit A above recited.

Exhibit 4 to the Affidavit of Tom Duncan is a aerial photo flown July 13, 2004, from the Fairbanks North Star Borough's public internet site G.I.S. "SPOT" photo set, again showing the above-said subject roads and also Defendants Holyfields new house built in or about 2003 near the terminus of Robert's Roost Road just feet from the common section corners to Sections 20, 21m 28 and 29, as cited earlier.

Patricia Sykes personally traveled frequently via truck and car beginning in 1972 through 1982 over the above-said rural, winding Robert's Roost Road to its terminus at the above-said 4-section corners and also over the above-said East-West Public Section Line Easement roadway between Sections 20 and 29 and between sections 21 and 28 (over Defendant Holyfields' Tax Lot 2847) and beyond.

As to public and private use of the said Robert's Roost Road, from Chena Hot Springs Road to its terminus at the above-said four common Section Corners and of the said East-West Public Section Line Easement roadway between Sections 20 and 29 and between 21

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and 28 as shown respectively as solid and dashed lines on aerial photo Exhibit A, in addition to my own personal roadway use and that of our family and associates, I also observed that said road was also used continuously and unrestricted by the general public, being:

a. used continuously and uninterrupted by myself, my associates and the general public;

b. used and enjoyed by myself, my associates and by the general public as the average user or owner of such road would use and enjoy it;

c. used adversely, inconsistently and hostilely to the rights or interests of the true owners of the property over which the above-said Robert's Roost Road traversed;

d. used notoriously, visibly, and openly by myself, my associates, and the general public in a manner that prudent owners would surely be put on notice of said roadway's frequent use and travel;

e. used without any consent, permit or permission of the true owners of the property traversed;

f. never closed, blocked, gated, or barricaded.

The lower, southern portion of this Robert's Roost Road was expressly granted "for the use of the public as a public roadway" in perpetuity 75 feet wide, 37.5 feet on each side of its centerline, in that ROADWAY EASEMENT from Robert O. Straight to

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the State of Alaska, Dept. of Highways, recorded as Instrument 71-07829 on Aug. 30, 1971, at Book 263 Page 93 (Exhibit B).

As to the intent for public use of the upper portion of Robert's Roost Road, that Statutory Warranty Deed recorded Sept. 11, 1975, as Instrument 85-43064 at Book 444 Pages 0295-96 (which included the above-said Tax Lot 2847 as Parcel A), set forth the continuation of the Robert's Roost Road centerline, stating:

".but with the full right on the part of the Grantor, her heirs and devisees, to dedicate to the public for roadway purposes. the land encumbered in said easement as a northerly extension of said Robert's Roost Road." (Exhibit C).

The general reputation or understanding in the area by many or most residents near 9 mile-mile Chena Hot Springs Road is that the entire Robert's Roost Road to its terminus at the common Section corners is a public, open road.

During the occasions of her personal regular use, Patricia Sykes observed other members of the general public using the Robert's Roost Road in a variety of vehicles without interruption or obstruction. Affidavit of Patricia Sykes, paragraphs 1-20. See also Affidavit of Trudy Glaser which supports said facts.

On June 17, 2005, after this litigation was filed, the Defendants filed an application to vacate section line easements existing within SE 1/4 SE1/4 Sec 20 and NW 1/4 NW 1/4 Sec 28 and NE 1/4 NE 1/4 Sec 29, T1N, R2E, FM. The width of the section line easements was noted to be 33' and 66', and were common to Sections

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20 and 29 within lots 5, 6, 7 and 12 Cassiar heights, Lot 13, block 3, Cassiar heights 2nd addition and TL 2066, and common to sections 28 and 29 within TL 2047, TL 2849, Lots 13 and 14, Block 3 Cassiar Heights 2nd addition and Tract A-2, Cassiar heights 3rd addn and to Section 28 within TL 2847, all within T1N, R2E, FM. See exact description of vacation attached hereto as Ex 4 to the Affidavit of Martin Gutoski.

RCH Surveys by Richard Heieren filed the application on behalf of the parties, Exhibit 5 to the Affidavit of Martin Gutoski, and ordered a title report from Fairbanks Title Agency. Exhibit 6 to the Affidavit of Martin Gutoski. The platting Certificate No. 63865 identified the properties in question and included all the defendants and several others. Rudolf L. Gavora and Jena D. Gavora own Lot 12, Block 3 Cassair Heights, (Parcel IV), Cassiar Heights Properties, Inc owns Parcels V and VI, Lots 13 and 14 Block 3, and Tax Lot 2066, James and Jennifer Button own Parcel VI, Tract A-2, Cassiar Heights Third Addition and the Holyfields own Parcel VIII, Tax Lot 2847. The exact legal descriptions of the parcels are attached hereto in the report.

The FNSB process requires a majority of owners of the land fronting the area being vacated to sign the petition. Title 17.40.020. See memo from Quakenbush to Jeremy and his reply. Exhibit 7, two pages to the Affidavit of Martin Gutoski.

Roy L. Duce TL 2027 and Joy Fair TL 2120 did not sign the petition. The signature page of the application is submitted

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herewith and all of the defendants signed the application. A preliminary review of the vacation was held on 7/27/05, and the comments are included in the exhibits attached hereto. The original owners who signed the Application are shown on Exhibit 8 to the Affidavit of Martin Gutoski. Grade information was also submitted by Heiren. Exhibit 9 to the Affidavit of Martin Gutoski. The borough did its preliminary review of the application and its comments are set forth in Exhibit 10 to the Affidavit of Martin Gutoski. Subsequently another neighbor (Panteleeft and Stringer) signed the application to complete the necessary signatures. Exhibit 11 to the Affidavit of Martin Gutoski.

A public hearing notice, Exhibit 12, (two pages) to the Affidavit of Martin Gutoski, was sent to the neighborhood property owners per borough code and Mr. Sykes objected to the application. The public hearing notice identifies in its title page the 66' section line easement to be vacated to the left of Misty Fjord Court, which Mr. Sykes did not object to, and which was eventually granted by the FNSB assembly. It also identified the remaining section line easements that were attempted to be vacated, the 33' section line easement to the north of Holyfield's property and the 66' section line easement to its west.

The staff report is submitted herewith, Exhibit 13 to the Affidavit of Martin Gutoski, prepared by Loriann C. Quakenbush, platting officer of the FNSB. It is noted that the last paragraph on page two is disputed by Mr. Sykes. See hand delivered letter

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to the FNSB Assembly dated August 17, 2005. Exhibit 14 to the Affidavit of Martin Gutoski. This exhibit also had attached an exact copy of the lawsuit filed in this case, which is excluded from the exhibit to save duplicative exhibits, which are part of the legal pleadings in this case.

The borough file also included the ASPLS Standards of Practice Manual Ch3 Guidelines pages 7 to 12, rev 1/13/94 written by John F. Bennett, PLS, Highway rights of Way in Alaska. Exhibit 15 to the Affidavit of Martin Gutoski.

The Platting Board of the FNSB held its required meeting on August 3, 2005 and the Draft minutes are submitted as Exhibit 16 to the Affidavit of Martin Gutoski. These are submitted to the Assembly with the packet of information on the vacation application.

Dan Gavora discussed this lawsuit. Nilda Holyfield stated they first knew of the easements when they had a plot plan done after they finished their house and that is when they found out they had encroached into the easement. She stated that what appears to be a sewer line outlet behind the utility house is actually a water softener outlet. She stated they have permanent legal access from Roberts Roost road to their lot and is noted on their deed. By this statement Nilda Holyfield admits the encroachment and the existence of the easements.

See also affidavit of William Blizzard, Exhibit A, that submits the plot plan in question. It clearly shows the

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encroachment. He prepared the attached survey plat to his exhibit of Tax Lot 2847, W $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 28, T1N, R2E, F.M. AK, on June 8, 2004. The plat was prepared for a title insurance report for Charles E. Holyfield and Nilda L. Holyfield.

The pictures attached to the Affidavit of Martin Gutoski, identified as Exhibits 1 and 2 also identifies the encroachments, and Exhibit C shows the Holyfields near the edge of their property.

The survey plat shows the encroachments within the 33 foot section line easement. It also shows the Mech building 4 offset south of the section line, and that the well and electric drop pole are also within the 33' section line easement.

The platting board granted all the sections for vacation but the section line easement common to sections 20 and 29 from Misty Fjords Court eastward to the section corner, and it was submitted to the approval of the Assembly.

The FNSB Assembly at the request of Mr. Skyes took the matter off its consent agenda and voted to divide the issue into two questions. They approved the section that Mr. Skyes did not object to, and vetoed the portion of the application to vacate the section line between sections 21 and 28 and 29 and 28. See certified copy of the memorandum from Drexler to the mayor dated August 22, 2005. Exhibit 18 page 2.

Plaintiffs submit that this application is solid proof that the Defendants admit the existence of the section line easements

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in the application and clearly supports the motion for summary judgment.

STANDARD FOR SUMMARY JUDGMENT

This motion falls under the guidelines of Alaska Civil Rule of Procedure No 56. Summary Judgment, which provides the ground rules for this motion. The rule provides under section (a) that the Plaintiffs may move for a summary judgment in the party's favor upon all or any part of the claims. Section (c) lays out the criteria for a successful motion.

(c) Motion and Proceedings Thereon. The motion shall be made pursuant to Rule 77, and may be supported by affidavits setting forth concise statements of material facts made upon personal knowledge. There must also be served and filed with each motion a memorandum showing that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law... Judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

The Plaintiff has the initial burden of proving through admissible evidence the absence of any genuine factual dispute and its entitlement to a judgment. Shade v Co & Anglo Alaska Service Corp, 901 P2d 434. (Alaska 1995). The Plaintiffs must also prove that they are entitled to judgment as a matter of law. Whaley v State, 438 P2d 718 (Alaska 1968). Moore vs State, 553 P2d 8 (Alaska 1976).

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Further the Defendants' admissions at a public hearing of which there is a transcript and/or recording, may be used to support a motion for summary judgment. Summary judgment may be based on deemed admissions if such facts are dispositive. Riley vs Northern Commercial Co. 648 P2d 961 (Alaska 1982). See exhibits concerning the application for vacation of right of way, VA001-06, identified further herein.

It is the Plaintiff's position that as to each of the counts of the motion for summary judgment there is no genuine issue as to any material fact and that the Plaintiff is entitled to judgment as a matter of law.

THIRD CAUSE OF ACTION
DECLARATORY JUDGMENT OF SECTION LINE EASEMENTS UNDER
THE U.S. MINING ACT OF 1866, & RS 2477 OF REV. STAT. 1872
(43 U.S.C. 932)

The United States of America tendered a Grant of Section Line Easements for public roadways, which RS 2477 Grant was timely accepted by the Territory of Alaska or the State of Alaska, and existed after the survey quad approval but prior to entry on Federal lands, as to the following Section Lines at issue here:

All four Section Lines of each boundary, N, E, S. and W, of Sections 20, 21, 28, and 29, T1N, R2E, F.M. State of Alaska.

Said Section Line Easements for public roadways are 50 feet wide on each side of each section line of land owned by the state, or acquired from the state, and two rods (33 feet) wide upon each side of each Section Line for all other sections lines in the state. The section line is the center of the dedicated right-of-way.

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On or about June 17, 1972, Plaintiff Dwane J. Sykes, purchased at an Alaska State public land auction, conducted in Fairbanks by the Alaska Dept. of Natural Resources, under ADL No. 57643 and ADL No. 57646, the following tracts, respectively:

The SW1/4 SW1/4 of Section 21, T1N, R2E, F.M., containing 40 acres, more or less, (a.k.a. Tax Lot 2120)

The S1/2 S1/2 of Section 29, T1N, R2E, F.M. containing 160 acres, more or less; all in the Fairbanks Recording District, Fourth Judicial District, State of Alaska.

At that Alaska State land auction, the land was represented to be served by, burdened by and benefitted by Section Line Easements for public roadways for public egress and ingress and utilities, to and from the public Chena Hot Springs Road, the width of each side of the Section Line Easement being either 50 feet or 33 feet on each side of the Section Line, depending on whether the land derived from the State of Alaska or the Federal Government, respectively. Dwane J. Sykes relied upon those representations and has used those easements continuously ever since then.

A Section Line Easement for public roadways 50 feet wide was also reserved by the State of Alaska upon the west and south 50 feet of Plaintiffs Sykes' above-said 40 acre tract, and West 50 feet & South 50 feet of Plaintiff Sykes above-said 160 acre tract.

In 1972, Plaintiff Dwane J. Sykes applied to the State of Alaska Department of Highways ("DOT") for authorization to use and to construct non-exclusive public roads over and upon certain

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named Section Lines, including those relevant to his above-said purchases, and to this action.

By letters dated on or about July 11, 1972, from the Alaska Department of Highways Right-Of-Way Agent, Sykes received such authorizations, the relevant one of which was recorded on July 13, 1972, at MS Book 36 Page 527, Fairbanks Recording District, Fourth Judicial District, State of Alaska, and which covered the subject Section Line Easements at issue herein (See Exhibit 1 to the original Complaint).

Plaintiff Dwane J. Sykes and others of his family and successors have repeatedly and continuously used and traveled upon those Section Line Easements since 1972 in reliance upon that State of Alaska DOT authorization and the Alaska Department of Natural Resources' and Bureau of Land Management representations. See the BLM homestead status plat as interlineated by BLM representatives, which is attached to the original Complaint as Exhibit 2.

The above-said State of Alaska DOT Section Line Easement letter of authorization was recorded various other times, including at BK 0899 PG 358.

Said recordings were not excepted, discovered nor mentioned in Fairbanks Title Agency's May 18, 1992, title report #29896 MAT nor in its May 6, 1994, PLATTING CERTIFICATE Order No. 35044 RB, preparatory to platting the CASSIAR Heights Subdivision and the Cassiar Heights 2ND ADDITION.

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The plats of Cassiar Heights Subdivision and Cassiar Heights 2ND ADDITION recorded as Fairbanks Plat #94-74 and Fairbanks 2000-29-001, respectively, in the Fairbanks Recording District, Fourth Judicial District, State of Alaska, neglected to reflect these 33 foot Section Line Easements in Sections 20 and 29, reserved for public use and public highways.

Sykes periodically received various reconfirmations from State of Alaska DOT, including a definitive re-confirmation letter dated November 1, 2004, from John F. Bennett, PLS, SW/WA, Chief, Right of Way, recorded on December 21, 2004, at 2004: (which is attached to the original Complaint as Exhibit 3). A copy of said letter was faxed to the surveyor of the Cassiar Heights Subdivision, Richard Heron, and forwarded on to FNSB Platting Officer Loriann Quakenbush, who then concurred with John F. Bennett's assessment and opinion.

Even before the John Bennett letter, several other Section Line Right-of-Way experts independently came to that same opinion, including: Charles L. Parr, SR/WA, professional land consultant and former Right-of-Way Chief for Golden Valley Electric Association; Joe Sullivan, Alaska Dept. of Natural Resources Survey Chief Gerald Jennings and his Right-of-Way officers in Anchorage. See Affidavit of Dwane Sykes paragraph 26.

On information and belief, Defendants Cassiar HEIGHTS PROPERTIES INC, an Alaskan corporation, RUDOLF L. GAVORA, and JENA D. GAVORA, JAMES K. BUTTON, JENNIFER B. BUTTON and/or their successors, own,

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developed and/or control properties affected by the above-said Section Line Easements, apparently including:

The S1/2 of the SE1/4, and the SE1/4 of the SW1/4 of Section 20 and the NE1/4 of the NE1/4 of Section 29, T1N, R2E, F.M., in part also now know as and including Cassiar Heights Subdivision Block 2 Lot 1, Block 3 Lots 5 and 12, Block 4 Lot 1, and Cassiar Heights 2ND ADDITION Block 3 Lots 13 and 14, and Cassiar Heights 3RD ADDITION, Lot A-2 and Tax Lot 2065, all in the Fairbanks Recording District, Fourth Judicial District, State of Alaska.

On information and belief, CHARLES E. HOLYFIELD, and NILDA L. HOLYFIELD own, developed and/or control properties affected by the above-said Section Line Easements, including:

The W1/2 NW1/4 NW1/4 of Section 28, T1N. R2E, F.M. in the Fairbanks Recording District, Fourth Judicial District, State of Alaska, a.k.a. Tax Lot 2847 by the Fairbanks North Star Borough.

RS 2477 SECTION LINE EASEMENT LEGAL ARGUMENT

Under the federal Mining Law of 1866 - Lode and Water Law, July 26, 1866 (Section 8 - 14 Stat. 253), re-designated as Section 2477 of the Revised Statutes 1878. (43 U.S.C. 932), the Federal offer for road easements over public lands was made through the following:

"The right of way for the construction of highways over public lands, not reserved for public use, is hereby granted."

There are three requirements or tests for a Section Line Easement to exist under RS 2477. Those three steps to determine RS

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2477 Section Line Easement existence are detailed in the extensive treatise, entitled ACCESS LAW AND ISSUES AFFECTING PUBLIC AND PRIVATE LANDS IN ALASKA, April 9, 1994, by Daniel. W. Beardsley, P. J. Sullivan, and John F. Bennett. (See Exhibit F to Dwane J. Sykes Affidavit.)

First, the section line must have been surveyed and platted; Second, the land must have been federal land and the RS 2477 offer timely accepted, between July 26, 1986, and repeal of RS 2477 on October 21, 1976; third, the adjoining section line land must be unreserved at time of survey plat approval. If all three requirements are met, a valid RS 2477 Section Line Easement exists.

It is noteworthy that the above three criteria for the legal existence of a valid section line easement are in no way effected by the local characteristics of the land or topographic features thereon. The validity of any section line easement, once having met the above mentioned three requirements as stated above, is independent of slope, gradient, soil conditions, permafrost, vegetation, topography, etc., and is independent of the ease or practicality of utilizing it and of the feasibility, economics and/or desirability or type or mechanics of such use or constructions, so long as no restrictions are placed thereon of public use. Thus these points, if brought up by the Defendants, are immaterial and is not a criteria for whether the section line easement exists. If there are questions about the feasibility of

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actually constructing a road, that would be left to the determination of the FNSB, under its Code concerning the building of subdivision roads, Title 17, and in no way effects the legality of whether the valid section line easements exist.

But what about the width of a Section Line Easement? Chapter 19 of Session Laws of Alaska, April 6, 1923, states:

A tract four rods wide between each section line in the Territory dedicated for use as public highway.

The 1949 compiled Session Laws of Alaska repealed this Act by implication. The 1951 Sessions Laws, Chapter 123 SLA 1951, reserved a right-of-way 100 feet wide, 50 feet on each side of a section line of Territorial lands. Chapter 35, Session Laws of Alaska 1953, provided for a right-of-way 33 feet wide on each side of a section line on Federal lands with the Territory of Alaska.

Thus, if a Section Line Easement exists by meeting the above three requirements, then a fourth simple step determines the width of the Section Line Easement on the respective side of the Section Line. This is because Section Line Easements derived directly from the federal government are 33 (thirty three) feet in width.

But if the State of Alaska took title from the federal government, then Section Line Easements granted by and derived from the State of Alaska are 50 (fifty) feet in width. Thus a total Section Line Easement can be 0, 33, 66, 86 or 100 feet in width, depending on from where the land on each side of the Section Line was derived. In summary, any Section Line Easement

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derived from the federal government is 33 feet wide, whereas any Section Line Easement derived from the State of Alaska is 50 feet wide.

These relatively simple steps were summarized by Alaska Department Of Transportation's Chief, Right Of Way, John F. Bennett in his Nov. 1, 2004, letter. (Contained in the FNSB Affidavit of the extensive file of herein Defendants' 2005 Application For Waiver of the subject Section Line Easements, and FNSB's Decision thereon; and recorded of public in the Fairbanks Recording District on 12/21/2004 at 2000-028398-0, pages 8-10 of 11 pages, and attached as Exhibit 3 to Plaintiffs' Complaint and to the April 1, 2006, Affidavit of Dwane J. Sykes. (exhibit 3).

Though Mr. Bennett was asked only to determine the Section Line Easement status of that section line crossing the subject dedicated Misty Fjords Court road east to the subject section corner, these steps can be readily applied to all subject Section Line Easement assessments in the subject Sections 20, 21, 28 and 28, T1N, R2E, F.M. of the instant litigation.

This is true because all subject Section Line Easements of the instant litigation are based upon the same T1N, R2E, F.M. Survey Plat approval of March 10, 1947. Upon that March 10, 1947, Survey Plat approval, a valid Section Line Easement instantly attached to every side of every Section Line upon said March 10, 1947 survey approval---unless the land on the respective side of

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the Section Line had already become specifically reserved and withdrawn from open for entry.

For all these lands adjoining Sections 20, 21, 28 and 29, T1N, R2E. F.M., the adjoining lands were unreserved on March 10, 1947, unless an application for homestead entry had been filed prior, and then timely proved up on. In no case was such homestead entry filed prior to March 10, 1947.

Re: Federal Patent # 1147535 to the 80 acre homestead abutting section lines in Sections 20, 21, 28 and 29 of the Cassiar group of Defendants:

Alaska Department of Transportation Right Of Way Chief John F. Bennett's said letter specifically addresses the subject 80-acre Robert J. McQuin homestead, Federal Patent # 1147535, patented on October 28, 1954 (see certified Federal Patent # 1147535 copy attached to the March 31, 2006, Affidavit of BLM Land Office Clerk, Kentia Stenroos) for the subject SE1/4 SE1/4 of Section 20 and the NE1/4 NE1/4 of Section 29, R1N, R2E, F.M.---which is the predecessor Patent for the same 80-acre tract of the herein Defendants Cassiar Heights Properties Inc, Rudolf L. Gavora, Jena D. Gavora, James K. Button and Jennifer B. Button---and thus determined that 33-foot Section Line Easement's exist for all adjoining Section Lines to said 80-acre homestead tract, and indeed for all the subject Section Line Easements in the instant litigation. Mr. Bennett's letter states:

"For a federal section line easement to exist there are three requirements:

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1. "First, the Section Line must exist, that is it must have been surveyed and platted. This is considered to have occurred when the official federal township plat that reflects the survey and monumentation of the section line is question has been approved. The federal plat that relates to the survey of the section line between Sections 29 and 20 [and 21 and 28] was approved on March 10, 1947

[see certified Survey Plat for T1N, R2E, F.M., with approval date of "March 10, 1947" located at its lower right corner, attached to the March 31, 2006, Affidavit of BLM Land Office Clerk, Kentia Stenroos]

2. "Next, there cannot be a federal section line easement unless there has been an offer and acceptance of the right of way grant. The offer for federal section line easements was made under the Mining Law of 1866 and reenacted as Revised Statute 2477 (RS2477). The grant for a 66-foot wide easement between each section of land was initially accepted by the Alaska Territorial Legislature on April 6, 1923.

There was a hiatus period between 1949 and 1953 when the grant acceptance was not in place and eventually the RS2277 grant offer was repealed in 1976. However, as the township survey in question was approved [on March 19, 1947] prior to the hiatus period, it has no effect on the [subject] section line evaluation.

3. "Finally, for the Section Line Easement to attach, the federal lands crossed by the section line must be unreserved. This status can generally be obtained from the BLM records.

[E.g.] The BLM records for the McQuin Homestead entry indicate that the application leading to patent was filed on December 14, 1951. For this application to have been filed, the lands must have been unreserved and open for entry.

[see certified copy of Robert J. McQuin Homestead Additional Application and its initial typed "1j951 December 14 Appl., filing" entry, attached to the March 31, 2006, Affidavit of BLM Land Office Clerk, Kentia Stenroos].

At the time of township approval (March 10, 1947), the RS2477 grant offer and acceptance was in place (April 6, 1923 to January 18, 1949) and the land appears to have been unreserved up until the date of the homestead entry that led to patent (December 14, 1951). Therefore, the conditions leading to the establishment of a 66-foot wide Section Line Easement along the quarter mile segment of the line between Section 29 and 20 lying within patent

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No. 11475535 were met as of the date of the township survey approval on March 10, 1947."

Applying that same assessment to the remaining Section Lines of Patent # 1227374 determines that valid Section Line Easements also exist, each with a width of 33 feet, on the east 33 feet of the SE1/4 SE1/4 of Section 20 and on the east 33 feet of the NE1/4 NE1/4 of Section 29, R1N, R2E, F.M of McQuin homestead federal Patent # 1147535.

Thus, in summary, as successors to Patent # 1147535, all the property of Defendants Cassiar Heights Properties Inc, Rudolf L. Gavora, Jena D. Gavora, James K. Button and Jennifer B. Button is subject to valid 33-foot Section Line Easements on the east 33 feet and the west 33 feet of the SE1/4 SE1/4 of Section 20 and on the east 33 feet and the north 33 feet of the NE1/4 NE1/4 of Section 29, R1N, R2E, F. M

Re: Federal Patent # 1227374 to the 120 acre homestead abutting section lines in Sections 21, 28 and 29, including Defendant Holyfields 5 acre TL 2847:

Likewise, applying that 4-step assessment to the 120-acre homestead Patent # 1227374 issued on June 18, 1962, to Donald Clifford Kimmel, for the W1/2 NW1/4 of Section 28 and the SE1/4 NE1/4 of Section 29, T1N, R2E, F.M., determines that:

1. On March 10, 1947, the same T1N R2E, F.M. Survey Plat was approved. (again see the certified Survey Plat attached to the March 31, 2006, Affidavit of BLM Land Office Clerk, Kentia Stenroos.

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2. The federal RS2477 grant of a 66-foot wide easement between each section of land was accepted by the Alaska Territorial Legislature on April 6, 1923. (Again, since the Survey Plat was approved March 10, 1947, before the hiatus period between 1949 and 1953, a valid Section Line Easement instantly attached on the March 10, 1947, Survey Plat approval unless land on either side of the Section Line had been prior reserved.

3. A valid Section Line Easement attached on the section line between Sections 28 and 29, on March 10, 1947, because land on either side of Section Line the date of homestead entry for Patent # 1227374 was then still unreserved, since the homestead entry for Patent # 1227374 did not occur until "5-30-56" as shown in the certified "Homestead 2nd entry" form for Patent # 1227374, attached to the March 31, 2006, Affidavit of BLM Land Office Clerk, Kentia Stenroos, as Exhibit 1.

4. Since Patent # 1227374 was a federal patent the width of the Section Line Easement on each side in Section 28 and 29 was each 33 feet. More specifically, valid Section Line Easements exist 33 feet wide on the west 33 feet and the north 33 feet of the W1/2 NW1/4 of Section 28 and the east 33 feet of the SE1/4 NE1/4 of Section 29, T1N, R2E, F.M. As to Defendants Charles E. Holyfield and Nilda L. Holyfield, these valid Section Line Easements include the west 33 feet and the north 33 feet of the W1/2 NW1/4 of Section 28, T1N, R2E, F.M.

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In conclusion, Plaintiff Sykes is entitled to a declaratory judgment from this court affirming the validity of the above said Section Line Easements for non-exclusive public roadways and use in Sections 20, 21, 38 and 29, T1N, R2E, F.M..

FOURTH CAUSE OF ACTION

A.S. 19.10.010 [formerly, 1 ch. 123 SLA 1951; am 1 ch. 35 SLA 1953] states:

A.S. 19.10.010: Dedication of land for public highways.

A tract 100 feet wide between each section of land owned by the state, or acquired from the state, and a tract four rods wide between all other sections in the state, is dedicated for use as public highways. The section line is the center of the dedicated right-of-way. If the highway is vacated, title to the strip inures to the owner of the tract of which it formed a part by the original survey.

Plaintiff Dwane J. Sykes is entitled to a declaratory judgment from this court affirming the validity of the above said Section Line Easements for non-exclusive public roadways and use in Sections 20, 21, 38 and 29, T1N, R2E, F.M., and so requests public roadways and use in Sections 20, 21, 38 and 29, T1n, R2E, F.M., under A.S. 19.10.010, as follows:

More specifically, valid Section Line Easements exist 33 feet wide on the west 33 feet and the north 33 feet of the W1/2 NW1/4 of Section 28 and the east 33 feet of the SE1/4 NE1/4 of Section 29, T1N, R2E, F.M. As to Defendants Charles E. Holyfield and Nilda L. Holyfield, these valid Section Line Easements include the

west 33 feet and the north 33 feet of the W1/2 NW1/4 of Section 28, T1N, R2E, F.M.

FIFTH CAUSE OF ACTION
ENCROACHMENT ON SECTION LINE ROADWAY EASEMENTS, AND EJECTION

In or about the years 2000 through 2004, Defendants CHARLES E. HOLYFIELD, and NILDA L. HOLYFIELD, in the process of constructing their residence on:

the W1/2 NW1/4 NW1/4 NW1/4 of Section 28, T1N. R2E, F.M. in the Fairbanks Recording District, Fourth Judicial District, State of Alaska, a.k.a. Tax Lot 2847 by the Fairbanks North Star Borough

negligently and wrongfully erected structures upon the Section Line Easements for public roadways on the north and/or west 33 feet of said Tax Lot 2847, including, but not limited to: a water well, some sort of mechanical building, drain-fields, drain vents, lines and pipes, service power-pole, embankments, parking pads, etc. See the comments of Nilda Holyfield to the Platting board identified above.

Such structures improperly block, preclude or hinder the use and enjoyment of said Section Line Easements for public roadways, by the public in general, and in particular by plaintiffs and their successors in interest, pursuant to Sykes' recorded July 11, 1972, State of Alaska DOT letter of authorization and by Plaintiffs' ownership of the adjoining Tax Lot 2120 and their on-going use of and reliance upon said Section Line Easements thereto.

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An encroachment is defined in Blacks' Law Dictionary, Eighth Edition, at 568, as follows:

encroachment, n. 1. An infringement of another's rights. 2. An interference with or intrusion onto another's property <the court remedied the encroachment by ordering the defendant to cut down the tree limb hanging over the plaintiff's yard>.

Encroachments defects are ascertainable through surveys or physical inspection of the property, but they normally will not appear on the record. A learned treatise on this issue, Thompson on Real Property Vol 11 (1994), at Section 92.12 (j) identifies the serious nature of encroachments.

There are two types of title defects due to encroachments: (1) a structure on the subject property encroaches on adjacent property or violates a building line on the subject property established by a restriction for the benefit of adjacent property; or (2) a structure on adjacent property encroaches on the subject property or violates a building line established for the benefit of the subject property. If the encroachment is substantial, it creates a title defect which may render the title unmarketable. Both types may present serious title problems. However, the first type is usually more serious because it may result in the costly removal or even destruction of the encroaching structure. The second type presents a serious problem when the encroachment interferes with the beneficial use of the subject property. Thompson on Real Property Vol 11 (1994) Sec 92.12 (j)

See the evidence and photos submitted by the Affidavit of Gutoski, including the FNSB Vacation records, the Affidavit of William Blizzard, attesting to the encroachments, the Affidavit of Dwane Sykes, attesting to the encroachments and the Affidavit of Tom Duncan, which clearly shows the encroachments.

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Plaintiffs are entitled to an order for removal and ejectment of said structures and easement impediments to the Section Line Easements, and to a writ of assistance to enforce same.

SIXTH CAUSE OF ACTION
TRESPASS, ENCROACHMENT, AND
TREBLE DAMAGES UNDER A.S. 09.45.730, AND EJECTMENT

Defendants CHARLES E. HOLYFIELD, and NILDA L. HOLYFIELD, without lawful authority, also erected structures, including but not limited to drains, drain fields, vents, parking pads, embankments, on the southern portion of the property of Plaintiffs in The SW1/4 SW1/4 of Section 21, T1N, R2E, F.M.

Additionally, Defendants CHARLES E. HOLYFIELD and NILDA L. HOLYFIELD improperly and without authority, wantonly cut down, injured, and removed several valuable trees and shrubs on Plaintiffs' land, by bulldozing and or earth-moving and/or constructing a parking pad and abrupt embankments, (see Photo which is attached to the original Complaint as Exhibit 4) and erected and maintained NO TRESPASSING and/or KEEP OUT signs on the southern portion of the property of plaintiffs in the SW1/4 SW1/4 of Section 21, T1N, R2E, F.M., (a.k.a. Tax Lot 2120), and improperly bulldozed embankments, and otherwise improperly exercised dominion and control over or upon Plaintiffs' said land, to the attempted exclusion of Plaintiff owners, and improperly engaged in acts of apparent ownership.

The pertinent statute, A.S. 09.45.730 provides in pertinent part as follows:

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A.S. 09.45.730: Trespass by cutting or injuring trees or shrubs. A person who without lawful authority cuts down, girdles, or otherwise injures or removes a tree, timber, or a shrub on (1) the land of another person... or (3). . . is liable to the owner of that land ... for treble the amount of damages that may be assessed in a civil action. ...

Trespass has been defined by the Alaska Supreme Court in the case of State Farm Fire & Casualty Co. v. White-Rodgers Corp. 77 P3d 729, 731 (Alaska 2003). The court referred to Fernandes v. Portwine, 56 P 3d 1 (Alaska 2002) and stated:

"Trespass" has both a narrow and a broad meaning. The narrow meaning refers to an unlawful entry upon the land of another. The broad meaning encompasses, as we recognized in McDowell in a statute of limitations context, any "unlawful interference with one's person, property, or rights." The broader definition here, as in McDowell, determines the meaning of AS 09.10.050. Using this definition, the Portwines' nuisance claims were encompassed by AS 09.10.050. Fernandes v. Portwine, 56 P 3d 1, 5-6 (Alaska 2002).

Fernandes v. Portwine, 56 P 3d 1 (Alaska 2002) went on to further discuss trespass as having both a narrow and a broad meaning.

The narrow meaning refers to an unlawful entry upon the land of another. The broad meaning encompasses, as we recognized in McDowell in a statute of limitations context, any unlawful interference with ones person, property, or rights. McDowell, 957 P.2d at 970 (quoting Blacks Law Dictionary 1502 (6th ed. 1990)ID.

The evidence in support of this claim as found in the Affidavits of Dwane Sykes, Martin Gutoski, and William Blizzard, And Tom Duncan and the FNSB Vacation Records, clearly prove that the

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Defendants trespassed, and encroached on the Plaintiffs property, as stated above. In conclusion, Plaintiffs are entitled to an Order for removal and ejectment of said structures from their real property and an Order to cease such acts of dominion and control and exclusion of the rightful owners.

As to the issue of the treble damages, this evidence will be presented by the Plaintiff at a hearing or at trial, which is expected to be around \$20,000.00, and to a writ of assistance to enforce the same. It is not believed that the issue of the damages would survive summary judgment.

SEVENTH CAUSE OF ACTION:
PUBLIC PRESCRIPTIVE EASEMENT OR COMMON LAW DEDICATION

Since about the 1950s the general public have traveled over and used the herein subject ca. 409-foot take-off road to the east from the driveway of Bonita and Kenneth Neiland and their predecessors and successors, on the segment of the public Section Line easement roadway which takes off east from near the point where the present Misty Fjords Court dedicated public road of the Cassiar Heights Subdivision crosses the section line between Sections 20 and 29---going east for some 409.49 feet, more or less, along said section line to the common corners of Sections 20, 21, 28 and 29, as shown on Cassiar Heights plat FRD 1994-74-001 (which is attached to the original Complaint as Exhibit 5).

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Plaintiffs should be granted Declaratory Judgment, as to Defendants Holyfields, under a public prescriptive easement under AS 09.45.052, for over seven years use with color of title, under AS 09.10.030 for over ten years adverse use without color of title, or under common law dedication, that the general public, including Plaintiffs herein, have unrestricted, perpetual easement and public right of use over and upon the existing Robert's Roost Road from Chena Hot springs through the N1/2 NW 1/4 of Section 28, T1N, R2E, FM, to and through Tax Lot 2847 aka W 1/2 NW 1/4 NW 1/4 of said Section 28, now owned by Holyfields, more specifically described as follows:

a. Commencing at a point on the Northerly boundary of Chena Hot Springs Road right-of-way, which point lies 225 feet East of the West boundary of Section 28, T1N, R2E. F.M., thence northerly on the existing public Robert's Roost Road as presently built and as recorded from Robert Straight to the State of Alaska DOT on August 30, 1971, as Inst. #71-07829 at BK 263 PG 93-4, to its public ROW terminus upon the south boundary of NW 1/4 NW 1/4 of said Section 28;

b. thence continues meandering northwesterly 25 feet on each side of the existing center line, along the common boundaries of TL-2826, TL-2848, TL-2807 and TL-2849, as more specifically set forth in the Right-Of-Way in Statutory Warranty Deed from Dorothy Titus to Brett M. Griffith and Deidre J. Geist, recorded on September 11, 1985 as Instrument 85-23062 in BK 444 Pg 295-6, until it reaches the SE corner of the Holyfields' W1/2 NW1/4 NW1/4 NW1/4 of Section 28, T1N. R2E, F.M. in the Fairbanks Recording District, Fourth Judicial District, State of Alaska, a.k.a. Tax Lot 2847 by the Fairbanks North Star Borough.

c. thence the centerline of said existing private road continues northwesterly, on an incline which skirts the old borrow-pit on its right, to a point about 8 feet, more or less, east of the west Section Line of Section 28, near the SW corner of the Holyfields' NW1/4 NW1/4 NW1/4 NW1/4 of said Section 28; thence the centerline continues north over the Holyfields' NW1/4 NW1/4 NW1/4 NW1/4 of said Section 28, along a line about 8 feet east of and parallel to

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the west Section Line of Sec. 28, lying mostly within the West 33-foot public section line ROW to a point about 8 feet East of the northwest corner of said Section 28 and of Holyfields said TL-2847, to reach and provide access to the adjoining SW1/4 SW1/4 of Section 21, T1N, R2E, a.k.a. TL 2120, the dominant 40-acre estate owned by the Sykes family.

All of that use by the general public has been continuous, uninterrupted, open, visible, actual, hostile, adverse and notorious, done as if under right and acting as if they were the owner of the ROW easement, not merely one acting with the permission of the owner, and was reasonably visible to the record owners, and was done under color of title for over seven years per A.S. 09.45.052, or without color of title for over 10 years per A.S. 09.10.030.

AS 09.45.052. Adverse Possession, states as follows:

(a) The uninterrupted adverse notorious possession of real property under color and claim of title for seven years or more, or the uninterrupted adverse notorious possession of real property for 10 years or more because of a good faith but mistaken belief that the real property lies within the boundaries of adjacent real property owned by the adverse claimant, is conclusively presumed to give title to the property except as against the state or the United States. For the purpose of this section, land that is in the trust established by the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, is land owned by the state.

(b) Except for an easement created by Public Land Order 1613, adverse possession will lie against property that is held by a person who holds equitable title from the United States under paragraphs 7 and 8 of Public Land Order 1613 of the Secretary of the Interior (April 7, 1958).

(c) Notwithstanding AS 09.10.030, the uninterrupted adverse notorious use of real property by a public utility for utility purposes for a period of 10 years or

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more vests in that utility an easement in that property for that purpose.

(d) Notwithstanding AS 09.10.030, the uninterrupted adverse notorious use, including construction, management, operation, or maintenance, of private land for public transportation or public access purposes, including highways, streets, roads, or trails, by the public, the state, or a political subdivision of the state, for a period of 10 years or more, vests an appropriate interest in that land in the state or a political subdivision of the state. This subsection does not limit or expand the rights of a state or political subdivision under adverse possession or prescription as the law existed on July 17, 2003.

09.10.030. states as follows

AS 09.10.030. Actions to Recover Real Property.

(a) Except as provided in (b) of this section, a person may not bring an action for the recovery of real property or for the recovery of the possession of it unless the action is commenced within 10 years. An action may not be maintained under this subsection for the recovery unless it appears that the plaintiff, an ancestor, a predecessor, or the grantor of the plaintiff was seized or possessed of the premises in question within 10 years before the commencement of the action.

(b) An action may be brought at any time by a person who was seized or possessed of the real property in question at some time before the commencement of the action or whose grantor or predecessor was seized or possessed of the real property in question at some time before commencement of the action, and whose ownership interest in the real property is recorded under AS 40.17, in order to

- (1) quiet title to that real property; or
- (2) eject a person from that real property.

The Affidavit of Patricia Sykes identifies that since June 1972, she and other members of their family, successors, associates, consultants and representatives personally traveled on

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the section line easements in question, on a repeated and continuous basis, without interruption or challenge. (Para.7) She identifies the route from Chena Hot Springs, up Robert's Roost road to the section corner of sec 20, 21,28 and 29, and states the details of such travels. (Para 11 etc). She observes the use of these section line easements and roads by the general public, including Robert's Roost road. Plaintiff directs the court to the facts as stated in her affidavit and the attachments thereto as support for its claim that it has proved a public prescriptive easement.

These facts are also proven by the Affidavit of Trudy Glaser. Her personal observations as set forth in paragraph 7, states "I observed some 2 to 15 vehicles per day using the Roberts Roost road."

See also the certified copies of the Borough Assessing department parcel data sheet (Exhibit 19) and the Borough Assessing file for TL 2847. Exhibit 20 (two pages). This exhibits identifies a building being erected and photographed by the Borough official on 9-28-97.

As set forth in the Affidavits of Patricia Sykes, Trudy Glaser, and Plaintiff Sykes, they and his agents have used these routes as a member of the general public for over 7 years under color of title. They have used these routes as a member of the general public without color of title for over 10 years per A.S. 09.10.030.

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Also please see the Affidavit of Trudy Glaser, Paragraphs 1 through 7 and Affidavit of Patricia Sykes paragraphs 10 through 20 and the Affidavit of Dwane Sykes, paragraphs 46 (a), especially 47, and 48-50, and especially paragraphs 51-54 and 56, 57-58, and especially 59 and 62, 73, 74, and most especially 75, and 76 to 79, as evidentiary support for the Plaintiffs' position.

The Alaska Supreme court elaborated recently on the issue of a public prescriptive easement and whether the easement may be expanded in the case of Price v Eastham, 128 P3d 725 (February 3, 2006.) The court discussed its previous ruling in Price I:

In Price v. Eastham, 75 P3d 1051(Alaska) we held that a public prescriptive easement had been established and remanded the case to the superior court for a determination of the easements scope. In Price I, we discussed the question of scope in some detail, remarking that

Courts have restricted the scope of prescriptive easements significantly to limit the burden on the servient estate. Id at 731.

The higher court suggested that the superior court was free to impose restrictions upon the easement consistent with the Restatement (Third) [of Property: Servitudes] . . . including . . . limiting use to certain seasons, prescribing the width of the easement, and specifying the precise uses that may be made of the easement. The court ruled that to determine the scope of the public prescriptive easement on Prices land,

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the superior court must make specific factual findings regarding the dates to be ascribed to the prescriptive period; the original purpose and use of the easement; any changes that have been made in the use of the easement; and, finally, the reasonableness of that change, taking into account such factors as the speed of the changes in use, damage to the estate, and the reasonable expectations of the servient landowner. Therefore, we REMAND the case to the superior court for such findings and both parties should prepare to address the factors at issue. Id.

In a case in which a disputed driveway caused Harris to seek a prescriptive easement, the Alaska supreme court set forth the elements in McDonald v. Harris, 978 P 2d 81,83(Alaska 1999):

The elements of a prescriptive easement are essentially the same as the elements of adverse possession, except that adverse possession focuses on possession rather than use. To be entitled to a prescriptive easement, a party must prove (1) continuity--that the use of the easement was continuous and uninterrupted; (2) hostility-- that the user acted as the owner and not merely one with the permission of the owner; and (3) notoriety -- that the use was reasonably visible to the record owner. A claimant must prove each element by clear and convincing evidence. Finally, a claimant must have engaged in the adverse use for at least ten years. Id.

(Footnotes omitted.)

For a good discussion of how each element fits into an actual pattern, this case is an excellent example. See also Lane v. City of Kotzebue, 982 P2d 1270(Alaska 1999)at 1275 for another discussion of prescriptive easements.

In conclusion, the Plaintiffs are entitled to an easement enjoyed by the public for the right to access and enjoyment of the property.

EIGHTH CAUSE OF ACTION:

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PRIVATE PRESCRIPTIVE EASEMENT

Likewise since about 1969, Plaintiff Sykes and his agents used and traveled the herein subject ca. 409-foot take-off road to the east from the driveway of Bonita and Kenneth Neiland and their predecessors, on the segment of the public Section Line easement roadway which takes off east from near the point where the present Misty Fjords Court dedicated public road of the Cassiar Heights Subdivision crosses the section line between Sections 20 and 29---going east for some 409.49 feet, more or less, along said section line to the common corners of Sections 20, 21, 28 and 29, as shown on Cassiar Heights plat 3RD 1994-74-001 See Exhibit 5 on the original Complaint) has been continuous, uninterrupted, open, visible, actual, hostile, adverse and notorious, and done as if under right and acting as if they were the owner of the ROW easement, not merely one using the roadways with the permission of the owner, and was reasonably visible to the record owners, and was done under color of title for over 7 years per A.S. 09.45.052.

The same is true since about 1969 for the existing private roadway from Chena Hot Springs Road north and through the NW1/4 NW 1/4 of Section 28 to and thru TL-2847 now owned by Defendants Holyfields. More specifically, that existing private road over private property:

1. Commencing at a point on the Northerly boundary of Chena Hot Springs Road right-of-way, which point lies 225 feet East of the West boundary of Section 28, T1N, R2E. F.M., thence

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779 8th Avenue Fairbanks, Alaska 99701-4498
Phone: 907-452-6195 Fax: 907-456-5949

northerly on the existing public Robert's Roost Road as presently built and as recorded from Robert Straight to the State of Alaska DOT on August 30, 1971, as Inst. #71-07829 at BK 263 PG 93-4, to its public ROW terminus upon the south boundary of NW 1/4 NW 1/4 of said Section 28; thence continues meandering northwesterly 25 feet on each side of the existing center line, along the common boundaries of TL-2826, TL-2848, TL-2807 and TL-2849, as more specifically set forth in the Right-Of-Way in Statutory Warranty Deed from Dorothy Titus to Brett M. Griffith and Deidre J. Geist, recorded on September 11, 1985 as Instrument 85-23062 in BK 444 Pg 295-6, until it reaches the SE corner of the Holyfields W1/2 NW1/4 NW1/4 NW1/4 of Section 28, T1N. R2E, F.M. in the Fairbanks Recording District, Fourth Judicial District, State of Alaska, a.k.a. Tax Lot 2847 by the Fairbanks North Star Borough, thence the centerline of said existing private road continues northwesterly, on an incline which skirts the old borrow-pit on its right, to a point about 8 feet, more or less, east of the west Section Line of Section 28, near the SW corner of the Holyfields' NW1/4 NW1/4 NW1/4 NW1/4 of said Section 28; thence the centerline continues north over the Holyfields' NW1/4 NW1/4 NW1/4 NW1/4 of said Section 28, along a line about 8 feet east of and parallel to the west Section Line of Sec. 28, lying mostly within the West 33-foot public section line ROW to a point about 8 feet East of the northwest corner of said Section 28 and of Holyfields said TL-2847, to reach and provide access to the adjoining SW1/4 SW1/4

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of Section 21, T1N, R2E, a.k.a. TL 2120, the dominant 40-acre estate owned by the Sykes family.

Again, Plaintiffs' and their agents' use of that roadway since about 1969 has been continuous, uninterrupted, open, visible, actual, hostile, adverse and notorious, done as if under right and acting as if they were the owner of the ROW easement, not merely one acting with the permission of the owner, and their travel and use was reasonably visible to the record owners, and was done without color of title for over 10 years per A.S. 09.10.030.

In conclusion, the Plaintiffs are entitled to an easement by prescription acquired to the property because of the long continued enjoyment and personal usage restricted to claimant and his ancestors, because possession has been continuous and uninterrupted, the possessor must have acted as if he were the owner and not merely one acting with the permission of the owner, the possession must have been reasonably visible to the record owner so that the record owner has notice of the existence of an adverse claimant. In the alternative, if the Plaintiffs have no right of way over the above described property, Plaintiffs are entitled to a right of way over and across all of such property described above as an easement of necessity. In order to have access, ingress and egress to the property currently owned by Plaintiffs it is necessary that Plaintiffs have an easement and right of way over and across the property as described above. Such

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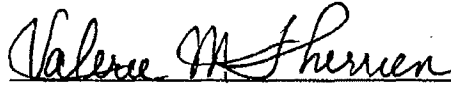
necessity existed at the time the property now owned by Plaintiffs was severed from the property now claimed by defendant.

CONCLUSION

The Plaintiffs have submitted voluminous evidence in support of their motion for summary judgment against the defendants, CASSAIR HEIGHTS PROPERTIES INC, AN ALASKA CORPORATION, RUDOLF L. GAVORA, JENA D. GAVORA, JAMES K. BUTTON, JENNIFER B. BUTTON, CHARLES E. HOLYFIELD AND NILDA L. HOLYFIELD, as to the THIRD, FOURTH, FIFTH, SIXTH, SEVENTH, AND EIGHTH CAUSES OF ACTION respectively. The Plaintiffs have asserted for each claim that there is no genuine issue as to any material fact. The Plaintiffs have set forth the law concerning each claim, and Plaintiffs argue that they are entitled to judgment as a matter of law.

Dated this 4th day of April, 2006, at Fairbanks, Alaska.

VALERIE M. THERRIEN, P.C.



Valerie M. Therrien, ABA #7610137
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on the day below written, a true and correct copy of the foregoing document was delivered via courier upon:

John J. Burns, Borgeson & Burns
Attorney for Rudolf Gavora, Jena Gavora,
James Button, Jennifer Button,
Cassiar Heights Properties Inc.
100 Cushman St., Suite 311
Fairbanks, AK 99701

Lynn E. Levensgood, MacDonald & Levensgood
Attorney for Charles Holyfield & Nilda Holyfield
1008 16th Avenue, Suite 200
Fairbanks, AK 99701



4/3/06

Office of Valerie M. Therrien Date



Fairbanks North Star Borough

Borough Clerk's Office

809 Pioneer Road * PO Box 71267 * Fairbanks, Alaska 99707-1267 *(907)459-1401 FAX 459-1224

MEMORANDUM

TO: Jim Whitaker, Mayor
Fairbanks North Star Borough

FROM: Mona Lisa Drexler, MMC
Municipal Borough Clerk

DATE: August 22, 2005

SUBJECT: ACTION OF THE REGULAR MEETING ASSEMBLY MEETING OF
August 18, 2005

I CERTIFY THIS DOCUMENT IS A
FULL TRUE AND CORRECT COPY OF
THE ORIGINAL ON FILE IN THE
OFFICE OF THE BOROUGH CLERK,
FAIRBANKS NORTH STAR BOROUGH,
ALASKA.

Mona Lisa Drexler
Borough Clerk 3/31/06

The following action was taken at the above-referenced meeting:

APPROVAL OF MINUTES

Regular Assembly Meeting minutes of June 23, 2005.
-Approved

Regular Assembly Meeting minutes of July 14, 2005.
-Approved

COMMUNICATIONS TO THE ASSEMBLY

A Memorandum from the Borough Mayor dated August 3, 2005 regarding the Appointment of Shauna Trotzke to the Early Childhood Development Commission.
-Concurred

A Memorandum from the Borough Mayor dated August 3, 2005 regarding the Appointment of Ryan Colgan to the Planning Commission.
-Concurred

A Memorandum from the Borough Mayor dated August 18, 2005 regarding the Appointment of Cynthia Henry to the Carlson Center Advisory Board.
-Concurred

A Memorandum regarding a Vacation Of A Public Right-of-Way
(VA 004-06 West Cartwright Ind. Pk)
-Approved (no veto)



COMMUNICATIONS TO THE ASSEMBLY (continued)

A Memorandum regarding a Vacation Of A Public Right-of-Way
(VA 002-06 located on Schutzen St. and Doughchee Ave.)

-Approved (no veto)

A Memorandum regarding a Vacation Of A Public Right-of-Way
(VA 001-06 located east off Misty Fjords Ct.)

-Removed from the Consent Agenda and divided into two motions listed below:

- Vacation of the 66' wide section line easement common to sections 29 lying west of Misty Fjords Court.
-Approved (no veto)
- Section line easement to be vacated between sections 21 and 28; 29 and 28.
-Vetoed

SPECIAL ORDERS – PUBLIC HEARING

Liquor License – Transfer- Beverage Dispensary

From: Aviators Steak House
Upriver Inc.
731 2nd Avenue

To: Jalapenos Tequila Bar/Jalapenos Mexican Restaurant
Upriver Inc.
923 Old Steese Hwy

-Filed without objection

Liquor License – Transfer- Beverage Dispensary

From: Alaska 1910
Elizabeth H. Rollins
No Premises

To: Alaska 1910
Thresa D. Hester
4625 Old Airport Road

-Filed without objection

SPECIAL ORDERS – PUBLIC HEARING (continued)

Liquor License – Transfer- Beverage Dispensary Tourism

From: Palace Theatre & Saloon
The Palace, Inc.
2300 Airport Way – Pioneer Park

To: Trio Restaurant and Lounge
Y and Y LLC
1235 Airport Way Suite #1

-Filed without objection

ORDINANCE NO. 2005-47. An Ordinance Rezoning 160 Acres Contained Within The NW ¼ Of Section 21, T.3S., R.3E., From General Use-1 To Rural Agriculture-5 And Rural Agriculture-20 Or Other Appropriate Zone. (Located east of the Tanana River and west of Old Valdez Trail) (RZ027-2005) (Sponsor: Mayor Whitaker)

-Adopted

ORDINANCE NO. 2005-51. An Ordinance Rezoning Block 23 Bjerremark Subdivision From Light Industrial To General Commercial Or Other Appropriate Zone. (Located between 26th and 27th Avenues and Rickert and Bjerremark Streets) (RZ030-2005) (Sponsor: Mayor Whitaker)

-Adopted

ORDINANCE NO. 2005-52. An Ordinance Rezoning Lots 11, 12, And 13, Block 17 Smith Ranch Subdivision From Rural Estate-2 To Two-Family Residential Or Other Appropriate Zone. (Located on the southeast corner of Fairchild Avenue and Western Avenue) (RZ031-2005) (Sponsor: Mayor Whitaker)

-Adopted

ORDINANCE NO. 2005-53. An Ordinance Rezoning TL-1244, Section 12, T1S, R1E Comprised Of Approximately 3.5 Acres From Rural Estate-2 To Rural Residential Or Other Appropriate Zone. (Located north of Persinger Drive and east of Feliz Road) (RZ033-2005) (Sponsor: Mayor Whitaker)

-Adopted

ORDINANCE NO. 2005-54. An Ordinance Rezoning TL-1011, Section 10, T. 1N., R. 1E., From Rural Estate-2/MHS To Rural Residential Or Other Appropriate Zone. (Located west of Gilmore Trail and north of Goldmine Trail) (RZ028-2005) (Sponsor: Mayor Whitaker)

-Defeated

ORDINANCE NO. 2005-29. An Ordinance Repealing Chapter 8.16 And Amending Title 18 Of The Fairbanks North Star Borough Code Of Ordinances Relating To Junkyards. (Sponsor: Assemblymember Williams)

-Amended/Adopted

SPECIAL ORDERS – PUBLIC HEARING (continued)

ORDINANCE NO. 2005-20-1A. An Ordinance Amending The FY 2005-06 Budget By Appropriating Funds From The Landfill Closure Reserve Account For An Interfund Loan To The Chena Point Road Service Area For A Resurfacing Project. (Sponsor: Mayor Whitaker)

-Adopted

ORDINANCE NO. 2005-20-1B. An Ordinance Amending The FY 2005-06 Budget By Appropriating \$35,000 To The Special Revenue Fund For The Purchase Of A Brush Truck For The Steese Volunteer Fire Service Area. (Sponsor: Mayor Whitaker)

-Adopted

ORDINANCE NO. 2005-20-1C. An Ordinance Amending The FY 2005-06 Budget By Appropriating \$75,000 To The Special Revenue Fund For Improving Precision And Sharing Of GIS Data By The Fairbanks North Star Borough By Converting Map Datum From North American Datum (NAD) 27 To NAD 83, And Adjusting The Base Map To The Updated Protracted Grid And Known Control Points. (Sponsor: Mayor Whitaker)

-Substituted/Adopted

CONSIDERATION OF CALENDAR – Unfinished Business

None

CONSIDERATION OF CALENDAR – New Business - Resolutions

RESOLUTION NO. 2005-38. A Resolution Authorizing A Limited Liability Company Operating Agreement And The Distribution Of The Noel Wien Library's Portion Of The Bentley Trust Assets Into The Limited Liability Company To Be Held In The Form Of An Assignee Interest.

(Sponsor: Mayor Whitaker)

-Substituted/Adopted

RESOLUTION NO. 2005-39. A Resolution Requesting The Administration To Implement The National Association Of Counties Prescription Discount Card Program.

(Sponsor: Assemblymember Bartos)

-Adopted

RESOLUTION NO. 2005-40. A Resolution Supporting Increased Penalties For DUI Violations.

(Sponsor: Assemblymember Bartos)

-Adopted

ADDED TO THE AGENDA

RESOLUTION NO. 2005-41. A Resolution By The FNSB Assembly To Support Raising Local involvement And Citizen Awareness Of Fetal Alcohol Syndrome And For The US Senate's Designation Of September 9, 2005 As "National Fetal Alcohol Spectrum Disorders Awareness Day".

(Sponsor: Assemblymember Hopkins)

-Suspended the rules/Adopted/Unanimous Co-sponsorship

CONSIDERATION OF CALENDAR – New Business – Ordinances To Be Introduced And Advanced To Public Hearing

SPECIAL ORDERS – PUBLIC HEARING (continued)

ORDINANCE NO. 2005-20-1A. An Ordinance Amending The FY 2005-06 Budget By Appropriating Funds From The Landfill Closure Reserve Account For An Interfund Loan To The Chena Point Road Service Area For A Resurfacing Project. (Sponsor: Mayor Whitaker)

-Adopted

ORDINANCE NO. 2005-20-1B. An Ordinance Amending The FY 2005-06 Budget By Appropriating \$35,000 To The Special Revenue Fund For The Purchase Of A Brush Truck For The Steese Volunteer Fire Service Area. (Sponsor: Mayor Whitaker)

-Adopted

ORDINANCE NO. 2005-20-1C. An Ordinance Amending The FY 2005-06 Budget By Appropriating \$75,000 To The Special Revenue Fund For Improving Precision And Sharing Of GIS Data By The Fairbanks North Star Borough By Converting Map Datum From North American Datum (NAD) 27 To NAD 83, And Adjusting The Base Map To The Updated Protracted Grid And Known Control Points. (Sponsor: Mayor Whitaker)

-Substituted/Adopted

CONSIDERATION OF CALENDAR – Unfinished Business

None

CONSIDERATION OF CALENDAR – New Business - Resolutions

RESOLUTION NO. 2005-38. A Resolution Authorizing A Limited Liability Company Operating Agreement And The Distribution Of The Noel Wien Library's Portion Of The Bentley Trust Assets Into The Limited Liability Company To Be Held In The Form Of An Assignee Interest.

(Sponsor: Mayor Whitaker)

-Substituted/Adopted

RESOLUTION NO. 2005-39. A Resolution Requesting The Administration To Implement The National Association Of Counties Prescription Discount Card Program.

(Sponsor: Assemblymember Bartos)

-Adopted

RESOLUTION NO. 2005-40. A Resolution Supporting Increased Penalties For DUI Violations.

(Sponsor: Assemblymember Bartos)

-Adopted

ADDED TO THE AGENDA

RESOLUTION NO. 2005-41. A Resolution By The FNSB Assembly To Support Raising Local Involvement And Citizen Awareness Of Fetal Alcohol Syndrome And For The US Senate's Designation Of September 9, 2005 As "National Fetal Alcohol Spectrum Disorders Awareness Day".

(Sponsor: Assemblymember Hopkins)

-Suspended the rules/Adopted/Unanimous Co-sponsorship

CONSIDERATION OF CALENDAR – New Business – Ordinances To Be Introduced And Advanced To Public Hearing

ORDINANCE NO. 2005-57. An Ordinance Rezoning Lots 01, 02, 19 And 20, Block 11 Hamilton Acres NW Portion From Single Family – 10 To Two Family Residential Or Other Appropriate Zone. (Located east of A Street between Craig and Dunbar Avenues)
(Sponsor: Mayor Whitaker) (RZ2006-002)
-Advanced to September 8, 2005; referred to the Committee of the Whole September 1, 2005.

ORDINANCE NO. 2005-58. An Ordinance Rezoning Lot 02 Roberts Roost 2nd Addition From General Use-1 To Rural Estate-2 Or Other Appropriate Zone. (Located north of Chena Hot Springs Road, east of Roberts Roost Road) (RZ2006-004) (Sponsor: Mayor Whitaker)
-Advanced to September 8, 2005; referred to the Committee of the Whole September 1, 2005.

ORDINANCE NO. 2005-59. An Ordinance Rezoning Approximately 1.043 Acres From General Use-1 To Rural Residential Or Other Appropriate Zone On Tract B Katsandres Subdivision In Order To Adjust Zoning Lines To Coincide With Proposed Lot Lines In Lakloey Annex RP056-03. (Located south of Badger Road and east of Lakloey Drive) (RZ2006-005)
(Sponsor: Mayor Whitaker)
-Advanced to September 8, 2005; referred to the Committee of the Whole September 1, 2005.

ORDINANCE NO. 2005-60. An Ordinance Rezoning Lot 21 Ester Small Tracts USS 3724 From Rural Residential To General Use-1 Or Other Appropriate Zone. (Located west of Stone Road and north of Main Street) (RZ2006-001) (Sponsor: Mayor Whitaker)
-Advanced to September 8, 2005; referred to the Committee of the Whole September 1, 2005.

ORDINANCE NO. 2005-61. An Ordinance Providing For The Sale Of Certain Borough-Owned Lands, Setting The Date Of Sale And Prescribing Terms. (Sponsor: Mayor Whitaker)
-Advanced to September 8, 2005; referred to the Committee of the Whole September 1, 2005.

ORDINANCE NO. 2005-62. An Ordinance Amending Chapter 3.10 Of The Fairbanks North Star Borough Code Of Ordinances Concerning Property Tax Exemptions To Make The Chapter Consistent With Recent Assembly Action And To Make Minor Language Revisions To The Chapter. (Sponsor: Mayor Whitaker)
-Advanced to September 8, 2005; referred to the Committee of the Whole September 1, 2005.

ORDINANCE NO. 2005-63. An Ordinance Amending Participation In The PERS Reemployment Program. (Sponsor: Assemblymember Hutchison)
-Advanced to September 8, 2005; referred to the Committee of the Whole September 1, 2005.

CONSIDERATION OF CALENDAR – New Business – Ordinances To Be Referred To Committees Or Commissions

None

Parcel Data Sheet

PAN	Description	Twn - Rng
0442917 2847 28 1N 2E		1N 2E
Neighborhood	Business	Status
0601 Chena Hot Springs Hills		Active - Roll Type 1
Millage Group	Most Recent Mill Rate	Tax Status
0930 ALL NW & NE	14.811	TAXABLE
Detail Description	Property Class	
TL-2847 SEC 28 T1N-R2E OUT OF TL-2807 SEC 28 T1N-R2E	Residential	

Billing Address

HOLYFIELD CHARLES E
 HOLYFIELD NILDA L
 1065 ROBERTS ROOST RD
 FAIRBANKS AK 99712 3553

Ownership: (Name / Interest)

HOLYFIELD, CHARLES E OWNERSHIP
 HOLYFIELD, NILDA L CO-OWNER

Documents: (Description / Record Date / Book / Page / Instrument# / Current / Amount)

BOROUGH RESIDENTIAL	01/01/2005				
Reference Only	12/21/2004			2004-028398-0	
Deed of Trust	06/15/2004			2004-012891-0	
Energy Audit	06/15/2004			2004-012889-0	
Notice of Completion	06/08/2004			2004-012329-0	
Address Change	05/05/2004				
Multi-Parcel Deed of Trust	08/25/2003			2003-021233-0	
Warranty Deed	11/02/2000	1224	689		
Warranty Deed	09/01/1985	444	295		

Govt. Codes: (Entity / Account)

Situs Address

1065 ROBERT'S ROOST RD (Entered by CP)

Land Sections: (ID / Land Class [Not Zoning] / Quantity)

1 General Residential 5 Acres

Assessment History:

Year	Land	Structures, etc.	Total	Taxable Amount
2005	28,438	339,989	368,427	358,427
2004	18,112	160,244	178,356	178,356
2003	18,112	0	18,112	18,112
2002	18,112	0	18,112	18,112
2001	18,112	0	18,112	18,112

PLAINTIFF
 EXHIBIT NO. 19
 ADMITTED

 (CASE NUMBER)

I CERTIFY THIS DOCUMENT IS A FULL TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN THE OFFICE OF THE BOROUGH CLERK, ASSESSOR FAIRBANKS NORTH STAR BOROUGH, ALASKA.

Mona Lisa Shuster
 Borough Clerk 4/3/06

Serial # 013215
N2NWNW

Plot # 1227374

SIZE: 5 ac

AREA CHANGES:

LAND USE: VACANT _____ IMP. _____ RESIDENTIAL _____ CONDO. _____
TRL. COURT _____ RECREATIONAL _____ COM. _____ MULTI-RES. _____
FARM _____ AG. _____ ZONING _____

INFLUENCES

LOCATION	%	SMALL	MEDIUM	LARGE
WATER FRONT		IRREGUL		
VIEW		SIZE		
ACCESS		OTHER		
LOCATION				
OTHER	70			



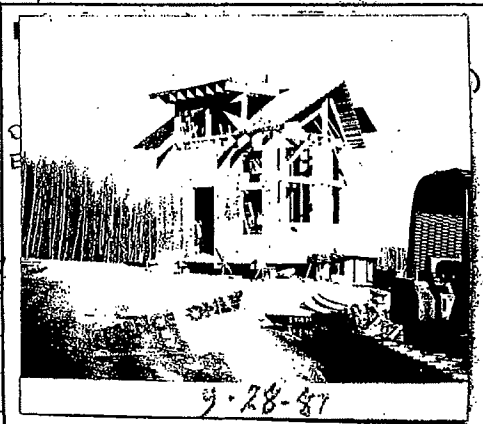
NOTES:

YEAR	OWNER	ASSESSMENT
1985	Roose, Roy L + Dorothy	Assessed on 72-2807 1N-2E
1986	Griffith, Brett M	8444-P275 7/1/85 w/d 8468-P240 8/1/85 o/d
2001	Holyfield, Charles E. + Nilda L.	B1224 P 689 11-2-2000 w/d 2004-028395-0 12-21-04 XX

PLAINTIFF
EXHIBIT NO. 20
ADMITTED
102
(CASE NUMBER)

REMARKS 9/03 Start of House here - meas Bsm't - Est
const into - NOK LA - CB end of year for size of upper
levels - DJP/DS
7/04 LC with worker locals @ 11/25 LA over Garage
need to meas OXH's - verify upper LV LA - GARC
-SS ins DJP/DS
7/04 Review LC talked to Alex on phone - Bsm't NO finish just
minor-trim; stairs me Dipped -SS ins to 1/4 DJP

I CERTIFY THIS DOCUMENT IS A
FULL TRUE AND CORRECT COPY OF
THE ORIGINAL ON FILE IN THE
OFFICE OF THE BOROUGH CLERK
FAIRBANKS NORTH STAR BOROUGH,
ALASKA.
Mona Lisa Brunker
Borough Clerk
4/3/06



IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

E. L. ROY DUCE, individually and as)
trustee of the Sykes Childrens Trusts, and)
DWANE J. SYKES, Plaintiffs,)

vs)

CASSIAR HEIGHTS PROPERTIES INC, an Alaskan)
corporation, RUDOLF L. GAVORA, JENA D. GAVORA,)
JAMES K. BUTTON, JENNIFER B. BUTTON,)
CHARLES E. HOLYFIELD, NILDA L. HOLYFIELD,)
JOHN DOES 10 1-20 et al,)

Defendants.)

CASE No. 4FA-04-2827 CI)

RECEIVED

APR 03 2006

HD 3:58pm

NOTICE OF FILING OF FAXED COPY OF SIGNED AFFIDAVIT

Come now the Plaintiffs, DWANE J. SYKES, et al, by and through their attorney, Valerie M. Therrien, and hereby give notice of the filing of a faxed copy of a signed affidavit of Dwane Sykes. The original document will be filed with the court upon receipt. It is the undersigned's belief that the original affidavit will be identical to that filed herein.

DATED this 3rd day of April, 2006, at Fairbanks, Alaska.

VALERIE M. THERRIEN, P.C.



Valerie M. Therrien, ABA #7610137
Attorney for Plaintiffs

VALERIE M. THERRIEN, ATTORNEY AT LAW, P. C.
779 8th Avenue Fairbanks, Alaska 99701-4498
Phone: 907-452-6195 Fax: 907-456-5949

VALERIE M. THERRIEN, ATTORNEY AT LAW, P. C.
779 8th Avenue Fairbanks, Alaska 99701-4498
Phone: 907-452-6195 Fax: 907-456-5949

CERTIFICATE OF SERVICE

I hereby certify that on the day below written,
a true and correct copy of the foregoing
document was delivered via courier upon:

John J. Burns, Borgeson & Burns
Attorney for Rudolf Gavora, Jena Gavora,
James Button, Jennifer Button,
Cassiar Heights Properties Inc.
100 Cushman St., Suite 311
Fairbanks, AK 99701

Lynn E. Levensgood, MacDonald & Levensgood
Attorney for Charles Holyfield & Nilda Holyfield
1008 16th Avenue, Suite 200
Fairbanks, AK 99701

Valerie Therrien 4/3/06
Office of Valerie M. Therrien Date

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

E. L. ROY DUCE, individually and as trustee of the)
Sykes Childrens Trusts, and DWANE J. SYKES,)
)
Plaintiffs,)
vs)
)
CASSIAR HEIGHTS PROPERTIES INC, an Alaskan)
corporation, RUDOLF L. GAVORA, JENA D. GAVORA,)
JAMES K. BUTTON, JENNIFER B. BUTTON,)
CHARLES E. HOLYFIELD, NILDA L. HOLYFIELD,)
et. al.,)
)
Defendants.)

CASE No. 4FA-04-2827 CI

AFFIDAVIT OF DWANE J. SYKES

STATE OF UTAH)
) ss.
COUNTY OF UTAH)

BEING FIRST SWORN ON OATH Dwane J. Sykes , of adult age, deposes and says on personal knowledge:

Re: PUBLIC SECTION LINE EASEMENTS BETWEEN SECTIONS 20, 21, 28 AND 29:

1. On or about July 11, 1969, Dwane J. and Patricia Sykes purchased a private 120-acre parcel, Tax Lot 2027, aka S1/2 NE1/4 and NE1/4 SE1/4 Sec. 20, T1N, R2E, F.M.
2. The relationship of Sykes' TL 2027, TL 2120 purchased later, and other subject parcels, together with the public Section Line Easements ("SLE") and roadways serving them from Chena Hot Springs Road ("CHSR"), is shown outlined in black emphasis in the Fairbanks North Star Borough ("FNSB") Tax Lot Status Plat, attached and incorporated herein as Exhibit A. That FNSB status plat also show a SLE reserved upon the East-most 33 feet along its 2,640-foot Eastern Section boundary of the dominant TL 2027 itself.
3. The relationship of the subject TL 2027, TL 2120 and other parcels, together with the roadways serving them from CHSR, is also shown outlined in black in Exhibit B, attached and incorporated

- herein, an Aug. 19, 1998, aerial photo printed from the Fairbanks North Star Borough's G.I.S. Ortho Quad map on its public internet site. Sykes' 1969 purchase contract is attached, Exhibit C.
4. NOTE: All Exhibits captions and text herein are also made testimony under oath and incorporated herein by reference.
 5. Additionally, on or about June 17, 1972, at the Alaska Divisions of Land's (ADL) competitive public land auction, Dwane J. and Patricia Sykes out-bid and purchased the "kitty-corner" adjoining 40-acres Tax Lot 2120, aka ADL No. 57643 aka the SW1/4 SW1/4 of Section 21, T1N, R2E, F.M., another dominant estate basis of this easement suit.
 6. Said ADL No. 57643 purchase contract was recorded of public record at Book 43 Pages 638-40, Fairbanks Recorders Office, Fourth Judicial District, Alaska, see Exhibit D hereto.
 7. At that Alaska State land auction, the subject land sale was officially represented to be served by, benefited and burdened by Section Line Easements for public roadways for public egress and ingress and utilities, to and from the public CHSR.
 8. The width of each Section Line Easement was stated as being either 50 feet or 33 feet on each side of the Section Line, depending on whether the land had derived from the State of Alaska or the Federal Government, respectively, including expressly those public Section Line Easements between above-said Sections 20, 21, 28 and 29 to and from the public CHSR, over the servient estates of herein Defendants..
 9. Similarly, a Section Line Easement for public roadways 50 feet wide was also reserved by the State of Alaska upon the west and south 50 feet of the Sykes' subject 40-acre Tax Lot 2120 purchase.
 10. Furthermore, since Sykes' said TL 2120 and TL 2027 adjoin each other only at their corners, physical vehicular travel between them is possible by virtue of the respective public Section Line Easements on each side of the Section Line between Sections 20 and 21 (see Exhibit A)..

11. Immediately in 1972, Plaintiff Dwane J. Sykes applied to the State of Alaska Department of Highways ("DOT") for authorization to non-exclusively use and to construct public roads over and upon certain named Section Lines, including those between above-said Sections 20, 21, 28 and 29 relevant to the subject TL 2120 and TL 2027 purchases, and to this lawsuit.
12. By document dated on or about July 11, 1972, from the Alaska Department of Highways by its Right-Of-Way Agent, Sykes received such authorization, which was recorded on July 13, 1972, at MS Book 36 Page 527, Fairbanks Recording District, Fourth Judicial District, State of Alaska (Complaint Exhibit 1, re-attached and re-incorporated herein), which covered the above-said subject public Section Line Easements at issue herein over servient properties of Defendants herein.
13. Said July 11, 1972, DOT Section Line Easement authorization was also recorded several other times, including, e.g., at BK 0899 PG 358 as shown on Complaint Exhibit 1, and on 12/21/2004 at 2004-028398-0, page 7 of 11.
14. Since our 1969 purchase, I have personally and continuously vehicular traveled over and upon those above-said public Section Line Easements between Sections 20, 21, 28 and 29, together with my now ex-wife Patricia Sykes and countless other members of our children, family, associates, consultants, surveyors, representatives, agents, contractors, equipment and bull-dozer and brush-cutters operators, successors, etc.
15. Said travel occurred repeatedly, continuously and without interruption—with frequency frequently weekly, monthly, yearly, but with some breaks of several months after 1986, but also often daily in 1970s and 1980s and during summer months in recent years—done in many types of vehicles including cars, sedans, vans, trucks, flat-beds, trailers, bulldozers, dump-trucks, mechanical brush-cutters, snow-machines, etc., done in reliance upon that 1972 State of Alaska DOT official authorization (Complaint Exhibit 1), and upon rights as members of the general

public and via representations of several governmental agencies, including the Alaska Department of Natural Resources (DNR), FNSB, federal Bureau of Land Management ("BLM"), etc. Over the years, various Alaska Dept. of Transportation Right of Way and Alaska Div. of Lands officials have reconfirmed—verbally and in writings—the unrestricted public-use status of those above-said public Section Line Easements between Sections 20, 21, 28 and 29.

16. Several years ago, I received a letter from the Cassiar Subdivision surveyor, I believe Richard Herning, enclosing a copy of the Cassiar Subdivision Plat, which had been approved by the FNSB as having no Section Line Easement on any of the Cassiar 80-acre property.
17. That Cassiar surveyor asserted that no Section Line Easement had ever existed on the subject Section Line 20/28 between Misty Fjords Court and the subject Section Corner at our 40-acre TL 2120, which he said I had been improperly using for several years, and upon which I had been relying for one of our key access for development. He indicated the BLM and FNSB as authority for his position.
18. I immediately wrote AK DOT for a comprehensive review of this matter and of the validity of my above-said July 11, 1972, DOT Section Line Easement authorization, Complaint Exhibit 1 hereto.
19. After, several phone consultations and lengthily re-review, that DOT right-of-way official assured me by phone and letter and confirmed the validity of the subject Section Line Easements; he absolutely reaffirmed my recorded July 11, 1972 authorization,—which I believe I again re-recorded then. (said surveyor and DOT letters apparently were destroyed in an office flood).
20. In addition to Richard Heron, virtually all FNSB officials referred me to go see "Kenita" at the BLM who they obviously relied on for the "definitive BLM determination" and thus their FNSB position regarding Section Line Easement validity; however, some FNSB officials quietly

suggested that FNSB officials were "covering their butts" and that I also see former GVEA Charles Parr and DNR's Joe Sullivan and DOT's John Bennett right-of-way specialists.

21. In about Sept. 2004, I personally conferred with the source of the allegedly contrary information, "Kenita", the reputed lady BLM "expert"—who I discovered was a mere filing clerk in the Fairbanks BLM lands record office, apparently without any licenses or professional credentials or authority.
22. Ms Kenita Stenroos—at least during those initial contracts—tentatively concurred with the surveyor's and FNSB's above-said contrary claims of no subject Section Line Easement.
23. Using a her so-called BLM "bible procedure" entitled SECTION LINE EASEMENT RESEARCH (see clean copy contained in the FNSB public "Vacation records" discussed below and my copy marked-up in discussions with Kenita, attached hereto as Exhibit T), Kenita went through with me assessment steps 1-6 therein, followed by sub-steps "a" through "h" to show why there was no Section Line Easement for the predecessor 80-acre homestead of the same subject Cassiar Heights property.
24. Kenita stated that the subject Cassiar Section Line Easement failed assessment step 'd' therein because "If survey plat approval is during the period of January 18, 1949 and March 21, 1953, and date of entry falls with this [hiatus] period, there is no section line easement."
25. I pointed out that she was reading it improperly, by substituting the word "or" for "and" in step d, and that if read verbatim then the subject Cassiar Section Line Easement indeed was valid. Kenita seemed surprised and acknowledged my point, but said that was how she had always read and interpreted step d, i.e., using "or".
26. However, on further inquiry, I soon received repeated independent confirmations by several professional, licensed Alaska Section Line Easement experts who personally told me that the subject Section Line Easement from Misty Fjords Court to our family Tax Lot 2120 was indeed

valid and that my subject July 11, 1972, recorded DOT authorization was sufficient; these including:

- P. Joe Sullivan, SW/WA, Lands Right of Way Chief, Alaska Dept. of Natural Resources ("DNR"), and a co-author of that extensive 118-page April 9, 1994, (Exhibit F hereto) by Daniel W. Beardsley, P. J. Sullivan, and John F. Bennett, which treatise summaries and explains the requirements for public Section Line Easements and for acquisition of public easement rights over private lands in Alaska;
- Charles L. Parr, SR/WA, private professional land and access consultant and former Right-of-Way Chief for Golden Valley Electric Association, who also stated to me that he could not provide me with his concurring opinion because he was close friends with and a consultant and/or associate of the Gavoras, who had developed Cassiar Heights Subdivision, and thus was under a conflict of interest;
- AK DNR Survey Chief, Gerald Jennings;
- And several other AK DOT and DNR Right-of-Way officers in Fairbanks and Anchorage.
27. Each of these experts also suggested that I contact John F. Bennett, PLS, SR/WA, Chief, Right of Way, Alaska Dept. of Transportation who they personally assured me is universally considered to be the "final authority", "the expert", "the undisputed guru" who's opinion is the "the Gold Standard" (one expert even said the "God") as to Alaska public Section Line Easements and public/private rights-of-way over private lands, and the key co-author of the oft cited ACCESS LAW AND ISSUES AFFECTING PUBLIC AND PRIVATE LANDS IN ALASKA treatise.
28. I contacted Mr. Bennett.
29. Thus, from DOT Chief John F. Bennett I requested and received his letter dated Nov. 1, 2004 (see Complaint Exhibit 3, re-incorporated herein, 3 pages) as yet another re-confirmation of the unrestricted public-use validity of that above-said Section Line Easement from Misty Fjord Court and of my July 11, 1972, DOT authorization, but now with Bennett's detailed legal analysis.
30. The third page of John F. Bennett's Nov. 1, 2004, letter is his DOT assessment procedure entitles "Section Line Easement Determinations", taken from page 11 of Bennett's above said syllabus. It appears to be much simpler and more understandable than the one used by the BLM (Exhibit T hereto).

31. I recorded Bennett's definitive Nov. 1, 2004, letter of public record at the Fairbanks Alaska Recording District on 12/21/2004 at 2004-028398-0, as pages 8-10 of my 11-page .
32. John Bennett also faxed his Nov. 1, 2004, letter to the surveyor of the Cassiar Heights Subdivision, Richard Heron, who apparently forwarded it on to FNSB Platting Officer Lorian Quakenbush.
33. Ms. Quakenbush later personally implied to me that she concurred with John F. Bennett's assessment and opinion.
34. I also delivered a copy of John F. Bennett's Nov. 1 letter to the BLM land office.
35. Later I returned and discussed it with Ms. Kenita Stenroos; she then reluctantly concurred with John Bennett Nov. 1st letter and conclusions that all Section Line Easements were valid in the Cassiar 80-acre subdivision property, although she parenthetically commented that she was just a "file clerk" and thus her opinion was of little consequence.
36. Though I concurred with that sentiment, I was surprised to hear her say it, since most everyone at FNSB and various—but not all—surveyors had cited "Kenita" as the relevant BLM "expert" on Section Line Easement validity, and had sent me to "Kenita" for her "definitive BLM determination". Indeed that seemed to be the source of the considerable confusion among non-experts in the area.
37. Kenita also very reluctantly concurred that she had been historically misreading paragraph 6.d., by substituting "or" for the key word "and" therein, though I sensed that her admission was painful and perhaps may be short-lived.
38. The specific Section Line Easements requested in this case and this Motion For Partial Summary Judgment are shown in Map A, Exhibit F hereto.

39. Immediately after filing this action Plaintiffs' counsel prepared and presented to Defendants conforming easement documents for their execution to avoid prosecuting this case. Defendants refused.
40. Nonetheless, in 2005 all the subject Defendant/Land-Owners of the acknowledged the validity of the above-said public Section Line Easements between Sections 20, 21, 28 and 29 by their express application, via their agent Richard C. Herron, RCH Surveys, to the Fairbanks North Star Borough, (which is the initial local authority) for a vacation of all the public Section Line Easements between Sections 20, 21, 28 and 29 subject to this lawsuit.
41. Because of the slow mail delivery to my location in Utah and hurried hearing schedule, I did not know anything about the Defendants' Variance application and its hearing until after it was over, thus I could not make response or timely input to the Platting Board's considerations.
42. Nonetheless, after careful consideration, public hearings and a full review (further detailed below), the FNSB Assembly approved vacation **ONLY** of the now irrelevant portion of the Section Line Easement between the Cassiar Height Subdivision's Misty Fjords Court and St. Elias Drive, both being dedicated public roads, **BUT DENIED VACATION** of all the remaining public Section Line Easements between Sections 20, 21, 28 and 29. (See FNSB extensive records containing Defendants' application, decision and the FNSB Assembly July 14, 2005, denial, filed separately)
43. Essentially, the FNSB basis for denial was "This is a practical route of access to [Plaintiffs] TL 2120..."
44. However, even that **partial** vacation by the FNSB is just an initial step which must yet be reviewed and formally approved by various state [and federal] agencies, including but not limited to the Alaska Department of Transportation and the Alaska Department of Natural Resources, and

then recorded of record, if all such agencies approve. On information and believe that has not yet been pursued nor occurred.

45. Notwithstanding Defendants' acknowledgement of the subject Section Line Easements validity and the FNSB Assembly unanimous denial to vacate, said Defendants continued to refuse to concede or to confirm the subject validity nor settle the matter, thus the necessity this Motion For Summary Judgment.

Re: HISTORICAL USE, PUBLIC AND PRIVATE, OF ACCESS ROADWAYS:

46. Exhibit B is an aerial photo flown on Aug. 19, 1998, printed from the Fairbanks North Star Borough's public internet site G.I.S. Ortho Quad map, which shows the subject area and the three access connections onto the two subject access roadways discussed below over the Defendant's subject properties to access and reach Plaintiffs' above-said 40-acre Tax Lot 2120 at the Section Corners of Sections 20, 21, 28 and 29.
47. There are two rural access roadways to reach Plaintiff's 40-acre TL 2120 as shown on Exhibit B, BUT both of which existed on virtually the same alignment since before about 1972, as documented by additional aerial photos, maps and testimony recited below :
- a. **Robert's Roost Road:** A rural, winding, roadway alignment, shown by heavy, solid black (or red) line on 1998 photo Exhibit B:
- (1) It departs northerly up the hill from about 9-mile Chena Hot Springs Road and eventually traverses Northwesterly across Defendant Holyfields' 5-acre Tax Lot 2847 (the white rectangle at road's end], Sec. 28, T1N, R2E, F.M. ,
- (2) As it passes over Holyfields' Tax Lot 2847, said Robert's Roost Road passes to the south and west around a large borrow-pit located thence due north along and within the 33 foot Public Section-Line Easement on the south 33 feet of Holyfields' Tax Lot 2847.

(3) Robert's Roost Road then terminates at the common section corners of Sections 20, 21, 28 and 29, where it intercepts the dashed East-West Public Section-Line Easement roadway and the power-pole line.

b. **Unnamed East-West Section-Line Easement public roadway:** This road is shown as a straight, dashed line on 1998 photo Exhibit B.

(1) This Section Line road runs a few feet west of and along the GVEA power-line within the 66-foot between Sections 20, 21, 28 and 29.

(b) That public roadway has existed and has been used continuously and uninterrupted by the general public since construction of that GVEA power-line decades earlier, in about the 1950's,

(c) It was also so used by the Sykes and their associates since 1972.

(d) In the years prior to construction of Cassiar Heights Subdivision's Misty Fjords Court public road (in the early 1990's)—in addition to the Robert's Roost Road connection—a second and third westerly access entries were utilized from the driveway of Kenneth and Bonita Nieland (predecessors of Cassiar Heights property) to connect to this East-West Public Section Line Easement roadway between Sections 20 and 29.

(i) The second, mostly westerly connection was off the south-most "dog-leg" of the Nieland's driveway which ran South-by-Southeasterly across the Nieland's SW1/4 SW14 of said Sec. 20 to the south edge of Section 20, before that "dog-leg" turned back north-westerly to reach Nieland's house. That second westerly "dog-leg" connection is shown on aerial photo Exhibit B, at the west end of the above-said dashed East-West Public Section-Line Easement roadway.

(ii) The third access came south from the Nieland's house to connect with that East-West Public Section Line Easement roadway between Sections 20 and 29, in the vicinity of where the Misty Fjords Court Road now crosses said Section Line.

48. Travel was often by driving vehicles from Chena Hot Springs Road north up the Robert's Roost Road to the section corner of Sec. 20, 21, 28 and 29, then south along the above-said East-West Public Section-Line Easement roadway to the Nieland's private road connections—or visa versa by driving in the opposite direction.
49. Exhibit L is a stereo-pair color infrared aerial photograph No.s 3752-3 02800 ALK CO CIR flown in August 1979, which provides three-dimensional depth viewing of the subject area and its roadways, together with a black-and-white enlargement certified by the U.S. Department of Agriculture, A.C.S.S. Aerial Photography Center, Exhibit M, which show the physical existence in 1979 of both the above-said roadway which became the Robert's Roost Road and of the East-West Section Line Easement public roadway between Sections 20 and 29, i.e. the solid and the dashed lines on Exhibit B as shown and recited above. .
50. Exhibit O is a aerial photo flown May 31, 2003, from the Fairbanks North Star Borough's public internet site G.I.S." photo set, again showing the above-said subject roads and also Defendants Holyfields new house built in or about 2003 near the terminus of Robert's Roost Road just feet from the common section corners to Sections 20, 21m 28 and 29, as cited earlier...
51. I personally traveled repeatedly via truck and car several times in spring, summer and fall months, weekly or monthly or annually, sometimes daily, beginning in 1969 through 2004 and periodically but less frequently during the late 1990's, over the above-said rural, winding Robert's Roost Road to its terminus at the above-said 4-section corners and also over the above-said East-West Public Section Line Easement roadway between Sections 20 and 29 and between 21 and 28 (over Defendant Holyfields' Tax Lot 2847) and beyond...

52. Several photographs were taken from time to time over the years from 1969 by myself and my associates/agents of above-said access roads to document their personal use by the Sykes family and their associates, other use by members of the general public, roadway improvements and construction, road conditions, road-side buildings, etc. Unfortunately those photos were damaged by a flood and are unavailable at this time.
53. However, over the years I and others made considerable improvements to both the East-West Section Line Roadway between Sections 20/29 and 21/28, and to Robert's Roost Road, the dashed and solid roads respectively shown on 1998 aerial photo Exhibit B hereto.
54. For example in or about the early 1980's I brought in a small front-end loader to widen, clear and roughly improve the East-West Section Line Roadway between Sections 20/29 and 21/28 and the upper end of the Robert's Roost Road on TL 2847, particularly on its' westerly Section Line Easement, before its borrow-pit and major road improvement was made therefrom.
55. Again in or about summer 1998 I hired a specialized contractor and his large vehicular bush-wacker equipment and front-end loader to widen, clear, brush-cut and improve the East-West Section Line Roadway from Misty Fjords Court to and beyond the Section Corner, between Sections 20/29 and 21/28, and the North-South Section Line Easement roadway from the Section Corner north on both the Cassiar's and Plaintiffs' sides of the line of Sections 20/21 to and past the ridge-top, and also to rough-out various road alignments through out their TL 2120 and TL 2027 and along those ridges. Those improvements are apparent in subsequent aerial photos.
56. Over the years the alignment from about 9-mile CHSR to the subject Section Corner—which became Robert's Roost Road—had been improved by me and others.
57. Exhibit N is a stereo-pair aerial photograph flown on 5-21-1985 (FAIRBANKS 1"=2000" contract prints 14-7 14-8) which, when viewed in 3-dimension stereo its also show the physical existence in 1985 of both the above-said Robert's Roost Road and the East-West Section Line

Easement public roadway between Sections 20 and 29, i.e. the solid and the dashed lines on Exhibit A above recited

58. Shortly after the 5-21-1985 photo a major improvement was made on the Robert's Roost portion in TL 2847 in conjunction with excavation of a 2-3 acre borrow-pit near its NE portion, as evident on the 1992 USGS Topo-Metric photo-map and the Aug. 19, 1998 Ortho Quad aerial photo, Exhibit B hereto, both part of the FNSB GIS System on the FNSB public web site, certified copies to be provided by the affidavit of FNSB's GIS Coordinator, Tom Duncan.
59. Over the years various large equipments, structures, storage buildings and interesting, tiny homes or large doll-houses appeared and/or disappeared and/or were replaced, apparently having been trucked in by flat-beds and/or installed or erected just yards from the subject Section Corner at the NW corner of TL 2847, with a far-reaching view over-looking the borrow-pit below and the distant flat-lands.
60. In or about 1985 the FNSB Assessor opened an Assessment Folder when TL 2847 was created.
61. Though my several photos have not survived of those "houses"—which also showed the nearby Robert's Roost Road on its West Section Line Easement and the nearby Section Corner monument—one exemplarily photo of such interesting tiny home or "large doll house", apparently some 15 x 15 feet in area, and some protruding gables) marked "reference only 9-28-87" is affixed to the lower right corner of page 2 of said FNSB TL 2847 Assessment Folder, copy attached hereto as Exhibit P-pg2 (certified photo copy to be provided by affidavit of FNSB official).
62. The trees in the back-ground of that "doll house" FNSB Assessment 9-28-87 photo are located on ' subject TL 2120 across the Section Line. The extensive clearing around and the view from that house are apparent, as is some large equipment motor or pump to its right foreground. All

- this is indicative of the necessary width, condition and status of the Robert's Roost Road in 1987, and to its unhindered availability for use by the public or anyone who wished to travel over it.
63. Oft times our own was up travel and back down on Robert's Roost road, and sometimes in and out from the Nieland driveway.
64. After the construction of the public Misty Fjords Court road of Cassiar Heights Subdivision (in about 1992-94) the vehicular travel over the East/West section line road went just to or from Misty Fjords Court road, in either direction.
65. In or about early November 2004 I took all the several ground photos in Exhibits W and X hereto, of the two above-said access roads appearance and use in winter, and Holyfields' sudden attempts in 2003-04 to improperly bull-doze virtually-vertical embankments or restrict use of those public Section Line Easements roads which we had been using for nearly 40 years since 1969, and blockage encroachments by the Holyfields..
66. Notwithstanding Holyfields' improper efforts, Photo Exhibits W-1 to W-9 document that all subject two Section Line Easement roadways are all still clear and in current, easy use, even in winter..
67. Photo Exhibit W-1, taken from near Cassiar's Misty Fjords Court Road, is looking East toward the Section Corner along the obviously clear and well used—even in winter—public Section Line Easement ("SLE") road with a traveled width some 15 to 25 feet wide on the south 33' of Cassiar's Lot 12 in Section 20.
68. The natural road slope in this first stretch from Misty Fjords is roughly 0% or flattish., then roughly -3% to -5% for the next stretch, then dropping to about -5% to -7% when passing the Section Corner in photo Exhibits W-2 and W-3, which 2-photo page was recorded as page 11 to that NOTICE OF INTEREST IN, USE OF, AND RELIANCE UPON SECTION LINE EASEMENTS...AND OBJECTION TO ANY VACATION OR MODIFICATION THEREOF,

which 11 page document I recorded 12/21/2004 at 2004-028398-0, a copy of which is included in the above-cited Application For Waiver and Denial of Waiver by the FNSB materials provided FNSB public records, all such records being incorporated herein by reference thereto.

69. This is a very acceptable road gradient for a major or minor collector roadway, under FNSB normal allowances of some 10% ,with variance provisions for steeper grades,
70. Photo Exhibit W-2 is looking West from near the Section Corner along the public SLE road on south 33' of Cassiar Lot 12 in Section 20.
71. Photo Exhibit W-3: Looking West on south SLE road on Plaintiffs' TL 2120, and Holyfields' improperly bulldozed vertical embankment and parking-pad on Holyfields' TL 2847 and TL 2120, on and between Sections 21 and 28.
72. Photo Exhibit W-4 is looking East on the SLE road on TL 2120 between Sections 21 and 28, and Photo W-4 from further East on TL 2120; this shows obvious travel in winter, but the traveled width drops to some 12 to 15 feet wide. These photos show that this traveled road width continues straight along said Section 21 section line, disappearing over the distant ridge about a mile East, where it intercepts the North/South "Nine-Mile Road" from CHSR.
73. Photo Exhibit W-7 looks south from the SLE road on Plaintiffs' TL 2120, past the Section Corner monument hidden behind the small fir tree, and then onto Holyfields' 33-foot-wide Robert's Roost Road on the public Section Line Easement on the West 33' of their TL 2847.
74. Photo Exhibit W-8 is looking south from the red-flagged Section Corner pipe-monument in the foreground, down the Holyfields' 10-15 foot near-vertical embankment onto on to Holyfields' parking pad and on to Robert's Roost Road on the public Section Line Easement on the West 33' of their TL 2847.
75. As to public use of the said Robert's Roost Road, from Chena Hot Springs Road to its terminus at the above-said four common Section Corners and of the said East-West Public Section Line

Easement roadway between Sections 20 and 29, and between 21 and 28, as shown respectively as solid and dashed lines on aerial photo Exhibit B, in addition to my own personal roadway use and those of our family, associates, consultants, traveling with me, I also observed that said road was also used continuously and unrestricted by the general public traveling in all sorts of sedans, trucks, equipment and construction vehicles, all being:

- a. used continuously and uninterrupted by myself, my associates and the general public;
- b. used and enjoyed by myself, my associates and by the general public as the average user or owner of such road would use and enjoy it;
- c. used adversely, inconsistently and hostilely to the rights or interests of the true owners of the property over which the above-said Robert's Roost Road traversed;
- d. used notoriously, visibly, and openly by myself, my associates, and the general public in a manner that prudent owners would surely be put on notice of said roadway's frequent use and travel;
- e. used without any consent, permit or permission of the true owners of the property traversed;
- d. never closed, blocked, gated, or barricaded,

76. The lower, southern portion of this Robert's Roost Road was expressly granted "for the use of the public as a public roadway" in perpetuity 75 feet wide, 37.5 feet on each side of its centerline, in that ROADWAY EASEMENT from Robert O. Straight to the State of Alaska, Dept. of Highways, recorded as Instrument 71-07829 on Aug. 30, 1971, at Book 263 Page 93 (copy attached hereto as Exhibit Q).

77. As to the intent for public use of the upper portion of Robert's Roost Road, that Statutory Warranty Deed recorded Sept. 11, 1975, as Instrument 85-43064 at 444 Pages 0295-96 (which included the above-said Tax Lot 2847 as Parcel A), set forth the continuation of the Robert's Roost Road centerline, stating "...but with the full right on the part of the Grantor, her heirs and

devisees, to dedicate to the public for roadway purposes... the land encumbered in said easement as a northerly extension of said Robert's Roost Road." (copy attached hereto as Exhibit R).

78. Charles E. and Nilda L. Holyfield constructed a large log home at or near the terminus of said Robert's Roost Road and near the above-said four common Section Corners, apparently in or about 2003.

a. but the said Robert's Roost Road had been used to its terminus at the four Section corners by the public for decades before the Holyfield's house construction, and

b. Indeed, as further indication that Robert's Roost Road is considered an open, public road by the Holyfield's grantors and area residents, the Holyfield's Statutory Warranty Deed recorded 11-2-2002 as Inst. 02-4596 at Book 1221 Page 0689 (attached hereto as Exhibit S) was wholly silent as to any access or right-of-way to their 5-acre Tax Lot 2847; and did not place any restrictions or conditions on the use of the Robert's Roost Road by the general public or anyone; otherwise the Holyfield's themselves would not have access were Robert's Roost Road not considered a public road.

c. The Holyfield's address is 1065 Robert's Roost Road, which further implies that the Robert's Roost Road to its terminus is a public roadway.

d. The general reputation or understanding in the area by many residents near 9 mile-mile Chena Hot Springs Road is that the entire Robert's Roost Road to its terminus at the common Section corners is a public, open road.

79. During the occasions of my personal use I observed usually some 2 to 20 vehicles per day using the Robert's Roost Road in a wide variety of personal and construction vehicles, including hunters, picnickers, residents, construction workers, land owners, governmental officials and many mere sight-seers seeking to observe the spectacular view of the whole Chena River valley from the said section corner area.

80. At least one (or both) of these two access easement routes shown on Exhibits A and B is necessary for the reasonable use and enjoyment of TL 2120. Without the Section Line Easement from Misty Fjords Court it would be rendered virtually or mostly unusable.

81. In addition to the Misty Fjord access, Robert's Roost Road would be an necessary and/or prudent alternate, secondary, back-up, accessory road to-and-from Plaintiff's future development on the 40-acre TL 2120, needed for safety purposes, emergency vehicles, fire trucks, etc., as well as occasional personal vehicle use..

Re: ENCROACHMENT AND BLOCKAGE BY HOLYFIELDS ON PUBLIC SECTION LINE EASEMENTS AND ON PLAINTIFFS' TAX LOT 2120. AND RESULTING FUTURE ROAD-TURN PROBLEMS:

82. In about 2003-4 the Holyfields constructed their house and out buildings and amenities tight up against the NW corner of their TL 2847, encroaching upon and blocking the Section Line Easements, and even encroaching onto Plaintiffs' TL 2120 to the east, as extensively documented by the several ground and aerial photo Exhibits attached to FNSB officials March 31, 2006, affidavits and Vacation application records and my Exhibits W & X attached hereto, but particularly Surveyor Blizzard's Affidavit and the enlargement of his As Built Survey the Plat, Exhibit V hereto.

83. In Public Records and transcripts of the Aug. 3, 2005, FNSB Vacation Hearing on Defendants' application, owner Nilda Holyfield readily admits to making those serious encroachments which block use of said Section Line Easements and roads, even to bull-dozing their parking pad across the Section Line into Plaintiffs' property TL 2120 and constructing permanent structural encroachments there, which partially block the traveled public Section Line Easement road there.

84. Also, though not an actual encroachment, said Survey Plat enlargement and Photos W-7, W-8, W-9, etc., show that Holyfields' built the entire house and its garage entry doors only four feet east of the 33-foot West Section Line Easement and Robert's Roost Road and only 37 feet east of their

Section Line. I doubt they obtained a FNSB variance for that, but instead they applied, unsuccessfully, to FNSB to vacate both the west and north 33-foot Section Line Easements on their TL 2847.

85. Furthermore, Holyfields attempted to further preclude travel over the existing public Section Line Easement road over Plaintiffs' TL 2120 by wrongfully erecting a NO TRESPASSING sign some 20+ feet onto TL 2120 upon the traveling surface of that existing public road, as shown by photo Exhibit W-9; that snow-encrusted sign, in the foreground of said photo, is affixed to a vertical pallet placed in the middle of the traveled roadway, forcing vehicles to veer around it on either side.
86. Holyfields said parking pad also improperly extends north some 20-30 feet onto our TL 2120, as apparent from Photo Exhibits X-1, X-3 and X-4, on which my truck is parked.
87. Photo Exhibits X-1 to X-4 show Holyfields encroachments on north 33 ft. of Holyfields TL 2847 and south Section Line Easement .
88. Photo Exhibit X-1 looks west, at Holyfield's plastic vent pipe located on TL 2120 within the Section Line Easement road.
89. Photo Exhibits X-2 is Looking west, showing Holyfield's plastic (vent?) pipe located on our TL 2120 and within that SLE road, and Holyfields' service power-pole & mechanical building .
90. Photo Exhibits X-3 and X-4 look East past Section Corner survey monument to mechanical building and vent pipe,.
91. Photo Exhibit X-5. Looking East: Close-up building, service pole and (vent?) pipe.
92. When I asked Mr. Holyfield what that apparent vent pipe was connected to and what underground structures or drain fields were located and invisible on our TL 2120, he refused to answer.
93. The said vent pipe and its presumed drain fields are not shown of Surveyor Blizzards As Built Plot Plan.

94. But at the FNSB Variance hearing Mr. Nilda Holyfield stated in the transcript:

“What appears to be a sewer line outlet behind the utility house [and on TL 2120] is actually a water softener outlet. She questioned the usefulness of the 33’ square [at the NE Section Corner, which 33’ square Holyfields’ have proposed to grant Plaintiffs’ as settlement of this lawsuit] as... the grade is about 22% right at that [Section] corner.

95. Ms. Holyfield failed to say that they had intentionally bull-dozed that impassible embankment which now precludes anyone, including the public, from using or driving over said Section corner area of the public Section Line Easement between Sections 29/28, or owners of TL 2120 from making their required future road turn to the north at that section corner.

Problems For Plaintiff Future Road Corner-Turn To North:

Holyfields also improperly constructed permanent structures within the north 33’ Section Line Easement of their TL 2847, including a water-well, mechanical building, fuel tank, service power-pole, etc., as shown by their surveyor Wm Blizzard’s 3-31-06 affidavit, especially the enlargement of his June 2004 “As Built” Survey Plat Exhibits U, V, and also in photo Exhibits X-1, X-2, X-3, X-4, X-5 and Complaint Exhibit 4 hereto, plus the several FNSB ground and aerial photos attached to affidavits of Martin Gutoski and Tom Duncan and FNSB Vacation records.

96. Furthermore, though not shown on Blizzard’s Survey Plat, Exhibit V hereto, Holyfields wrongfully blocked the very necessary public Section Line Easement coming in from the north 33 feet of Section 29, by bull-doing a 10-15 foot near-vertical embankment immediately east of the Section Corner survey monument, upon the west easement of both their own TL 2847 and also on our TL 2120, as partially apparent in Photo Exhibits W-3.W-8, X-1 and X-3, where said embankment and corner survey monument tower over my pick-up truck parked on both sides of the Section line in various photos on Holyfields’ leveled parking pad below.

97. This embankment now precludes East-West travel over the north 33' of Cassiar Lot 13 and Holyfields' TL 2847.
98. In our future construction of our primary entrance collector road from Misty Fjords Court along the Section 29 Section Line Easement to our 40-acre TL 2120, negotiating that turn north at the Section Corner will be difficult or impossible --with a travel surface width and total width as required by FNSB--- because of Holyfields' steep embankment and their encroachments, water-well, mechanical building, etc., which they wrongfully constructed at that corner and on the north 33-foot Section Line easement of their property and on our own property
99. The Public Record transcripts of the August Vacation hearing state:

"Dan Gavora, applicant, was one of the developers of the property.... [he did not want] to provide access to the hinterlands [i.e. L 2120], though he understands that access is necessary... [FNSB platting officer] Quakenbush offered...the profile of the Section Line Easement along the north of Section 28. **The area recommended for retention is not steep; the steepness near there occurred because of a cut made for the house pad and other improvements.**" by the Holyfields parking pad. ...

Quakenbush said...She has no information on the grades on Carterville Rd., so she doesn't know if it can be constructed to Borough standards. She does know, however, that the section line easement known as Nine-Mile Hill Rd is excessively steep. It is quite unlikely Nine Mile Hill will be able to be used for access for subdivision purposes... For TL 2120 t have the option to subdivide the Section Line Easement east of Misty Fjords Ct has to be retained.

VACATIONS DENIED


Tod Boyce, FNSB Transportation Planner, said the 33' is needed to transition into L 2120. [Even so] A curve variance might be required. If the section line easement were stubbed at the section line, it would make the last 30' of it unusable for the road. He would have asked for a larger piece of the easement [in TL 2847] if the encroachments within TL 2847 were not already there...

100. Photo Exhibits W-1 through W-6 show that the existing, traveled Section Line road is beside and virtually beneath the GVEA power poles themselves, and within the south 7.5' of GVEA's 15' Section Line Utility Easement in Cassiar's Lot 12,
101. In addition, negotiating that turn is further completed by GVEA's rightful power-line easement occupying the northerly 15-foot of the Section Line Easements on the south 33 feet of Cassiar's

Lot 12, and particularly by that 3-way-line corner-pole and its guy wires near in the SW corner of Cassiar's Lot 12, as shown in Photo Exhibits W-3 and W-6.

102. Photo Exhibit W-6. Looking South on existing SLE road on Lot 12 and Plaintiffs' TL is already partially obstructed by that corner power-pole's anchoring guy wire, which passes over the Section Line itself.
103. Because of this corner power-pole's easement location and guy wires, said new-road-turn to the north cannot realistically be constructed before reaching it, nor within the un-occupied Section Line Easement to the NW of said Section Corner nor its corner power-pole.
104. Thus FNSB Title 17 Ordinance would require that development of a collector road from Misty Fjord Court to Plaintiffs' TL 2120 must be mainly in Lot 13 in Sec. 29. then continuing east over the Holyfields new vertical embankment well into Holyfields TL 2847 and its encroachments, before turning north into TL 2120
105. Even if possible, relocation of this corner pole, supporting its 3-way lines to the west, south and east, would be unduly complicated, time consuming and expensive, costing some \$8,000 to \$10,000 for the pole, according to Grey Wyman, GVEA construction supervisor, plus an unknown amount to move the phone connection, estimated at least \$2,000+.
106. But removal of Holyfields' improper Section Line Easement near-vertical embankment and encroachments would largely resolve those future development road corner-turn issues.

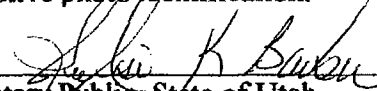
Dated this 7th day of April, 2006.

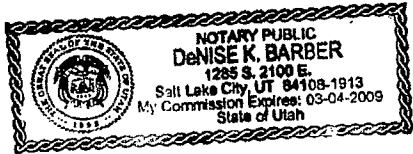

Dwane J. Sykes

STATE OF UTAH)
) SS.
COUNTY OF UTAH)

SUBSCRIBED AND SWORN TO personally before me this 7 day of April, 2006, by Dwane J. Sykes for the purposes stated herein, upon presentation of positive photo identification.

My commission expires: 3-4-09


Notary Public, State of Utah



LIST OF EXHIBITS TO DWANE J. SYKES AFFIDAVIT:

SECTION LINE EASEMENTS

- A. Fairbanks North Star Borough Tax Lot Status Plat
- B. Aug. 19, 1998, aerial photo from FNSB's public internet site G.I.S. Ortho Quad
- C. Sykes' July 11, 1969 purchase contract, TL 2027
- D. Sykes' June 17, 1972, ADL purchase contract, TL 2120
 - Complaint Exhibit No. 1. Sykes' July 11, 1972, DOT easement authorization
 - Complaint Exhibit No. 3. John Bennett's Nov. 1, 2004 letter Re: SLEs
- E.. Map A defining Section Line Easements sought via this Motion For Summary Judgment
- F. ACCESS LAW AND ISSUES AFFECTING PUBLIC AND PRIVATE LANDS IN ALASKA, April 9, 1994, John F. Bennett, et. at.,
 - Complaint Exhibit No. 2. BLM Patent Plat [with SLEs hand-sketched thereon]
- G. Survey Plat for TIN, R2E, F. M., (showing at right-bottom) accepted and approved March 10, 1947.
- H. Patent #1147535 to Robert J. McQuin, predecessor of subject Cassiar's 80 acres.
- I. Case abstract: **subsequent** Date of Entry Dec. 14, 1951, for Patent #1147535, Re: Cassiar's 80 acres.
- J. Patent #1227374 to subject 120 acre patent, Holyfield's predecessor including their 5-acre TL 2847
- K. **Subsequent** Date of Entry _____ for Patent #1227374, including Holyfield's 5-acre TL 2847

USE HISTORY OR ROADWAYS:

- L. August 1979 Aerial photographs No.s 3752-3 02800 ALK CO CIR stereo-pair, colored, certified
- M. Enlargement, black-and-white, No. 3752 02800 ALK CO CIR, certified
- N. May 21, 1985 Aerial photographs FAIRBANKS 1"=2000' contract prints 14-7 14-8, stereo-pair
- O. May 31, 2003, Aerial photographs, from FNSB's public internet site G.I.S, SPOT series.
- P. FNSB's Assessors 1985 folder for Holyfield's TL 2847, with its Sept. 28, 1987, small house photo
- Q. Robert's Roost Road Public Easement recorded 8-30-71 from Robert Strait to State of Alaska.
- R. Robert's Roost Road Public Easement recorded 9-11-85 from Titus to Griffith
- S. Holyfield's Statutory Warranty Deed, without any other right-of-way, recorded Nov. 2, 2000
- T.

ENCROACHMENTS BY HOLYFIELDS:

- U. Holyfield's Survey Plat, 6-8-04, As Built
- V. Enlargement of encroachment area of Holyfield's Survey Plat, 6-8-04, As Built
- W. Sykes' Photos: Section Line Easement roadways
 - 1. Looking East from Cassiar's Misty Fjords Court Road on SLE road between Sections 20 and 29
 - 2. Looking West on SLE on Cassiar land on SLE road between Sections 20 and 29
 - 3. Looking West on SLE road on Holyfields' TL 2847 between Sections 21 and 28
 - 4. Looking East on SLE road on Holyfields' TL 2847, between Sections 21 and 28
 - 5. Looking East on SLE road on Holyfields' TL 2847, NE portion, between Sections 21 and 28
 - 6. Looking West on SLE road on Sykes' TL 2120, past Sec. Corner onto Holyfields' TL 2847 between Sections 29 and 28.
 - 7. Looking West from SLE on Sykes' TL 2120, past Sec. Corner onto Holyfields' TL 2847 between Sections 29 and 28.
 - 8. Looking West on from Section Corner to SLE road on Holyfields' TL 2847 between Sec 29 & 28.
 - 9. Looking West at Holyfield NO TRESPASSING SIGN placed on the public SLE road upon Sykes' TL 2120. In background, public road on Holyfields' TL 2847 between Sections 29 and 28.
 - 10. Looking east at Holyfields NO TRESPASSING sign [partially obscured by snow] wrongfully erected well within the public Section Line Easement roadway on the west portion of Sykes Tax Lot 2120 and several yards north of the Section Line.. Photo taken by Dwane Sykes, about Nov. 2004.
- X. Sykes' Photos: Holyfields encroachments on north 33 ft. of Holyfields TL 2847:
 - 1. Looking west, at Holyfield's plastic (vent?) pipe located on Sykes' TL 2120 within the SLE road.
 - 2. Looking west, showing Holyfield's plastic (vent?) pipe located on Sykes' TL 2120 and within that SLE road, and Holyfields' service power-pole & mechanical building .
 - 3. Looking East past Section Corner survey monument to mechanical building and (vent?) pipe.
 - 4. Looking East: mechanical building, service pole and (vent?) pipe
 - 5. Looking East: Close-up building, service pole and (vent?) pipe.
- Complaint Exhibit No. 4: FNSB photograph of Holyfield vegetation destruction on Plaintiffs' TL 2120, and initial construction encroachment within the SLE on NW corner of Holyfield's TL 2847

AMENDED LIST OF EXHIBITS TO DWANE J. SYKES APRIL 1, 2006 AFFIDAVIT:**Re: SECTION LINE EASEMENTS**

- A. Fairbanks North Star Borough Tax Lot Status Plat
- B. Aug. 19, 1998, aerial photo from FNSB's public internet site G.I.S. Ortho Quad
- C. Sykes' July 11, 1969 purchase contract, TL 2027
- D. Sykes' June 17, 1972, ADL purchase contract, TL 2120
Complaint Exhibit No. 1. Sykes' July 11, 1972, DOT easement authorization
Complaint Exhibit No. 3. John Bennett's Nov. 1, 2004 letter Re: SLEs
- E. Map A defining Section Line Easements sought via this Motion For Summary Judgment
- F. ACCESS LAW AND ISSUES AFFECTING PUBLIC AND PRIVATE LANDS IN ALASKA, 4-0-94
Complaint Exhibit No. 2. BLM Patent Plat [with SLEs hand-drawn thereon]
- G. Survey Plat for TIN, R2E, F. M., (showing at right-bottom) accepted and approved March 10, 1947.
- H. Patent #1147535 to Robert J. McQuin, predecessor of subject Cassiar's 80 acres.
- I. Case abstract: subsequent Date of Entry Dec. 14, 1951, for Patent #1147535, Re: Cassiar's 80 acres.
- J. Patent #1227374 to subject 120 acre Kimmel homestead, Holyfield's predecessor w/their 5-acre TL 2847
- K. Subsequent Date of Entry 5-10-56 for Patent #1227374, including Holyfield's 5-acre TL 2847

Re: USE HISTORY OR ROADWAYS:

- L. August 1979 Aerial photographs No.s 3752-3 02800 ALK CO CIR stereo-pair, colored, certified
- M. Enlargement, black-and-white, No. 3752 02800 ALK CO CIR, certified
- N. May 21, 1985 Aerial photographs FAIRBANKS 1"-2000" contract prints 14-7 14-8, stereo-pair
- O. May 31, 2003, Aerial photographs, from FNSB's public internet site G.I.S. SPOT series.
- P. FNSB's Assessors 1985 folder for Holyfield's TL 2847, with its Sept. 28, 1987, small house photo
- Q. Robert's Roost Road Public Easement recorded 8-30-71 from Robert Strait to State of Alaska.
- R. Robert's Roost Road Public Easement recorded 9-11-85 from Titus to Griffith
- S. Holyfield's Statutory Warranty Deed, without any other right-of-way, recorded Nov. 2, 2000
- T. The BLM "SECTION LINE EASEMENT RESEARCH" step procedure

Re: ENCROACHMENTS BY HOLYFIELDS:

- U. Holyfield's Survey Plat, 6-8-04, As Built
 - V. Enlargement of encroachment area of Holyfield's Survey Plat, 6-8-04, As Built
 - W. Sykes' Photos: Section Line Easement roadways
 1. Looking East from Cassiar's Misty Fjords Court Road on SLE road between Sections 20 and 29
 2. Looking West on SLE on Cassiar land on SLE road between Sections 20 and 29
 3. Looking West on SLE road on Holyfields' TL 2847 between Sections 21 and 28
 4. Looking East on SLE road on TL 2120, between Sections 21 and 28
 5. Looking further East on SLE road on TL 2120, between Sections 21 and 28
 6. Looking West on SLE road on Sykes' TL 2120, past Sec. Corner onto Holyfields' TL 2847 between Sections 29 and 28.
 7. Looking West from SLE on Sykes' TL 2120, past Sec. Corner onto Holyfields' TL 2847 between Sections 29 and 28.
 8. Looking West on from Section Corner to SLE road on Holyfields' TL 2847 between Sec 29 & 28.
 9. Looking West at Holyfield NO TRESPASSING SIGN placed on the public SLE road upon Sykes' TL 2120. In background, public road on Holyfields' TL 2847 between Sections 29 and 28.
 - X. Sykes' Photos: Holyfields encroachments on north 33 ft. of Holyfields TL 2847:
 1. Looking west, at Holyfield's plastic vent pipe located on Sykes' TL 2120 within the SLE road.
 2. Looking west, showing Holyfield's plastic (vent?) pipe located on Sykes' TL 2120 and within that SLE road, and Holyfields' service power-pole & mechanical building.
 3. Looking East past Section Corner survey monument to mechanical building and (vent?) pipe.
 4. Looking East: mechanical building, service pole and (vent?) pipe
 5. Looking East: Close-up building, service pole and (vent?) pipe.
- Complaint Exhibit No. 4: FNSB photograph of Holyfield vegetation destruction on Plaintiffs' TL 2120, and initial construction encroachment within the SLE on NW corner of Holyfield's TL 2847

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

E. L. ROYDUCE, individually and as)
trustee of the Sykes Childrens Trusts, and)
DWANE J. SYKES,)
)
Plaintiffs,)
vs)
)
CASSIAR HEIGHTS PROPERTIES INC, an Alaskan)
corporation, RUDOLF L. GAVORA, et. al.,)
)
Defendants.)

CASE No. 4FA-04-2827 CI

AFFIDAVIT OF PATRICIA SYKES

BEING FIRST SWORN ON OATH Patricia Sykes, of adult age, deposes and says on personal knowledge:

Re: PUBLIC SECTION LINE EASEMENTS BETWEEN SECTIONS 20, 21, 28 AND 29:

1. On or about June 17, 1972, at the Alaska Divisions of Lands' competitive public land auction, Dwane J. and Patricia Sykes out-bid and purchased the subject 40-acres Tax Lot 2120, aka ADL No. 57643 aka the SW1/4 SW1/4 of Section 21, T1N, R2E, F.M., which is the ^{*dominant & dl*} ~~servient~~ estate basis of this easement suit; said ADL No. 57643 purchase contract was recorded of public record at Book 43 ^{*Pl. Fairbanks Recording District*} Pages 638-40/see Exhibit ___ attached to the Affidavit of Dwane J. Sykes and incorporated herein.
2. NOTE: All Exhibits cited herein are attached to the concurrent Affidavit of Dwane J. Sykes and incorporated herein by reference, but are not re-attached hereto for expediency of maintaining a manageable case file.
3. At that Alaska State land auction, the subject land sale was officially represented to be served by, burdened by and benefited by various Section Line Easements for public roadways for public egress and ingress and utilities, to and from the public Chena Hot Springs Road, the width of each side of the Section Line Easement being either 50 feet or 33 feet on each side of the Section Line, depending on whether the land derived from the State of Alaska or the Federal Government, respectively,

including expressly those public Section Line Easements between Sections 20, 21, 28 and 29, the subject of this lawsuit.

4. Similarly, a Section Line Easement for public roadways 50 feet wide was also reserved by the State of Alaska upon the west and south 50 feet of the Sykes' subject 40 acre Tax Lot ^{2120 AB} 2847 purchase..
5. In 1972, Plaintiff Dwane J. Sykes applied to the State of Alaska Department of Highways ("DOT") for authorization to use and to construct non-exclusive public roads over and upon certain named Section Lines, including those above-said relevant to the subject Tax Lot ^{2120 AB} 2847 purchase, and to this action.
6. By letter dated on or about July 11, 1972, from the Alaska Department of Highways Right-Of-Way Agent, Sykes received such authorization, which was recorded on July 13, 1972, at MS Book 36 Page 527, Fairbanks Recording District, Fourth Judicial District, State of Alaska, and which covered the above-said subject public Section Line Easements at issue herein (see Complaint Exhibit 1, re-incorporated herein). Said July 11, 1972, DOT Section Line Easement letter authorization was also recorded several other times, including, e.g., at BK 0899 PG 358 as shown on Complaint Exhibit 1.
7. Since June 1972 purchasers Dwane J. and Patricia Sykes and many others of their family, successors, associates, consultants, representatives, etc., have repeatedly and continuously and without interruption or challenge used and traveled upon those above-said public Section Line Easements between Sections 20, 21, 28 and 29, in reliance upon that 1972 State of Alaska DOT official authorization, and the Alaska Department of Natural Resources' and federal Bureau of Land Management representations. See the BLM homestead status plat as interlinedated by BLM ^{Exhibit hereto} representatives (see Complaint Exhibit 2, re-incorporated herein).

Re: HISTORICAL USE OF ROADWAYS:

8. Exhibit A (also attached hereto for convenience) is an aerial photo flown on Aug. 19, 1998, printed from the Fairbanks North Star Borough's public internet site G.I.S. Ortho Quad map, which shows

(b) That public roadway has existed and has been used continuously and uninterrupted by the general public since construction of that GVEA power-line decades earlier, in about the 1950's,

(c) It was also so used by the Sykes and their associates since 1972.

(d) In the years prior to construction of Cassiar Heights Subdivision's Misty Fjords Court public road (in the early 1990's)--in addition to the Robert's Roost Road connection--a second and third westerly access entries ^{point to} were utilized from the driveway of Kenneth and Bonita Nieland (predecessors of Cassiar Heights property) to connect to this East-West Public Section Line Easement roadway between Sections 20 and 29.

(i) The second, mostly westerly connection was off the south-most "dog-leg" of the Nieland's driveway which ran South-by-Southeasterly across the Nieland's SW1/4 SW14 of said Sec. 20 to the south edge of Section 20, before that "dog-leg" turned back north ^{easterly} ~~westerly~~ to reach Nieland's house. That second westerly "dog-leg" connection is shown on aerial photo Exhibit A, at the west end of the above-said dashed East-West Public Section-Line Easement roadway.

(ii) The third access came south from the Nieland's ^{near the SE corner of said sec 20} house to connect with that East-West Public Section Line Easement roadway between Sections 20 and 29, in the vicinity of where the Misty Fjords Court Road now crosses said Section Line.

11. Travel was often by driving vehicles from Chena Hot Springs Road north up the Robert's Roost Road to the section corner of Sec. 20, 21, 28 and 29, then ^{west} south along the above-said East-West Public Section-Line Easement roadway to the Nieland's private road connections ^{or west down to 7 mi. H SR} or visa versa by driving in the opposite direction.

12. Exhibit _ (also in Dwane J. Sykes's affidavit and incorporated herein) is a stereo-pair color infrared aerial photograph No.s 3752-3 02800 ALK CO CIR flown in August 1979, which provides three-dimensional depth viewing of the subject area and its roadways, together with a black-and-white enlargement certified by the U.S. Department of Agriculture, A.C.S.S. Aerial Photography Center,

Exhibit __, which show the physical existence already in 1979 of both the above-said Robert's Roost Road and the East-West Section Line Easement public roadway between Sections 20 and 29, i.e. the solid and the dashed lines, *respectively, PL* on Exhibit A as shown and recited above.

13. Exhibit _ is a stereo-pair aerial photograph flown on 5-21-1985 (FAIRBANKS 1"=2000" contract prints 14-7 14-8) which, when viewed in 3-dimension stereo also show the physical existence in 1985 of both the above-said Robert's Roost Road and the East-West Section Line Easement public roadway between Sections 20 and 29, i.e. the solid and the dashed lines, *respectively, PL* on Exhibit A above recited.

14. Exhibit _ is a aerial photo flown July 13, 2004, from the Fairbanks North Star Borough's public internet site G.I.S. "SPOT" photo set, again showing the above-said subject roads and also Defendants Holyfields new house built in or about 2003 near the terminus of Robert's Roost Road just feet from the common section corners to Sections 20, 21m 28 and 29, as cited earlier

15. I personally traveled frequently via truck and car beginning in 1972 through 1982 over the above-said rural, winding Robert's Roost Road to its terminus at the above-said 4-section corners and also over the above-said East-West Public Section Line Easement roadway between Sections 20 and 29 and between *sections PL* 21 and 28 (over Defendant Holyfields' Tax Lot 2847) and beyond...

16. As to public *+ private PL* use of the said Robert's Roost Road, from Chena Hot Springs Road to its terminus at the above-said four common Section Corners and of the said East-West Public Section Line Easement roadway between Sections 20 and 29 and between 21 and 28 *as shown respectively as* solid and dashed lines on aerial photo Exhibit A, in addition to my own personal roadway use and that of our family and associates. I also observed that said road was also used continuously and unrestricted by the general public, being:

- a. used continuously and uninterrupted by myself, my associates and the general public;
 - b. used and enjoyed by myself, my associates and by the general public as the average user or owner of such roads would use and enjoy it;
- PL*

- c. used adversely, inconsistently and hostilely to the rights or interests of the true owners of the property over which the above-said Robert's Roost Road traversed;
- d. used notoriously, visibly, and openly by myself, my associates, and the general public in a manner that prudent owners would surely be put on notice of said roadway's frequent use and travel;
- e. used without any consent, permit or permission of the true owners of the property traversed;
- d. never closed, blocked, gated, or barricaded.

17. The lower, southern portion of this Robert's Roost Road was expressly granted "for the use of the public as a public roadway" in perpetuity 75 feet wide, 37.5 feet on each side of its centerline, in that ROADWAY EASEMENT from Robert O. Straight to the State of Alaska, Dept. of Highways, recorded as Instrument 71-07829 on Aug. 30, 1971, at Book 263 Page 93 (copy attached hereto as Exhibit B).

18. As to the intent for public use of the upper portion of Robert's Roost Road, that Statutory Warranty Deed recorded Sept. 11, 1975, as Instrument 85-43064 at Book 444 Pages 0295-96 (which included the above-said Tax Lot 2847 as Parcel A), set forth the continuation of the Robert's Roost Road centerline, stating:

"... but with the full right on the part of the Grantor, her heirs and devisees, to dedicate to the public for roadway purposes... the land encumbered in said easement as a northerly extension of said Robert's Roost Road." (copy attached hereto as Exhibit C).

19. The general reputation or understanding in the area by many or most residents near 9 mile-mile Chena Hot Springs Road is that the entire Robert's Roost Road to its terminus at the common Section corners is a public, open road.

6

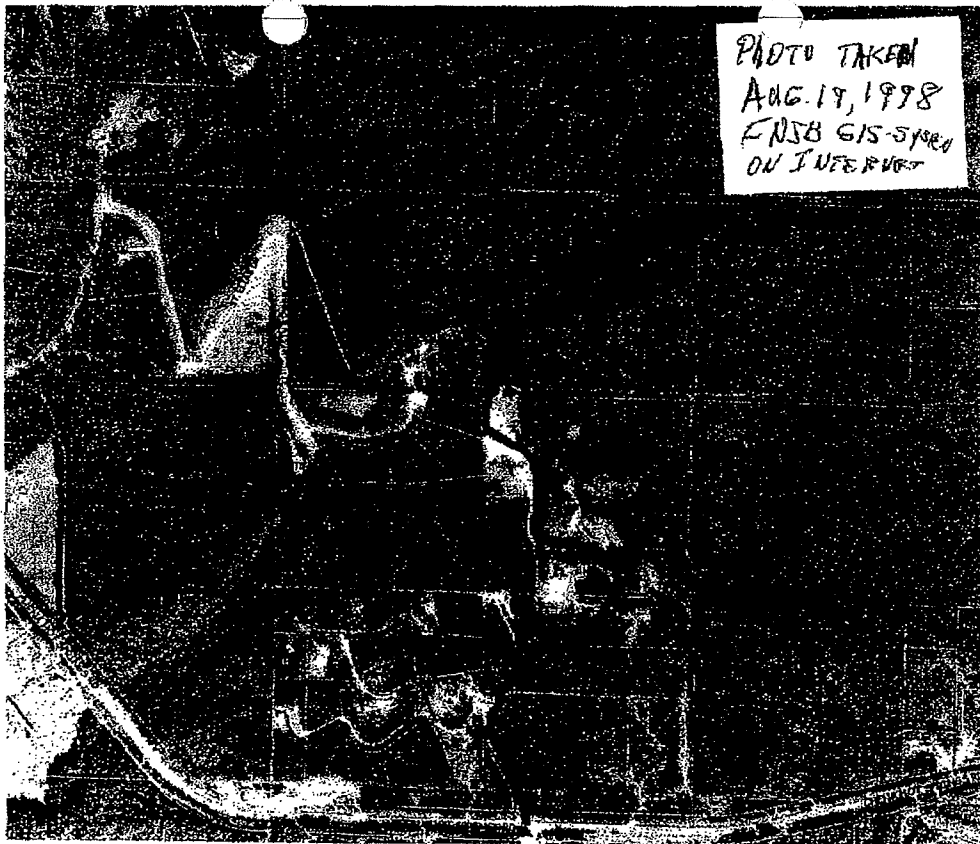
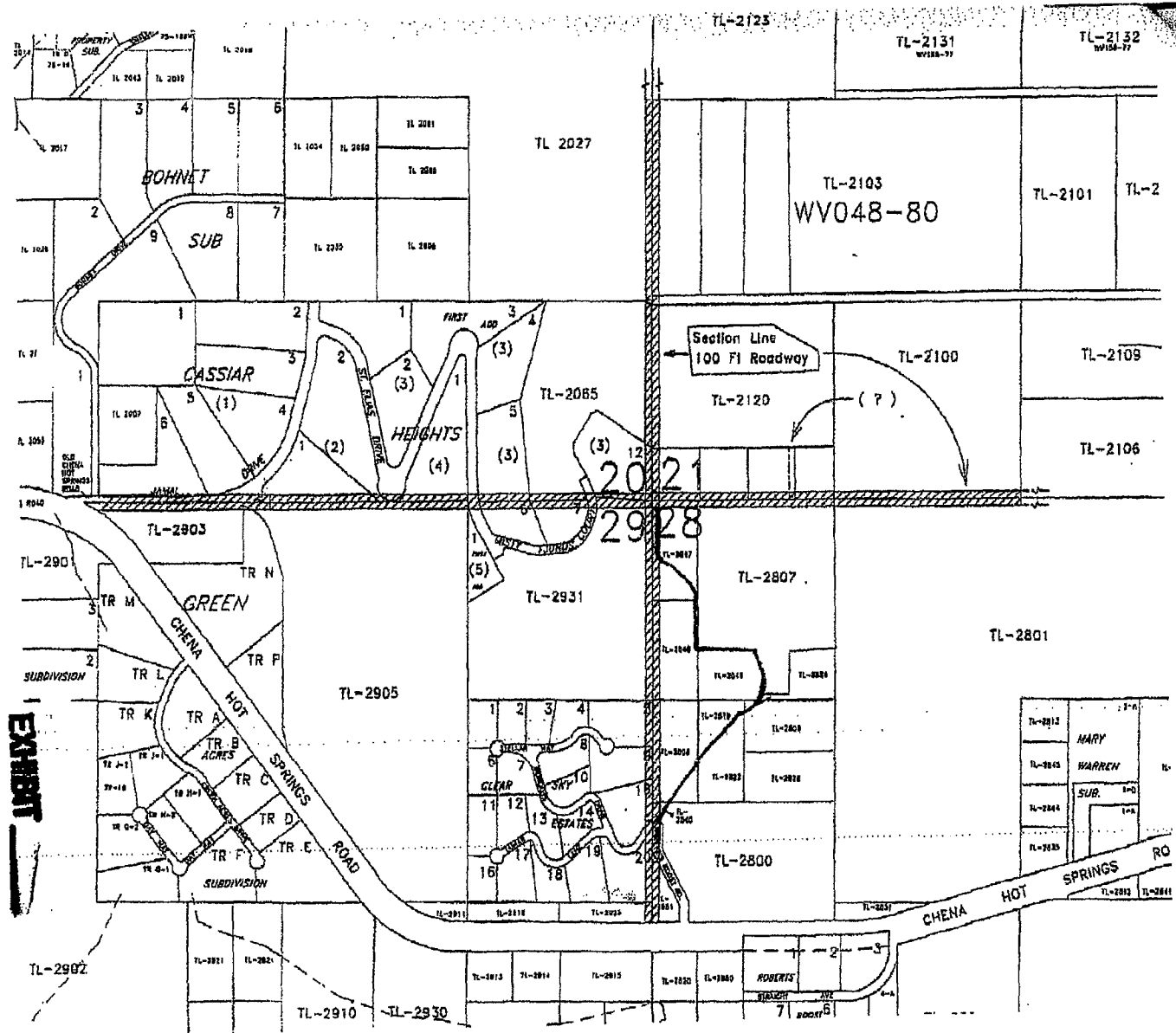


EXHIBIT : The rural, winding, public Robert's Roost Road alignment, shown by heavy, solid black (or red) line, which departs northerly up the hill from about 9-mile Chena Hot Springs Road and eventually traverses Northwesterly across Holyfield's 5-acre Tax Lot 2847 (the white rectangle at road's end), Sec. 28, T1N, R2E, F.M., passing to the south and west around the large gravel- or borrow-pit located on said Tax Lot 2847, thence due north along and within the 33 foot Public Section-Line Easement on the south 33 feet of said Tax Lot 2847, to intercept the dashed East-West Public Section-Line Easement roadway and the power-pole line at the Section Corners common to Sections 20, 21, 28 and 29, T1N, R2E, F. M., as shown in the Aug. 19, 1998, aerial photo from the Fairbanks North Star Borough's public internet site G.I.S. Ortho Quad map. Later, in about 1993, the Holyfields build their large home at 1065 Robert's Roost Road within mere feet of the above-said four common Section Corners, with their out-buildings and structures encroaching within and blocking the north 33 foot Public Section Line Easement of Tax Lot 2847.

The dashed unnamed East-West Section-Line Easement public roadway runs a few feet west of and along the GVEA power-line within the 66-foot between Sections 20, 21, 28 and 29. That public roadway has existed and been used continuously and uninterrupted by the general public since construction of that GVEA power-line decades earlier in about the 1950's, and also so used by the Sykes and their associates since 1972. In the years prior to construction of Cassiar Heights Subdivision's Misty Fjords Court public road (about the early 1990's), a second and third westerly access entries to reach this East-West Public Section Line Easement roadway between Sections 20 and 29—in addition to the Robert's Roost Road—were also utilized from the driveway of Kenneth and Bonita Nieland (predecessors of Cassiar Heights property).. The second, mostly westerly connection was off the south-most "dog-leg" of the Nieland's driveway which ran South-by-Southeasterly across the Nieland's SW1/4 SW14 of said Sec. 20 to the south edge of Section 20, before that "dog-leg" turned back north-westerly to reach Nieland's house. That second westerly "dog-leg" connection is shown on above aerial photo map at the west end of the above-said dashed East-West Public Section-Line Easement roadway. The third access came south from the Nieland's house to connect with that East-West Public Section Line Easement roadway between Sections 20 and 29, in the vicinity of where the Misty Fjords Court Road now crosses that Section Line.

Travel was often by driving from Chena Hot Springs Road north up the Robert's Roost Road to the section corner of Sec. 20, 21, 28 and 29, then south along the above-said East-West Public Section-Line Easement roadway to the Nieland's private road connections—or, after it's about 1992-94 construction, to Misty Fjords Court public road—or visa versa driving in the opposite direction.



EXHIBIT

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

E. L. ROY DUCE, individually and as)
trustee of the Sykes Childrens Trusts, and)
DWANE J. SYKES, Plaintiffs,)

vs)

CASSIAR HEIGHTS PROPERTIES INC, an Alaskan)
corporation, RUDOLF L. GAVORA, JENA D. GAVORA,)
JAMES K. BUTTON, JENNIFER B. BUTTON,)
CHARLES E. HOLYFIELD, NILDA L. HOLYFIELD,)
MARK O. SYKES,)

ET AL)

CASE No. 4FA-04-2827 CI

AFFIDAVIT OF TOM DUNCAN

STATE OF ALASKA)
) ss.
Fourth Judicial District)

Tom Duncan, being first duly sworn upon his oath, deposes and states:

1. I am a Geographic Information Systems Coordinator at the Fairbanks North Star Borough. In my position at the Borough, I am knowledgeable about the pictures we have available in our GIS computer system. These photographs are true and correct copies of the public record. I provided to the Plaintiff the following GIS photographs. The pictures are representation of the parcels, with parcel lines identified. They need to be surveyed to establish the exact lines. The photographs are satellite images taken by Digital Globe, contractor to the Borough.

2. To the best of my knowledge, information, and belief, the attached photograph (see Exhibit 1) was taken by Digital Globe, on May 31, 2003.

3. To the best of my knowledge, information, and belief, the

VALERIE M. THERRIEN, ATTORNEY AT LAW, P. C.
779 8th Avenue Fairbanks, Alaska 99701-4498
Phone: 907-452-6195 Fax: 907-456-5949

VALERIE M. THERRIEN, ATTORNEY AT LAW, P. C.
779 8th Avenue Fairbanks, Alaska 99701-4498
Phone: 907-452-6195 Fax: 907-456-5949

attached photograph (see Exhibit 2) was taken by Digital Globe the Satellite on May 31, 2003, except for that portion of the picture to the right of TL 2847, which was taken May 23, 2002. It is a composite picture.

4. To the best of my knowledge, information, and belief, the attached photograph (see Exhibit 3) was taken by Ditigal Globe on May 31, 2003, except for the eastern portion of the picture to the which was taken May 23, 2002. It is a composite picture. was taken by the Satellite.

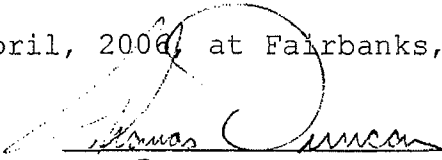
5. To the best of my knowledge, information, and belief, the attached photograph (see Exhibit 4) is a copy of the picture available in our public files of the picture taken on 5-21-85.

6. To the best of my knowledge, information, and belief, the attached photograph (see Exhibit 5) is a copy of the picture available in our public files of the ^{at the Quad aerial} picture taken on ~~1988~~ ^{AD} AUGUST 19, 1998.

7. To the best of my knowledge, information, and belief, the attached photograph (see Exhibit 6) is a copy of the picture available in our public files of the picture taken on ^{SPOT AD} ~~May 31~~ ^{July 13}, 2004. _{AD}

Further affiant sayeth naught.

Dated this 3 day of April, 2006, at Fairbanks, Alaska.


Tom Duncan

SUBSCRIBED and SWORN to before me this 3rd day of April, 2006.

VALERIE M. THERRIEN, ATTORNEY AT LAW, P. C.
779 8th Avenue Fairbanks, Alaska 99701-4498
Phone: 907-452-6195 Fax: 907-456-5949

Valerie Therrien
Notary Public in and for Alaska
My Commission Expires: 12-9-07

CERTIFICATE OF SERVICE

I hereby certify that on the the day below written, a true and correct copy of the foregoing document was delivered via courier upon:

John J. Burns, Borgeson & Burns
Attorney for Rudolf Gavora/Jena Gavora,
James Button/Jennifer Button, Cassiar Heights
Properties Inc. & William Mattice
100 Cushman St., Suite 311
Fairbanks, AK 99701

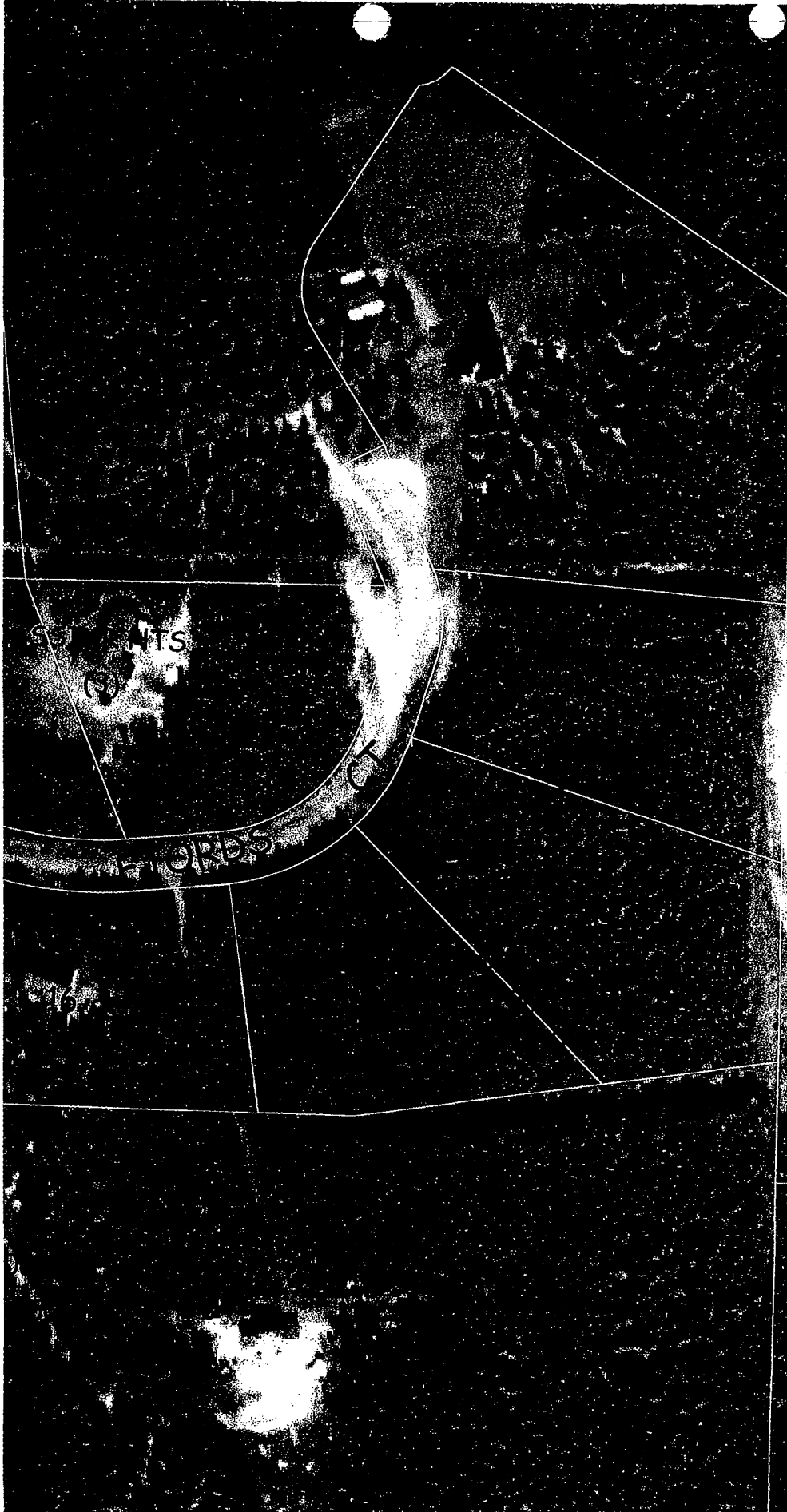
Lynn E. Levensgood
Downes, MacDonald & Levensgood
Attorney for Charles Holyfield/Nilda Holyfield
1008 16th Avenue, Suite 200
Fairbanks, AK 99701

Office of Valerie M. Therrien

Duce v. Cassiar Heights Properties, Inc. et al, Case No. 4FA-04-2827 CI
Affidavit of Tom Duncan

PLAINTIFF
EXHIBIT NO. 1
ADMITTED

(CASE NUMBER)

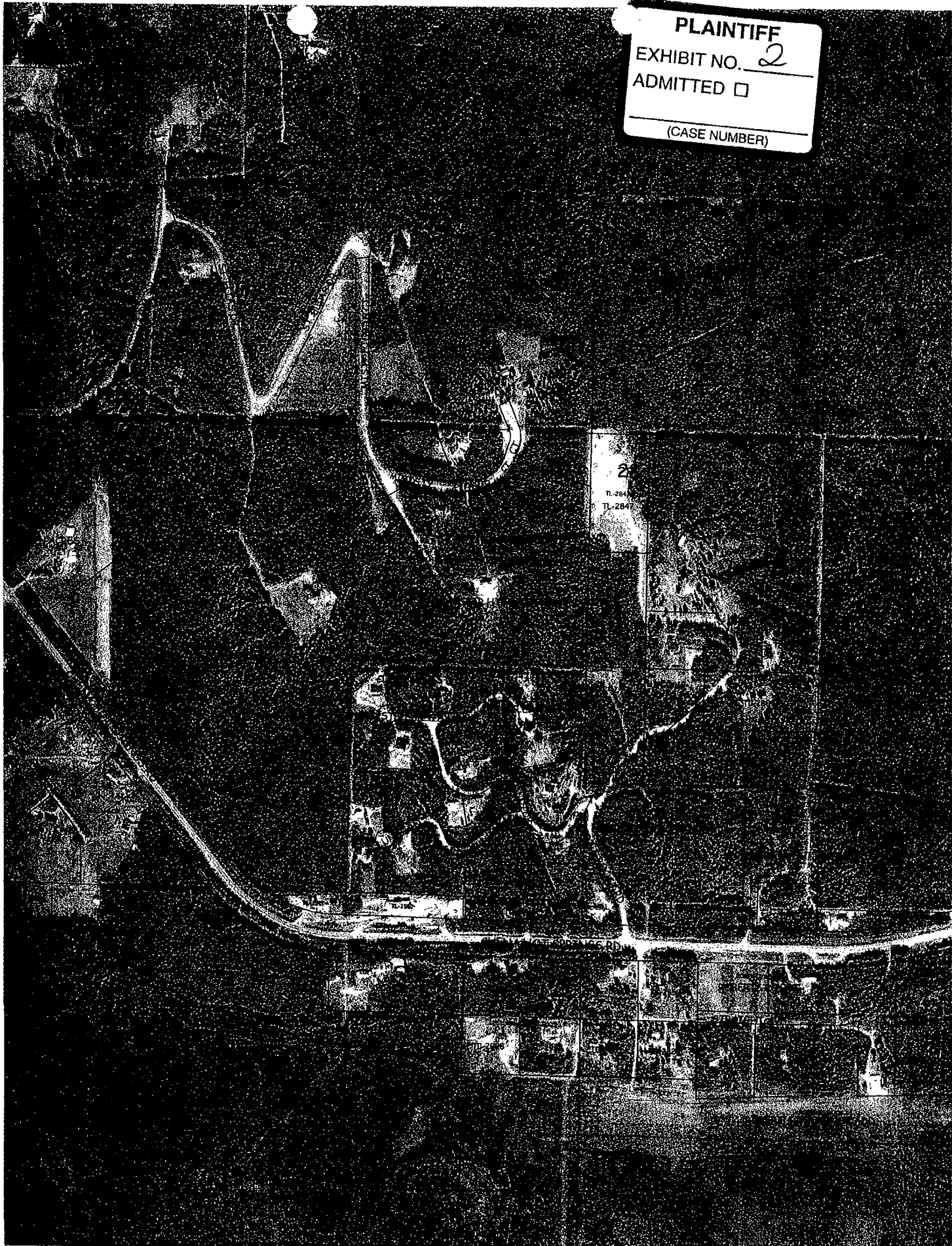


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TL-284

PLAINTIFF
EXHIBIT NO. 2
ADMITTED

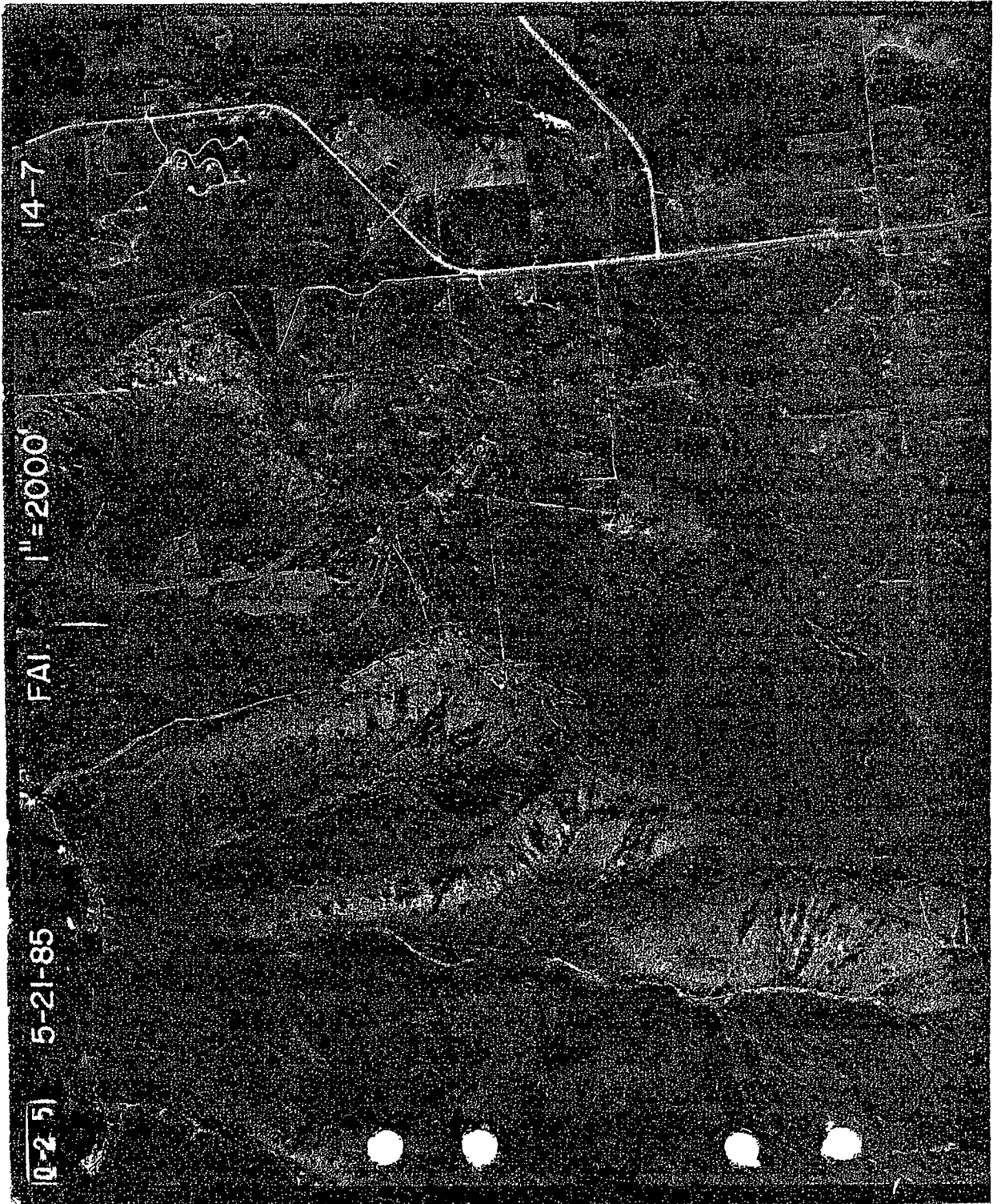
(CASE NUMBER)



PLAINTIFF
EXHIBIT NO. 3
ADMITTED

(CASE NUMBER)





p.1

801-434-7243

Dwane

Mar 28 06 04:24p

PLAINTIFF
EXHIBIT NO. <u>4</u>
ADMITTED <input type="checkbox"/>
(CASE NUMBER)

PLAINTIFF

EXHIBIT NO. 5

ADMITTED

(CASE NUMBER)

