

John Bennett

From: John Bennett
Sent: Wednesday, July 14, 2021 1:41 PM
To: 'Gervelis, Gwen M (DNR)'
Cc: 'Brechtel, Vailferree S (DNR)'; 'george.horton@alaska.gov'
Subject: RE: State v. Fowler

Hi Gwen – Regarding your question on the Farmer’s Loop RS2477 case and AS 19.10.015 I believe I have found a much better source of information. It is the attached 1963 memo from the Alaska Legislative Council on the purpose of both AS 19.10.010 and AS 19.10.015. AS 19.10.015 that was to establish highway widths at 100 feet was as I mentioned previously related to a condemnation action in Fairbanks in which the width of an asserted RS2477 trail was in question. Page 2 of this letter makes reference to this RS2477 width issue as the basis for AS 19.10.015 aka SB#165. Note that in paragraph 2 of page 2, the memo notes that SB#165 was to establish uniform highway widths for highways “except on section lines.” This contradicts FN2 in the 12/30/20 MHT/DNR/DOT Agreement on Section Line Easements which states that AS 19.10.015 served to modify the width of federal SLEs to 100 feet. The 1963 memo notes that SB#165 (AS 19.10.015) had a companion bill SB#166 that was not enacted. If it had been passed it would have had the effect of accepting 100 foot wide SLEs over federal lands rather than the 66 foot wide SLEs that the Territory accepted in 1923.

So having said all that I was intending to just send you an email asking about whether there had been any news from the AGO on my question and comments regarding the MHT/DNR/DOT SLE Agreement. If the State’s position is that the SLE Agreement now establishes new policy for determining the width of federal SLEs, then that needs to be more clearly stated and supported and distributed to title and surveying professionals who have a need to use this information in the course of their work. While the issue of federal SLE widths is very important to resolve in the SLE agreement it is likely not the only one. Paragraph 5 in the agreement suggests that utilities (except state owned and operated) within a valid SLE crossing MHT lands may not be a valid use. It would seem that for this to be true, the Departments (DNR/DOT/MHT), would have had to vacate Alaska case law (Fisher v. Golden Valley) which allows for utility placement in SLEs as a subordinate use. I’m pretty sure they can’t do that. So that’s all I’ve got for now but I think the Alaska professionals who need to understand SLE rules are looking forward to an answer from DNR. Thanks, JohnB

John F. Bennett, PLS, SR/WA *Senior Land Surveyor – Right of Way Services*

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From: John Bennett
Sent: Tuesday, March 16, 2021 2:01 PM
To: 'Gervelis, Gwen M (DNR)' <gwen.gervelis@alaska.gov>
Cc: Brechtel, Vailferree S (DNR) <vailferree.brechtel@alaska.gov>
Subject: RE: State v. Fowler

Hi Gwen – I have a couple of references for you. The file “9.26.62 – AS 19.10.015 – Farmer’s Loop.pdf” is the Superior Court decision in Fowler. Next, the attachment “DOH Memo 62-11 Relating to Farmers Loop RS2477 Case.pdf” shows the Dept. of Highways response to the court’s decision to limit the RS2477 trail width to “ditch to ditch” or the used width. Note it cites a different case, “State v. Stroeker”, but it also relates to the State’s assertion of a 66’ width for the RS2477 trail on that project. This memo directs Highways staff to quantify the asserted used width. The third file is “1983 (DNR) Circle Fairbanks Historic Trail.pdf”. in this 1983 memo, a Fairbanks DNR AAG responds to RS2477 questions from a Fairbanks DNR NRO. On pages 3-5, the AAG discusses the Fowler case and suggests that this case led to the 1963 legislation AS 19.10.015 which then specifies the width of the RS2477 trail. This statute would then prevent the kind of width limitation imposed by the Fowler court.

I think that might be all I have on the Fowler case. Let me know if I can provide anything further. JohnB

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From: Gervelis, Gwen M (DNR) [<mailto:gwen.gervelis@alaska.gov>]
Sent: Tuesday, March 16, 2021 12:42 PM
To: John Bennett <JBennett@rmconsult.com>
Cc: Brechtel, Vailferree S (DNR) <vailferree.brechtel@alaska.gov>
Subject: State v. Fowler

Hi John,

Can you send me the State v. Fowler decision?

Thanks,

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