

**S B**

**362**

AIL SAGMENT	DISTANCE
A-B	1620.'
B-C	2000.'
A-C	3570.'

# PRELIMINARY

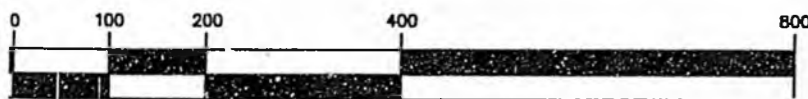
A  
 LAT. 61° 26' 25" N  
 LONG. 148° 33' 24" W  
 (NAD 1927)

C  
 LAT. 61° 26' 34" N  
 LONG. 148° 32' 42" W  
 (NAD 1927)

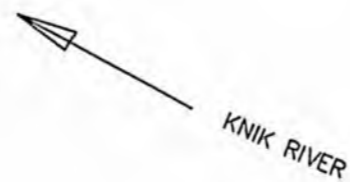
B  
 LAT. 61° 26' 17" N  
 LONG. 148° 32' 50" W  
 (NAD 1927)



## GRAPHIC SCALE



( IN FEET )  
 1 inch = 200 ft.



USS 4318

USS 5265

RS 2477 R/W  
 RST 17

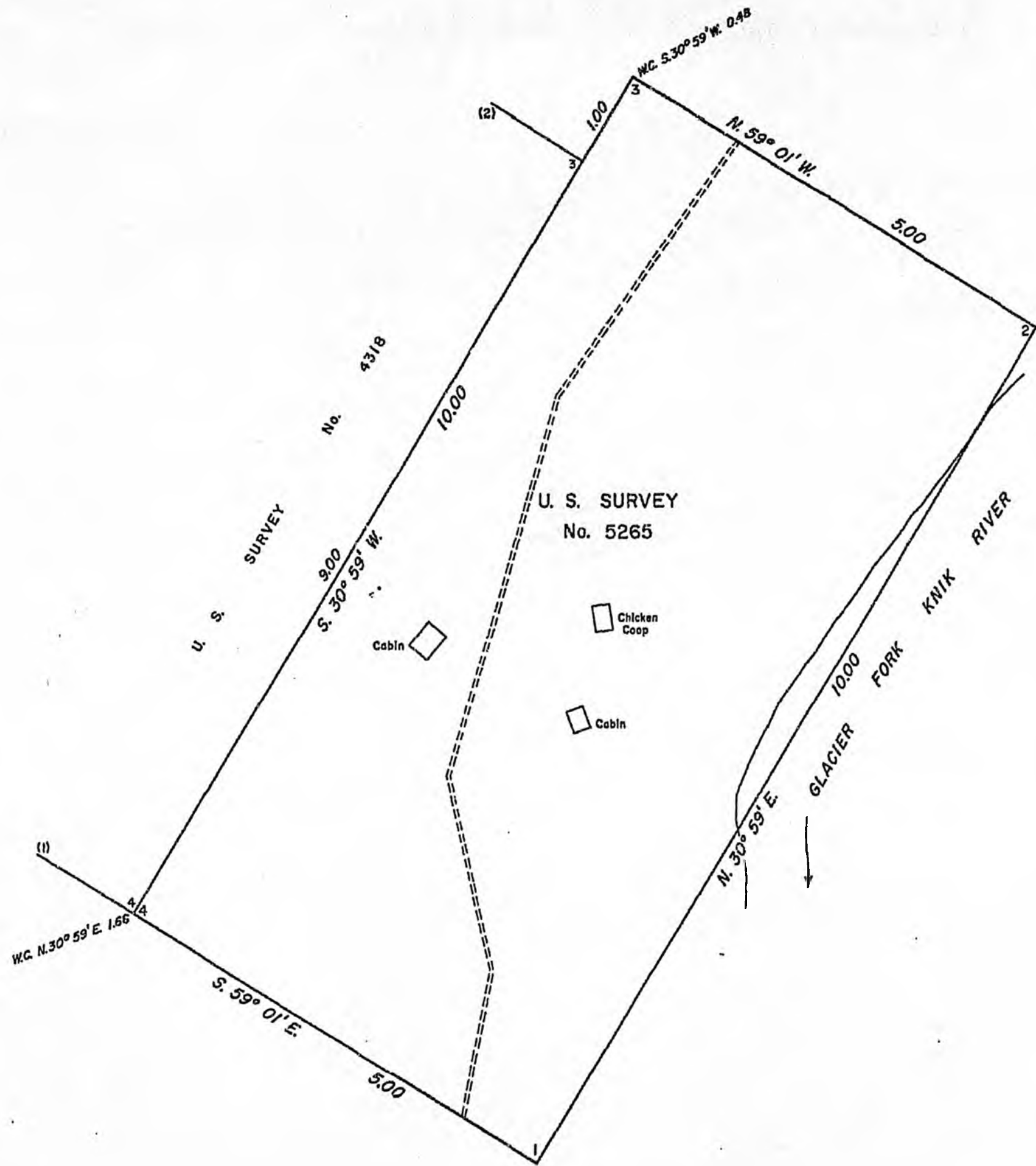


## NOTES

Trail linework shown is from field data collected with a Pathfinder Pro GPS unit. USS 5265 is drawn from record data with ties made to two found monuments with the GPS.

## LEGEND

- ⊕ MONUMENT OF RECORD
- ⊙ RECORD INFORMATION
- SURVEYED LINE
- UNSURVEYED LINE



U. S. SURVEY  
No. 5265, ALASKA

LOCATED 8 MILES NORTH  
OF  
LOWER LAKE GEORGE ON THE  
GLACIER FORK OF THE KNIX RIVER

APPROXIMATE GEOGRAPHIC POSITION  
AT  
CORNER NO. 1  
LATITUDE 61°26.3' NORTH, LONGITUDE 148°32.2' WEST

AREA: 5.00 ACRES

SURVEYED BY  
REZD TERRY, CADASTRAL SURVEYOR  
JUNE 30 THROUGH JULY 1, 1975  
UNDER SPECIAL INSTRUCTIONS

DATED  
JULY 6, 1975

AND

APPROVED

JANUARY 15, 1975

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
Washington, D.C. October 21, 1976

This plat is strictly conformable to the approved field notes, and the survey, having been correctly executed in accordance with the requirements of law and the regulations of this Bureau, is hereby accepted.

For the Director

Roger T. Barron

U. S. SURVEY  
No. 5839, ALASKA

This plat constitutes the entire survey record.

This survey was executed by Joseph Fred Maestas, Jr., Cadastral Surveyor, August 6 through August 7, 1977, in accordance with the specifications as set forth in the Manual of Surveying Instructions, 1973, and Special Instructions dated May 11, 1977, approved July 19, 1977, and Assignment Instructions dated August 5, 1977, for U.S. Survey No. 5839, Alaska.

The azimuth was obtained from a traverse of line 3-4 of U.S. Survey No. 4318 and refers to the true meridian.

The approximate geographic position of corner No. 1, as scaled from U.S. Geological Survey topographic map, "ANCHORAGE (B-5)," Alaska, 1960 edition, is:

Latitude 61°26.4' North, Longitude 148°31.8' West

The magnetic declination was not measured. The mean value was obtained from previous mentioned topographic map.

Area Surveyed 5.00 Acres

This survey is situated on the north side of the Glacier Fork Knik River, approximately 1/10 mile downstream from its confluence with Metal Creek. The land is rolling and covered with spruce, alder, and cottonwood timber. The soil is a sandy loam with good top soil.

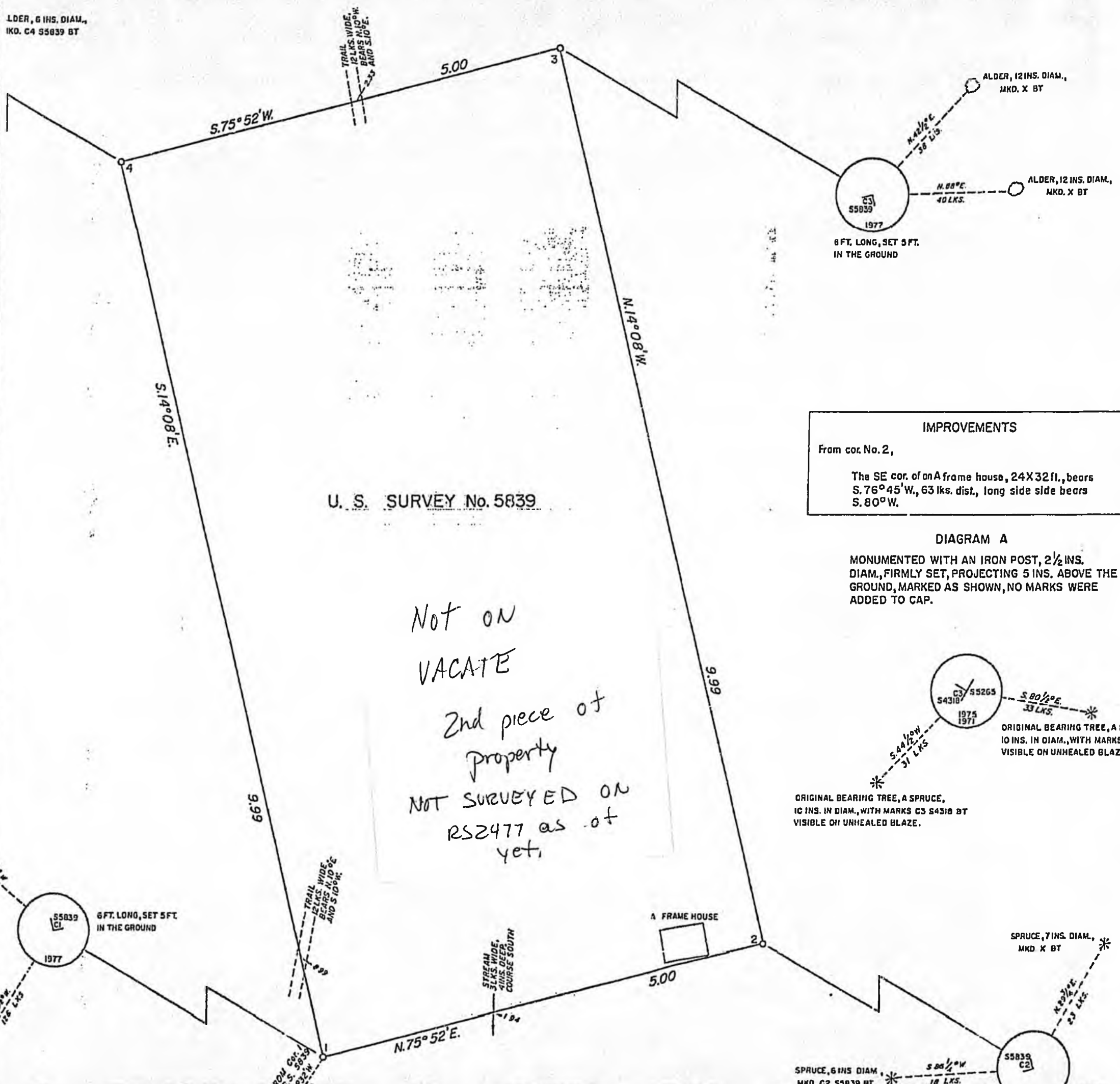
UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
Washington, D.C. October 10, 1978

This plat, having been correctly executed in accordance with the requirements of law and the regulations of this Bureau, is hereby accepted.

For the Director



Chief, Division of Cadastral Survey



U. S. SURVEY No. 5839

NOT ON  
VACATE  
2nd piece of  
property  
NOT SURVEYED ON  
RS2477 as of  
yet,

IMPROVEMENTS  
From cor. No. 2,  
The SE cor. of an A frame house, 24X32 ft., bears S. 76°45'W, 63 lks. dist., long side side bears S. 80°W.

DIAGRAM A  
MONUMENTED WITH AN IRON POST, 2 1/2 INS. DIAM., FIRMLY SET, PROJECTING 5 INS. ABOVE THE GROUND, MARKED AS SHOWN, NO MARKS WERE ADDED TO CAP.

ORIGINAL BEARING TREE, A SPRUCE, 10 INS. IN DIAM., WITH MARKS X BT VISIBLE ON UNHEALED BLAZE.  
ORIGINAL BEARING TREE, A SPRUCE, 10 INS. IN DIAM., WITH MARKS C3 54318 BT VISIBLE ON UNHEALED BLAZE.

SPRUCE, 6 INS DIAM., MKD C2 54318 BT  
SPRUCE, 7 INS. DIAM., MKD X BT

6 FT. LONG, SET 5 FT. IN THE GROUND

6 FT. LONG, SET 5 FT. IN THE GROUND

A FRAME HOUSE

TRAIL 12 LKS. WIDE, BEARS N. 10° E. AND S. 10° W.  
STREAM 3 LKS. WIDE, 4 INS. DEEP, COURSE SOUTH  
TRAIL 12 LKS. WIDE, BEARS N. 10° E. AND S. 10° W.

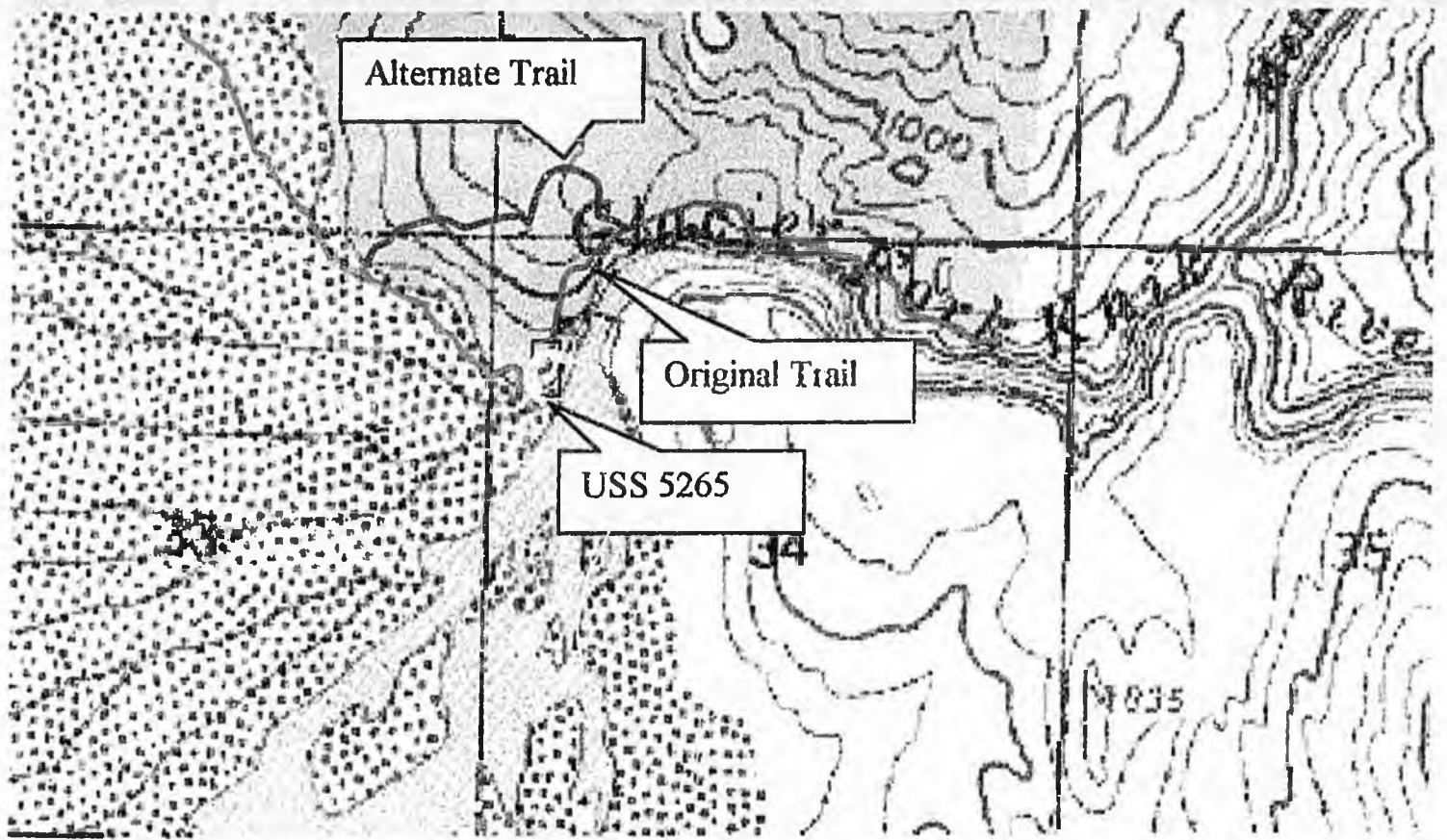
ALDER, 12 INS. DIAM., MKD. X BT

ALDER, 12 INS. DIAM., MKD. X BT

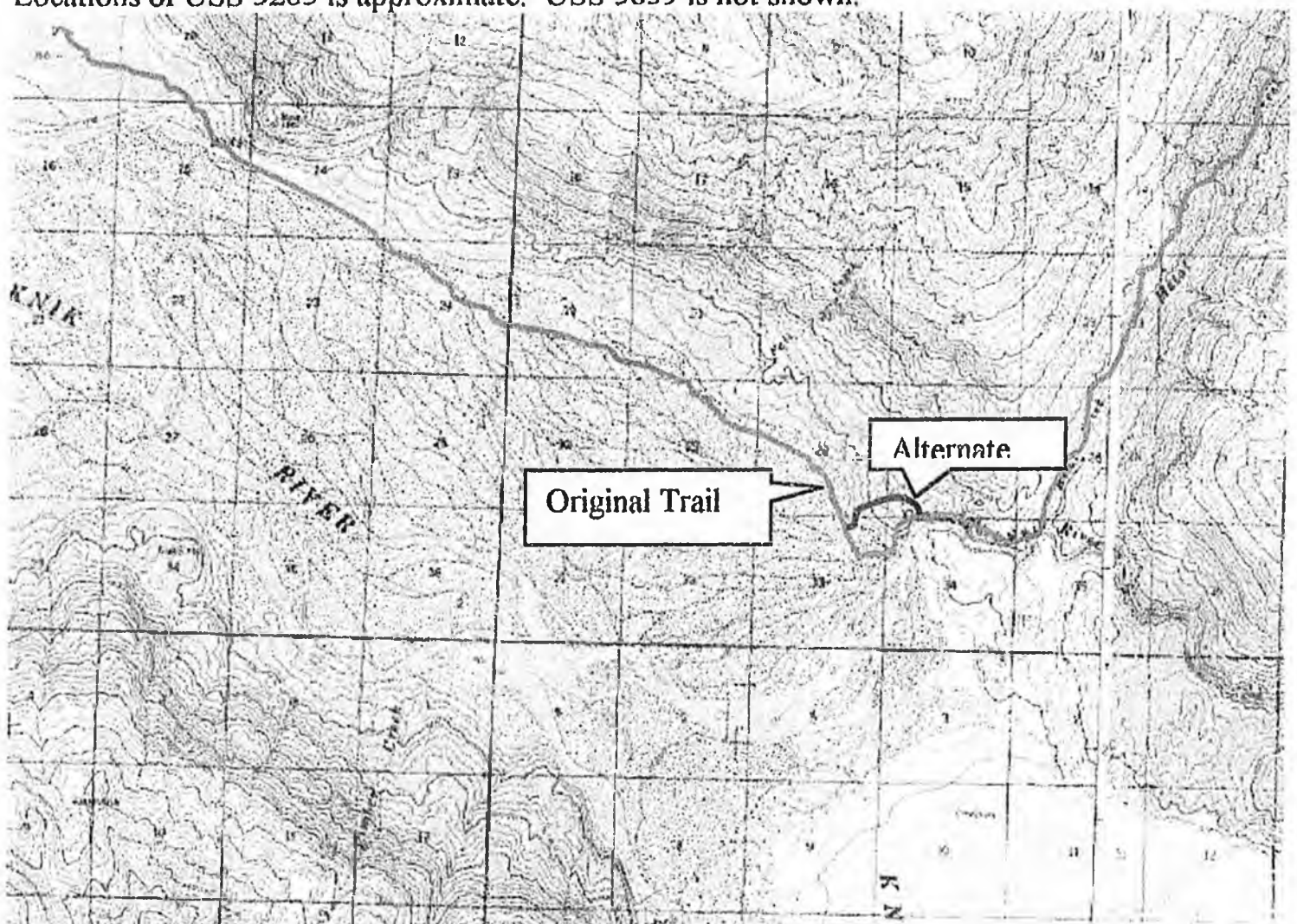
SPRUCE, 7 INS. DIAM., MKD X BT

SPRUCE, 6 INS DIAM., MKD C2 54318 BT





Locations of USS 5265 is approximate. USS 5839 is not shown.



# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 9, 2002

**SUBJECT:** Vacation of Right-of-Way (Work Order No. 22-LS1664\A)

**TO:** Senator Lyda Green

**FROM:** Gerald P. Luckhaupt   
Legislative Counsel

Enclosed is the bill draft you requested. Article II, § 19, Constitution of the State of Alaska, provides:

The legislature shall pass no local or special act if a general act can be made applicable. Whether a general act can be made applicable shall be subject to judicial determination. Local acts necessitating appropriations by a political subdivision may not become effective unless approved by a majority of the qualified voters voting thereon in the subdivision affected.

This bill draft could be subject to challenge as a local and special act. However, it is not immediately clear to me that a general act could be made applicable.

GPL:med  
02-358.med

Enclosure

STATE OF ALASKA  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF LAND  
DEPARTMENTAL DECISION

BOOK 0937 PAGE 010

Knik Glacier Trail

**Proposed Action:** The proposed action is to determine the applicability of the RST #17 - Knik Glacier Trail decision, approved by the Acting Commissioner, January 11, 1995, to U.S. Survey 5265 and 5839; to determine upon particularized review of the conflicting evidence and in light of the availability of alternate access across state land, that no public right-of-way is certified across either U.S. Survey 5265 or U.S. Survey 5839; and to reserve in public ownership as a right-of-way to Metal Creek, an existing alternative access route across state land within Sections 27 and 28 of Township 16 North, Range 5 East, Seward Meridian, Alaska.

The Knik Glacier trail is asserted as an RS 2477 right-of-way. The right-of-way for the trail begins at the public access easement established by the Matanuska-Susitna Borough in the vicinity of Jim Creek within T. 17 N., R. 3 E., S.M. and then follows the right bank of the Knik River for approximately 18 miles, thence up Metal Creek approximately 4 miles to a block of state mining locations. The subject U.S. Survey lots are located in the vicinity of the mouth of the Glacier Fork of the Knik River and Metal Creek. The Knik Glacier trail is identified as RST #17 - Knik Glacier Trail in the Departmental Decision and Certification approved by the Commissioner of the Department of Natural Resources in January, 1995.

**Authorities:**

- AS 38.05.020 Duties of the commissioner
- AS 38.05.035 Duties of the director
- AS 38.05.850 Permits
- AS 38.04.055 Access through private use areas
- RS 2477 Section 8 of the Mining Law of 1866
- 11 AAC 51 Nomination, Identification, and Management of RS 2477 Right-of-Way

**Administrative Record:**

- a) Administrative ADL casefiles.
- b) Classification order # SC 86-015, by reference.
- c) Susitna Area Plan dated June, 1985, by reference.
- d) RST #17, Departmental Decision and Certification.
- e) Court Records
- f) Alaska Constitution, Public Trust Doctrine, Alaska Statutes Title 38, and Alaska Administrative Code Title 11, by reference.
- g) Public comments.

This is to certify that this is a true and correct copy of the original as executed by the director of the Division of Land, Department of Natural Resources.

*Celeste L. Kinsler*  
Title Administration

Date 3-3-98

The administrative record contains background information on issues, existing resources, land status, land ownership patterns, management intent, and land classification.

The administrative record also contains background information for each proposed use on size, location, proposed construction, history of adjudication, title, agency comments, and other requirements.

**Properties Affected:**

Lands within the affected township, Township 16 North, Range 5 East, Seward Meridian, Alaska, are a mixture of state owned-lands with several 5-acre privately owned parcels. This decision

BK 01122 PG 0654

deals with the following properties situated within the Palmer Recording District, Third Judicial District, State of Alaska: U.S. Survey No. 5265 lying within Section 27; U.S. Survey No. 5839 lying within Sections 27 and 34; and state lands lying within Sections 27 and 28.

#### Planning and Classification:

The state owned lands are located within management unit 1d (Chugach Mountains) of the Susitna Area Plan and are to be managed for public recreation and wildlife habitat. The area is classified Wildlife Habitat by Classification Order # SC 86-015.

#### Justification for Action:

To resolve a long-standing access dispute by providing legal public access, reserved under state law, to provide access through an area where the route of a certified RS 2477 trail is disputed and uncertain, and thereby to remove an alleged cloud of title to private land that is not necessary to a continuous public trail.

#### Scope:

Reserve a right-of-way in state ownership to ensure the continuity of RS 2477 right-of-way in the vicinity of the junction of the North Fork of the Knik River with the main riverbed of the Knik River within Sections 27 and 28 of Township 16 North, Range 5 East, Seward Meridian.

#### Background:

RST #17, Departmental Decision and Certification, provides historical documentation on the establishment and use of the trail.

#### Public Notice and Public Comments:

The public was invited to comment on a Preliminary Decision from July 31, 1995 until September 11, 1995. Public comments were received from Michael Connor, Kenneth and Joanne Fitzgerald and Austin Helmers. Michael Connor's comments, received on August 16, 1995, addressed several issues that the department had previously considered, with the pertinent issues being:

1) Whether it is possible to certify two discontinuous stretches of trail as RS-2477 right-of-way? The department agrees that the trail has a termini at both ends, being in this case, the city of Palmer and a mining camp located approximately 3 miles up Metal Creek and was used as a continuous route. However, the location of the trail from the vicinity of the old Liska/Tex Cobb cabin to Metal Creek as depicted on the ARC map does not appear to go through the present day location of U.S.S. 5265 and U.S.S. 5839, and appears to be overgrown and unusable. By providing for an alternate access route that presently exists, the department ensures a continuous access trail from the Knik River to the road to Metal Creek that was constructed by Doug Sumner, beyond his property, in the early 1960's. The language of this final decision clarifies the effect and intent of the department's decision.

2) In regards to the Field Examination as addressed below, how old is the route through the Puddicombe/Dunham properties . . . ? " The department recognizes that the road inspected was built by Mr. Sumner in the early 1960's, prior to the establishment of the alternate route, by miners

in the early 1980's. The department also recognizes that trails existed through the U.S. Surveys 5265 and 5839, but evidence lacks of anything more than minimal use of the trails across the property during the period preceeding 1965. As addressed below, aerial photos from the 1950's do not depict any distinct trails through the parcel. Aerial photos from 1978 clearly show the present road, constructed between 1965 and 1967, through the parcel and beyond into the Metal Creek area.

3) In regards to the Discussion, what were the judge's finding, "In a private lawsuit to which the State was not a party? The reference for that decision has been modified for accuracy.

JoAnne Fitzgerald's comments, received by the department on September 1, 1995, also addressed several issues that the department had previously considered, with the pertinent issues being:

1) Whether it is possible to certify two discontinuous stretches of trail as RS-2477 right-of-way? The department's considerations are described in it's response to Mr. Connor's first comment.

2) Whether it is proper "to respect private property rights. . .at the cost of losing a well documented trail or in the least substituting a dangerous r/w..."? As noted elsewhere in this decision, the department finds the documentation of trail use specifically across U. S. Surveys 5265 and 5839 sketchy and inconclusive. The department is not convinced it could succeed in proving a claim of RS 2477 across those properties. The miners established an alternative route avoiding the properties in the early 1980's. This route, located on state land, shows signs of use. While not improved to the standard of the road across U.S. Surveys 5265 and 5839, the alternate route can provide access as good as other portions of the road to the Metal Creek drainage above U.S. Surveys 5265 and 5839. In this case, the availability of an alternate route makes it unnecessary to commit public resources to pursue a questionable claim against holders of private properties.

3) Whether in light of the "broad based support in the community and borough [for this trail, it is proper to]. . .put the interest of two individual property owners ahead of the interest of the people when this trail is well documented and well used". The department addresses this issue above. The support of the community and the borough is commended. Because the issue of whether an RS 2477 right-of-way exists through the private lands near the mouth of Metal Creek is inconclusive, that support would best be channeled toward support for improvements to the alternate access provided under this decision. This decision, which ensures continuous access to Metal Creek, is not inconsistent with community support.

Austin Helmers' comments, received by the department on September 5, 1995, addressed some issues already considered above.

In addition, Mr. Helmers' question whether the standard patent reservation effectively reserved an RS 2477 over these properties. The Bureau of Land Management has utilized the two standard patent language statements relating to the reservation for a right-of-way for ditches and canals since 1890 (43 USC 945) and the reservation for construction of railroads, telegraph and telephone lines since 1914 (38 Stat. 305). The department is not aware of any interpretation of these reservations that would apply to an RS 2477 public right of way.

Mr. Helmers also notes that, "a decision in this case should recognize the existence of a valid RS 2477 right-of-way, but under present circumstance, including alternate (if adequate) access . . .". That is exactly what the decision is intended to do: to confirm the general validity of RST-17, Knik Glacier Trail, as an RS 2477 public right-of-way, providing alternate access across state land for a portion where historical information as to the precise route is inconclusive and in dispute. Mr. Helmers' suggestion that a court decide whether the RS 2477 right of way exists across U. S. Surveys 5265 and 5839, would require needless expenditure of public funds in light of the

availability of the alternate route.

The information provided by public comments provides no evidence not previously considered by the department that an RS 2477 right-of-way exists through either U.S. Survey 5265 or U.S. Survey 5839.

#### Field Examination:

On May 5, 1995, departmental staff, accompanied by an engineer from the Department of Transportation and Public Facilities, conducted a site visit of the subject properties and surrounding state land in the vicinity of the mouth of Metal Creek/Knik River area.

The group inspected an alternative access route that had been established by miners during 1981 and 1982, on state lands within Section 28 of T. 16 N., R. 5 E., located approximately 1/2 mile northwesterly of the mouth of the Glacier Fork, Knik River. The alternate route climbs up a slope from the Knik River gravel bar and then connects to the Metal Creek mining road. The trail bypasses the private properties and consists of an unimproved trail approximately 6 to 10 feet wide, that connects to the Metal Creek mining road at a point northerly of U. S. Survey No. 5839.

The group also inspected the older route through the Puddicombe/Dunham private properties. U. S. Survey 5265, the Puddicombe property, is located at the mouth of the Glacier Fork of the Knik River, near Metal Creek. The road, constructed in 1965 - 1967, is accessible by any vehicle which could reach the parcel, ie., four-wheeler, swamp buggy or other vehicles. The road is improved from the gravel bed at the mouth of the river, on through the parcel and continuing on easterly through state land and U.S. Survey 5839, to intersect with the alternative access route and the Metal Creek mining road. The road shows signs of rock blasting near the mouth of the river, where the road traverses uphill through the parcel.

#### Discussion:

The decision in RST #17 discusses the construction of the road through U.S. Survey 5265. The 1973 notes in the decision reference that the road up to Metal Creek, beyond U.S. S. 5265, was constructed in 1965, 1966 and 1967, by Mr. Sumner, the original owner of the parcel, at a cost of \$9,000. However, additional information in the decision noted that in 1993, several parties stated that the trail was in use in 1955 and used for prospecting trips.

In a private lawsuit to which the state was not a party, the Superior Court reviewed most of the evidence presented to the department, and found it insufficient to support finding of an RS 2477 right of way prescriptive easement across U. S. Survey 5265 (U. S. Survey 5839 was not at issue in that action).

The court records reference affidavits of there being trails through U.S.S. 5265. The division recognizes that trails existed through the U.S. Surveys, but evidence lacks of anything more than minimal activity on the trails within the Metal Creek valley during the period proceeding 1965.

This office has examined aerial photos of the area from the 1950's which do not appear to show any particular trails through the parcel and beyond to Metal Creek. Aerial photos from 1978 clearly show the present road, constructed between 1965 and 1967, through the parcel and beyond into the Metal Creek area. Also examined were Alaska Road Commission records from 1923 that are referenced in RST #17. The road as depicted on the map that Alex Liska submitted to the Alaska Road Commission does not appear to go through the present day location of U.S.S. 5265.

An alternative route exists for access into the Metal Creek mining area. The alternate route, located on state land, shows signs of use. While not improved to the standard of the road across U.S. Surveys 5265 and 5839, the alternate route can provide access as good as other portions of the road to the Metal Creek drainage above U.S. Surveys 5265 and 5839. To improve access over the route, a ramp and other improvements could be constructed of locally available gravel. Per discussions with the private property owners, the alternative road does not cross onto private lands within U.S. Survey 5839. If U.S.S. 5839 was impacted, the location of the intersection of the alternative access route and the Metal Creek road could be shifted easterly to avoid the private land.

Keith Morberg of the Department of Transportation and Public Facilities was present during the field inspection. DOTPF was asked to comment as to whether there was a definite destination to which the department might be interested in building a highway, and how would it relate to the department's mission. DOTPF's representative was also asked if it was possible to use the alternative access route for transportation into the Metal Creek mining area. Mr. Morberg understood the area to be used primarily by a limited number of miners and recreational users. Mr. Morberg indicated that he did not presently see any likelihood that the road across U. S. Surveys 5265 and 5839, or any other route to the Metal Creek mining district, would be needed for a future highway project. Mr. Morberg indicated that he believed the alternate access route could provide recreational access to the mining area consistent with the quality of access now available further up the trail. ✓

Evidence that a RS 2477 right-of-way exists through the private lands near the mouth of Metal Creek is inconclusive. DNR stated in the January, 1995 RST #17 decision, *"An RS 2477 right-of-way should be asserted along the historic route which is the most feasible and prudent. Public comments indicate multiple alignments, which should be confirmed through field inspection. If at the time of platting, sufficient state land exists to bypass third party landowners, the state generally follows this policy."* ✓

#### Alternatives:

The following alternatives were considered:

1. Authorize the proposed action without modification.
2. Authorize the proposed action with modifications.
3. Do not authorize the proposed action.

Alternative 1 is the alternative that maximizes the public interest. The decision is consistent with the management intent of the Susitna Area Plan for this area.

#### Final Finding and Decision:

After particularized review of the conflicting evidence and in light of the availability of alternate access across state land, I hereby determine that the RST # 17 - Knik Glacier Trail decision, approved by the Acting Commissioner, January 11, 1995, is inapplicable to U.S. Surveys 5265 and 5839; and that DNR no longer certifies any public right of way across either U. S. Survey 5265 or U. S. Survey 5839. An alternative route on state land exists within the township that is suitable for reservation as a public right-of-way. The route, though not improved or suitable for use by conventional vehicles, is presently passable and provides for access into the Metal Creek area by

miners, hikers, hunters and others that may use the area.

I hereby determine that DNR reserve a right-of-way to make the alternative route of record; to link the Knik River portion of the RS 2477 with the Metal Creek portion of the RS 2477 right-of-way, and to provide for trail access at users' own risk into the Metal Creek area by miners and other recreational users.

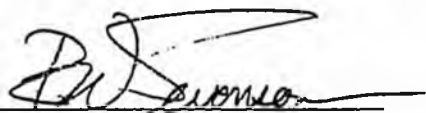
A center line survey of the existing alternative route will be completed to establish the location for record purposes.

**Final Finding and Decision:**

I find that all requirement of applicable statutes and regulations have been met , and it is in the best interest of the state to proceed with this action.

**Appeals:**

This is a final administrative order and decision of the department for purposes of an appeal to Superior Court. A person adversely affected by this final order and decision may (1) appeal to Superior Court within 30 days in accordance with the rules of the court, and to the extent permitted by applicable law, or (2) first request reconsideration of this decision, in accordance with AS 44.62.540 and 11 AAC 02.020, to John Shively, Commissioner, Department of Natural Resources, 3601 C street, Suite 1210, Anchorage, Alaska 99503-5921. Please include the appeal code number provided below. Any such request for reconsideration must be received at that address, or be received by being faxed to 1-907-562-4871, within 15 calendar days after the date of "delivery" of the decision, as defined by 11 AAC 02.040(c) and (d). Failure of the commissioner to act on a request of reconsideration within 30 days after delivery of this decision is a denial of reconsideration and is also a final administrative order and decision for purposes of an appeal to Superior Court. It may then be appealed to Superior Court within a further 30 days in accordance with the rules of the court, and to the extent permitted by applicable law. A copy of 11 AAC 02 may be obtained from any Department of Natural Resources office. If no request for reconsideration is filed before the end of the period specified, this decision then goes into effect.



Ronald W. Swanson  
Director, Division of Land  
Department of Natural Resources

10/25/95  
Date  
003523

PALMER 30cc  
RECORDING DISTRICT X2

1998 MR -5 AM 10:49

REQUESTED BY

Craig Puddicombe



John Shively, Commissioner  
Department of Natural Resources

10/26/95  
Date

Return to:

Craig R. Puddicombe  
BOX 215  
Palmer, Alaska 99645

Appeal Code Number COSC102595

BK 01122PG0660

U.S. DISTRICT COURT  
JAN 17 1996  
JAN 17 1996

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

CRAIG PUDDICOMBE and JOHN DUNHAM	)
	)
Appellants,	)
	)
vs.	)
	)
STATE OF ALASKA, DEPARTMENT OF	)
NATURAL RESOURCES,	)
	)
Appellee.	)
_____ ) Case No. 3PA-95-248 Civil	

WOPPERUD & HEFFERAN  
ATTORNEYS AT LAW  
351 WEST SWANSON AVENUE, SUITE 3  
WASILLA, ALASKA 99654-8892  
1907/378-2438 OR 378-2430

STIPULATION FOR DISMISSAL OF APPEAL

COME NOW, appellants, CRAIG PUDDICOMBE and JOHN DUNHAM, by WOPPERUD AND HEFFERAN, and the STATE OF ALASKA, by Assistant Attorney General JOHN L. STEINER, and hereby stipulate and agree as follows:

1. The STATE OF ALASKA, DEPARTMENT OF NATURAL RESOURCES, DIVISION OF LAND, issued its final Departmental Decision on October 26, 1995, which decision pertains to the property which is the subject of this appeal. The Departmental Decision is on file with this court, as Exhibit 1 to the Motion for Reconsideration, dated January 16, 1996.

BK 01122PG0661

2. Based on that decision, which is final and no longer subject to appeal, the STATE OF ALASKA claims no public right of way across U.S. Survey 5265 and U.S. Survey 5839, and this appeal, consequently, is moot.

3. The undersigned respectfully request that this court enter the Order submitted concurrently herewith.

KOPPERUD AND HEFFERAN  
Attorneys for Appellants

Date: 1/26/96

By: Patricia R. Hefferan  
PATRICIA R. HEFFERAN

Date: 1-30-96

John L. Steiner  
JOHN L. STEINER, Assistant  
Attorney General for the STATE  
OF ALASKA

BK 01122PG0662

KOPPERUD AND HEFFERAN  
351 W. Swanson Ave., Suite 3  
Wasilla, AK 99654-6892  
(907) 376-2439  
Attorneys for Appellants

APR 22 AM 8 02  
CLERK OF THE COURTS  
STATE OF ALASKA

IN THE SUPREME COURT FOR THE STATE OF ALASKA

CRAIG PUDDICOMBE and JOHN DUNHAM )

Appellants, )

vs. )

JOANNE CONNER FITZGERALD, )  
MICHAEL CONNER, STATE OF ALASKA, )  
JAMES V. KRACKER, DALE NICK FIDLER, )

Appellees, )

Supreme Court No. S-6639

Superior Court Case No. EPA-91-391

KOPPERUD & HEFFERAN  
ATTORNEYS AT LAW  
351 WEST SWANSON AVENUE, SUITE 3  
WASILLA, ALASKA 99654-6892  
(907) 376-2439 OR 376-2430

STIPULATION FOR DISMISSAL OF APPEAL

COME NOW, appellants, CRAIG PUDDICOMBE and JOHN DUNHAM, by KOPPERUD AND HEFFERAN, and the STATE OF ALASKA, by Assistant Attorney General JOHN L. STEINER, and hereby stipulate and agree as follows:

1. The STATE OF ALASKA, DEPARTMENT OF NATURAL RESOURCES, DIVISION OF LAND, issued its final Departmental

BK 01122PG0663

Decision on October 26, 1995, which decision pertains to the property which is the subject of this appeal. The Departmental Decision is on file with this court, as Exhibit 1 to the Motion for Extension, dated November 22, 1995.

2. Based on that decision, which is final and no longer subject to appeal, the STATE OF ALASKA claims no public right of way across U.S. Survey 5265 and this appeal, consequently, is moot.

3. The undersigned respectfully request that this court dismiss this matter and order that the cash appeal bond be returned forthwith to CRAIG PUDDICOMBE and JOHN DUNHAM, the posting parties.

KOPPERUD AND HEFFERAN  
Attorneys for Appellants

Date: 1/22/96

By: Patricia R. Hefferan  
PATRICIA R. HEFFERAN

Date: 1-22-96

John L. Steiner  
JOHN L. STEINER, Assistant  
Attorney General for the STATE  
OF ALASKA

I certify that this is a true, full copy of an original document on file in the Appellate Courts of the State of Alaska.

Dated Feb 27, 1996 at  
Anchorage, Alaska

CLERK OF THE APPELLATE COURTS

By [Signature]  
Deputy Clerk

BK 01122PG0664

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

CRAIG PUDDICOMBE and JOHN DUNHAM )

Appellants, )

vs. )

STATE OF ALASKA, DEPARTMENT OF  
NATURAL RESOURCES, )

Appellee. )

STATE OF ALASKA THIRD DISTRICT  
APPEALS DIV.

JAN 23 1996

Clerk of the Trial Courts

*R* Deputy

Case No: 3PA-95-248 Civil

NOTICE OF INTENT TO ENTER  
RULING REQUESTED BY APPELLANT

Appellant has informed the court that an appropriate resolution of this matter would be to dismiss with a finding that the state has no claim to or interest in the two properties subject to this action.

Unless an opposition is received from the state by February 1, 1996, such an order will be entered.

Dated this 23<sup>rd</sup> day of January, 1996 at Anchorage Alaska.

John Reese  
Superior Court Judge

23-96

Each of the above was mailed to each of the following at their addresses of record:

*A. Steiner*  
*P. Hoffmann*  
*J. Shively*

*R*  
Secretary/Deputy Clerk

CC: *Pat Coulter*

Alaska Court System

BK 01122PG0665

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

CRAIG PUDDICOMBE and JOHN DUNHAM )

Appellants, )

vs. )

STATE OF ALASKA, DEPARTMENT OF )  
NATURAL RESOURCES, )

Appellee. )

STATE OF ALASKA THIRD DISTRICT  
APPEALS DIV.

FEB 03 1996

Clerk of the Trial Courts  
Deputy

Case No. 3PA-95-248 Civil.

ORDER OF DISMISSAL

Upon the Stipulation and Request for Order of Dismissal, and the court being fully advised under the premises,

IT IS HEREBY ORDERED, based upon the STATE OF ALASKA

claiming no public right of way across U.S. Survey 5265 and

Sections 27 and 34, Township 16 North, Range 5 East,

located in the Palmer Recording District, Third Judicial

District, State of Alaska, pursuant to RS 2477, this matter is

hereby DISMISSED. The Clerk is ordered to return the \$75

cash bond to Appellants.

Date: 2/3/96

JOHN REESE  
SUPERIOR COURT JUDGE

I certify that a copy of the above was mailed to each of the following at their addresses of record:

Haffner/Stamer

I certify that this is a true and correct copy of the original on file in my office.  
Clerk of the Trial Courts  
Deputy  
3/6-96

KOPPERUD & HEFFERAN  
ATTORNEYS AT LAW  
351 WEST SWANSON AVENUE, SUITE 3  
WASILLA, ALASKA 99654-5802  
(907) 376-2139 OR 376-2250

By: [Signature]  
CLERK OF THE APPELLATE COURTS

Date: 2/3/96  
Anchorage, Alaska

I certify that this is a true and correct copy of the original on file in the Appellate Court of the State of Alaska.

BK01122PG0666

006437  
PALMER  
RECORDING DISTRICT

*12/27*

2001 MR 27 AM 11:28

REQUESTED BY

*Craig  
Puddicombe*







# LAND STATUS KNIK GLACIER RESOURCE ASSESSMENT

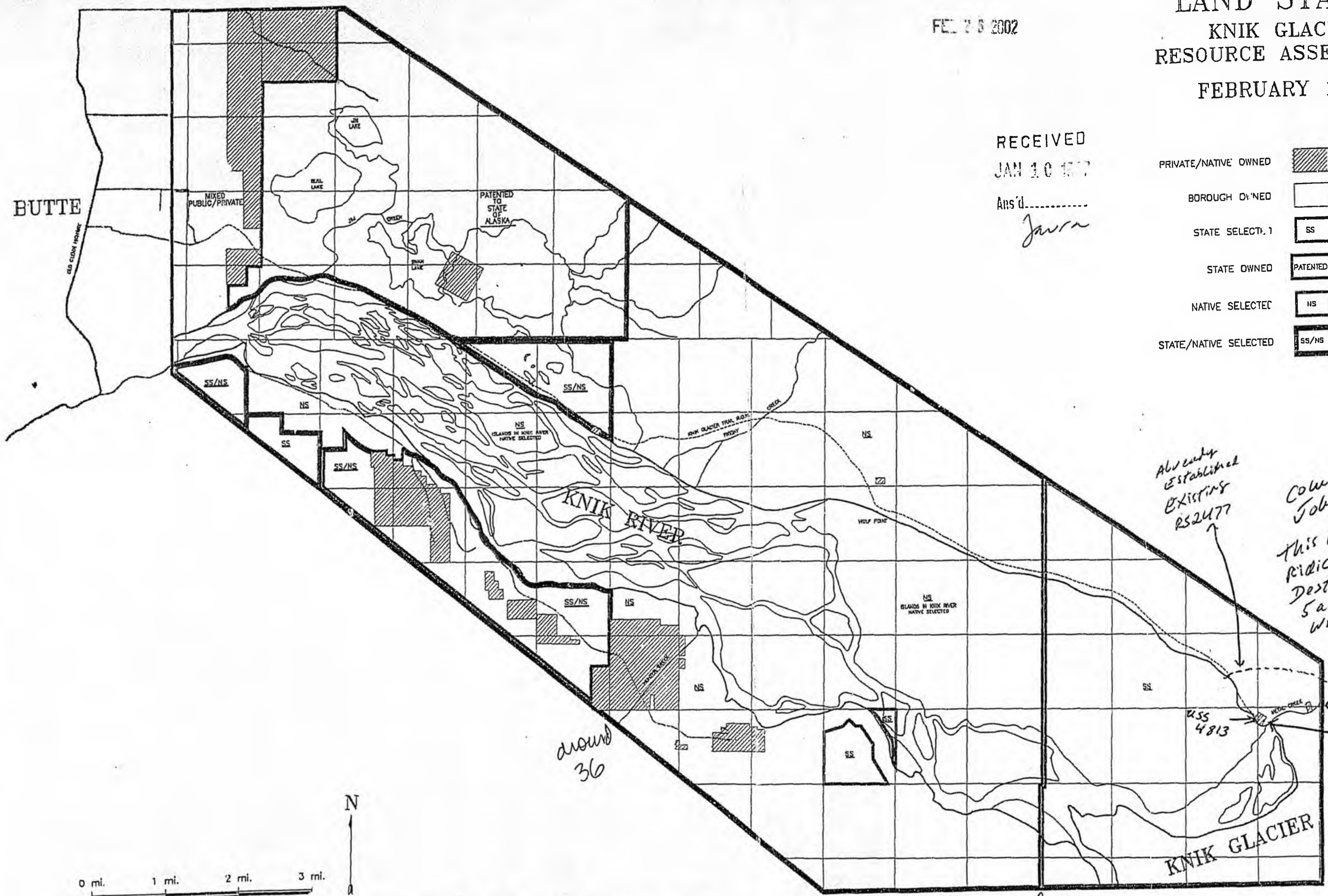
FEBRUARY 1993

FEB 28 2002

RECEIVED  
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Ans'd.....  
*Jawn*

- PRIVATE/NATIVE OWNED 
- BOROUGH OWNED 
- STATE SELECT. 1 
- STATE OWNED 
- NATIVE SELECTED 
- STATE/NATIVE SELECTED 



0 mi. 1 mi. 2 mi. 3 mi.



PREPARED BY: THE USDA/SOIL CONSERVATION SERVICE IN COOPERATION WITH THE PALMER SOIL & WATER CONSERVATION DISTRICT AND MAT-SU RESOURCE CONSERVATION AND DEVELOPMENT INC.

Figure 5

# ALASKA STATE LEGISLATURE



*Interim:*  
600 East Railroad Avenue  
Wasilla, Alaska 99654  
(907) 376-3370  
(907) 376-3157 Fax

*Session:*  
State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-6600  
(907) 465-3805 Fax

**SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE**  
SENATOR LYDA GREEN, CHAIR

## **Sponsor Statement** **Senate Bill 362**

### **“AN ACT RELATING TO VACATION RS2477, RIGHT OF WAY ON USS 5265”**

Senate Bill 362 was introduced to address the concerns of Mr. Craig Puddicombe and his partner Mr. Jack Dunham on the RS2477 through their property on the Knik Glacier Trail USS 5265, Section 34, Township 16 North, Range 5 East, Seward Meridian.

Mr. Puddicombe came to our office after exhausting efforts through DNR to accomplish a vacate process on his property in the Mat-Su.

The Knik Glacier Trail begins in Palmer and ends at a mining camp located approximately 3 miles up Metal Creek and was used as a continuous route. However, there is an existing RS2477 recognized by DNR for the area since 1995 that does not go through USS 5265. The intent of this bill is to vacate an RS2477 on private property when there is already an existing, established RS2477 route for the area that provides access around the private property.

The vacation of rights-of-way is found in AS 19.30.410, the vacate may be approved by the Legislature.

SENATOR LOREN LEMAN, VICE-CHAIR  
SENATOR JERRY WARD, SENATOR GARY WILKEN, SENATOR BETTYE DAVIS

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 9, 2002

**SUBJECT:** Vacation of Right-of-Way (Work Order No. 22-LS1664\A)

**TO:** Senator Lyda Green

**FROM:** Gerald P. Luckhaupt   
Legislative Counsel

Enclosed is the bill draft you requested. Article II, § 19, Constitution of the State of Alaska, provides:

The legislature shall pass no local or special act if a general act can be made applicable. Whether a general act can be made applicable shall be subject to judicial determination. Local acts necessitating appropriations by a political subdivision may not become effective unless approved by a majority of the qualified voters voting thereon in the subdivision affected.

This bill draft could be subject to challenge as a local and special act. However, it is not immediately clear to me that a general act could be made applicable.

GPL:med  
02-358.med

Enclosure

US 5265  
TIME LINE OF EVENTS  
PUDDICOMBE/DUNHAM

1983: We purchased the land free of any easements, with a clean title report.

1990: Due to seasonal flooding, we offered a few local miners an easement through our property, but they refused the easement.

1991: In April we filed "Quiet Title" litigation to protect our property from adverse possession claims.

1993: We went to trial with Judge Shortell presiding. We prevailed on the adverse possession claims, but during the trial the defendants brought up the subject of RS2477.

February 1994: Judge Shortell ruled that there was no validity to adverse possession claims or the RS2477 claim.

May 1994: The court ordered the state to study the validity of an RS2477 claim. The state entered the lawsuit and ruled after a 21 month study and an onsite investigation.

October 25, 1995: The state ruled against an RS2477 on US 5265. The language of this decision clarifies the background and intent of the department's decision.

January 22 & 30, 1996: The DNR decision against an RS2477 on US 5265 was non-appealable in both courts, and dismissed by Judge Reese based on a stipulation we entered into with the attorney general.

April 1996: Supreme Court reversed Judge Shortell's ruling as to RS2477 without any mention of the "State's Decision" in the DNR review. We appealed and were denied without reason.

May 1996: The Supreme Court remanded back to Shortell to find "extent and location" of the RS2477. Shortell's comments on this Supreme Court direction are: "Although I strongly disagree with the Supreme Court findings and cannot believe the injustice that results from this, civil disobedience is not available to me, I will follow the ruling on remand to the best of my ability."

June 1999: The first thing one of the justices said at oral argument on our appeal back to the Supreme Court was: "Why not simply vacate the RS2477?" Our attorney responded that there was a \$35,000.00 cash bond held by the courts, which we had to give to the court because Judge Shortell assessed full attorneys fees against us under a "public litigant" theory.

August 1999: Supreme Court ruled that there was an RS2477 on US 5265, but reversed the attorney fee bill against us and remanded back to the Superior Court for review of the attorney fee issue.

September 15, 1999: We wrote to the commissioner of the DNR per AAC11AAC51.100 to vacate this RS2477 on US 5265 and to confirm the DNR decision that access in the area was sufficient on the road around US 5265 that was recognized as the RS2477 for the area.

December 17, 1999: Commissioner Shively advised us to vacate through the Legislature.

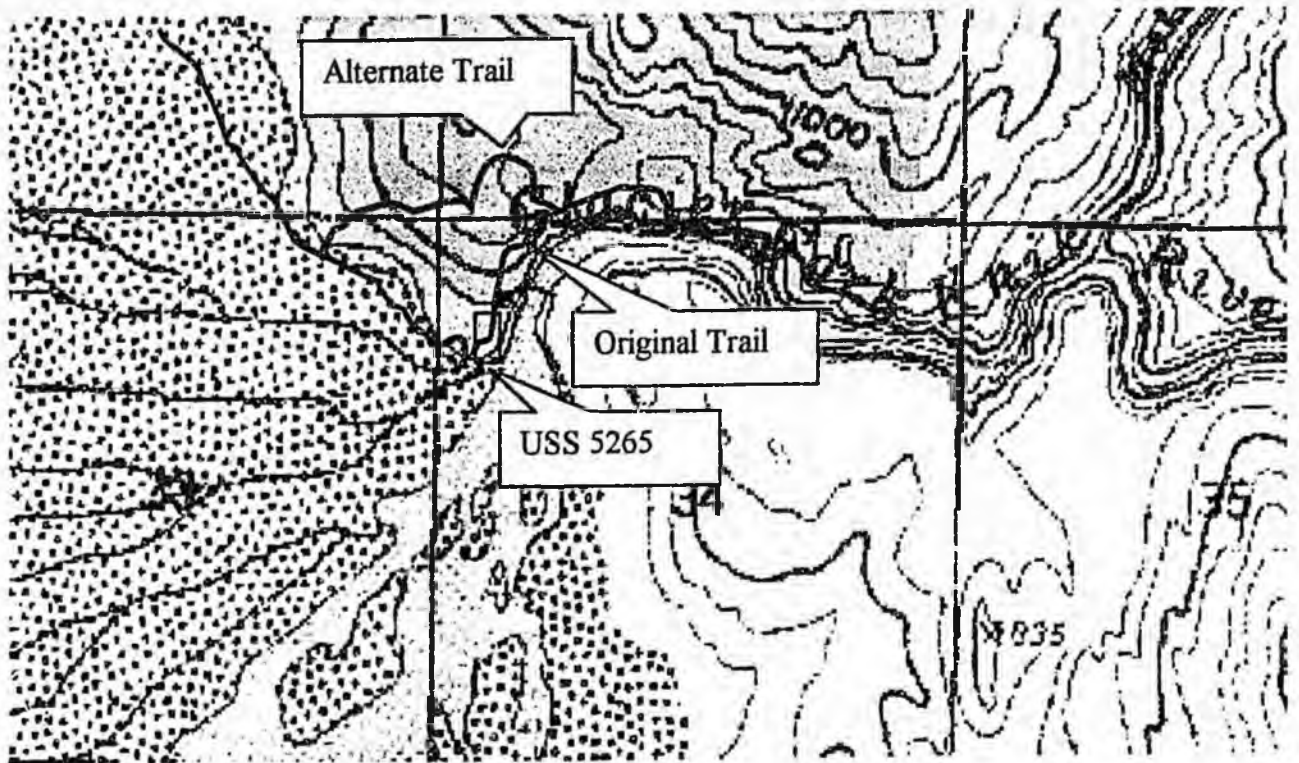
Start of 2000 Session: We asked the Legislature to vacate, but they were too busy and didn't have the money for vacating.

End of 2000 Session: Having gotten nowhere, we turned to the DNR commissioner after 2 1/2 years of stalling, the state's loss of registered mail, and not responding. As of this day we have yet to get an answer to our registered letter to the commissioner in August 2001.

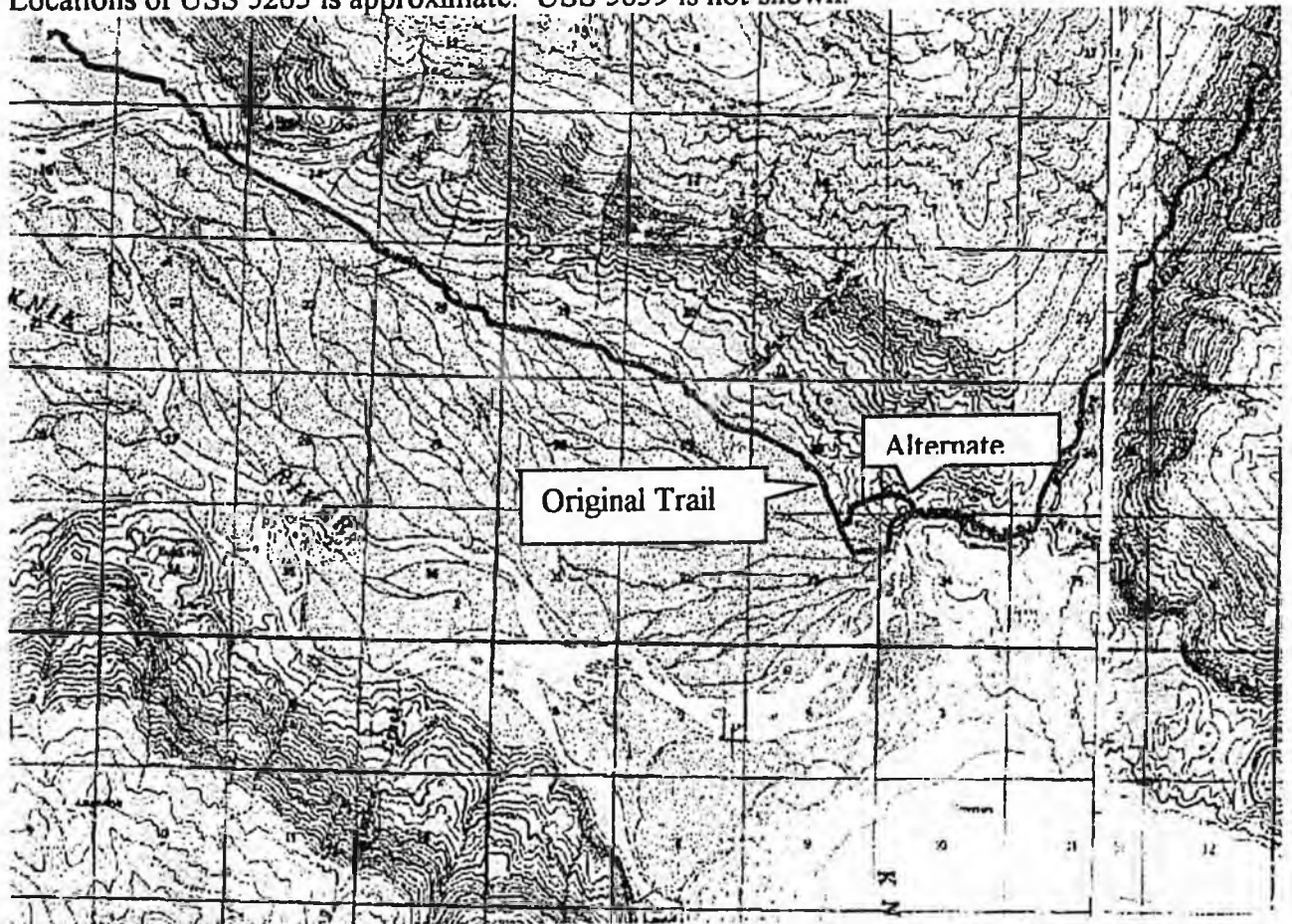
February 21, 2002: We then formally requested to Senator Green's and Representative Ogan's offices that they vacate any RS2477 on our property.

### CONCLUSION

To all Senators and Representatives to whom we have written before, please take time to note the colored map of the area. DNR's engineer, Keith Morberg, among others, studied and visited US 5265 in 1995, and agreed that there was another route "consistent with the quality of access now available." (State's 10/25/95 decision, page 5) Access does not need to destroy our private property. We have lived this battle for 12 years and spent great sums of money. We hope to find justice with the Legislature this session, clearing up title to our 5 acres at US 5265.



Locations of USS 5265 is approximate. USS 839 is not shown.



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Ladue River Trail	1854
Steele Creek — Border	1871
Manley Hot Springs — Sullivan Creek	1872
Dry Bay Trail	1873
Cottonwood Bay — Old Iliamna	1876
Bear Creek — Eagle Creek	1884
Little Minook Creek — Troublesome Creek	1885
Hodanza River Trail	1889
Mission Creek Trail	1891
The Government Route — Fortymile Station to Eagle Supply Route	1892
Canyon Creek — Hanagita River	1894
Bremner River Trail	1895
Chickaloon — Coal Creek	1896
Purgatory — Stevens Village	1897
Lost Creek Trail (Yukon Flats)	1898
Minook Creek — Pioneer Creek	1899.
(§ 2 ch 26 SLA 1998)	

**Cross references.** — For the time limit and conditions relating to recording the rights-of-way identified in subsection (d) of this section by the Department of Natural Resources, see § 3, ch. 26, SLA 1999 in the 1998 Temporary and Special Acts.

**Sec. 19.30.410. Vacation of rights-of-way.** Notwithstanding another provision of law, the Department of Natural Resources, the Department of Transportation and Public Facilities, or another agency of the state may not vacate a right-of-way acquired by the state under former 43 U.S.C. 932 unless

(1) a reasonably comparable, established alternate right-of-way or means of access exists that is sufficient to satisfy all present and reasonably foreseeable uses;

(2) the right-of-way is within a municipality, the municipal assembly or council has requested the vacation, a reasonable alternative means of access is available, and the vacation is in the best interests of the state; or

(3) the vacation is approved by the legislature. (§ 2 ch 26 SLA 1998; am § 1 ch 94 SLA 1999)

**Effect of amendments.** — The 1999 amendment, effective July 10, 1999, inserted "or council" in paragraph (2).

**Sec. 19.30.420. Immunity from liability for damages; risk of use of right-of-way acquired under former 43 U.S.C. 932.** (a) Notwithstanding AS 09.50.250 and AS 09.65.070, the state and its political subdivisions are not liable for damages, injury, or death arising from AS 19.30.400 — 19.30.420 and the recording of any rights-of-way identified in AS 19.30.400 or acquired under former 43 U.S.C. 932.

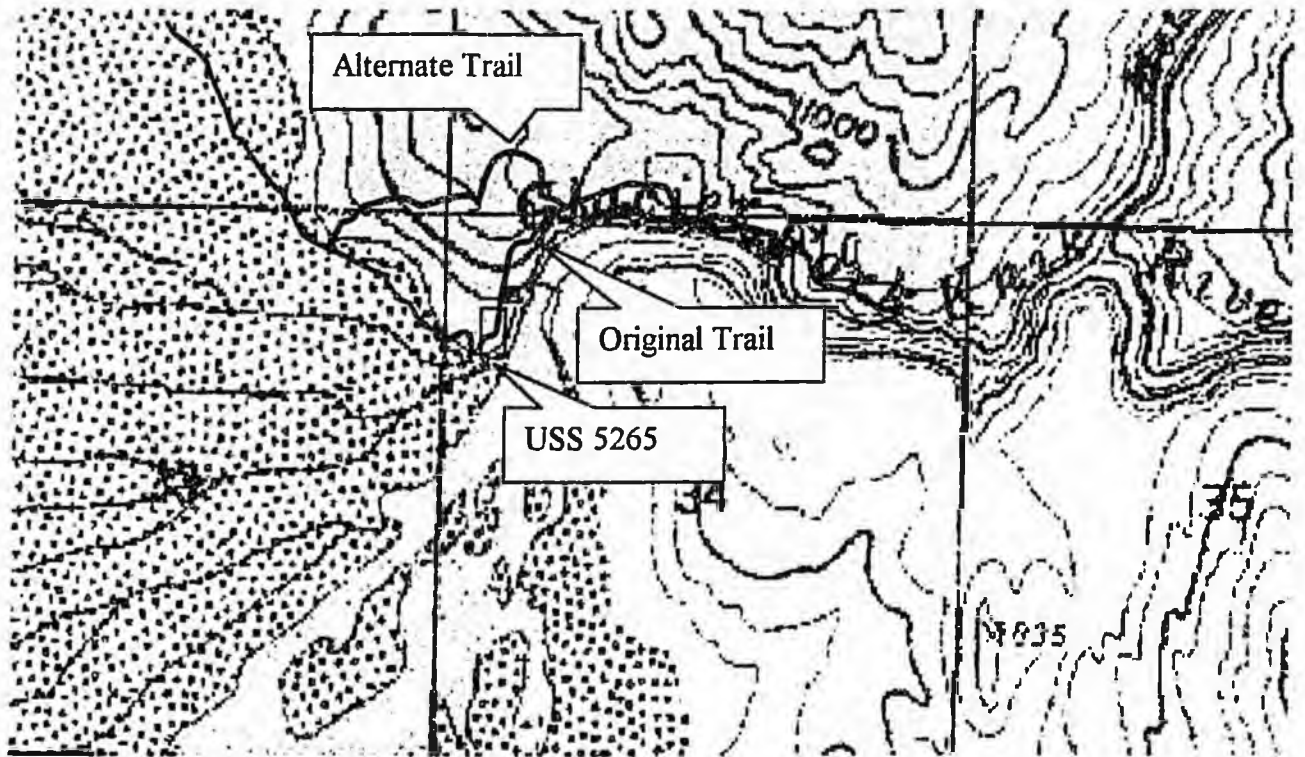
(b) A right-of-way identified under AS 19.30.400 or acquired under former 43 U.S.C. 932 that is not designated as part of the state highway system under AS 19.10.020 is traveled and used at the risk of the user. As to those rights-of-way and notwithstanding AS 09.50.250 and AS 09.65.070, the state and a political subdivision of the state are not liable for damages, injury, or death

(1) arising from the use of the right-of-way;

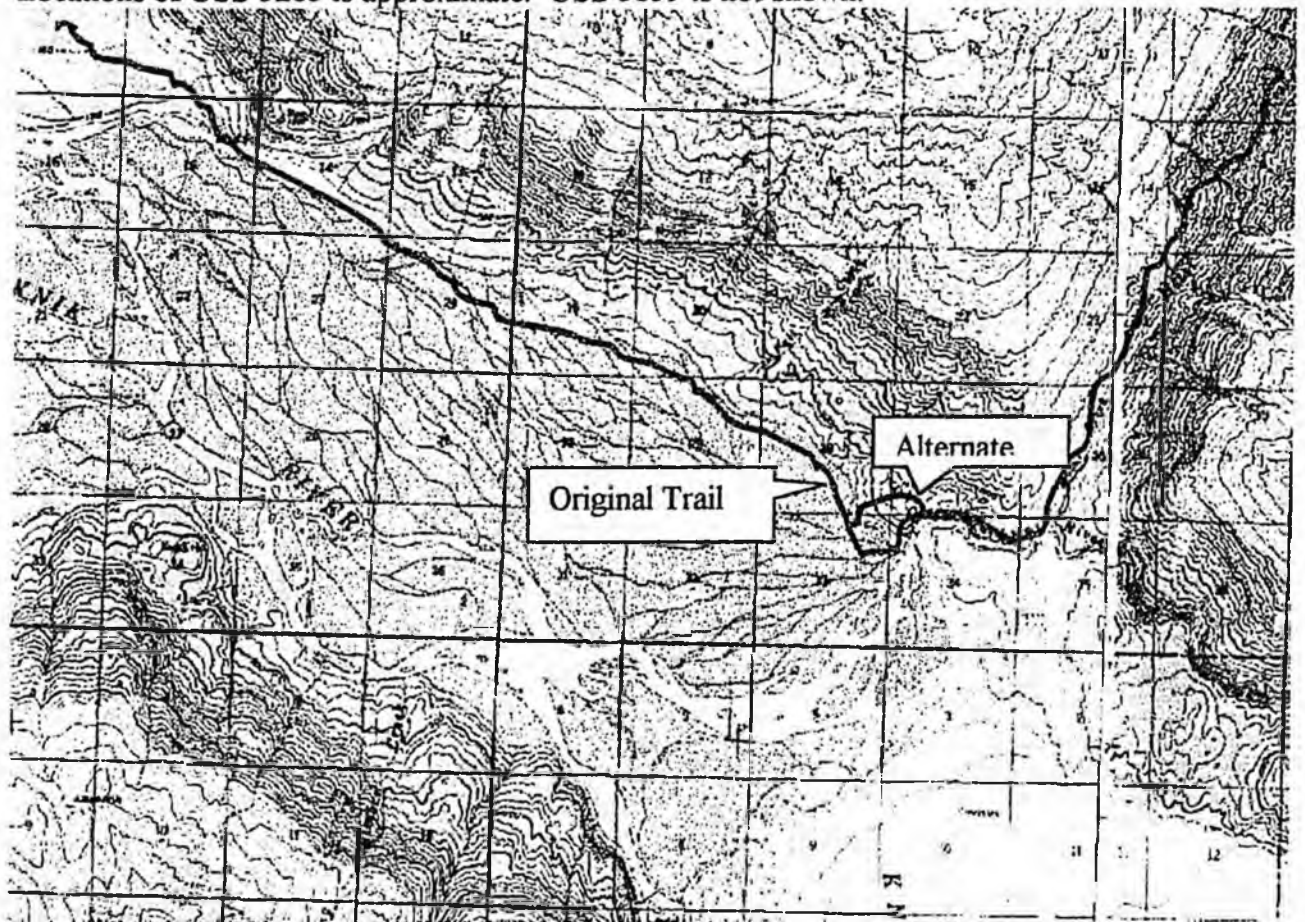
(2) arising from the failure to inspect, mark, or maintain the right-of-way;

(3) occurring in the right-of-way; or

(4) associated with the right-of-way. (§ 2 ch 26 SLA 1998)



Locations of USS 5265 is approximate. USS 5839 is not shown.



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(b) A right-of-way identified under AS 19.30.400 or acquired under former 43 U.S.C. 932 that is not designated as part of the state highway system under AS 19.10.020 is traveled and used at the risk of the user. As to those rights-of-way and notwithstanding AS 09.50.250 and AS 09.65.070, the state and a political subdivision of the state are not liable for damages, injury, or death

(1) arising from the use of the right-of-way;

(2) arising from the failure to inspect, mark, or maintain the right-of-way;

(3) occurring in the right-of-way; or

(4) associated with the right-of-way. (§ 2 ch 26 SLA 1998)

~~Shultz~~  
Third Superior Court District  
THE SUPREME COURT OF THE STATE OF ALASKA

CRAIG PUDDICOMBE and )  
JOHN DUNHAM, ) Supreme Court Nos. S-8342/8421  
 )  
Appellants and )  
Cross-Appellees, )  
 )  
v. ) Superior Court No.  
 ) 3PA-91-391 CI  
 )  
JOANNE CONNER FITZGERALD, ) MEMORANDUM OPINION  
MICHAEL A. CONNER, JAMES V. ) AND JUDGMENT  
KRACKER, DALE N. FIDLER, )  
 )  
Appellees and )  
Cross-Appellants. )  
\_\_\_\_\_ )  
[No. 0930 - August 25, 1999]

Appeal from the Superior Court of the State of  
Alaska, Third Judicial District, Palmer,  
Brian C. Shortell, Judge.

Appearances: Patricia R. Hefferan, Noel H.  
Kopperud, Kopperud and Hefferan, Wasilla, for  
Appellants and Cross-Appellees. Joanne  
Fitzgerald, pro se, Wasilla. Michael Conner,  
pro se, Palmer. Erica Kracker, Kracker Law  
Office, Palmer, for Appellees and Cross-  
Appellants Kracker and Fidler.

Before: Matthews, Chief Justice, Eastaugh,  
Fabe, Bryner, and Carpeneti, Justices.

1. The superior court did not err in locating the public  
right-of-way along the route of Sumner's driveway. The Ninth  
Circuit's 1996 decision<sup>1</sup> vacating Shultz v. Department of the Army

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\* Entered pursuant to Appellate Rule 214.

<sup>1</sup> Shultz v. Department of the Army (Shultz II), 96 F.3d  
1222, 1223 (9th Cir. 1996).

(Shultz I)<sup>2</sup> does not affect the analysis or result reached in Fitzgerald v. Puddicombe.<sup>3</sup> As such, the superior court's decision to locate the right-of-way along the driveway was not erroneous because a Revised Statute (RS) 2477 right-of-way can be established along "a generally-followed route."<sup>4</sup>

The Department of Natural Resources's (DNR) administrative determination finding no RS 2477 grant across United States Survey (USS) 5265 does not change this result. In Dillingham Commercial Co. v. City of Dillingham,<sup>5</sup> we explained that there are two methods by which an RS 2477 right-of-way could be established:

The operation of [RS 2477] is not obvious from its terms. Case law has made it clear that [RS 2477] is one-half of a grant -- an offer to dedicate. In order to complete the grant "there must be either [1] some positive act on the part of the appropriate public authorities of the state, clearly manifesting an intention to accept a grant, or [2] there must be public user for such a period of time and under such conditions as to prove that the grant has been accepted."<sup>6</sup>

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<sup>2</sup> 10 F.3d 649 (9th Cir. 1993).

<sup>3</sup> 918 P.2d 1017 (Alaska 1996).

<sup>4</sup> See id. at 1021-22.

<sup>5</sup> 705 P.2d 410, 413 (Alaska 1985).

<sup>6</sup> Id. at 413-14 (quoting Hamerly v. Denton, 359 P.2d 121, 123 (Alaska 1961)).

Under the second method, an RS 2477 grant comes into existence "automatically when a public highway [is] established across public lands in accordance with the law of the state."<sup>7</sup>

Using method one, DNR, an "appropriate public authorit[y] of the state," did not find an RS 2477 grant across USS 5265. But under method two, this court in Fitzgerald did.<sup>8</sup> The superior court on remand was bound by the Fitzgerald decision and was not free to reject or ignore it in favor of DNR's decision. Accordingly, the superior court did not err when it declined to locate the RS 2477 right-of-way in the location DNR selected.<sup>9</sup>

2. The superior court did not err in holding that the right-of-way should be 100 feet wide. The scope of an RS 2477 grant is subject to state law.<sup>10</sup> The superior court's reliance on AS

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<sup>7</sup> Standage Ventures, Inc. v. Arizona, 499 F.2d 248, 250 (9th Cir. 1974).

<sup>8</sup> See Fitzgerald, 918 P.2d at 1022 ("[W]e hold that there is a public right-of-way through USS 5265.").

<sup>9</sup> Our review of the record reveals that Puddicombe and Dunham did not present evidence before the superior court concerning the proper placement and exact location of the RS 2477 right-of-way across their property. Rather, their arguments before the superior court on remand were that the RS 2477 grant should not cross their property. But in Fitzgerald we decided that the grant did cross their property. 918 P.2d at 1022. Accordingly, the superior court did not err in not granting Puddicombe and Dunham a hearing on the issue of the location of the right-of-way. Cf. Smith v. State, CSED, 790 P.2d 1352, 1353 (Alaska 1990) ("A statutory right to a hearing does not require development of facts through an evidentiary hearing in the absence of a factual dispute.").

<sup>10</sup> See Sierra Club v. Hodel, 848 F.2d 1068, 1080-83 (10th Cir. 1988); State v. Alaska Land Title Ass'n, 667 P.2d 714, 722 (continued...)

19.10.015 to determine the scope was not erroneous. The statutory definition of "highway" includes "traill[s]." <sup>11</sup>

3. The superior court did not err in holding that the right-of-way could be used for "any purpose consistent with public travel." This conclusion is directly supported by our decision in Dillingham. <sup>12</sup>

4. The superior court abused its discretion in awarding Fitzgerald full attorney's fees as a public interest litigant. To qualify as a public interest litigant, a party must satisfy the following criteria: (1) the case is designed to effectuate strong public policies; (2) if the party succeeds, numerous people will receive benefits from the lawsuit; (3) only a private party could have been expected to bring suit; and (4) the purported public interest litigant would not have sufficient economic incentive to file suit even if the action involved only narrow issues lacking general importance. <sup>13</sup> The party claiming public interest litigant status carries the burden of satisfying all four criteria. <sup>14</sup>

---

<sup>10</sup> (...continued)  
(Alaska 1983).

<sup>11</sup> AS 19.45.001(9).

<sup>12</sup> 705 P.2d at 415.

<sup>13</sup> See Anchorage Daily News v. Anchorage Sch. Dist., 803 P.2d 402, 404 (Alaska 1990).

<sup>14</sup> See Kachemak Bay Watch, Inc. v. Noah, 935 P.2d 816, 827 (Alaska 1997).

Fitzgerald did not satisfy this burden with regard to the fourth criterion. Fitzgerald acknowledges that several of her affirmative defenses, including "adverse possession" and "prescriptive right of access" involved her private interests. Had she prevailed on one of these private defenses, she would not have qualified as a public interest litigant. These initial affirmative defenses show that her motivation in this case was in good measure due to her desire to maintain her access to her mining claim. In Kachemak Bay Watch, we affirmed the trial court's denial of public interest status to litigants whose property values might have been affected by the lawsuit they filed.<sup>15</sup> Such an economic incentive related to property ownership is analogous to Fitzgerald's ownership of mining claims in Metal Creek.<sup>16</sup>

The superior court's award of full attorney's fees was also erroneous because it did not consider Puddicombe and Dunham's status in this case. In Moses v. McGarvey,<sup>17</sup> we stated that

the cases discussing full fees on [the public interest] basis have involved public or governmental agencies and that in no case have full fees been assessed against an individual defendant on the public interest theory. It is entirely justifiable for a public or governmental agency to bear the full costs of litigating a public interest question because the public benefits. In cases involving the personal liability of an individual defendant, there is no such benefit conferred on the

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<sup>15</sup> 935 P.2d at 828.

<sup>16</sup> See 918 P.2d at 1018.

<sup>17</sup> 614 P.2d 1363 (Alaska 1980).

defendant as a result of litigating a question of genuine public interest.<sup>[18]</sup>

This statement suggests that private defendants should not be subject to full fees under the public interest litigation doctrine. We adhere to this suggestion in this case. Accordingly, the award of full attorney's fees and costs to Fitzgerald is vacated and remanded to the trial court.<sup>19</sup>

5. Conner's, Kracker's and Fidler's cross-appeals for attorney's fees are without merit. Kracker and Fidler never went to trial in this case. And although Conner did participate in the first trial, he did not appeal the superior court's adverse ruling against him and Fitzgerald. Thus, neither Conner's nor Kracker and Fidler's efforts were contributory to Fitzgerald's success on appeal and on remand. For this reason, they are not entitled to fees or costs.

6. The superior court did not err when it denied Dunham an increased exemption under AS 09.38.050(b). The trial court correctly noted that the head of household exemption under AS 09.38.050(b) did not apply because Dunham lives alone and a household is "a group of persons dwelling together under the same roof."

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<sup>18</sup> 614 P.2d at 1369-70 (footnotes omitted).

<sup>19</sup> Because we vacate her award for attorney's fees and costs, Fitzgerald's claim that the superior court erred in not awarding her all of her requested costs is moot.

We AFFIRM the superior court's decision, with the exception of the award of full attorney's fees to Fitzgerald. On that issue, we VACATE the attorney's fees award and REMAND.

## Order Regarding Fees and Costs

Craig Puddicombe & John Dunham v. Joanne Conner Fitzgerald ;

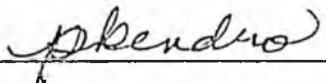
Supreme Court No. S-08342

Date of Order: 8/25/99

Each party is to bear its own costs and attorney's fees in the supreme court in this matter.

Entered at the direction of an individual justice.

Clerk of the Supreme Court

  
Deputy Clerk

cc: Authoring Justice  
Trial Court Appeals Clerk--Anchorage

### Distribution:

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Attorney General's Office  
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Joanne Conner Fitzgerald  
HC-34-2259  
Wasilla AK 99654

Michael Conner  
P. O. Box 3837  
Palmer AK 99645

STATE OF ALASKA  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF LAND  
DEPARTMENTAL DECISION

BOOK 0937 PAGE 010

Knik Glacier Trail

**Proposed Action:** The proposed action is to determine the applicability of the RST #17 - Knik Glacier Trail decision, approved by the Acting Commissioner, January 11, 1995, to U.S. Survey 5265 and 5839; to determine upon particularized review of the conflicting evidence and in light of the availability of alternate access across state land, that no public right-of-way is certified across either U.S. Survey 5265 or U.S. Survey 5839; and to reserve in public ownership as a right-of-way to Metal Creek, an existing alternative access route across state land within Sections 27 and 28 of Township 16 North, Range 5 East, Seward Meridian, Alaska.

The Knik Glacier trail is asserted as an RS 2477 right-of-way. The right-of-way for the trail begins at the public access easement established by the Matanuska-Susitna Borough in the vicinity of Jim Creek within T. 17 N., R. 3 E., S.M. and then follows the right bank of the Knik River for approximately 18 miles, thence up Metal Creek approximately 4 miles to a block of state mining locations. The subject U.S. Survey lots are located in the vicinity of the mouth of the Glacier Fork of the Knik River and Metal Creek. The Knik Glacier trail is identified as RST #17 - Knik Glacier Trail in the Departmental Decision and Certification approved by the Commissioner of the Department of Natural Resources in January, 1995.

**Authorities:**

- AS 38.05.020 Duties of the commissioner
- AS 38.05.035 Duties of the director
- AS 38.05.850 Permits
- AS 38.04.055 Access through private use areas
- RS 2477 Section 8 of the Mining Law of 1866
- 11 AAC 51 Nomination, Identification, and Management of RS 2477 Right-of-Way

**Administrative Record:**

- a) Administrative ADL casefiles.
- b) Classification order # SC 86-015, by reference.
- c) Susitna Area Plan dated June, 1985, by reference.
- d) RST #17, Departmental Decision and Certification.
- e) Court Records
- f) Alaska Constitution, Public Trust Doctrine, Alaska Statutes Title 38, and Alaska Administrative Code Title 11, by reference.
- g) Public comments.

This is to certify that this is a true and correct copy of the original as executed by the director of the Division of Land, Department of Natural Resources.

*Celeste L. Kuisin*  
Title Administration

Date 3-3-98

The administrative record contains background information on issues, existing resources, land status, land ownership patterns, management intent, and land classification.

The administrative record also contains background information for each proposed use on size, location, proposed construction, history of adjudication, title, agency comments, and other requirements.

**Properties Affected:**

Lands within the affected township, Township 16 North, Range 5 East, Seward Meridian, Alaska, are a mixture of state owned-lands with several 5-acre privately owned parcels. This decision

BK 01122PG0654

deals with the following properties situated within the Palmer Recording District, Third Judicial District, State of Alaska: U.S. Survey No. 5265 lying within Section 27; U.S. Survey No. 5839 lying within Sections 27 and 34; and state lands lying within Sections 27 and 28.

**Planning and Classification:**

The state owned lands are located within management unit 1d (Chugach Mountains) of the Susitna Area Plan and are to be managed for public recreation and wildlife habitat. The area is classified Wildlife Habitat by Classification Order # SC 86-015.

**Justification for Action:**

To resolve a long-standing access dispute by providing legal public access, reserved under state law, to provide access through an area where the route of a certified RS 2477 trail is disputed and uncertain, and thereby to remove an alleged cloud of title to private land that is not necessary to a continuous public trail.

**Scope:**

Reserve a right-of-way in state ownership to ensure the continuity of RS 2477 right-of-way in the vicinity of the junction of the North Fork of the Knik River with the main riverbed of the Knik River within Sections 27 and 28 of Township 16 North, Range 5 East, Seward Meridian.

**Background:**

RST #17, Departmental Decision and Certification, provides historical documentation on the establishment and use of the trail.

**Public Notice and Public Comments:**

The public was invited to comment on a Preliminary Decision from July 31, 1995 until September 11, 1995. Public comments were received from Michael Connor, Kenneth and Joanne Fitzgerald and Austin Helmers. Michael Connor's comments, received on August 16, 1995, addressed several issues that the department had previously considered, with the pertinent issues being:

1) Whether it is possible to certify two discontinuous stretches of trail as RS-2477 right-of-way? The department agrees that the trail has a termini at both ends, being in this case, the city of Palmer and a mining camp located approximately 3 miles up Metal Creek and was used as a continuous route. However, the location of the trail from the vicinity of the old Liska/Tex Cobb cabin to Metal Creek as depicted on the ARC map does not appear to go through the present day location of U.S.S. 5265 and U.S.S. 5839, and appears to be overgrown and unusable. By providing for an alternate access route that presently exists, the department ensures a continuous access trail from the Knik River to the road to Metal Creek that was constructed by Doug Sumner, beyond his property, in the early 1960's. The language of this final decision clarifies the effect and intent of the department's decision.

2) In regards to the Field Examination as addressed below, how old is the route through the Puddicombe/Dunham properties . . . ? " The department recognizes that the road inspected was built by Mr. Sumner in the early 1960's, prior to the establishment of the alternate route, by miners

in the early 1980's. The department also recognizes that trails existed through the U.S. Surveys 5265 and 5839, but evidence lacks of anything more than minimal use of the trails across the property during the period preceeding 1965. As addressed below, aerial photos from the 1950's do not depict any distinct trails through the parcel. Aerial photos from 1978 clearly show the present road, constructed between 1965 and 1967, through the parcel and beyond into the Metal Creek area.

3) In regards to the Discussion, what were the judge's finding, "In a private lawsuit to which the State was not a party? The reference for that decision has been modified for accuracy.

JoAnne Fitzgerald's comments, received by the department on September 1, 1995, also addressed several issues that the department had previously considered, with the pertinent issues being:

1) Whether it is possible to certify two discontinuous stretches of trail as RS-2477 right-of-way? The department's considerations are described in it's response to Mr. Connor's first comment.

2) Whether it is proper "to respect private property rights. . . at the cost of losing a well documented trail or in the least substituting a dangerous r/w..."? As noted elsewhere in this decision, the department finds the documentation of trail use specifically across U. S. Surveys 5265 and 5839 sketchy and inconclusive. The department is not convinced it could succeed in proving a claim of RS 2477 across those properties. The miners established an alternative route avoiding the properties in the early 1980's. This route, located on state land, shows signs of use. While not improved to the standard of the road across U.S. Surveys 5265 and 5839, the alternate route can provide access as good as other portions of the road to the Metal Creek drainage above U.S. Surveys 5265 and 5839. In this case, the availability of an alternate route makes it unnecessary to commit public resources to pursue a questionable claim against holders of private properties.

3) Whether in light of the "broad based support in the community and borough [for this trail, it is proper to]. . . put the interest of two individual property owners ahead of the interest of the people when this trail is well documented and well used". The department addresses this issue above. The support of the community and the borough is commended. Because the issue of whether an RS 2477 right-of-way exists through the private lands near the mouth of Metal Creek is inconclusive, that support would best be channeled toward support for improvements to the alternate access provided under this decision. This decision, which ensures continuous access to Metal Creek, is not inconsistent with community support.

Austin Helmers' comments, received by the department on September 5, 1995, addressed some issues already considered above.

In addition, Mr. Helmers' question whether the standard patent reservation effectively reserved an RS 2477 over these properties. The Bureau of Land Management has utilized the two standard patent language statements relating to the reservation for a right-of-way for ditches and canals since 1890 (43 USC 945) and the reservation for construction of railroads, telegraph and telephone lines since 1914 (38 Stat. 305). The department is not aware of any interpretation of these reservations that would apply to an RS 2477 public right of way.

Mr. Helmers also notes that, "a decision in this case should recognize the existence of a valid RS 2477 right-of-way, but under present circumstance, including alternate (if adequate) access . . .". That is exactly what the decision is intended to do: to confirm the general validity of RST-17, Knik Glacier Trail, as an RS 2477 public right-of-way, providing alternate access across state land for a portion where historical information as to the precise route is inconclusive and in dispute. Mr. Helmers' suggestion that a court decide whether the RS 2477 right of way exists across U. S. Surveys 5265 and 5839, would require needless expenditure of public funds in light of the

availability of the alternate route.

The information provided by public comments provides no evidence not previously considered by the department that an RS 2477 right-of-way exists through either U.S. Survey 5265 or U.S. Survey 5839.

#### Field Examination:

On May 5, 1995, departmental staff, accompanied by an engineer from the Department of Transportation and Public Facilities, conducted a site visit of the subject properties and surrounding state land in the vicinity of the mouth of Metal Creek/Knik River area.

The group inspected an alternative access route that had been established by miners during 1981 and 1982, on state lands within Section 28 of T. 16 N., R. 5 E., located approximately 1/2 mile northwesterly of the mouth of the Glacier Fork, Knik River. The alternate route climbs up a slope from the Knik River gravel bar and then connects to the Metal Creek mining road. The trail bypasses the private properties and consists of an unimproved trail approximately 6 to 10 feet wide, that connects to the Metal Creek mining road at a point northerly of U. S. Survey No. 5839.

The group also inspected the older route through the Puddicombe/Dunham private properties. U. S. Survey 5265, the Puddicombe property, is located at the mouth of the Glacier Fork of the Knik River, near Metal Creek. The road, constructed in 1965 - 1967, is accessible by any vehicle which could reach the parcel, ie., four-wheeler, swamp buggy or other vehicles. The road is improved from the gravel bed at the mouth of the river, on through the parcel and continuing on easterly through state land and U.S. Survey 5839, to intersect with the alternative access route and the Metal Creek mining road. The road shows signs of rock blasting near the mouth of the river, where the road traverses uphill through the parcel.

#### Discussion:

The decision in RST #17 discusses the construction of the road through U.S. Survey 5265. The 1973 notes in the decision reference that the road up to Metal Creek, beyond U.S. S. 5265, was constructed in 1965, 1966 and 1967, by Mr. Sumner, the original owner of the parcel, at a cost of \$9,000. However, additional information in the decision noted that in 1993, several parties stated that the trail was in use in 1955 and used for prospecting trips.

In a private lawsuit to which the state was not a party, the Superior Court reviewed most of the evidence presented to the department, and found it insufficient to support finding of an RS 2477 right of way prescriptive easement across U. S. Survey 5265 (U. S. Survey 5839 was not at issue in that action).

The court records reference affidavits of there being trails through U.S.S. 5265. The division recognizes that trails existed through the U.S. Surveys, but evidence lacks of anything more than minimal activity on the trails within the Metal Creek valley during the period proceeding 1965.

This office has examined aerial photos of the area from the 1950's which do not appear to show any particular trails through the parcel and beyond to Metal Creek. Aerial photos from 1978 clearly show the present road, constructed between 1965 and 1967, through the parcel and beyond into the Metal Creek area. Also examined were Alaska Road Commission records from 1923 that are referenced in RST #17. The road as depicted on the map that Alex Liska submitted to the Alaska Road Commission does not appear to go through the present day location of U.S.S. 5265.

An alternative route exists for access into the Metal Creek mining area. The alternate route, located on state land, shows signs of use. While not improved to the standard of the road across U.S. Surveys 5265 and 5839, the alternate route can provide access as good as other portions of the road to the Metal Creek drainage above U.S. Surveys 5265 and 5839. To improve access over the route, a ramp and other improvements could be constructed of locally available gravel. Per discussions with the private property owners, the alternative road does not cross onto private lands within U.S. Survey 5839. If U.S.S. 5839 was impacted, the location of the intersection of the alternative access route and the Metal Creek road could be shifted easterly to avoid the private land.

Keith Morberg of the Department of Transportation and Public Facilities was present during the field inspection. DOTPF was asked to comment as to whether there was a definite destination to which the department might be interested in building a highway, and how would it relate to the department's mission. DOTPF's representative was also asked if it was possible to use the alternative access route for transportation into the Metal Creek mining area. Mr. Morberg understood the area to be used primarily by a limited number of miners and recreational users. Mr. Morberg indicated that he did not presently see any likelihood that the road across U. S. Surveys 5265 and 5839, or any other route to the Metal Creek mining district, would be needed for a future highway project. Mr. Morberg indicated that he believed the alternate access route could provide recreational access to the mining area consistent with the quality of access now available further up the trail. ✓

Evidence that a RS 2477 right-of-way exists through the private lands near the mouth of Metal Creek is inconclusive. DNR stated in the January, 1995 RST #17 decision, "*An RS 2477 right-of-way should be asserted along the historic route which is the most feasible and prudent. Public comments indicate multiple alignments, which should be confirmed through field inspection. If at the time of platting, sufficient state land exists to bypass third party landowners, the state generally follows this policy.*" ✓

#### Alternatives:

The following alternatives were considered:

1. Authorize the proposed action without modification.
2. Authorize the proposed action with modifications.
3. Do not authorize the proposed action.

Alternative 1 is the alternative that maximizes the public interest. The decision is consistent with the management intent of the Susitna Area Plan for this area.

#### Final Finding and Decision:

After particularized review of the conflicting evidence and in light of the availability of alternate access across state land, I hereby determine that the RST # 17 - Knik Glacier Trail decision, approved by the Acting Commissioner, January 11, 1995, is inapplicable to U.S. Surveys 5265 and 5839; and that DNR no longer certifies any public right of way across either U. S. Survey 5265 or U. S. Survey 5839. An alternative route on state land exists within the township that is suitable for reservation as a public right-of-way. The route, though not improved or suitable for use by conventional vehicles, is presently passable and provides for access into the Metal Creek area by

miners, hikers, hunters and others that may use the area.

I hereby determine that DNR reserve a right-of-way to make the alternative route of record; to link the Knik River portion of the RS 2477 with the Metal Creek portion of the RS 2477 right-of-way, and to provide for trail access at users' own risk into the Metal Creek area by miners and other recreational users.

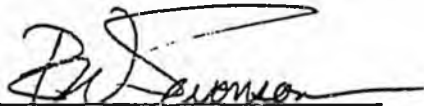
A center line survey of the existing alternative route will be completed to establish the location for record purposes.

**Final Finding and Decision:**

I find that all requirement of applicable statutes and regulations have been met , and it is in the best interest of the state to proceed with this action.

**Appeals:**

This is a final administrative order and decision of the department for purposes of an appeal to Superior Court. A person adversely affected by this final order and decision may (1) appeal to Superior Court within 30 days in accordance with the rules of the court, and to the extent permitted by applicable law, or (2) first request reconsideration of this decision, in accordance with AS 44.62.540 and 11 AAC 02.020, to John Shively, Commissioner, Department of Natural Resources, 3601 C street, Suite 1210, Anchorage, Alaska 99503-5921. Please include the appeal code number provided below. Any such request for reconsideration must be received at that address, or be received by being faxed to 1-907-562-4871, within 15 calendar days after the date of "delivery" of the decision, as defined by 11 AAC 02.040(c) and (d). Failure of the commissioner to act on a request of reconsideration within 30 days after delivery of this decision is a denial of reconsideration and is also a final administrative order and decision for purposes of an appeal to Superior Court. It may then be appealed to Superior Court within a further 30 days in accordance with the rules of the court, and to the extent permitted by applicable law. A copy of 11 AAC 02 may be obtained from any Department of Natural Resources office. If no request for reconsideration is filed before the end of the period specified, this decision then goes into effect.



Ronald W. Swanson  
Director, Division of Land  
Department of Natural Resources

10/25/95  
Date  
003523

PALMER  
RECORDING DISTRICT

30 <sup>cc</sup> x2

1998 MR -5 AM 10:49

REQUESTED BY

Craig Puddicombe



John Shively, Commissioner  
Department of Natural Resources

10/26/95  
Date

Return to:

Craig R. Puddicombe

BOX 215

Palmer, Alaska 99645

Appeal Code Number COSC102595

BK01122PG0660

STATE OF ALASKA  
DEPARTMENT OF  
NATURAL RESOURCES

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

CRAIG PUDDICOMBE and JOHN DUNHAM	)
	)
Appellants,	)
	)
vs.	)
	)
STATE OF ALASKA, DEPARTMENT OF	)
NATURAL RESOURCES,	)
	)
Appellee.	)
_____ ) Case No. 3PA-95-248 Civil	

KOPPERUD & HEFFERAN  
ATTORNEYS AT LAW  
381 WEST SWANSON AVENUE, SUITE 3  
WASILLA, ALASKA 99654-6892  
(907) 378-2439 OR 378-2630

STIPULATION FOR DISMISSAL OF APPEAL

COME NOW, appellants, CRAIG PUDDICOMBE and JOHN DUNHAM, by KOPPERUD AND HEFFERAN, and the STATE OF ALASKA, by Assistant Attorney General JOHN L. STEINER, and hereby stipulate and agree as follows:

1. The STATE OF ALASKA, DEPARTMENT OF NATURAL RESOURCES, DIVISION OF LAND, issued its final Departmental Decision on October 26, 1995, which decision pertains to the property which is the subject of this appeal. The Departmental Decision is on file with this court, as Exhibit 1 to the Motion for Reconsideration, dated January 16, 1996.

BK 01122PG0661

2. Based on that decision, which is final and no longer subject to appeal, the STATE OF ALASKA claims no public right of way across U.S. Survey 5265 and U.S. Survey 5839, and this appeal, consequently, is moot.

3. The undersigned respectfully request that this court enter the Order submitted concurrently herewith.

KOPPERUD AND HEFFERAN  
Attorneys for Appellants

Date: 1/26/96

By: Patricia R. Hefferan  
PATRICIA R. HEFFERAN

Date: 1-30-96

John L. Steiner  
JOHN L. STEINER, Assistant  
Attorney General for the STATE  
OF ALASKA

BK01122FG0662

KOPPERUD AND HEFFERAN  
351 W. Swanson Ave., Suite 3  
Wasilla, AK 99654-6892  
(907) 376-2439  
Attorneys for Appellants

CLERK OF THE COURTS  
JULY 22 AM 8 02  
STATE OF ALASKA  
SUPERIOR COURTS

IN THE SUPREME COURT FOR THE STATE OF ALASKA

CRAIG PUDDICOMBE and JOHN DUNHAM )  
Appellants, )

vs. )

JOANNE CONNER FITZGERALD, )  
MICHAEL CONNER, STATE OF ALASKA, )  
JAMES V. KRACKER, DALE NICK FIDLER, )  
Appellees, )

Supreme Court No. S-6639

Superior Court Case No. 3PA-91-391

STIPULATION FOR DISMISSAL OF APPEAL

COME NOW, appellants, CRAIG PUDDICOMBE and JOHN DUNHAM, by KOPPERUD AND HEFFERAN, and the STATE OF ALASKA, by Assistant Attorney General JOHN L. STEINER, and hereby stipulate and agree as follows:

1. The STATE OF ALASKA, DEPARTMENT OF NATURAL RESOURCES, DIVISION OF LAND, issued its final Departmental

KOPPERUD & HEFFERAN  
ATTORNEYS AT LAW  
351 WEST SWANSON AVENUE, SUITE 3  
WASILLA, ALASKA 99654-6892  
(907) 376-2439 OR 376-2430

Decision on October 26, 1995, which decision pertains to the property which is the subject of this appeal. The Departmental Decision is on file with this court, as Exhibit 1 to the Motion for Extension, dated November 22, 1995.

2. Based on that decision, which is final and no longer subject to appeal, the STATE OF ALASKA claims no public right of way across U.S. Survey 5265 and this appeal, consequently, is moot.

3. The undersigned respectfully request that this court dismiss this matter and order that the cash appeal bond be returned forthwith to CRAIG PUDDICOMBE and JOHN DUNHAM, the posting parties.

KOPPERUD AND HEFFERAN  
Attorneys for Appellants

Date: 1/22/96

By: Patricia R. Hefferan  
PATRICIA R. HEFFERAN

Date: 1-22-96

John L. Steiner  
JOHN L. STEINER, Assistant  
Attorney General for the STATE  
OF ALASKA

I certify that this is a true, full copy of an original document on file in the Appellate Courts of the State of Alaska.

Dated Feb 27 96, 1996 at Anchorage, Alaska.

CLERK OF THE APPELLATE COURTS  
By [Signature]  
Deputy Clerk

BK01122PG0664

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

CRAIG PUDDICOMBE and JOHN DUNHAM )

Appellants, )

vs. )

STATE OF ALASKA, DEPARTMENT OF )  
NATURAL RESOURCES, )

Appellee. )

STATE OF ALASKA THIRD DISTRICT  
APPEALS DIV.

JAN 23 1996

Clerk of the Trial Courts

R Deputy

Case No: 3PA-95-248 Civil

NOTICE OF INTENT TO ENTER  
RULING REQUESTED BY APPELLANT

Appellant has informed the court that an appropriate resolution of this matter would be to dismiss with a finding that the state has no claim to or interest in the two properties subject to this action.

Unless an opposition is received from the state by February 1, 1996, such an order will be entered.

Dated this 23<sup>rd</sup> day of January, 1996 at Anchorage Alaska.



John Reese  
Superior Court Judge

27-96

a copy of the above was mailed to each of the following at their addresses of record:

Al Steiner  
P. Halperin  
J. Shively

[Signature]  
Secretary/Deputy Clerk

CC: Plt @ Court  
- in of A

Alaska Court System

BK01122PG0665

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

CRAIG PUDDICOMBE and JOHN DUNHAM )

Appellants, )

vs. )

STATE OF ALASKA, DEPARTMENT OF )  
NATURAL RESOURCES, )

Appellee. )

STATE OF ALASKA THIRD DISTRICT  
APPEALS DIV.

FEB 03 1996

Clerk of the Trial Courts

Deputy

Case No. 3PA-95-248 Civil.

ORDER OF DISMISSAL

Upon the Stipulation and Request for Order of Dismissal, and the court being fully advised under the premises,

IT IS HEREBY ORDERED, based upon the STATE OF ALASKA claiming no public right of way across U.S. Survey 5265 and

Sections 27 and 34, Township 16 North, Range 5 East, located in the Palmer Recording District, Third Judicial

District, State of Alaska, pursuant to RS 2477, this matter is hereby DISMISSED. The Clerk is ordered to return the \$7,000 cash bond to Appellants.

Date: 2/3/96

JOHN REESE  
SUPERIOR COURT JUDGE

I certify that a copy of the above was mailed to each of the following at their addresses of record:

Hefferan/Steiner

Clerk of the Trial Courts  
Deputy  
3/6-96

KOPPERUD & HEFFERAN  
ATTORNEYS AT LAW  
251 WEST SWANSON AVENUE, SUITE 2  
WASILLA, ALASKA 99554-8802  
(907) 576-2439 OR 376-2430

CLERK OF THE APPELLATE COURTS

Dated: 2/3/96  
At Anchorage, Alaska

I certify that this is a true and correct copy of the original document on file in the Appellate Court of the State of Alaska.

Comment on ..  
 "RS2477" SB 362

DANA L. OLSON  
 HC-30 Box 5438  
 WASILLA, AK 99654  
 25 April 2002

SB 180 Legislative Vacation must be  
 read consistent with Article I Sec 2 AS WELL AS  
 Article II § 19 OF AK Constitution.

SB 180 (1998) has no codified provision of  
 LAW for implementing VACATION  
 thus common LAW applies.

In Common LAW CASE present  
 is made. I AM ASSERTING defense  
 ASSERTIONS FOR CASE present STANDING.

I ASSERT AND dispute ANY existence OF RS2477  
 CLAIM ON my lots 3+4 BL 2 Skyline Estates Subdivision  
 I do not intervene in this matter, under ANY  
 STANDING FOR CASE present.

I ASSERT defense CLAIMS  
 under public trust doctrine.

§B 196 (1987) read to be presumably VALID, provides  
 (NO existence of right of way in ANY LAND use PLAN)  
 A requirement for inclusion of right of ways.  
 (Legislative)

-/-

SB 180 (1998) has no codified provision of  
Law concerning the Leg. vacating  
"RS2477" SB 180 (1998)

Common Law applies.  
Under Public Trust doctrine  
Standing to raise defense Assertion/  
Claim to establishment of case  
present.

I state for the record, I dispute any  
Claim/Assertion of RS2477 on my  
Knik property Lots 344 b2 Skyline  
Estates Sub. RS2477 #1467. <sup>I HAVE NO STANDING</sup> For case  
present.

I dispute Legislative Authority  
to Act legislatively AND Qui-  
judicial concurrently.

I raise unconstitutionality Assertion (defense  
Claim)

Legislation is presumed VALID

SB 196 (1987) requires RS2477 be in LAND use  
Plans

I dispute under (Factual finding defense  
Claim) Legislation CANT invalidate  
Something not CLAIMED. NOR OVErRIDE a  
JUDICIAL decision. (UNCONSTITUTIONAL)

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB362  
 () Publish Date: \_\_\_\_\_  
 Dept. Affected: Natural Resources  
 BRU: Statehood Defense  
 Component: RS2477/Navigability  
 Component Number: 2226

Revision Date/Time (Note if correction): \_\_\_\_\_  
 Title: VACATE RS 2477 RIGHT-OF-WAY ON  
USS 5265  
 Sponsor: (S) HESS  
 Requester: (S) TRA

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2002) cost: none

Check this box (X) if funding for this bill is included in the Governor's FY2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill would have no fiscal impact on this division.

Prepared by: Bob Loeffler  
 Division: Mining, Land and Water  
 Approved by: Pat Pourchot  
 Agency: Natural Resources

Phone: 269-8600  
 Date/Time: 24-Apr-02  
 Date: 24-Apr-02

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 9, 2002

**SUBJECT:** Vacation of Right-of-Way (Work Order No. 22-LS1664\A)

**TO:** Senator Lyda Green

**FROM:** Gerald P. Luckhaupt   
Legislative Counsel

Enclosed is the bill draft you requested. Article II, § 19, Constitution of the State of Alaska, provides:

The legislature shall pass no local or special act if a general act can be made applicable. Whether a general act can be made applicable shall be subject to judicial determination. Local acts necessitating appropriations by a political subdivision may not become effective unless approved by a majority of the qualified voters voting thereon in the subdivision affected.

This bill draft could be subject to challenge as a local and special act. However, it is not immediately clear to me that a general act could be made applicable.

GPL:med  
02-358.med

Enclosure

US 5265  
TIME LINE OF EVENTS  
PUDDICOMBE/DUNHAM

1983: We purchased the land free of any easements, with a clean title report.

1990: Due to seasonal flooding, we offered a few local miners an easement through our property, but they refused the easement.

1991: In April we filed "Quiet Title" litigation to protect our property from adverse possession claims.

1993: We went to trial with Judge Shortell presiding. We prevailed on the adverse possession claims, but during the trial the defendants brought up the subject of RS2477.

February 1994: Judge Shortell ruled that there was no validity to adverse possession claims or the RS2477 claim.

May 1994: The court ordered the state to study the validity of an RS2477 claim. The state entered the lawsuit and ruled after a 21 month study and an onsite investigation.

October 25, 1995: The state ruled against an RS2477 on US 5265. The language of this decision clarifies the background and intent of the department's decision.

January 22 & 30, 1996: The DNR decision against an RS2477 on US 5265 was non-appealable in both courts, and dismissed by Judge Reese based on a stipulation we entered into with the attorney general.

April 1996: Supreme Court reversed Judge Shortell's ruling as to RS2477 without any mention of the "State's Decision" in the DNR review. We appealed and were denied without reason.

May 1996: The Supreme Court remanded back to Shortell to find "extent and location" of the RS2477. Shortell's comments on this Supreme Court direction are: "Although I strongly disagree with the Supreme Court findings and cannot believe the injustice that results from this, civil disobedience is not available to me, I will follow the ruling on remand to the best of my ability."

June 1999: The first thing one of the justices said at oral argument on our appeal back to the Supreme Court was: "Why not simply vacate the RS2477?" Our attorney responded that there was a \$35,000.00 cash bond held by the courts, which we had to give to the court because Judge Shortell assessed full attorneys fees against us under a "public litigant" theory.

August 1999: Supreme Court ruled that there was an RS2477 on US 5265, but reversed the attorney fee bill against us and remanded back to the Superior Court for review of the attorney fee issue.

September 15, 1999: We wrote to the commissioner of the DNR per AAC11AAC51.100 to vacate this RS2477 on US 5265 and to confirm the DNR decision that access in the area was sufficient on the road around US 5265 that was recognized as the RS2477 for the area.

December 17, 1999: Commissioner Shively advised us to vacate through the Legislature.

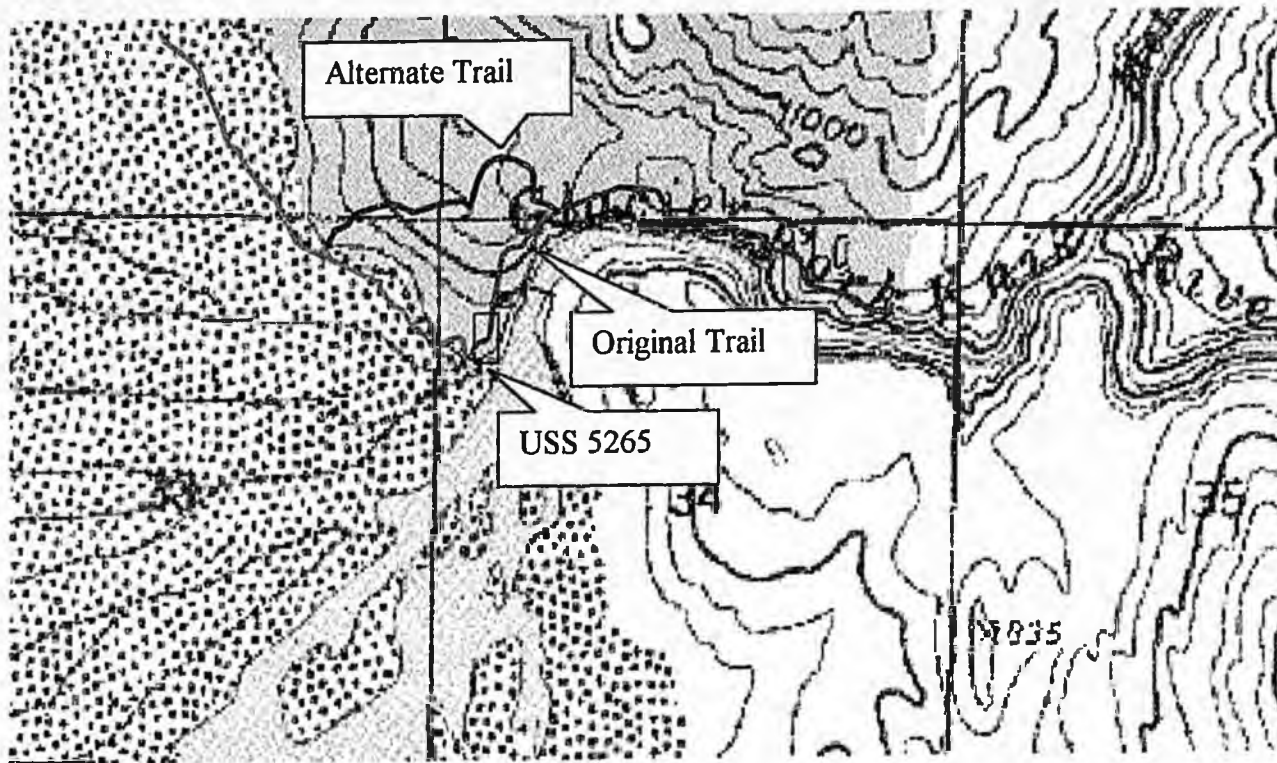
Start of 2000 Session: We asked the Legislature to vacate, but they were too busy and didn't have the money for vacating.

End of 2000 Session: Having gotten nowhere, we turned to the DNR commissioner after 2 1/2 years of stalling, the state's loss of registered mail, and not responding. As of this day we have yet to get an answer to our registered letter to the commissioner in August 2001.

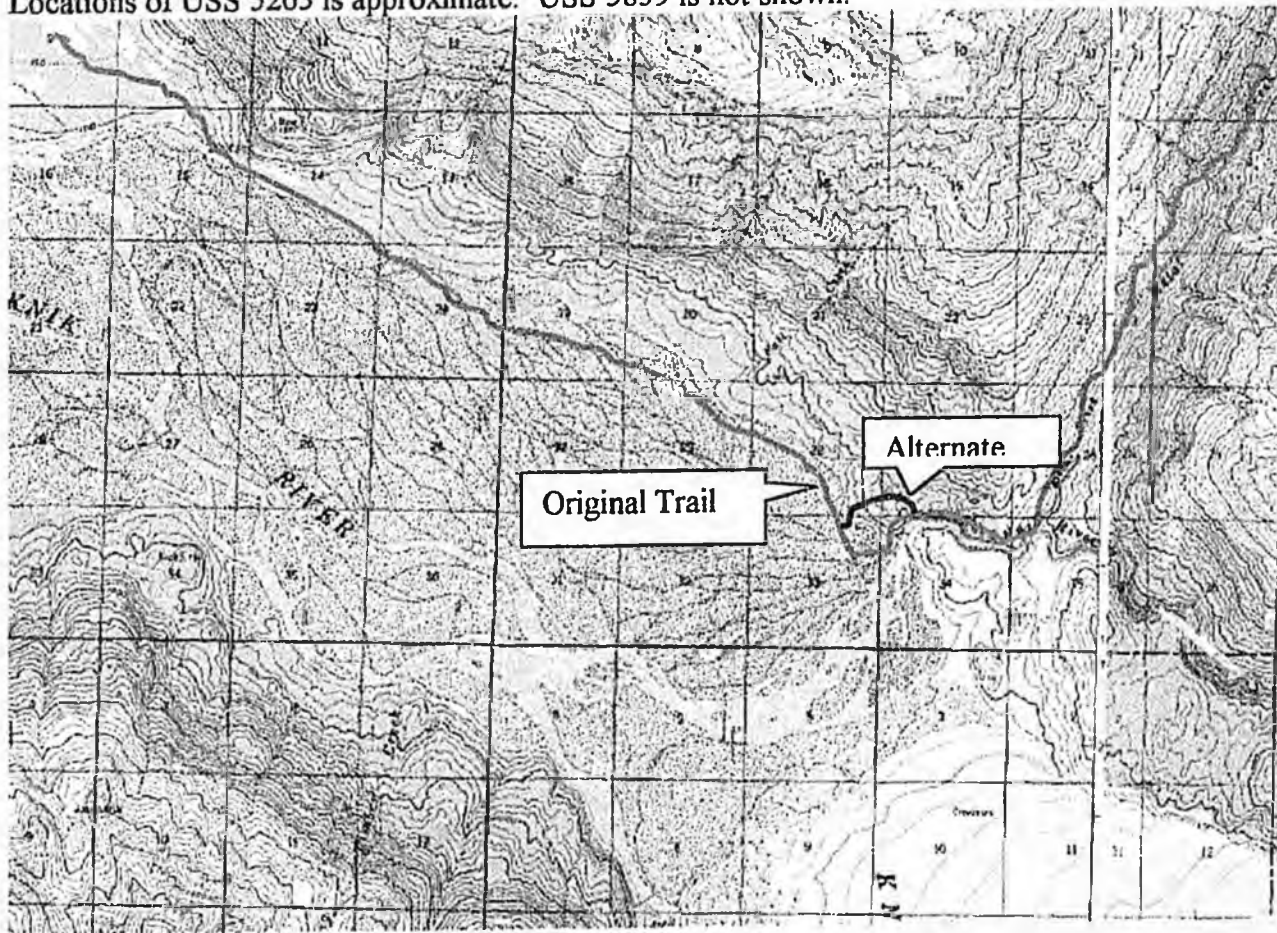
February 21, 2002: We then formally requested to Senator Green's and Representative Ogan's offices that they vacate any RS2477 on our property.

### CONCLUSION

To all Senators and Representatives to whom we have written before, please take time to note the colored map of the area. DNR's engineer, Keith Morberg, among others, studied and visited US 5265 in 1995, and agreed that there was another route "consistent with the quality of access now available." (State's 10/25/95 decision, page 5) Access does not need to destroy our private property. We have lived this battle for 12 years and spent great sums of money. We hope to find justice with the Legislature this session, clearing up title to our 5 acres at US 5265.



Locations of USS 5265 is approximate. USS 5839 is not shown.



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Ladue River Trail	1854
Steele Creek — Border	1871
Manley Hot Springs — Sullivan Creek	1872
Dry Bay Trail	1873
Cottonwood Bay — Old Iliamna	1876
Bear Creek — Eagle Creek	1884
Little Minook Creek — Troublesome Creek	1885
Hodanza River Trail	1889
Mission Creek Trail	1891
The Government Route — Fortymile Station to Eagle Supply Route	1892
Canyon Creek — Hanagita River	1894
Bremner River Trail	1895
Chickaloon — Coal Creek	1896
Purgatory — Stevens Village	1897
Lost Creek Trail (Yukon Flats)	1898
Minook Creek — Pioneer Creek	1899.
(§ 2 ch 26 SLA 1998)	

**Cross references.** — For the time limit and conditions relating to recording the rights-of-way identified in subsection (d) of this section by the Department of Natural Resources, see § 3, ch. 26, SLA 1998 in the 1998 Temporary and Special Acts.

**Sec. 19.30.410. Vacation of rights-of-way.** Notwithstanding another provision of law, the Department of Natural Resources, the Department of Transportation and Public Facilities, or another agency of the state may not vacate a right-of-way acquired by the state under former 43 U.S.C. 932 unless

(1) a reasonably comparable, established alternate right-of-way or means of access exists that is sufficient to satisfy all present and reasonably foreseeable uses;

(2) the right-of-way is within a municipality, the municipal assembly or council has requested the vacation, a reasonable alternative means of access is available, and the vacation is in the best interests of the state; or

(3) the vacation is approved by the legislature. (§ 2 ch 26 SLA 1998; am § 1 ch 94 SLA 1999)

**Effect of amendments.** — The 1999 amendment, effective July 10, 1999, inserted "or council" in paragraph (2).

**Sec. 19.30.420. Immunity from liability for damages; risk of use of right-of-way acquired under former 43 U.S.C. 932.** (a) Notwithstanding AS 09.50.250 and AS 09.65.070, the state and its political subdivisions are not liable for damages, injury, or death arising from AS 19.30.400 — 19.30.420 and the recording of any rights-of-way identified in AS 19.30.400 or acquired under former 43 U.S.C. 932.

(b) A right-of-way identified under AS 19.30.400 or acquired under former 43 U.S.C. 932 that is not designated as part of the state highway system under AS 19.10.020 is traveled and used at the risk of the user. As to those rights-of-way and notwithstanding AS 09.50.250 and AS 09.65.070, the state and a political subdivision of the state are not liable for damages, injury, or death

(1) arising from the use of the right-of-way;

(2) arising from the failure to inspect, mark, or maintain the right-of-way;

(3) occurring in the right-of-way; or

(4) associated with the right-of-way. (§ 2 ch 26 SLA 1998)

# ALASKA STATE LEGISLATURE



*Interim:*  
600 East Railroad Avenue  
Wasilla, Alaska 99654  
(907) 376-3370  
(907) 376-3157 Fax

*Session:*  
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## SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE SENATOR LYDA GREEN, CHAIR

### MEMORANDUM

April 18, 2002

To: Senator John J. Cowdery  
Chairman, Senate Transportation Committee

From: Senator Lyda Green, Chair  
Senate HESS Committee

RE: Senate Bill 362

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I respectfully request that SB 362 be scheduled for a hearing before Senate Transportation Committee.

Sponsor statement and related information will follow this request.

Thank you for your cooperation and assistance in scheduling this hearing.

If you have any questions, please contact Vicki at 3762.

SENATOR LOREN LEMAN, VICE-CHAIR  
SENATOR JERRY WARD, SENATOR GARY WILKEN, SENATOR BETTYE DAVIS

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