

MEMORANDUM

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RECEIVED

MAY 23 1979

TO: Claud M. Hoffman
Chief Cadastral Engineer
Division of Lands
Dept. of Natural Resources
Anchorage

DATE: May 21, 1979

D.O.T. & P.F.
RIGHT OF WAY
ANCHORAGE

FILE NO:

TELEPHONE NO:

FROM: AVRUM M. GROSS
ATTORNEY GENERAL *AM*
By: Tom Meacham
Assistant Attorney General
AGO - Anchorage

SUBJECT: "One-Half Section Line
Easements"; Your File No.
2370. Our File 866-164-77

I have reviewed your memorandum of April 19, 1979 concerning the proper way in which purported half-section line easements may be cleared from the land records in the Recorder's Office and State land plats. I have also reviewed the sections of the Alaska Administrative Code (11 AAC 68) which you attached to your memorandum, concerning changes to, or vacations of, plats. While the elimination of any reference to any half-section line easements could, I suppose, be termed a "change" to a plat, it should more properly be viewed as the elimination of a previously-recorded "legal" interest which in fact had no legal basis. Thus it is not the imposition of a new legal interest on the land, or the elimination of a previous valid legal interest, but instead the removal of a cloud on land title which had no legal validity. Under these circumstances, it is my opinion that the procedures for public notice and hearing which are outlined in the regulations are not required in this instance. Further, those procedures contemplate that the "petitioner" for a change in a plat is usually a private individual or a member of the general public, and not the Director of the Division of Lands or his designee. While even the Director of the Division of Lands would be required to follow the procedures outlined in the regulations if a substantive legal interest were being added to removed from a plat, because these half-section line "easements" are, and never have been, legal interests, their removal from the plat should not invoke the complete procedural requirements of the regulations.

I am enclosing a copy of a proposed document to be jointly executed by the Commissioner of Natural Resources and the Commissioner of the Department of Transportation and Public Facility, which document would then be recorded in each recording district to remove from any previously-recorded plats the implication that half-section line easements were being reserved under the presumed authority of R. S. 2477, 14 Stat. 253 (43 U.S.C. § 932). I am open to suggestions from the Highways Section attorneys concerning the adequacy of my proposed document.

- cc: Ross Kopperud, AGO - Anchorage
Jim Sandberg, Regional Right-of-Way Agent
Dept. of Transportation and Public Facilities, Anchorage
Dick LeFebvre, Division of Forest, Land & Water Management
Dept. of Natural Resources, Anchorage

Department of Law
OFFICE OF ATTORNEY GENERAL
Anchorage Branch
420 L Street, Suite 100
Anchorage, Alaska 99501

F C O M I

A N S	C O P Y	Central Region	DATE RCVD
		RIGHT OF WAY / "Hwys" - "Aviation"	MAY 23 1979
<input checked="" type="checkbox"/>		RICHARDS, TED	
<input type="checkbox"/>		SCRATTON, DAN	
<input type="checkbox"/>		DAVIS, SHIRL	
<input type="checkbox"/>		APPRAISALS	
<input type="checkbox"/>		NEGOTIATIONS	
<input checked="" type="checkbox"/>		ENGR/PLANS	
<input type="checkbox"/>		RELOCATION	
<input type="checkbox"/>		PREAUDIT	
<input checked="" type="checkbox"/>		RECORDS: "Hwys"	
<input type="checkbox"/>		RECORDS: "Aviation"	
<input checked="" type="checkbox"/>		OTHER: <i>R/W Manual Attorney</i>	
Remarks		<i>General opinion</i>	

DECLARATION OF EXTINGUISHMENT
OF "HALF-SECTION LINE EASEMENTS"

The Alaska Department of Transportation and Public Facilities and the Alaska Department of Natural Resources, through their respective undersigned Commissioners, herewith agree and declare that the prior purported reservation on State or Federal lands of "half-section line easements" by their respective Departments, or either of them, through any of their officers agents, or employees, constituted an act without basis in Federal or Alaska statutory law, and was thus an act void and of no force and effect ab initio. *from the beginning*

The purpose of this declaration is to restore, on all plats upon which purported "half-section line easements" are noted, the lands affected by such purported reservations to the legal status which pertained prior to such purported easement reservations. This declaration shall not alter or affect valid existing rights, if any, in and to the lands affected by such purported easement reservations or this declaration. The purpose of this declaration is to remove from the public land records any clouds on title which may exist due to the purported reservation of "half-section line easements". A true copy of this declaration is to be recorded in each of the several District Recorder's offices throughout the State of Alaska

DATED at Juneau, Alaska this _____ day of _____

1979.

For the Alaska Department of
Transportation and Public
Facilities:

For the Alaska Department of
Natural Resources:

Robert A. Ward, Commissioner

Robert E. LeResche, Commissioner

STATE OF ALASKA

ss.

FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____
1979, before me, the undersigned, a Notary Public in and for the
State of Alaska, personally appeared Robert A. Ward, to me known
to be the Commissioner of the Alaska Department of Transportation
and Public Facilities, and who stated that he executed the fore-
going instrument as his free and voluntary act and deed, with
lawful authority and for the uses and purposes therein mentioned.

WITNESS my hand and Notarial Seal on this _____ day of
_____, 1979.

Notary Public in and for Alaska
My commission expires: _____

STATE OF ALASKA

ss

FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____,
1979, before me, the undersigned, a Notary Public in and for the
State of Alaska, personally appeared Robert E. LeResche, to me known
to be the Commissioner of the Alaska Department of Natural Resources,
and who stated that he executed the foregoing instrument as his free
and voluntary act and deed, with lawful authority and for the uses
and purposes therein mentioned.

WITNESS my hand and Notarial Seal on this _____ day of
_____, 1979.

Notary Public in and for Alaska
My commission expires: _____