From:	John Bennett
To:	Karen Tilton; Charlie Parr
Subject:	FW: SLEs on MHT Lands
Date:	Tuesday, July 15, 2014 9:32:00 AM

This is my conversation with John Kerr on MHT SLEs. JohnB

From: Bennett, John F (DOT)
Sent: Monday, February 11, 2013 4:13 PM
To: 'John Kerr'
Cc: Jim Sharp (jsharp@acsalaska.net)
Subject: RE: SLEs on MHT Lands

John, Interesting stuff. I may have to read Meacham's memo a few more times because my first read suggested that he is not saying that there is not a state SLE application to the original Mental Health Trust lands, but that Lassen prohibited the uncompensated use or taking of the federally-granted trust lands. Because AS 19.10.010 does not specify any "reserved" lands that might be exempted from the state SLE, they likely did create state SLEs on the original trust lands. Meacham states that the SLE should be vacated on the basis of Lassen. In the alternative I suppose the state could compensate the Trust with cash or additional replacement lands. But I don't see that the compensation requirement could have prevented the state SLE from applying.

The application of the State SLE to the Trust replacement lands doesn't seem to be an issue as the State 1994 legislation regarding the Trust said that settlement required recognition of pre-existing easements and I have seen some of the "replacement" transactions specifically call out the State SLEs as an easement the deeds would be subject to.

There seems to be a dust up with the DNR AAG's right now regarding protracted section lines and the application of state SLE's to those. The old rule was that SLE's applied to protracted section lines but just couldn't be used until surveyed. Gerald mentioned to me that something was going on but I don't know if they are backing down from the application to protracted section lines or if it somehow relates to the Mental Health Trust lands.

When you called I understood you to say that Gerald or someone had forwarded this question to the AGO but that it may be a while before a response is issued. It sounds as if you have a project where this is an issue. I guess the only caveat I would have is that if you assert a position to your client that is contrary to that which DNR will support, it will likely not go well. Generally, at least lately, it appears that DNR asserts access issues fairly aggressively. If they could not support SLE's on the original trust lands it would be either because they don't believe they have the legal basis or are concerned that they may be stuck with having to compensate the trust for them

In any event, I have attachment my latest version of the Highways paper that I will present in Anchorage on Feb 22. I didn't get into Mental Health Trust lands but now thanks to you, if it comes up, I will try to dance around it like a good bureaucrat! JohnB

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From: John Kerr [mailto:john.kerr@survbase.com]
Sent: Sunday, February 10, 2013 4:33 PM
To: Bennett, John F (DOT)
Cc: Jim Sharp (jsharp@acsalaska.net)
Subject: RE: SLEs on MHT Lands

Hi John,

I've attached the Trust Land Office Packet supporting their position (which I received from Gerald Jennings). Meacham's letter starts on Page 9. There's also a 1964 AG opinion related to the State's trust responsibility (which is harmony with Meacham's opinion).

Regards,

John

From: Bennett, John F (DOT) [mailto:johnf.bennett@alaska.gov]
Sent: Sunday, February 10, 2013 11:56 AM
To: John Kerr
Cc: Sharp, James
Subject: RE: SLEs on MHT Lands

John, I've been reading through mental health trust materials this weekend and realized that I don't have (or can't find) the 1996 letter from Meacham to the MHT that you referenced. If you can forward me a copy I would appreciate it. JohnB

From: John Kerr [mailto:john.kerr@survbase.com]
Sent: Wednesday, February 06, 2013 3:56 PM
To: Bennett, John F (DOT)
Cc: Sharp, James
Subject: SLEs on MHT Lands

Hi John (and Jim),

Given that you are the published and lectured King of Alaska SLEs (among other things), I'm writing to get your take on SLEs via AS 19.10.010 on MHT lands. I've corresponded with Gerald Jennings on this matter and he's forwarded it on to the AGs office to get their opinion – this is low priority for them and I don't expect to hear from them unless it's litigated (which I can't imagine that happening). I'm hoping that you'll take a look at it, weigh in, and consider adding additional information related to SLEs on MHT lands to your SLE paper for the 2013 ASPLS Standards of Practice.

In short: I believe that SLEs attach to MHT lands in the same manner they would any other State lands per AS 19.10.010.

Here's why:

1. AS 19.10.010 is very clear:

> Sec. 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.

2. I'm under the impression that the State's position regarding SLEs on MHT lands is in part based on Thomas Meacham's 1996 opinion letter to the MHT. This opinion relies upon U.S. Supreme Court's Lassen V. Arizona Highway Dept. 385 US 458 (which relates to School Trust Lands) to assert that SLEs don't attach to original MHT lands under AS 19.10.010. Mr. Meacham's opinion was prepared prior to the 1997 Alaska Supreme Court case Weiss v. State (5/2/97) – this case discusses the core of Mr. Meacham's position related to original MHT land and is discussed in 3. below.

3. The Federal Enabling act that established the grant gave the Legislature the authority to sell, lease, mortgage, exchange, or otherwise disposed of in such manner as the Legislature of Alaska may provide. This is recognized in Weiss v. State (5/2/97), 939 P 2d 380 where the Supreme Court of the State of Alaska discussed the holdings in cases related to enabling acts and land trusts and stated "Precedent relied on by Weiss involving school land trusts in Nebraska and Arizona does not contradict this conclusion. The holdings in those cases rely on the detailed procedures for disposal of trust land contained in the enabling acts and state constitutional provisions governing those land trusts. E.g. Gladden Farms, Inc. v. State, 633 P.2d 325, 327-30 (Ariz. 1981); Murphy v. State, 181 P.2d 336, 353-54 (Ariz. 1947); State ex rel. Ebke v. Board of Educ. Lands & Funds, 47 N.W.2d 520, 522-23 (Neb. 1951). The AMHEA differs from these laws because it explicitly permits trust lands to "be sold, leased, mortgaged, exchanged, or otherwise disposed of in such manner as the Legislature of Alaska may provide." AMHEA sec. 202; see also State v. University of Alaska, 624 P.2d 807, 815 n.11 (Alaska 1981) (noting that the Nebraska Constitution specifically provides for a method of management and disposal of school lands, while the Alaska Constitution "has left these determinations to the legislature"). While we noted in Weiss that precedent involving school trust land supported our reliance on "basic trust law principles," Weiss, 706 P.2d at 683 n.3, this reliance does not imply that application of such principles yields the same result regardless of the nature of the trust at issue. The superior court properly applied basic principles of trust law under the specific terms of the AMHEA to determine that the plaintiffs would face a high risk of recovering land conveyed to many third-party purchasers."
    a. It should be noted that this language was in reference to Third-party purchasers but the principal that the court recognized which has bearing is that The Alaska Mental Health Enabling Act, Pub. L. No. 84-830, sec. 202, 70 Stat. 709, 711-712 (1956) (AMHEA) is not subject to the same disposal constraints as the school trust restraints in Arizona.

4. I believe that the Alaska Supreme Court findings in Weiss v State illustrate the shortcoming of Mr. Meacham's opinion on original MHT lands – the Alaska Mental Health Enabling Act broadly empowers the legislature in regards to management and disposal of the lands whereas the New Mexico-Arizona Enabling Act (the law argued in Lassen V. Arizona Highway Dept.) has defined rules related to management and disposal (such as those for public notice and public sale, restricts the manner of disposition of trust lands and provides that no lands may be sold for less than their appraised value.)

At the end of the day:

- the law is clear – the legislature wants to create a contiguous framework of rights-of-way to provide the Public with access to all lands
- the legislature had authority to manage and dispose of MHT lands (probably not after the 1994 HB 201 MHT settlement)
- AS 19.10.010 does not have any text requiring a section of land to be surveyed in order to have a dedicated right-of-way

- I don't see any reason that original MHT lands (or other MHT lands) wouldn't have a 100 feet wide right-of-way between sections.

Until the contrary may be shown, it is my opinion that there are SLEs on MHT lands.

Let me know what you think.

Regards,

John

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