



UNIVERSITY  
*of* ALASKA  

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*Many Traditions One Alaska*

June 14, 2005

**TRANSMITTAL**

To: Shari Howard

From: Kristi Sherman 

Re: Guess & Rudd Access Analysis  
In-House Access Analysis  
**E2SE4 S22, 19S, 9W, FM**

Per your request, enclosed is a copy of an access analysis, prepared by Guess & Rudd for the University of Alaska, and an in-house analysis, for the above referenced property located near Parks Highway MP 194.

This analysis was prepared solely for University of Alaska purposes. Do not rely on this information in making any decisions concerning the property. The University does not warranty the information contained in the analysis.

This transmittal does not provide a waiver of privilege.

Enclosures: Guess & Rudd Access Analysis  
In-house Analysis

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June 9, 2005

Via Email and U.S. Mail

Mari Montgomery, Director  
Statewide Office of Land Management  
University of Alaska  
3890 University Lake Dr., Suite 103  
Anchorage, AK 99508

Re: Access between University Parcel NE.BP.0013 (E2SE4 Sec. 22,  
T. 19 S., R. 9 W., F.M.) and the Parks Highway;  
Our File No. 5438.9

Dear Mari:

Pursuant to your request, we have reviewed and analyzed the following information respecting the captioned parcel of University lands (the "Lands") and access between said parcel and the Parks Highway:

- (1) draft Memorandum dated May 31, 2005, prepared for you by Meg J. Hayes, together with all attachments thereto, including but not limited to copies of the following:
  - (a) U.S. Rectangular Survey of T. 19 S., R. 9 W., F.M., accepted August 2, 1923;
  - (b) portion of BLM Historical Index for T. 19 S., R. 9 W., F.M.;
  - (c) Interim Conveyance No. 1289 dated November 7, 1986, conveying, *inter alia*, certain lands in Secs. 22 and 27 of said township to Ahtna, Incorporated ("Ahtna") pursuant to ANCSA; and
  - (d) State of Alaska Quitclaim Deed No. 756 (ADL No. 214785) dated August 15, 1984 (accepted by the University of Alaska on April 14, 1986), conveying, *inter alia*, the Lands to the University of Alaska pursuant to 1983 SLA ch. 22, §§ 2-3;

Mari Montgomery, Director  
Statewide Office of Land Management  
University of Alaska  
June 9, 2005  
Page 2

- (2) copies of the following additional documents retrieved by us from the relevant agencies:
- (a) the BLM master title plat for said township;
  - (b) the DNR status plat (and any relevant supplemental status plats) for said township;
  - (c) U.S. Patent No. 1222773 dated September 15, 1961, conveying, *inter alia*, the Lands to the State of Alaska pursuant to the Act of January 21, 1929 (45 Stat. 1091), as supplemented by the Alaska Statehood Act; and
  - (d) U.S. Patent No. 50-82-0008 dated October 23, 1981, conveying, *inter alia*, E2NE4 Sec. 27 of said township to Ahtha pursuant to ANCSA.

#### **Questions Presented**

1. Does a section line right-of-way exist along the section line common to Secs. 22 and 27, T. 19 S., R. 9 W., F.M., from the Parks Highway easterly to the section corner common to Secs. 22, 23, 26, and 27? If so, under what authority or authorities was it established and what is its width?
2. Does a public right-of-way exist along the course of the "Middle Fork Chulitna Access Road" (which road appears to cross the northern portion of the Lands) from the Parks Highway to the Willow-Healy Intertie electric transmission line? If so, under what authority or authorities was it established and what is its width?

#### **Short Answers**

1. We concur with Meg Hayes that a section line right-of-way almost certainly exists along the section line common to Secs. 22 and 27, T. 19 S., R. 9 W., F.M., from the Parks Highway easterly to the section corner common to Secs. 22, 23, 26, and 27. Said right-of-way came into existence under R.S. 2477 (43 U.S.C. § 932 (repealed 1976)) and 1923 SLA ch. 19 and is 33 feet wide on each side of said

section line except on the north side of said section line within the Lands (where said right-of-way has been expanded on the north side of said section line from 33 feet wide to 50 feet wide by virtue of AS 19.10.010 (as in effect in 1961)). See Quitclaim Deed No. 756.

2. A 25-foot wide public trail easement (upon which small ATVs may be used but not four-wheel-drive trucks or larger vehicles) was reserved to the United States—pursuant to section 17(b) of ANCSA out of the conveyance made to Ahtna pursuant to Interim Conveyance No. 1289—along the course of the "Middle Fork Chulitna Access Road". But said trail easement may not be the only existing right-of-way along said route, however: According to the U.S. Rectangular Survey for T. 19 S., R. 9 W., F.M., a road of unknown width following the same route existed as of 1923. Depending on the nature and extent of the use thereof, said road might constitute an R.S. 2477 right-of-way that was accepted by "public user". E.g., *Fitzgerald v. Puddicombe*, 918 P.2d 1017 (Alaska 1996) (recognizing a road depicted on a U.S. Survey as an R.S. 2477 right-of-way accepted by public user). (As noted by Meg Hayes, the facts pertaining to the nature and extent of the use of said road must be investigated more fully before it can be concluded whether an R.S. 2477 right-of-way exists along this route and, if so, what its width is.)

### **Additional Discussion**

Based on our analysis of the relevant BLM records, we see no withdrawals, entries, or appropriations that would have prevented an R.S. 2477 right-of-way from coming into existence along the section line common to Secs. 22 and 27, T. 19 S., R. 9 W., F.M., upon one of the following dates:

- (1) August 2, 1923 (the date of acceptance of the rectangular survey for said township, which date is approximately four months after the effective date of 1923 SLA ch. 19 (April 6, 1923)); or
- (2) November 26, 1924 (the date on which Executive Order No. 4107 revoked the withdrawal made on June 22, 1915, by Executive Order No. 2217); or, at the latest,

Mari Montgomery, Director  
Statewide Office of Land Management  
University of Alaska  
June 9, 2005  
Page 4

- (3) September 27, 1926 (the date on which Coal Prospecting Permit A-005229 was terminated).

(We have not reviewed Executive Order No. 2217, Executive Order No. 4107, or any of the records or law relating to Coal Prospecting Permit A-005229 for the purpose of attempting to ascertain which of the three dates set forth above is the operative date, and therefore we cannot state which of said dates is the operative date. But our analysis indicates that one of such dates is the date on which a section line right-of-way came into existence along the section line common to Secs. 22 and 27, T. 19 S., R. 9 W., F.M., pursuant to R.S. 2477 and 1923 SLA ch. 19.)

In addition, any claim by Ahtna that Native occupancy prevented an R.S. 2477 right-of-way from coming into existence along said section line (see, e.g., Alaska v. Udall, 420 F.2d 938 (9<sup>th</sup> Cir. 1969), *cert. denied*, 397 U.S. 1076 (1970)) was made moot by the enactment of ANCSA, which extinguished all such claims. ANCSA § 4(a), 43 U.S.C. § 1603(a); see Inupiat Community of Arctic Slope v. United States, 680 F.2d 122 (Ct. Cl.), *cert. denied*, 459 U.S. 969 (1982); United States v. Atlantic Richfield Co., 612 F.2d 1132 (9<sup>th</sup> Cir.), *cert. denied*, 449 U.S. 888 (1980). Finally, it is irrelevant that neither Interim Conveyance No. 1289 nor U.S. Patent No. 50-82-0008 expressly identifies any section line rights-of-way to which the conveyances made thereby are subject, as (1) sections 14(g) and 17(b)(2) of ANCSA expressly preserve all valid existing rights of access, see Alaska Public Easement Defense Fund v. Andrus, 435 F.Supp. 664, 668 (D. Alaska 1977), and (2) both Interim Conveyance No. 1289 and U.S. Patent No. 50-82-0008 expressly state that the conveyances made thereby are subject to

[v]alid existing rights therein, ... including but not limited to those created by any lease ..., contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him....

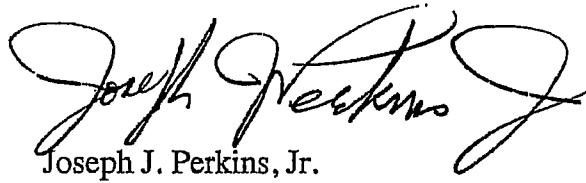
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Mari Montgomery, Director  
Statewide Office of Land Management  
University of Alaska  
June 9, 2005  
Page 5

If you have any questions concerning the foregoing or if you need any additional assistance, please contact Jamie or me.

/ Very truly yours,

GUESS & RUDD P.C.

A handwritten signature in black ink, appearing to read "Joseph J. Perkins, Jr.", written in a cursive style. The signature is positioned above the printed name.

Joseph J. Perkins, Jr.

Access to  
University of Alaska Land Management  
Parcel NE.BP.0013  
F.M. Township 19 South, Range 9 West, E1/2 SE1/4

Issue: What legal access exists to University of Alaska Land Management (UALM) Parcel NE.BP.0013 from the Parks Highway?

**Short Answer:**

1) Based on a review of the records of the Bureau of Land Management (BLM), the only unrestricted legal access from the Parks Highway is via a 66-foot-wide section line easement centered along the section line common to Sections 22 and 27, Township 19 South, Range 9 West, F.M. (Attachment A).

2) Interim Conveyance 1289 (Attachment B) to Ahtna, Inc. for the land adjacent and west of the NE.BP.0013 is subject to two ANCSA 17(b) easements: EIN 101 C4, a one-acre site adjacent to the Parks Highway to be used for temporary (<24 hours) parking, camping, and loading; and EIN 3a C5, L, a 25-foot-wide trail which is limited to use by pedestrians, non-motorized modes, and small all-terrain vehicles less than 3,000 pounds Gross Vehicular Weight. A survey would be needed to confirm the location of the latter easement with respect to NE.BP.0013, but it appears from small scale maps to provide access over Ahtna land to the northern portion of the NE.PB.0013 and thence to other Ahtna lands north and east of the University parcel.

3) The EIN 3a C5, L trail does not appear in DNR's database of RS 2477 trails, despite a similar trail appearing on the original township survey of 1923. Further research would be needed to find whether government funds had been used to build or maintain the trail and thus to support an easement claim under RS 2477.

4) BLM records indicate that BLM did not act on behalf of Ahtna in permitting the Alaska Power Authority's (APA's) access to the Healy-Willow Intertie via this trail. From UALM records (NE.BP.0013.001), as collaborated by Jay Sullivan of Landfield Services, APA had intended to acquire a public easement over Ahtna land and over NE.BP.0013. In fact, as the as-built survey for ADL 213063 (Attachment C1) indicates, the Alaska Department of Natural Resources (DNR) dedicated easements for public or private use on State lands. (The Middle Fork of the Chulitna Access Road, which has essentially the same alignment as EIN 3s C5, L, is shown on sheets 11 and 17 of 17 (Attachment C2 and C3) on the as-built survey.) However, the filing date for the plat, December 7, 1987, was subsequent to recording of the Quit Claim Deed to the University on May 5, 1986 (Attachment D). APA failed to follow up to ripen the temporary use permits into public easements on Ahtna and University lands. A title report has been ordered to determine if Ahtna has subsequently authorized a public easement on this route.

**Further Explanation for the Section Line Easement:**

According to a widely-quoted paper by John F. Bennett, PLS, Chief of Right-of-Way for the Alaska Department of Transportation and Public Facilities, "In order for section line easements to have been created, the lands must have been unreserved public lands at some time between April 6, 1923 and January 17, 1949, or between March 21, 1953 (March 26, 1951 in the case of lands transferred to the State or Territory) and March 24, 1974."

A review of BLM's Historical Index in both digital and paper formats (Attachments E1 and E2) indicates that a coal prospecting permit (A 5229) for 2,560 acres of unknown metes and bounds within the township expired September 27, 1926. Another coal prospecting permit (A 10329), also of unknown metes and bounds for 2,560 acres, was authorized on November 20, 1944. The paper files on both of these coal prospecting permits have been destroyed, according to Diane Songer, Docket Supervisor for BLM, so their legal descriptions cannot be readily ascertained. The BLM Historical Index does not show any entries during the period of September 28, 1926 through November 19, 1944 except for the Alaska Railroad (ARR), located west of the area in question.

Under the Act of May 14, 1898 (Attachment F), any duly-organized railroad company was granted a right of way 100 feet wide on each side of the centerline of the road, the right to "take" timber and materials for construction and maintenance, and the right to "take" other lands for such railroad purposes as depots, side tracks, etc. on federal lands in Alaska.

The rectangular survey for sections 1-34 of Township 19 South, Range 9 West, F. M., approved on August 2, 1923, shows many details of the surrounding terrain (Attachment G1). The copy of the rectangular survey available on the Alaska Department of Natural Resources website includes an area labeled "018092 ARR Gravel" written in the W1/2 SE1/4, which is adjacent and west of UALM Parcel NE.BP.0013. (A detail is attached as Attachment G2 for convenient reference.) If the ARR had used the area continuously during the period from September 28, 1926 to November 19, 1944, there could be an argument that the section line had not been unreserved public lands, and thus, the Territorial acceptance of the RS 2477 offer of a right of way had not attached to the section line common to Sections 22 and 27.

According to BLM casefile number A 18092, on February 27, 1951 the ARR requested gravel pits to be reserved in Broad Pass, among other areas. The request was revised on May 8, 1951 to request a reserve on 630 acres at Broad Pass, for business reasons. The letter from John E. Manley, the Acting General Manager of the ARR states that the ARR had a "coaling station, water station, wye and mess hall" located at Mile 304.3. These activities might have constituted a use reserved under the Act of May 14, 1898. However, the section line easement common to Sections 22 and 27 is located at approximately Milepost 305.2 according to the March 1951 sketch that accompanied the ARR's 1951 application (Attachment H) and thus, the station activities described in the latter did not affect the section line.

Further, the casefile at the National Archives and Record Center in Anchorage includes a letter from Roger R. Robinson, Regional Forester for the BLM, to the Manager, District Land Office, Anchorage dated September 10, 1952, stating that

"I have checked with the Alaska Railroad and am informed that they have removed no gravel from the permit areas prior to the issuance of Public Land Order 844."

Thus, the ARR does not appear to have entered on the land prior to Public Land Order 844. The notation on the DNR website copy of the 1923 rectangular survey is believed to be a later addition and does not indicate that the ARR had "taken" the parcel for material or other uses during the period in question.

#### **Conclusion:**

Pending confirmation through receipt of the title report and a survey, UALM appears to be in a good position to negotiate with Ahtna about reciprocal easements across Ahtna and University



land for use of the trail reserved as EIN 3a C5, L. Should these negotiations fail, the University would be able to develop and use the section line easement common to Sections 22 and 27 for access to NE.BP.0013.

**Attachments:**

Attachment A: UALM Property Map showing general location of NE.BP.0013

Attachment B: Interim Conveyance 1289

Attachment C1, C2, and C3: As built ADL 213063, Sheets 1, 11 and 17 of 17

Attachment D: QCD No. 756 recorded May 5, 1986

Attachment E1 and E2: Selection from BLM Historical Index in paper and digital formats

Attachment F: Excerpts from the Law of May 14, 1898

Attachment G1 and G2: BLM rectangular survey T 19 S, R 9 W, FM dated May 8, 1923

Attachment H: Map dated March 1951 that accompanied letter request dated May 8, 1951