

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT PALMER

AHTNA, INC.,

Plaintiff,

v.

STATE OF ALASKA,

Defendant.

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Case No. 3PA-08-01600 CI

**ORDER DENYING AHTNA'S MOTION FOR PARTIAL SUMMARY  
JUDGMENT AND GRANTING STATE OF ALASKA'S SECOND CROSS-  
MOTION FOR SUMMARY JUDGMENT**

The plaintiff, Ahtna, Inc., filed a Motion for Partial Summary Judgment arguing that the State's current use of right-of-way (ROW) grant AA-2922 exceeds the scope of the right-of-way. Ahtna seeks summary judgment on its claims for declaratory judgment, trespass and injunctive relief. The State submitted its opposition to the motion and filed a cross-motion for summary judgment on the same issues. For the following reasons, it is HEREBY ORDERED that Ahtna's Motion for Partial Summary Judgment is DENIED and the State's Second Cross-Motion for Summary Judgment is GRANTED.

I. FACTS

In 1968, the Bureau of Land Management (BLM) granted the State of Alaska ROW AA-2922 for the purpose of connecting the towns of Chitina and McCarthy. The BLM also granted the State ROW AA-2868 for the purpose of a material site which was used for construction of the McCarthy Road and Copper River Bridge. The BLM authorized the grants pursuant to the Federal Aid Highway Act, 23 U.S.C. § 317.

On October 23, 1981, pursuant to the Alaska Native Claims Settlement Act (ANCSA), the BLM conveyed lands to Ahtna via Interim Conveyance 442. This conveyance purported to transfer title to the lands encompassing the ROWs, however the

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State disputes that title passed to Ahtna.<sup>1</sup> BLM conveyed the lands subject to existing ROWs, including ROWs AA-2922 and AA-2868. In 2007, the BLM waived its administrative authority over ROW AA-2922 in favor of Ahtna as successor-in-interest to the United States. On October 12, 2007, Ahtna's Land Department issued an Administrative Order to the State, cancelling right-of-way grant AA-2868 and directing the State to cease and desist occupancy and use of the material site.<sup>2</sup>

A portion of ROW AA-2922 includes an area which the Alaska Department of Transportation (DOT) improved and maintains as a rest area. The DOT seasonally maintains a dumpster and toilets and allows overnight camping in the rest area. The State posted a sign in the rest area indicating that the rest area may be used for camping.

Within ROW AA-2922, the State improved an access road which is adjacent to the downriver side of the Copper River Bridge. The State used material from material site AA-2868 to improve and/or maintain the access road and rest area within AA-2922. The access road runs between the rest area and the Copper River. The State is aware that members of the public have been known to launch boats at that location and the State has not made any attempt to prevent such use.

## II. DISCUSSION

### A. Summary Judgment

Under Civil Rule 56, a moving party is entitled to summary judgment if there are no genuine issues of material fact and the party is entitled to judgment as a matter of law. The moving party bears the initial burden of proving, through admissible evidence, the absence of genuine factual disputes and its entitlement to judgment as a matter of law.<sup>3</sup> Once the moving party has made a prima facie showing, the burden shifts to the non-moving party to produce "admissible evidence reasonably tending to dispute or contradict the movant's evidence."<sup>4</sup> A non-moving party may not rest upon mere allegations or

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<sup>1</sup> The State argues that lands could not be conveyed because the ROWs are located in navigable waterways and the land beneath the navigable waterways passed to Alaska upon statehood. This issue is not the subject of the summary judgment motions or Motion for Rule of Law.

<sup>2</sup> Ahtna's Motion for Rule of Law relates to whether Ahtna had the authority to cancel ROW AA-2868.

<sup>3</sup> *Cikan v. ARCO Alaska, Inc.*, 125 P.3d 335, 339 (Alaska 2005).

<sup>4</sup> *Id.*

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denials, but must set forth specific facts showing that there is a genuine issue for trial.<sup>5</sup> “To create a genuine issue of material fact there must be more than a scintilla of contrary evidence.”<sup>6</sup>

The material facts relevant to the summary judgment motions are not in dispute. The parties do not dispute that the purpose of ROW AA-2922 was for “highway purposes” and continues to be for “highway purposes.” The State maintains a rest area with overnight camping within ROW AA-2922. The access road within ROW AA-2922 is used by the public as a boat launch. Therefore, the issue on summary judgment is purely a question of law; whether the State’s use of ROW AA-2922 exceeds the scope of permissible uses.

#### B. The State’s Use of ROW AA-2922 for Highway Purposes

Ahtna argues that the State’s use of site AA-2922 as a public campground and public boat launch exceeds the scope of permissible uses and is inconsistent with the purpose of the ROW at the time it was created. Ahtna claims ROW AA-2922 was granted to serve “highway purposes” and the term does not encompass public recreational activities such as camping or boat launches.

The State argues that Ahtna’s interpretation of the phrase “highway purposes” is extremely narrow and restrictive. The State argues that the definition of “safety rest areas” is expansive and the State has broad discretion to manage its transportation infrastructure and to determine what is appropriate for the “rest, relaxation, comfort, and information needs” of the traveler. The State has historically interpreted and applied the term rest areas to include camping.

##### *1. Rest Area as a Highway Purpose*

As a threshold matter, the parties do not dispute that a rest area constitutes a highway purpose and the court finds that a rest area constitutes a highway purpose. The BLM granted ROW AA-2922 pursuant to the Federal Aid Highway Act.<sup>7</sup> The Act allows states to obtain interests in land which are “reasonably necessary for the right-of-

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<sup>5</sup> Civil Rule 56(e).

<sup>6</sup> *Cikan*, 125 P.3d at 339.

<sup>7</sup> 23 USC 317.

way of any highway.”<sup>8</sup> Moreover, federal regulations provide that “real property ... within the right-of-way boundaries of a project shall be devoted exclusively to public highway purposes.”<sup>9</sup> Thus, a ROW granted pursuant to the Federal Highway Act may be used only for highway purposes.

A safety rest area, also known as a “rest and recreation area,” is “[a] roadside facility safely removed from the traveled way with parking and such facilities for the motorist deemed necessary for his rest, relaxation, comfort and information needs.”<sup>10</sup> The federal regulations provide that rest areas will be located along highways and will be used for the benefit of motorists. Therefore, the State’s use of ROW AA-2922 as a rest area is a permissible because the rest area is for “highway purposes.”

## *2. Camping Within ROW AA-2922*

As discussed above, rest areas are specifically considered to be for “highway purposes.” The federal regulations define a safety rest area to include “facilities for the motorist deemed necessary for his rest, relating, comfort and information needs.”<sup>11</sup> Federal law provides no indication as to whether camping is permissible within a rest area. The only explicit prohibitions on certain uses within rest areas pertain to automobile service stations and other commercial establishments.<sup>12</sup> This silence indicates that states are entitled to discretion in determining what is appropriate for the “rest, relaxation, comfort and information needs” of the public when utilizing the state highway system. Therefore, in the absence of federal authority on the issue, it is appropriate to refer to state law.

Additionally, the structure of federal/state partnership with respect to highways provides for deference to the State’s policy choices. The federal government appropriates funds<sup>13</sup> and as in this case, provides the land necessary for federal-aid highways and related purposes.<sup>14</sup> The states are given the authority to plan for their

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<sup>8</sup> 23 USC 317(a).

<sup>9</sup> 23 CFR 1.23(b).

<sup>10</sup> 23 CFR 752.3(a); *see also* 23 CFR 752.5(a).

<sup>11</sup> 23 CFR 752.3(a).

<sup>12</sup> 23 USC 111(a).

<sup>13</sup> *See generally* 23 USC 104.

<sup>14</sup> 23 USC 317(a).

transportation systems,<sup>15</sup> and design,<sup>16</sup> construct,<sup>17</sup> and maintain<sup>18</sup> federal-aid highways. Moreover, even if federal funds are appropriated, states still retain their sovereign right to determine which projects shall be federally financed.<sup>19</sup> Thus, this federal/state partnership provides states with the authority to determine how to carry out federal-aid highway projects.

Federal law is also deferential to the state's authority for roads not part of the National Highway System. Federal-aid projects not on the National Highway System are to be "designed, constructed and maintained in accordance with state laws [and] regulations...."<sup>20</sup> The McCarthy Road is not a National Highway System road. As such, federal law is deferential to design and maintenance of the highway ROWs on the McCarthy Road.

Turning to the State's authority, the DOT has broad authority over Alaska's highways. The DOT was established to create and maintain "a network of highways linking together cities and communities throughout the state (thereby contributing to the development of commerce and industry in the state, and aiding the extraction and utilization of its resources), and otherwise improve the economic and general welfare of the people of the state."<sup>21</sup> Through its police power, the State has broad discretion to achieve these goals.<sup>22</sup>

DOT is responsible for selecting sites for "roadside rests for travelers resting, camping, or parking."<sup>23</sup> The DOT is required to place these sites, insofar as possible, on or adjacent to highway rights-of-way.<sup>24</sup> At rest areas, the DOT "may construct and

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<sup>15</sup> 23 USC 135(a).

<sup>16</sup> 23 USC 106(a).

<sup>17</sup> 23 USC 114(a).

<sup>18</sup> 23 USC 116(a).

<sup>19</sup> 23 USC 145(a).

<sup>20</sup> 23 CFR 625.3(a)(2).

<sup>21</sup> AS 19.05.125.

<sup>22</sup> See *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520, 523 (1959) (the power of the State to regulate the use of its highways is broad and pervasive); *B & G Meats, Inc. v. State*, 601 P.2d 252, 254 (Alaska 1979) ("It is well established that a state may regulate the highways within its boundaries pursuant to its inherent police power.").

<sup>23</sup> AS 41.21.800.

<sup>24</sup> *Id.*

maintain facilities ... as are determined to be necessary and desirable.”<sup>25</sup> These facilities specifically include “camp facilities, including picnic tables, fireplaces and toilets, camping areas or other facilities that are considered necessary and desirable for the convenience and benefit of travelers and small boat operators.”<sup>26</sup> Alaska law specifically contemplates providing for camping areas within a rest area as the State has done here. Camping within a rest area is directly tied to the use of the highways. Therefore, the State’s use of ROW AA-2922 for camping is within its authority and a reasonable and permissible use of the ROW.

Ahtna cites to two cases which have approvingly quoted the definition of “rest areas” as provided by the American Association of State Highway Officials in *A Guide on Safety Rest Areas for the National System of Interstate and Defense Highways* (1968) (AASHO Guide). The AASHO Guide reads:

Rest areas are to be provided on Interstate highways as a safety measure. Safety rest areas are off-roadway spaces with provisions for emergency stopping and resting by motorists for short periods. They have free-way type entrance and exit connections, parking areas, benches, and tables and usually toilets and water supply, where proper maintenance and supervision are assured. They may be designed for short-time picnic use in addition to parking of vehicles for short periods. They are not to be planned for use as local parks. Areas for family leisure picnics, active recreation, waterfront activities, or overnight camping are not to be developed as part of an Interstate Highway.<sup>27</sup>

The court does not find the AASHO Guide persuasive. Camping within a rest area is “for the convenience and benefit of the travelers.” Rest areas in Alaska are not similar to rest areas along interstate highways within the Lower 48, such as a rest area along I-90. Rest areas are not used merely as a brief stopping point between location A and location B. Rest areas are frequently used to partake in the surrounding recreation opportunities. Additionally, given the long distances to be traveled between areas,

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<sup>25</sup> AS 41.21.805.

<sup>26</sup> *Id.*

<sup>27</sup> *Sentinel Communications Co. v. Watts*, 936 F.2d 1189, 1204 (11th Cir. 1991); *see also Jacobsen v. Howard*, 904 F. Supp. 1065, 1069 (D. S.D. 1995).

overnight camping at rest areas may be a necessity to travelers. It is within the State's authority to determine whether camping facilities at rest areas are a necessity.

The AASHO Guide pertains to rest areas on interstate highways and the McCarthy Road not is part of the interstate highway system. Moreover, highways on the Interstate System in Alaska are exempt from the design standards of highways on the Interstate System.<sup>28</sup> Highways on the Interstate System in Alaska are to be designed "in accordance with such geometric and construction standards as are adequate for current and probable future traffic demands and *the needs of the locality of the highway*."<sup>29</sup> Even if the McCarthy Road were part of the Interstate System, the AASHO Guide would not be applicable as federal regulations specifically exempt the Alaska highways from the typical design standards.

For the above stated reasons, the court finds that the State's use of ROW AA-2922 as an overnight campground in conjunction with the rest area is permissible.

#### C. Access Road / Boat Launch

Ahtna also argues that the use of the access road within ROW AA-2922 for a boat launch does not constitute a highway purpose. Ahtna argues that recreational uses do not fall within the parameters of highway purposes. The State argues that the boat launch is necessary to provide access to the Copper River, as a connection to Alaska's water transportation system.

Funds made available to the State of Alaska under the Federal Aid Highway Act "may be expended for construction of access and development roads that will serve resource development, recreational, residential, commercial, industrial, or other like purposes."<sup>30</sup> On the other hand, federal regulations state that "access from the safety rest areas to adjacent publicly owned conservation and recreation areas may be permitted if access to these areas is only available through the rest area and if these areas or their usage does not adversely affect the facilities of the safety rest area."<sup>31</sup>

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<sup>28</sup> 23 USC 103(c)(1)(B)(ii).

<sup>29</sup> *Id.* (emphasis added).

<sup>30</sup> 23 USC 118(e).

<sup>31</sup> 23 CFR 752.5(d).

The primary purpose of the access road was for the maintenance of the right of way. However, as the State acknowledges, the access road is used by the public as a boat launch despite the availability of a nearby public boat launch. Pursuant to 23 USC 118(e), the use of the access road for a recreational purpose, such as a boat launch, is permitted. On the other hand, pursuant to 23 CFR 752.5(d), access from the rest area to the public waterways is only permitted if access to the waterway is only available through the rest area. The parties do not dispute that a public boat launch to the Copper River exists nearby off the McCarthy Road. Thus, use of the access road, which extends from the rest area, would not be permitted under the regulation. This presents a conflict between the federal statute and federal regulation.

Where an administrative regulation conflicts with a statute, the statute controls.<sup>32</sup> In this instance, the statute permitting the access road to be used for recreation purposes controls over the regulation limiting the use of rest areas for access to publically owned recreation areas. Therefore, the use of the access road within ROW AA-2922 as a boat launch is a permissible use.

Additionally, Alaska law contemplates the use of the access road as a boat launch. The DOT may construct facilities at roadside rests “determined to be necessary and desirable.”<sup>33</sup> These facilities may include access roads “considered necessary and desirable for the convenience and benefit of travelers and *small boat operators*.”<sup>34</sup> While the purpose of the access road is for maintenance of McCarthy Road, the use of the access road as a boat launch would be permissible if the DOT considered the road necessary and desirable for the convenience and benefit of small boat operators. Therefore, the State’s use of ROW AA-2922 is considered a highway purpose under Alaska law.

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<sup>32</sup> U.S. v. Doe, 701 F.2d 819 (9th Cir. 1983).

<sup>33</sup> AS 41.21.805.


<sup>34</sup> *Id.*



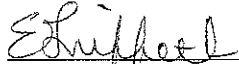
### III. CONCLUSION

The court finds that the State's use of ROW AA-2922 is permissible and therefore the court declines reach Ahtna's remaining claims on partial summary judgment and the State's claim of adverse possession. Ahtna's Motion for Partial Summary Judgment is DENIED and the State's Second Cross-Motion for Summary Judgment is GRANTED.

Dated at Palmer, Alaska on this 7 day of January 2012.

  
Gregory L. Heath  
Superior Court Judge

I certify that on 1/17/12 a copy  
of this order was mailed/faxed/  
hand-delivered to counsel at their  
address of record.

  
E. Griffith, Judicial Assistant

