

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10710 SENATE TRANSPORTATION

555

S B

362

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

PRELIMINARY

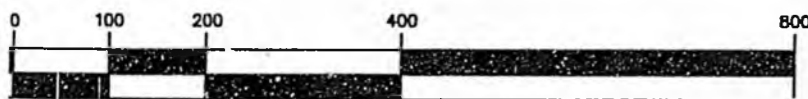
A
 LAT. 61° 26' 25" N
 LONG. 148° 33' 24" W
 (NAD 1927)

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

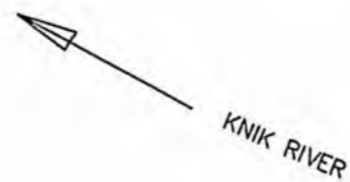
B
 LAT. 61° 26' 17" N
 LONG. 148° 32' 50" W
 (NAD 1927)



GRAPHIC SCALE



(IN FEET)
 1 inch = 200 ft.



USS 4318

USS 5265

RS 2477 R/W
 RST 17

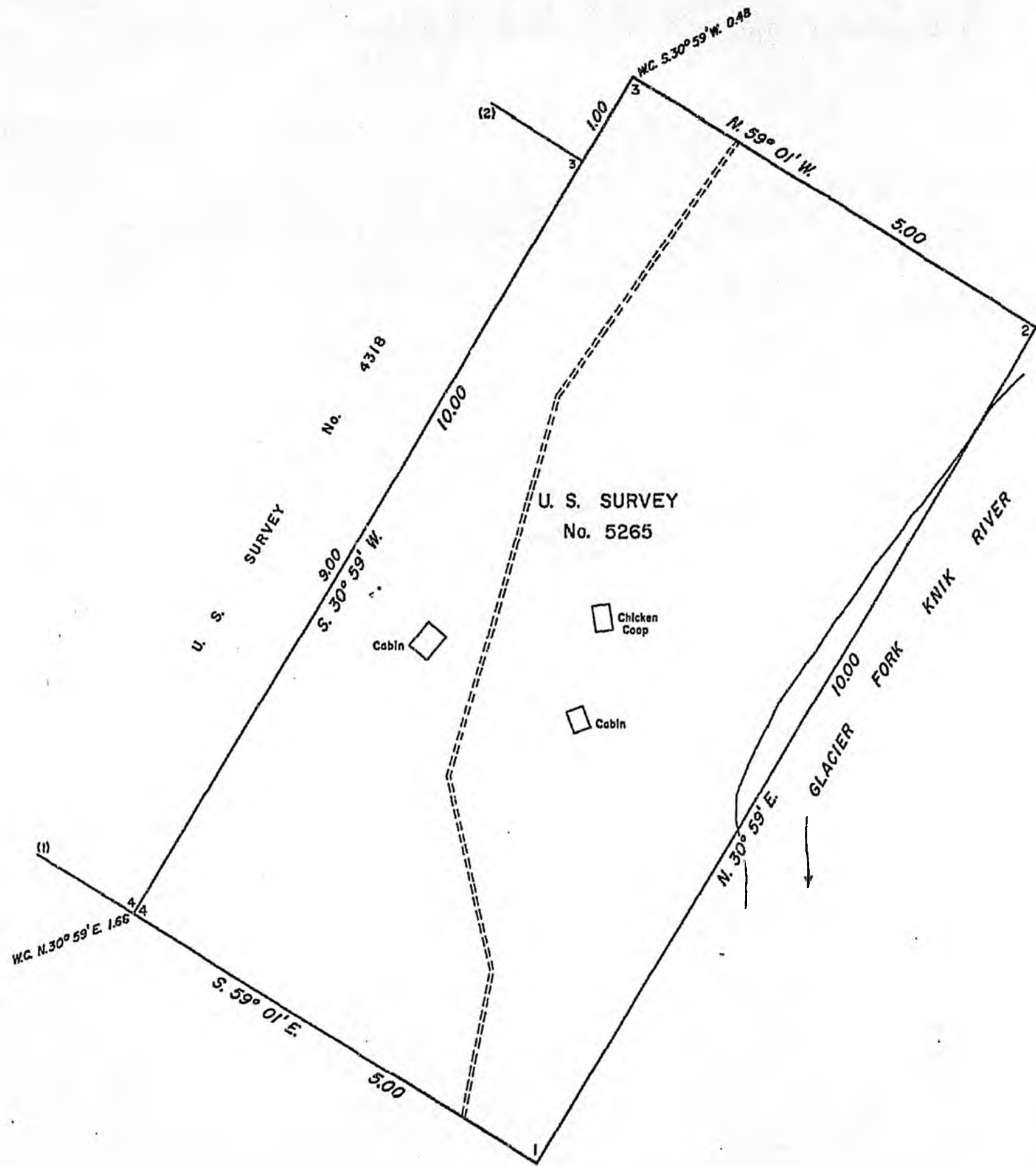


NOTES

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.

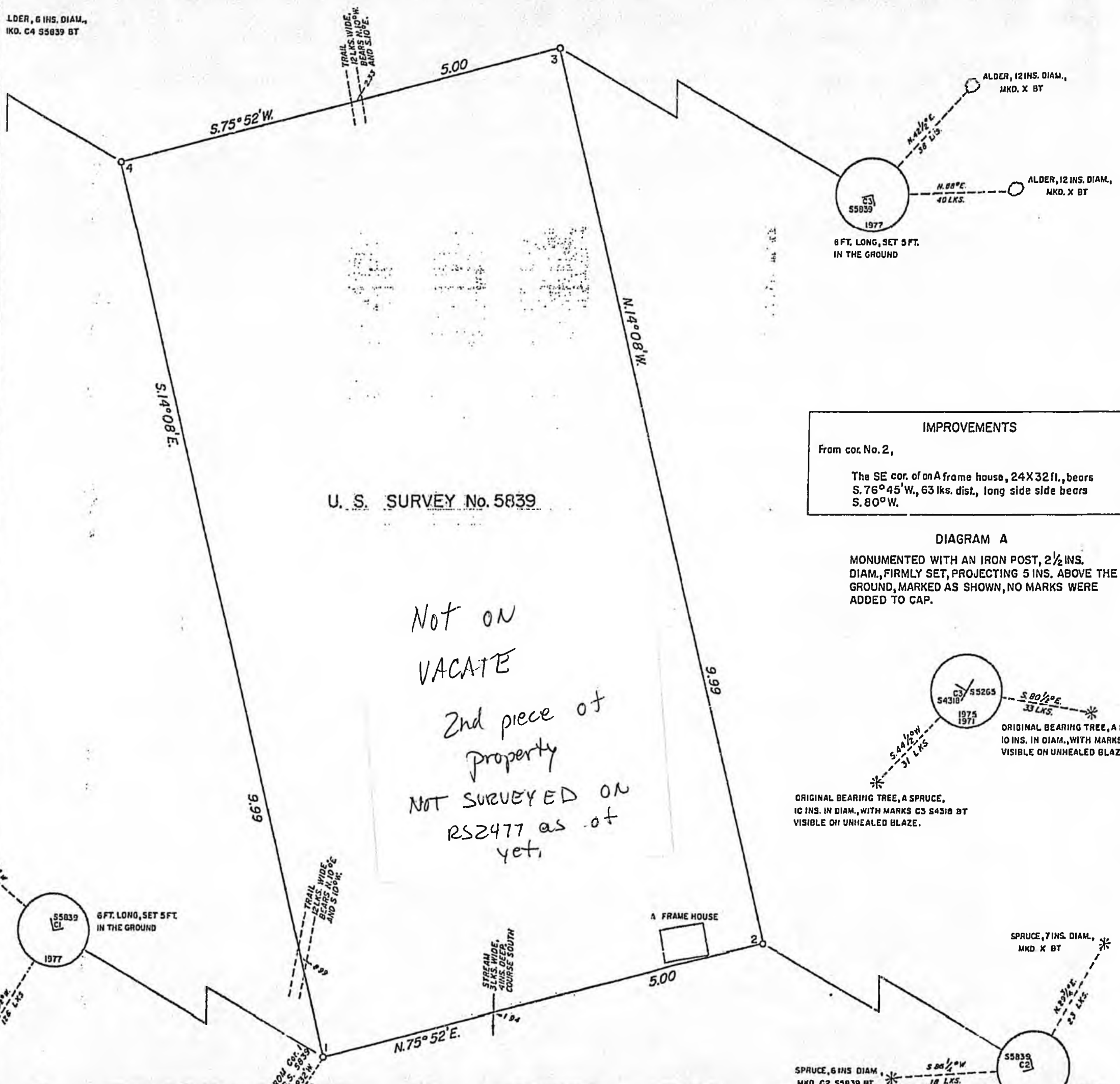
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Washington, D.C. October 10, 1978

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

FROM COR. C1 55839 922 W

55839 C2

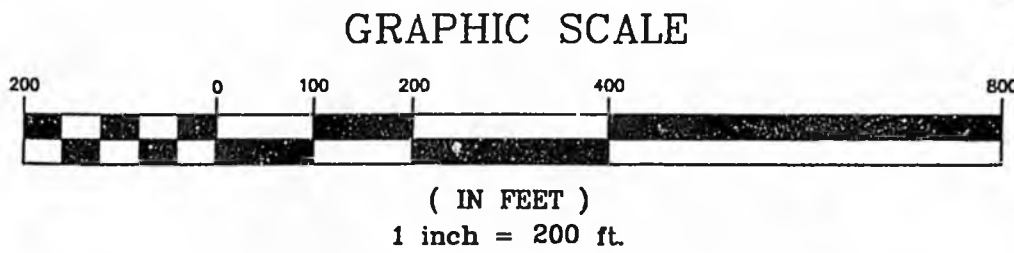
TRAIL SAGMENT	DISTANCE
A-B	1620.'
B-C	2000.'
A-C	3570.'

PRELIMINARY

A
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 LONG. 148° 33' 24" W
 (NAD 1927)

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

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



RS 2477 R/W
 RST 17



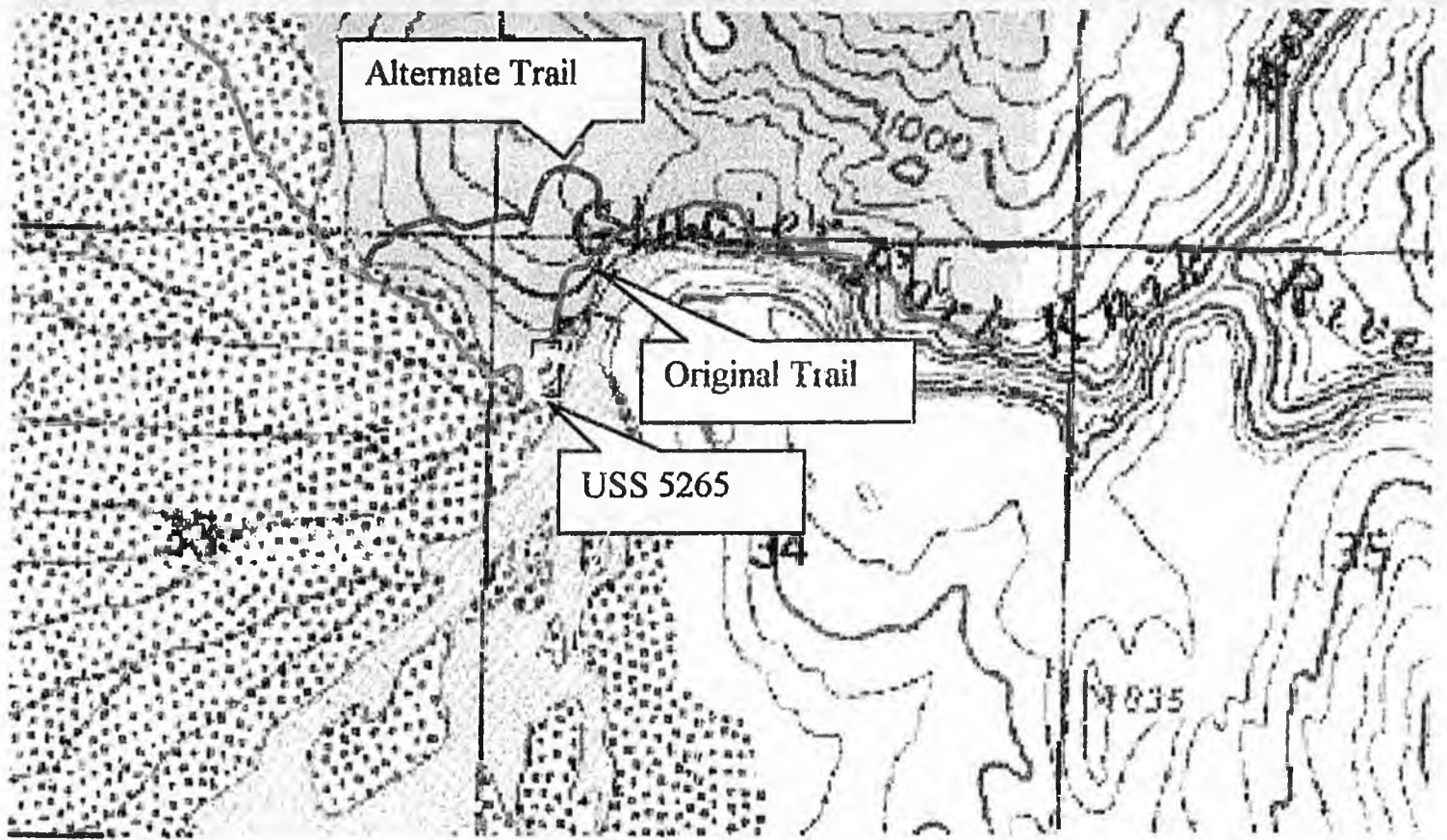
KNIK RIVER

NOTES

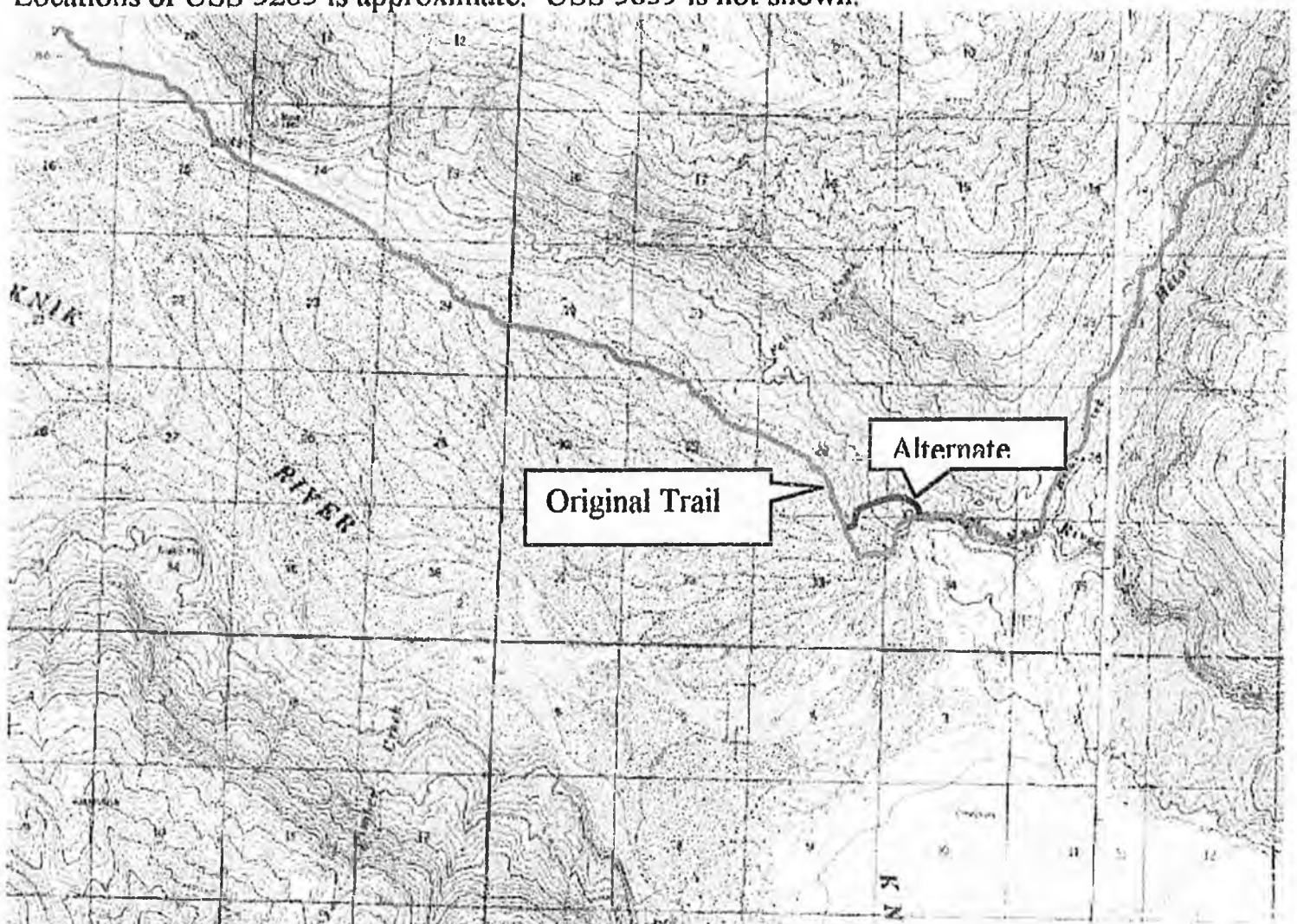
Trail linework shown is from field data collected with a Pathfinder Pro GPS unit. USS 5265 is drawn from record data with ties made to two found monuments with the GPS.

LEGEND

- ⊕ MONUMENT OF RECORD
- (·) RECORD INFORMATION
- SURVEYED LINE
- UNSURVEYED LINE



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.

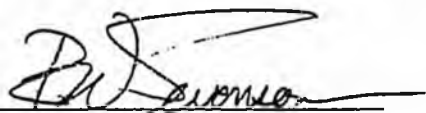
A center line survey of the existing alternative route will be completed to establish the location for record purposes.

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

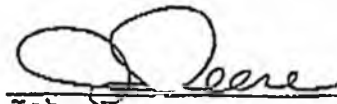
Case No: 3PA-95-248 Civil

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 23rd day of January, 1996 at Anchorage Alaska.



John Reese
Superior Court Judge

23-96
A copy of the above was mailed to each of the following at their addresses of record:

A.G. Steiner
P. Hoffberger
J. Shively

R
Secretary/Deputy Clerk

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.

Deputy

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

CLERK OF THE APPELLATE COURTS

Deputy

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

2-6-96

BK01122PG0666

006437
PALMER
RECORDING DISTRICT

12/27

2001 MR 27 AM 11:28

REQUESTED BY

*Craig
Puddicombe*

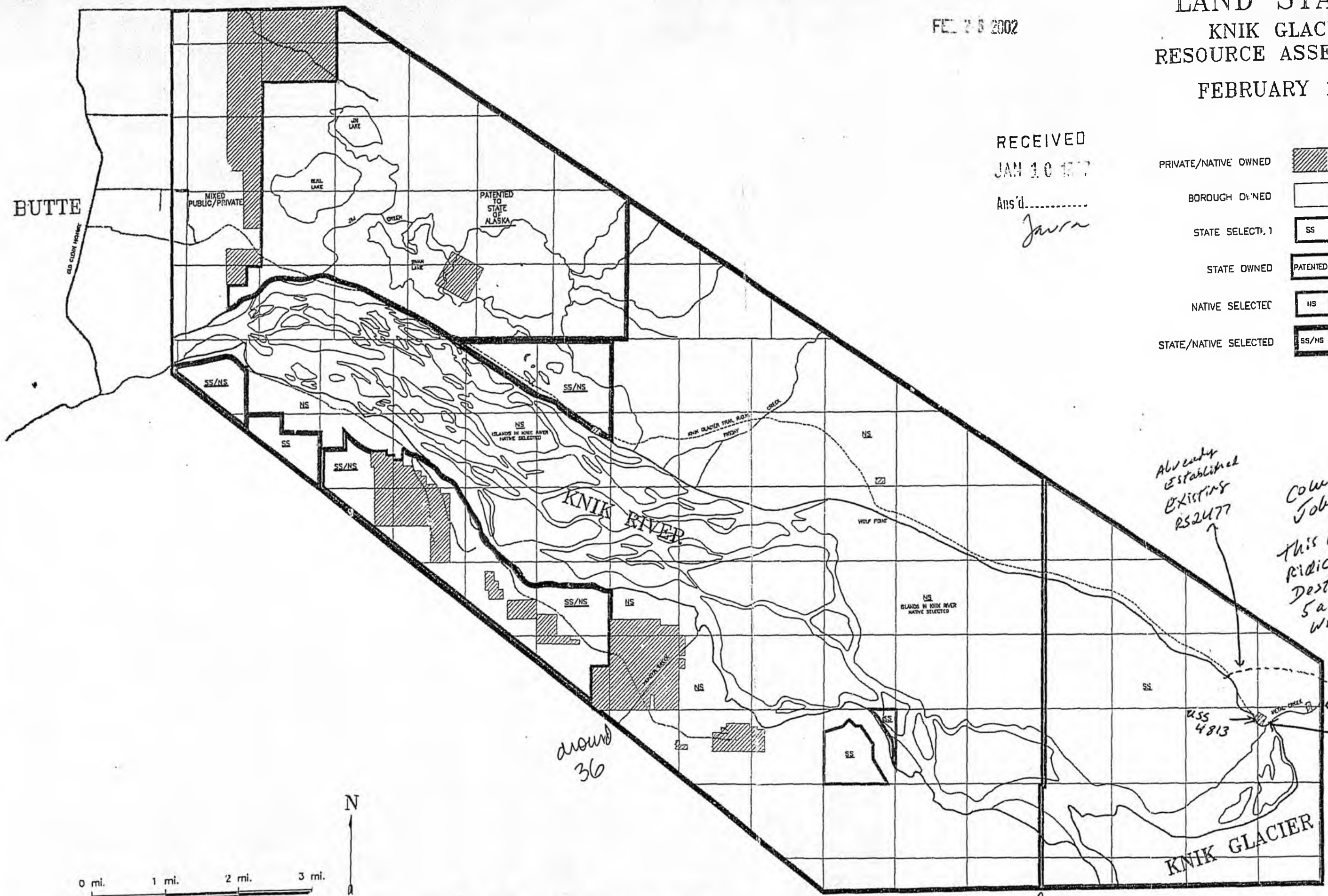
LAND STATUS KNIK GLACIER RESOURCE ASSESSMENT FEBRUARY 1993

FEB 28 2002

RECEIVED
JAN 10 1997

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.

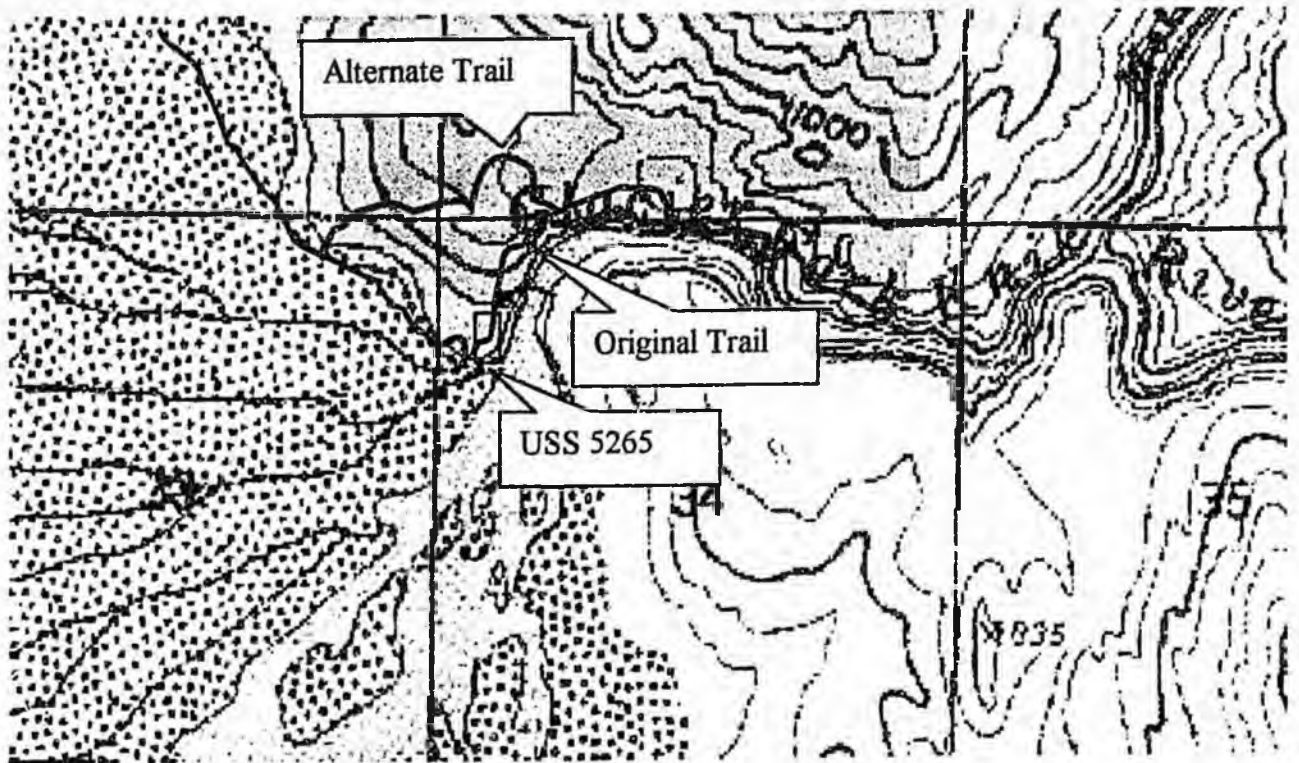
Start of 2000 Session: We asked the Legislature to vacate, but they were too busy and didn't have the money for vacating.

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.

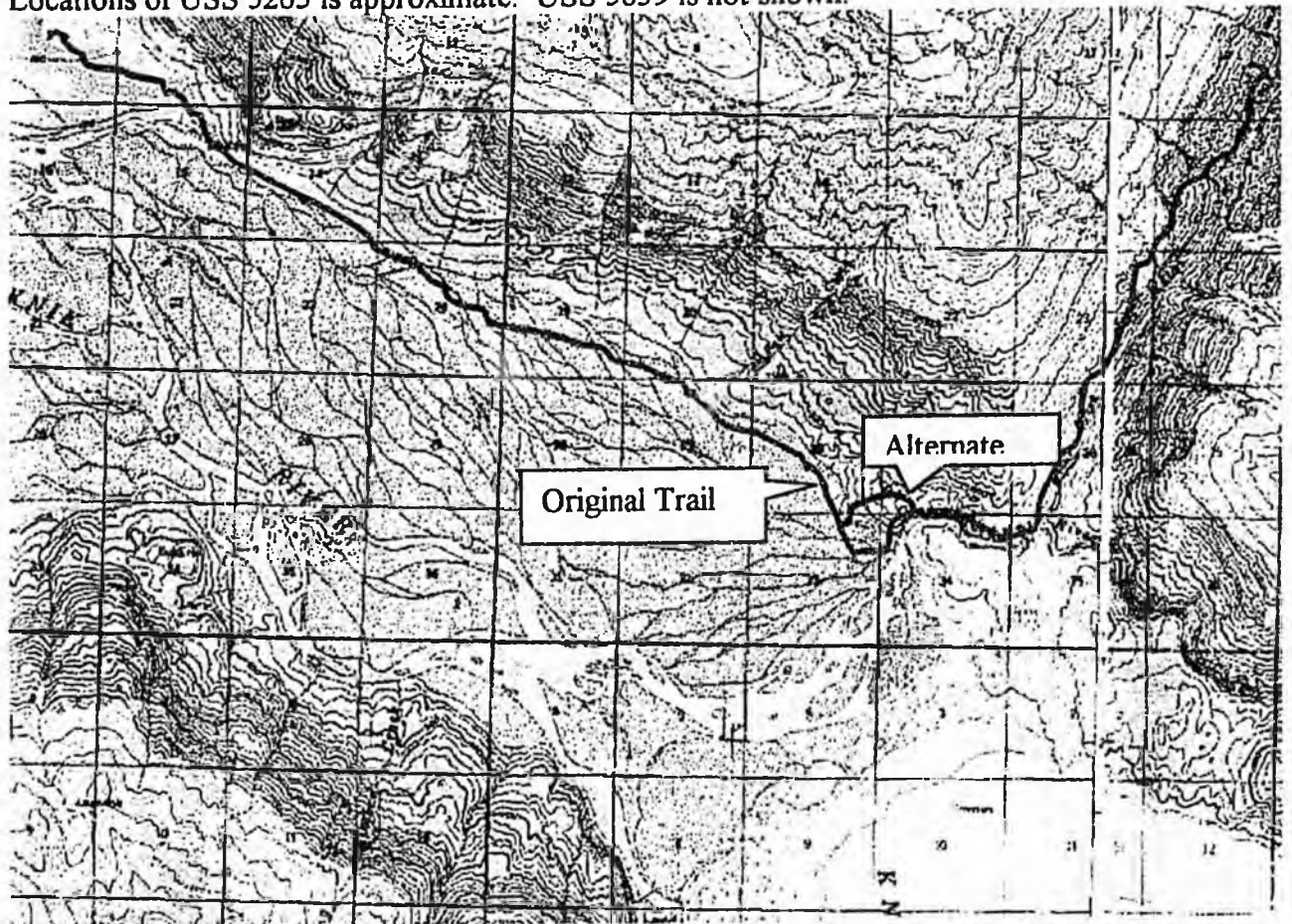
February 21, 2002: We then formally requested to Senator Green's and Representative Ogan's offices that they vacate any RS2477 on our property.

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 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 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.

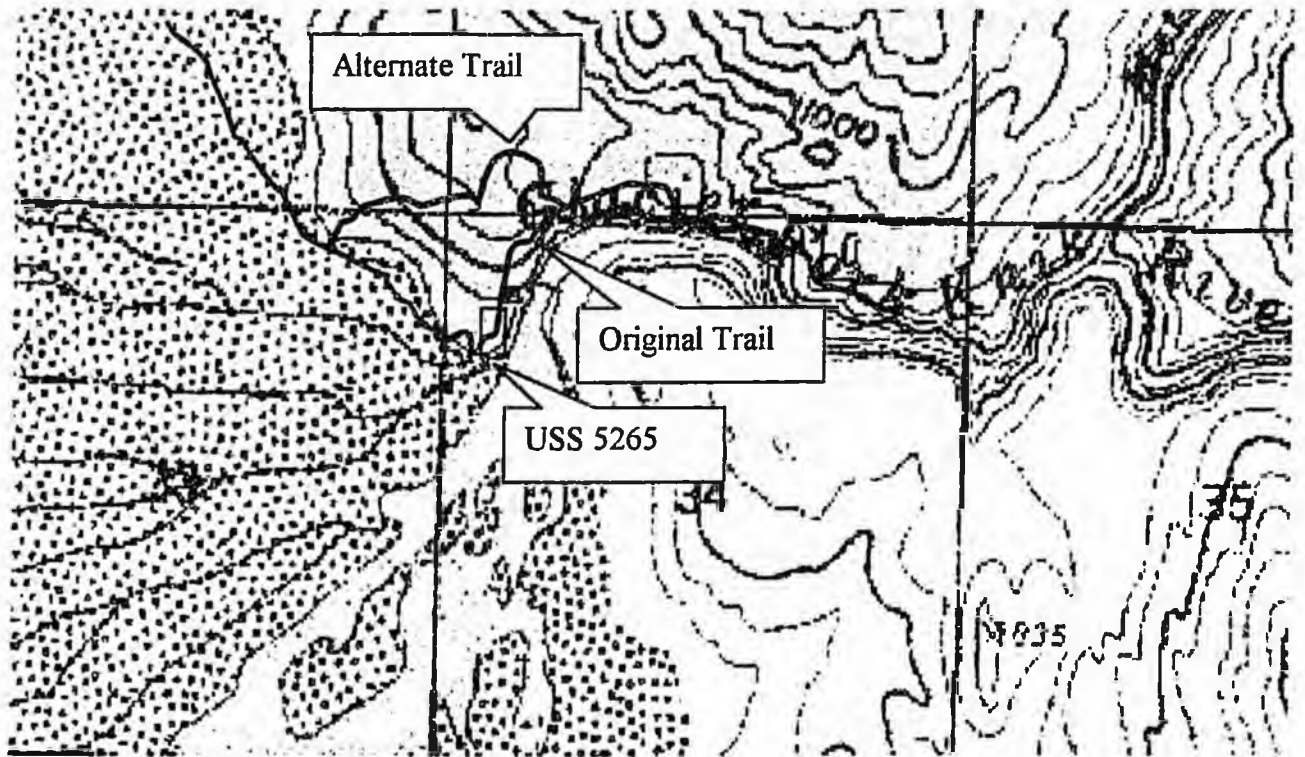
(b) A right-of-way identified under AS 19.30.400 or acquired under former 43 U.S.C. 932 that is not designated as part of the state highway system under AS 19.10.020 is traveled and used at the risk of the user. As to those rights-of-way and notwithstanding AS 09.50.250 and AS 09.65.070, the state and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

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

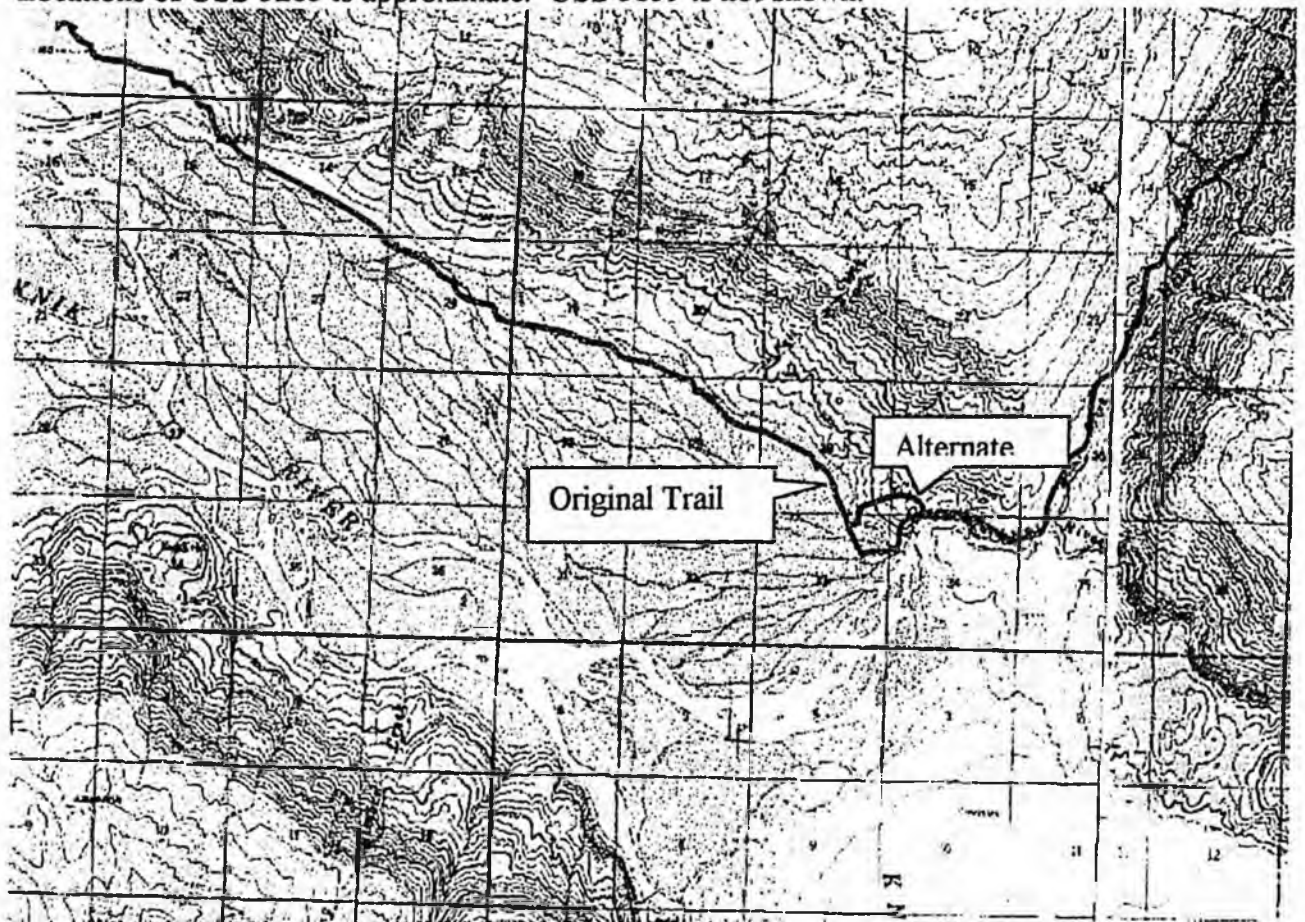
(2) arising from the failure to inspect, mark, or maintain the right-of-way;

(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.



1685	Ladue River Trail	1854
1686	Steele Creek — Border	1871
1687	Manley Hot Springs — Sullivan Creek	1872
1689	Dry Bay Trail	1873
1691	Cottonwood Bay — Old Iliamna	1876
1693	Bear Creek — Eagle Creek	1884
1694	Little Minook Creek — Troublesome Creek	1885
1695	Hodanza River Trail	1889
1696	Mission Creek Trail	1891
1697	The Government Route — Fortymile Station to Eagle Supply Route	1892
1698	Canyon Creek — Hanagita River	1894
1699	Bremner River Trail	1895
1700	Chickaloon — Coal Creek	1896
1704	Purgatory — Stevens Village	1897
1705	Lost Creek Trail (Yukon Flats)	1898
1710	Minook Creek — Pioneer Creek	1899.
1711	(§ 2 ch 26 SLA 1998)	
1712		
1713	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.
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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,

)
)
) Appellants and
) Cross-Appellees,
)

v.)

JOANNE CONNER FITZGERALD,
MICHAEL A. CONNER, JAMES V.
KRACKER, DALE N. FIDLER,

)
)
) Appellees and
) Cross-Appellants.
)

) Supreme Court Nos. S-8342/8421

) Superior Court No.
) 3PA-91-391 CI

) MEMORANDUM OPINION
) AND JUDGMENT

[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 decision¹ vacating Shultz v. Department of the Army

* Entered pursuant to Appellate Rule 214.

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

(Shultz I)² does not affect the analysis or result reached in Fitzgerald v. Puddicombe.³ 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."⁴

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,⁵ 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."⁶

² 10 F.3d 649 (9th Cir. 1993).

³ 918 P.2d 1017 (Alaska 1996).

⁴ See id. at 1021-22.

⁵ 705 P.2d 410, 413 (Alaska 1985).

⁶ 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."⁷

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.⁸ 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.⁹

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.¹⁰ The superior court's reliance on AS

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

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

⁹ 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.").

¹⁰ 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]." ¹¹

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. ¹²

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. ¹³ The party claiming public interest litigant status carries the burden of satisfying all four criteria. ¹⁴

¹⁰ (...continued)
(Alaska 1983).

¹¹ AS 19.45.001(9).

¹² 705 P.2d at 415.

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

¹⁴ 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.¹⁵ Such an economic incentive related to property ownership is analogous to Fitzgerald's ownership of mining claims in Metal Creek.¹⁶

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,¹⁷ 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

¹⁵ 935 P.2d at 828.

¹⁶ See 918 P.2d at 1018.

¹⁷ 614 P.2d 1363 (Alaska 1980).

defendant as a result of litigating a question of genuine public interest.⁽¹⁸⁾

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.¹⁹

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."

¹⁸ 614 P.2d at 1369-70 (footnotes omitted).

¹⁹ 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

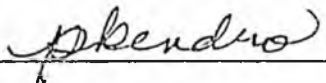
Supreme Court No. S-08342

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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Kopperud & Hefferan
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Wasilla AK 996546892

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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. Kinsie
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.

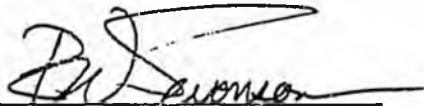
A center line survey of the existing alternative route will be completed to establish the location for record purposes.

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 ^{cc} x2

1998 MR -5 AM 10:49

REQUESTED BY



John Shively, Commissioner
Department of Natural Resources

10/26/95
Date

Craig
Puddicombe

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

BK01122PG0662

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

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

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

BK01122PG0663

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 23rd 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

15
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. ^{I HAVE NO STANDING} 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 can't 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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

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.

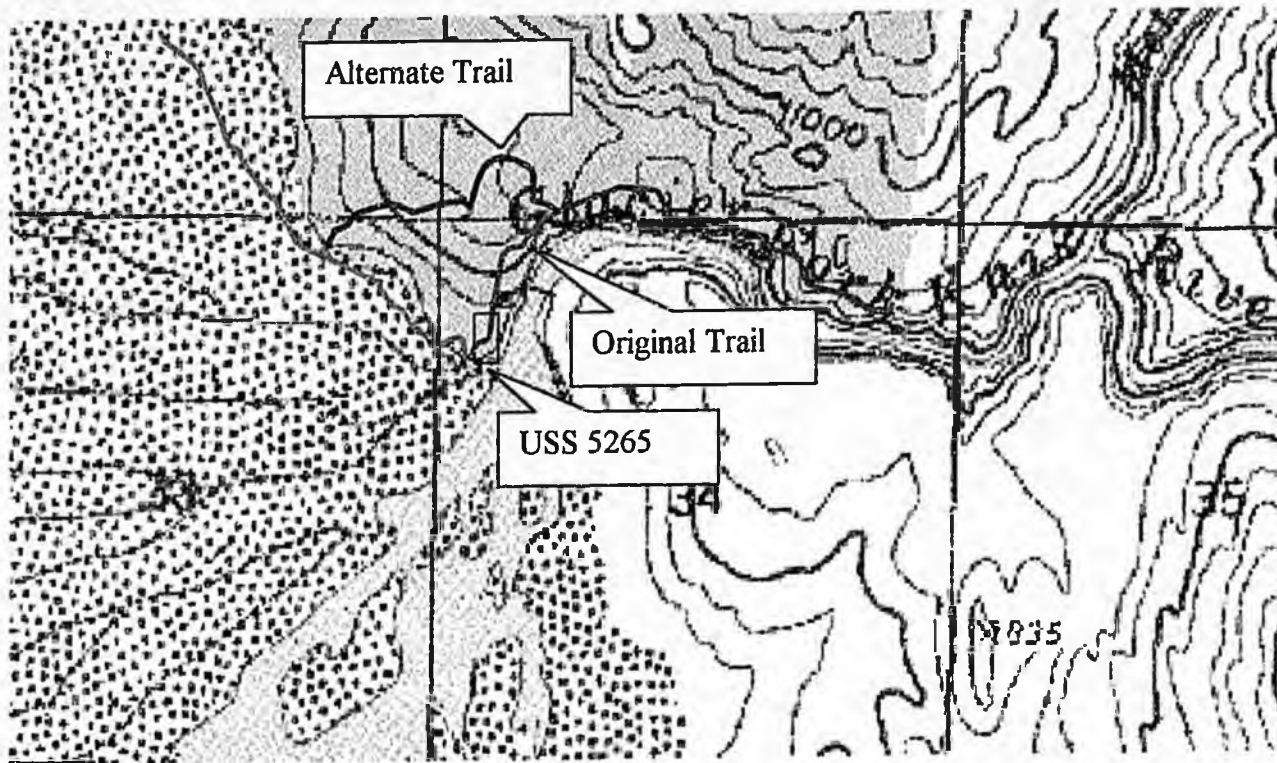
Start of 2000 Session: We asked the Legislature to vacate, but they were too busy and didn't have the money for vacating.

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.

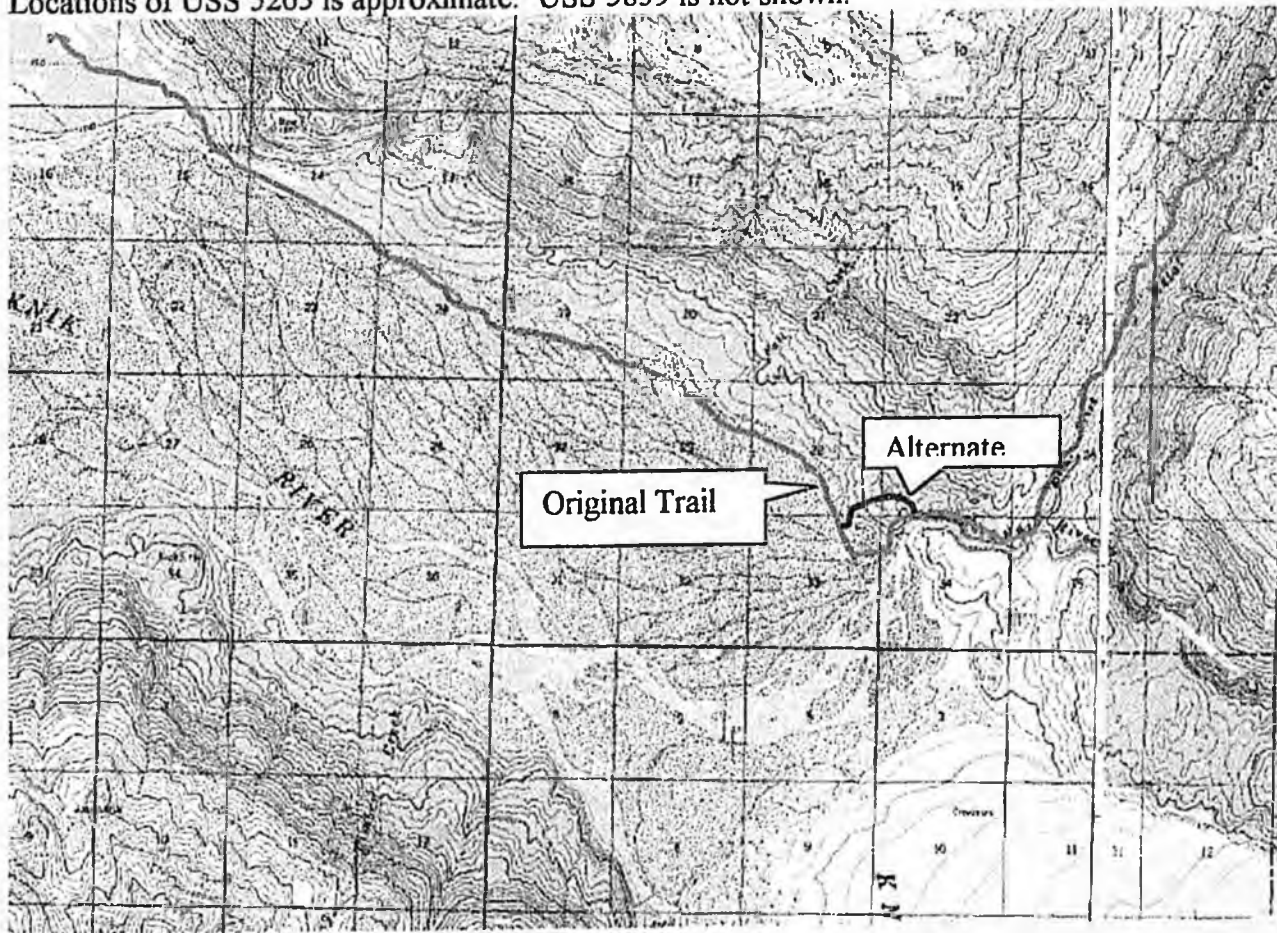
February 21, 2002: We then formally requested to Senator Green's and Representative Ogan's offices that they vacate any RS2477 on our property.

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

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

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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(§ 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).

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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)

SJR

32

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SJR 32
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: OOG
Title Constitutional amendment relating BRU Elections
to marine and rail transportation fund Component Elections
Sponsor Senator Ward
Requester Senate Transportation Component No. 21

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	1.5					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	1.5	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	1.5					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	1.5	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58. If this measure requires the printing of an 8-1/2 by 18 inch ballot, the cost will increase by \$22.0.

Prepared by: Gail Fenumiai, Election Administrative Supervisor Phone 465-3935
Division: Division of Elections Date/Time 2/21/02 4:55 PM
Approved by: Lieutenant Governor Fran Ulmer Date 02/21/2002
Agency: Office of the Lieutenant Governor



SENATOR JERRY WARD

ALASKA STATE LEGISLATURE

SPONSOR STATEMENT

Senate Joint Resolution No. 32

“Proposing amendments to the Constitution of the State of Alaska relating to a marine and rail transportation fund.”

SJR 32 authorizes the creation of a marine and rail transportation fund and is a companion to SB 271.

In 1985 the State of Alaska purchased the Alaska Railroad from the Federal Government for \$20 million dollars. This transaction came with a significant amount of excess land that assists in the operational costs of the railroad. The Alaska Railroad currently has a surplus land base. The Alaska Railroad is not currently under the executive budget act. The Alaska Marine Highway was created under the authority of the Federal Government in 1963 and was not given a land base. For the past several years the Alaska Marine Highway has relied on the general fund for costs because of lack of a capital equity base in order to make it self-sufficient.

Creating an authority and conveying an additional 500,000 acres of land would allow the excess land to generate revenue and provide a stable funding base for the Alaska Marine and Rail Transportation Authority. The idea is to reduce the requirements to fund the Alaska Marine Highway through the general fund. The overall transportation plan in Alaska would benefit from the re-organization and provide for a system to utilize both services and cut the cost of doing so. Currently the Alaska Marine Highway and the Alaska Railroad share the use of facilities in many locations.

It is my hope as sponsor of SJR 32 that it becomes legislation that will ensure a long-term, self-sufficient transportation network that serves all Alaskans.

January-May: STATE CAPITOL • JUNEAU, AK • 99801-1182 • (907) 465-4940 • FAX (907) 465-3766

ANCHORAGE: 716 W. 4th AVE. • STE. 450 • ANCHORAGE, AK 99501 • (907) 269-0106 • FAX (907) 269-0109

KENAI: 145 MAIN STREET LOOP • KENAI, AK • 99611 • (907) 283-7996 • FAX (907) 283-3075

Vice-Chair, Senate Finance Committee • Vice-Chair, Senate Transportation • Member, Senate Health Education & Social Services
Senator_Jerry_Ward@legis.state.ak.us

SJR

41

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SJR 41
(S) Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
Title Reconstruction & Paving of AK Hwy BRU _____
Sponsor Senate Transportation Committee Component _____
Requester Senate Transportation Committee Component No. _____

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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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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--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: SENATE TRANSPORTATION COMMITTEE Phone 465-3879
Division _____ Date/Time _____
Approved by: /s/ Senator Cowdery, Chair Date 3/3/02
Agency _____

Hon. Scott Kent

*Minister of Economic Development
Minister of Government Services
Minister responsible for the Yukon Development
Corporation/Yukon Energy Corporation
Caucus Chair*



*MLA - Riverside
Yukon Liberal Party*

Scott Kent was elected as the MLA for Riverside in the general election on April 17, 2000. He was appointed to Cabinet as Minister of Economic Development on June 12, 2001.

Mr. Kent was born in Meadow Lake, Saskatchewan on October 25, 1968, and has been a Whitehorse resident since 1973.

He attended Selkirk Elementary School and graduated from F.H. Collins Secondary School in 1986. He studied economics and commerce at the University of Calgary.

He has a long history of involvement with local sporting organizations.

Most recently, Mr. Kent was the sales and purchasing manager for a local wholesaler. He also owned and operated a small business, and a real estate holding company.

In all, he brings 10 years of business experience to his portfolio.

Phone: (867) 667-5813
Fax: (867) 667-8409
Mail correspondence:
Hon. Scott Kent
Government of Yukon
Box 2703
Whitehorse, Yukon Y1A 2C6
E-mail: scott.kent@gov.yk.ca

Pat Michael - Clerk

- 867-667-5498

10:30 AM 3/5

Last updated January 21, 2002



Office of the Minister
Box 2703, Whitehorse, Yukon Y1A 2C6

February 14, 2002

Senator Randy Phillips,
State Capitol, Room 103
Juneau, Ak.
99801-1182
USA

Dear Senator Phillips,

Re: Shakwak Project

Your support for the Shakwak Project over the years has been very helpful in securing the funding necessary to advance the reconstruction work.

The reconstruction of the highway to a bituminous surface standard is finally approaching completion. We anticipate that all but 18 miles along Kluane Lake will be completed with the current TEA-21 appropriation. We are hopeful that Congress will approve funding to complete this section and to replace four major bridges on the route in the successor legislation to TEA-21, which is due in October 2003. The cost of the remaining roadwork and the bridge replacement is estimated at \$45 million.

During the deliberations prior to TEA-21 the Alaska State Legislature passed Resolution SJR 12am in support of completing the project. A similar resolution would be of great assistance at this time to demonstrate to congressional decision-makers that Alaska continues to support the project. As your help was instrumental in obtaining passage of Resolution SJR 12am, anything that you could do to facilitate a similar resolution during the current legislative session would be very much appreciated. I have asked my staff to update the factual information in the 1997 resolution which I hope will be of assistance to you.



KLONDIKE
GOLD RUSH
CENTENNIAL

Completion of the Shakwak Project has many benefits to Alaska both in commerce and tourism and I hope that it will be possible for the State Legislature to demonstrate its continued support.

Once again thank you very much for anything that you can do to assist.

Sincerely

A handwritten signature in black ink, appearing to read "Scott Kent". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Scott Kent
Minister of Infrastructure

(907) 667-5813
(807) 667-8722

TRANSPORTATION
RING, S-3



MAY 22 1997 FRAN ULMER
LIEUTENANT GOVERNOR
STATE OF ALASKA

A: 1 LOG # 4060

BI DATE: _____

CC: _____

For Response _____

For Info AS, AS, Gavey, MacRobb

URGENT _____

May 8, 1997

The Honorable Piers McDonald
Government Leader
Government of the Yukon
Yukon Government Services
P.O. Box 2703
Whitehorse, YT Y1A2C6

97-05-21
Robert Walsh
copy for you

Dear Mr. McDonald:

In accordance with Uniform Rule 49 (b) of the Alaska State Legislature, I am transmitting to you a copy of SJR 12 am, Relating to reconstruction and paving of the Alaska Highway.

I hope all is well!

Sincerely,

Fran Ulmer
Lieutenant Governor

Enclosure

**STATE OF ALASKA
THE LEGISLATURE**

1997

Source . . .
SJR 12 am

Legislative
Resolve No.
8



Relating to reconstruction and paving of the Alaska Highway.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS the United States and Canada entered into an agreement to reconstruct and pave the Alaska Highway from the Alaska-Canada border to Haines Junction, Yukon Territory, Canada, and the Haines Cutoff Highway from Haines Junction, Yukon Territory, Canada, to the Alaska-Canada border near Haines, Alaska, known as the Shakwak project, as authorized in the Federal-Aid Highway Act of 1973; and

WHEREAS the Congress authorized \$59,000,000 in 1973 for the project and has appropriated \$47,000,000 to the Federal Highway Administration for actual construction by Canada; and

WHEREAS the Congress further authorized \$20,000,000 a year for fiscal years 1993 - 1996 under the Intermodal Surface Transportation Efficiency Act of 1991, which has been fully appropriated; and

WHEREAS, in the last 16 years, the state has provided \$37,000,000 of state federal-aid highway apportionments to assist in meeting the obligations of the agreement; and

WHEREAS the estimated amount necessary to complete the entire project was in the order of \$260,000,000 in United States dollars;

BE IT RESOLVED that the Alaska State Legislature respectfully requests the United States government and the Canadian government to honor their agreement and provide the additional funds necessary through direct federal appropriations, independent of the federal funds apportioned to Alaska by the Federal Highway Administration, to complete the remaining portions of the Shakwak project; and be it

FURTHER RESOLVED that the United States Congress is respectfully requested to immediately appropriate an additional \$94,000,000 to allow work on additional project segments to proceed to a bituminous surface treatment standard.

COPIES of this resolution shall be sent to the Right Honourable Jean Chretien, Prime Minister of Canada; the Honourable Diane Marleau, Minister of Public Works and Government Services, Canada; the Honourable Audrey McLaughlin, Member of Parliament, House of Commons, Canada; the Honourable Piers McDonald, Government Leader, Yukon Territory, Canada; the Honourable Robert Bruce, Speaker, Legislative Assembly, Yukon Territory, Canada; the Honourable Dave Keenan, Minister of Community and Transportation Services, Yukon Territory, Canada; the Honorable Bill Clinton, President of the United States; the Honorable Al Gore, Jr., Vice-President of the United States and President of the U.S. Senate; the Honorable Newt Gingrich, Speaker of the U.S. House of Representatives; the Honorable Rodney E. Slater, Secretary-designee of the U.S. Department of Transportation; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

22-LS1554A
Utermohle
2/15/02

Minister
of Highway
Scott
Kent

Sen. Phillips would like to know if you will support this and sponsor this as a committee bill.

Yukon
Territories
1-867-
667-
5813

SENATE JOINT RESOLUTION NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY SENATOR PHILLIPS

Chiakwak
Project

Introduced:
Referred:

Sure;
yes
need a
sponsor
start.

Letter to
Merkens;

A RESOLUTION

1 Relating to reconstruction and paving of the Alaska Highway.

2 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 WHEREAS the United States and Canada have entered into an agreement to
4 reconstruct and pave the Alaska Highway from the Alaska-Canada border to Haines Junction,
5 Yukon Territory, Canada, and the Haines Cutoff Highway from Haines Junction, Yukon
6 Territory, Canada, to the Alaska-Canada border near Haines, Alaska, known as the Shakwak
7 Project, as authorized in the Federal-Aid Highway Act of 1973; and

8 WHEREAS the Congress authorized \$59,000,000 in 1973 for the project and has
9 appropriated \$47,000,000 to the Federal Highway Administration for actual construction by
10 Canada; and

11 WHEREAS the Congress has further authorized \$20,000,000 a year for fiscal years
12 1993 - 1996 under the Intermodal Surface Transportation Efficiency Act of 1991, which has
13 been fully appropriated; and

14 WHEREAS the Congress further authorized \$18,800,000 a year for fiscal years 1998
15 - 2002 under the Transportation Equity Act for the 21st Century, of which \$84,900,000 has
16 been appropriated; and

1 **WHEREAS**, in the last 21 years, the state has provided \$37,000,000 of state federal-
2 aid highway apportionments to assist in meeting the obligations of the agreement; and

3 **WHEREAS** the estimated amount necessary to complete the entire project was in the
4 order of \$260,000,000 in United States dollars;

5 **BE IT RESOLVED** that the Alaska State Legislature respectfully requests the United
6 States government and the Canadian government to honor their agreement and provide the
7 additional funds necessary through direct federal appropriations, independent of the federal
8 funds apportioned to Alaska by the Federal Highway Administration, to complete the
9 remaining portions of the Shakwak project; and be it

10 **FURTHER RESOLVED** that the United States Congress is respectfully requested to
11 immediately appropriate an additional \$45,000,000 to allow reconstruction of the remaining
12 18 miles of the Alaska Highway to a bituminous surface treatment standard and to replace
13 four bridges in order to meet the serviceability requirements of the highway.

14 **COPIES** of this resolution shall be sent to the Right Honourable Jean Chretien, Prime
15 Minister of Canada; the Honourable Don Boudria, Minister of Public Works and Government
16 Services Canada; the Honourable Larry Bagnell, Member of Parliament, House of Commons,
17 Canada; the Honourable Pat Duncan, Premier, Yukon Territory, Canada; the Honourable
18 Dennis Schneider, Speaker, Legislative Assembly, Yukon Territory, Canada; the Honourable
19 Scott Kent, Minister of Infrastructure, Yukon Territory, Canada; the Honorable George W.
20 Bush, President of the United States; the Honorable Richard B. Cheney, Vice-President of the
21 United States and Prcs.dent of the U.S. Senate; the Honorable J. Dennis Hastert, Speaker of
22 the U.S. House of Representatives; the Honorable Norman Y. Mineta, United States Secretary
23 of Transportation; and to the Honorable Ted Stevens and the Honorable Frank Murkowski,
24 U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska
25 delegation in Congress.

Relating to reconstruction and paving of the Alaska Highway

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS the United States and Canada entered into an agreement to reconstruct and pave the Alaska Highway from the Alaska-Canada border to Haines Junction, Yukon Territory, Canada, and the Haines Cutoff Highway from Haines Junction, Yukon Territory, Canada, to the Alaska-Canada border near Haines, Alaska, known as the Shakwak Project, as authorized in the Federal-Aid Highway Act of 1973; and

WHEREAS the Congress authorized \$59,000,000 in 1973 for the project and has appropriated \$47,000,000 to the Federal Highway Administration for actual construction by Canada; and

WHEREAS the congress has further authorized \$20,000,000 a year for fiscal years 1993 - 1996 under the Intermodal Surface Transportation Efficiency Act of 1991, which has been fully appropriated; and

WHEREAS the Congress further authorized \$18,800,000 a year for fiscal years 1998 - 2002 under the Transportation Equity Act for the 21st Century, of which \$84.9 million has been appropriated; and

WHEREAS, in the last 21 years, the state has provided \$37,000,000 of state federal-aid highway apportionments to assist in meeting the obligations of the agreement; and

WHEREAS, the estimated amount necessary to complete the entire project was in the order of \$260,000,000 in United States dollars;

BE IT RESOLVED that the Alaska State Legislature respectfully requires the United States government and the Canadian government to honor their agreement and provide the additional funds necessary through direct federal appropriations, independent of the federal funds apportioned to Alaska by the Federal Highway Administration, to complete the remaining portions of the Shakwak project; and be it

FURTHER RESOLVED that the United States Congress is respectfully requested to immediately appropriate an additional \$45,000,000 to allow reconstruction of the remaining 18 miles of the Alaska Highway to a bituminous surface treatment standard and to replace 4 bridges in order to meet the serviceability requirements of the highway.

COPIES of this resolution shall be sent to the Right Honourable Jean Chretien, Prime Minister of Canada; the Honourable Don Boudria, Minister of Public Works and Government Services, Canada; the Honourable Larry Bagnell, Member of Parliament, House of Commons, Canada; the Honourable Pat Duncan, Premier, Yukon Territory, Canada; the Honourable Dennis Schneider, Speaker, Legislative Assembly, Yukon Territory, Canada; the Honourable Scott Kent, Minister of Infrastructure, Yukon Territory, Canada; the Honorable George W. Bush, President of the United States; the Honorable Dick Cheney, Vice-President of the United States and President of the U.S. Senate; the Honorable Dennis Hastert, Speaker of the U. S. House of Representatives; the Honorable Norman Mineta, Secretary of the U.S. Department of Transportation; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress