

John Bennett

From: John Bennett
Sent: Tuesday, March 2, 2021 9:53 AM
To: 'george.horton@alaska.gov'
Subject: SLE Stuff

Good Morning George – I'm assuming you are still the DNR Cadastral go-to person for SLEs? The reason I am contacting you today relates to how federal SLEs are researched. The first attachment is the chart in my Highways paper regarding how SLEs are determined to exist. The federal SLEs on the left side were pretty straightforward. The RS2477 offer was accepted by the Territory in 1923, lost in the recodification of statutes in 1949 and re-accepted in March of 1953. This ran until RS2477 was repealed or the federal land withdrawals made all lands "reserved". Most of this chart long preceded me and had been handed out in the BLM and DNR public rooms possibly starting in the '70s (?).

So the other day I received a copy of the DNR/MHT/DOT Agreement dated 12/30/20 discussing applicability of SLEs on MHT lands. This is good as we have had more than one discussion in the past about how SLEs might apply to these lands. But there is one thing that surprised me.

The Agreement has a footnote (No. 2) that says "This is the date (April 7, 1963) AS 19.10.015 was enacted, which provides that 'All officially proposed and existing highways on public land not reserved for public uses are 100 feet wide'. **This modified the width of federal section line easement that were accepted under AS 19.10.010, where the land was still unreserved federal land**".

My past research has indicated that AS 19.10.015 was implemented as a result of an adverse ruling against the Dept. of Highways in a condemnation of a parcel in the 1960's reconstruction of Farmer's Loop Road in Fairbanks. The court said that as there was no "officially" accepted width for an RS2477 trail, it would only allow "ditch to ditch". To avoid this in the future, AS 19.10.015 would assign a 100' width to future assertions of RS2477 trail easements.

What the MHT/DNR/DOT memo FN2 tells me is that AS 19.10.015 also should be considered as a modification to the Territorial April 5, 1923 acceptance of the RS2477 grant. So not only would RS2477 trails be accepted as 100' in width but also federal SLEs! This would suggest that the SLE chart for federal SLE's should be modified by inserting the April 7, 1963 date between the March 21, 1953 and December 14, 1968 date to show where federal SLEs were accepted at 66' before the date and 100' after the date!

I was wondering whether DNR Cadastral was involved in crafting this memo and whether they were aware that it suggests that federal SLEs should be 100' wide after the effective date of AS 19.10.015 (Assuming the other tests have been met). But it goes even further than that. Karen Tilton and I worked with DNR AAG Kent Sullivan on the Dickson RS2477 trail case and Karen was the State's survey/mapping expert. In that case, the State argued that the RS2477 width should be 100' by virtue of AS 19.10.015 – AND – the declaration by federal Public Land Orders that "Local" road widths would be 100' (See PLO 601 October 10, 1949). The Dickson's appealed to the Supreme Court and the court upheld the Superior court's decision. They stated pretty clearly : *"But we agree with the superior court that the 100-foot width was dictated both by federal land orders and by AS 19.10.015"*

My question is this: If the Supreme Court holds that both PLO 601 and AS 19.10.015 fix the width of an RS2477 (SLEs included), why did the DOT/MHT/DNR Agreement accept the 1963 date of AS 19.10.015 instead of the earlier 1949 date for PLO 601?

This entire question can have quite an impact on those determining the widths of federal SLEs over private lands (and potentially MHT lands) in the future and brings into question the determinations that have been made in the past. I'm

hoping this is not all news to you and that DNR recognizes this significant change in the law. Looking forward to hearing from you. Hope all is well down in the big city! JohnB

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