ANCSA 17(b) Easements

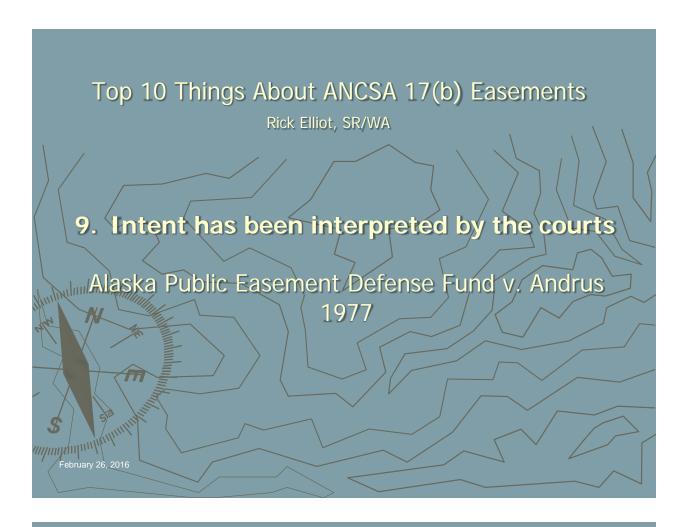


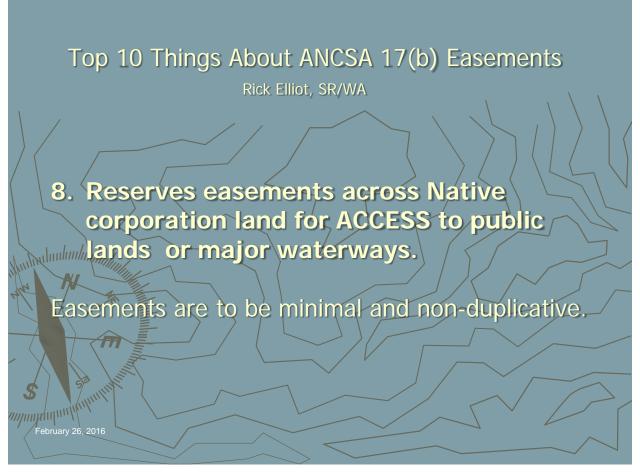
Access Law and Issues Affecting Public and Private Lands In Alaska February 26, 2016

Top 10 Things About ANCSA 17(b) Easements

Rick Elliot, SR/WA

10. It's the law. It is a federal law, part of the Alaska Native Claims Settlement Act (ANCSA) 1971, Section 17(b) (1) (2) and (3). (P.L. 92-203-85 Stat. 688). Federal regulation 43CFR 2650.47 describes the guidelines used in reserving easements in conveyance documents. 17(b) easements apply only to land conveyed under ANCSA. Does not apply to Native allotments or other private land conveyed under another authority.





Top 10 Things About ANCSA 17(b) Easements Rick Elliot, SR/WA

7. Easement use is limited and very specific and is described in the conveyance document issued to a Native corporation.

Any other use other than what is described in the conveyance document is not authorized.

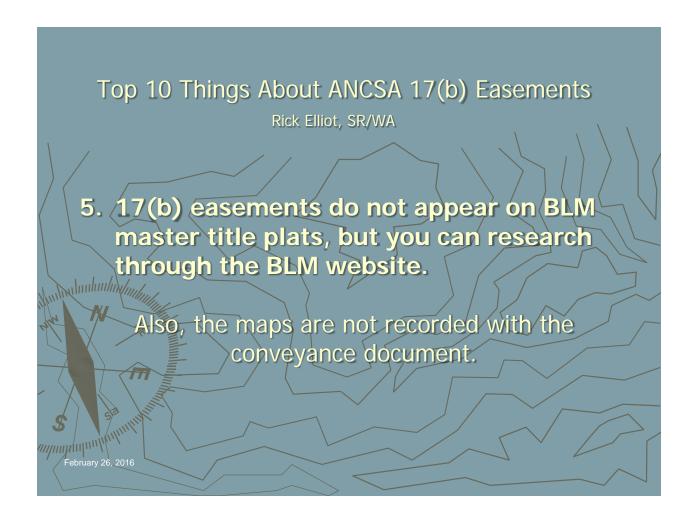
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Top 10 Things About ANCSA 17(b) Easements

Rick Elliot, SR/WA

6. No scenic easements, no recreational easements, no hunting and fishing easements as 17(b) easements.

(These activities cannot occur on the easement itself but the easement can provide access to those areas on public lands and waters where they can view, recreate, and hunt and fish.)



Top 10 Things About ANCSA 17(b) Easements Rick Elliot, SR/WA 4. Management and marking of 17(b) easements is discretionary and may be limited because of funding and/or availability of personnel. BLM gives high priority to easements with high use, the potential for conflict, or have known safety hazards.

Top 10 Things About ANCSA 17(b) Easements Rick Elliot, SR/WA

3. 17(b) easements can be terminated but a public process in required. BLM is the responsible agency.

The easements may be terminated for the following reasons:

- non use by the public
- easements that are topographically unfeasible
- easements which do not meet existing criteria
- easements that are no longer needed.

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Top 10 Things About ANCSA 17(b) Easements Rick Elliot, SR/WA

2. Trespass can be an issue related to 17(b) easements.

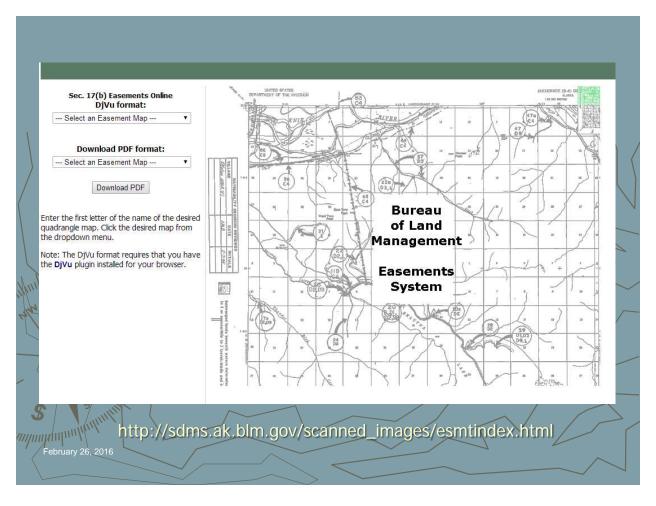
Trespass must be separated into 2 categories to reflect respective management authority and responsibility. Any trespass that interferes with public use of the easement is a Federal responsibility. Any trespass that impact resources or does not interfere with public use is the responsibility of the servient land owner.

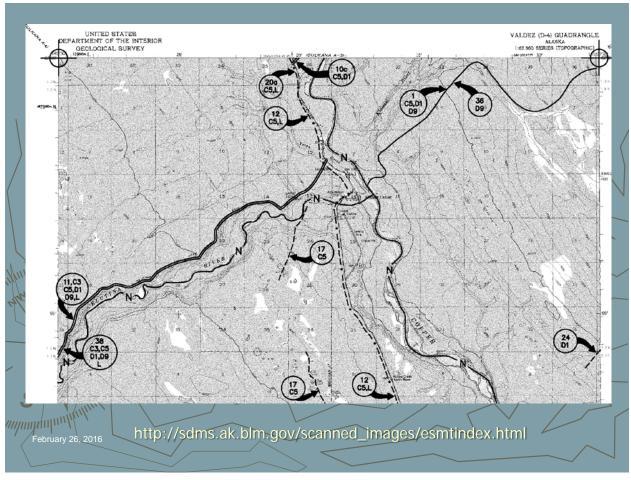
Top 10 Things About ANCSA 17(b) Easements

Rick Elliot, SR/WA

- 1. Concerns are many from and different perspectives: government (as easement holder); Native corporations (as land owners) and the public (easement user). Following are some of the concerns:
- Protection of public right of access to public lands
- Liability resulting from public use
- Effective and efficient land management; both public and private land
- Trespass on private land and protection of resources from theft, damage and fire
- Concentration of users on public land by the limited access opportunities
- Documentation of use to preserve the easement reservation
- Termination of unused or unfeasible easements
- Public Safety







Easement Identification Numbers (EIN) **Sponsor Codes** EASEMENT NUMBER: D I



SPONSOR CODE

EASEMENT SPONSOR CODE

- Alaska Center for the Environment Department of Defense Department of Interior: Bureau of Outdoor Recreation National Park Service Bureau of Mines BLM State Office BLM District Office Fish and Wildlife Geological Survey
- Alaska Power Administration State of Alaska: c8 Division of Lands Division of Parks
- 03 Department of Highways

- Division of Planning and Research
- Division of Aviation
 Division of Public Works
- Department of Fish and Game Land Use Planning Commission
- RCA Alaska Communications
- U.S. Forest Service The Alaska Railroad
- Federal Aviation Administration
- U.S. Coast Guard
- Corps of Engineers General Public
- Village Corporation
- Regional Corporation



Alaska

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17(b) easements¹ are rights reserved to the United States. They take the form of 60-foot wide roads, 25- and 50-foot trails, and one-acre sites for short-term uses. These rights are reserved when the BLM conveys land to a Native corporation under the Alaska Native Claim's Settlement Act (ANCSA). There are no 17 (b) easements across public lands

What is the purpose of 17(b) easements?

Most 17(b) easements are reserved to allow the must 17(b) easements at erase ved ut anow the public to cross private property to reach public lands³ and major waterways. Using 17(b) easements does not allow the public to use the private lands these easements cross. It is very similar to the street in front of many homes. The public has the right to travel on the street, but

they do not have the right to dump litter on private property or trespass on private lawns.

Notes:

¹ 17(b) easements may also be reserved to and from communities, airports, docks, marine coastline, groups of private holdings sufficient in number to constitute public use and government facilities. See 43 Code of Federal Regulation (CFR) 2550.4-7 for a complete listing of the types of public easements.

 2 The authorities for reserving 17(b) easements are the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(b) and 43 Code of Federal Regulation (CFR) 2650.4-7.

³ Publicly owned land means all Federal, State, or municipal and borough lands or interests and submerged lands as defined by the Submerged Lands Act. This definition of public lands also includes lands selected by, but not conveyed to, a Native corporation.

How are 17(b) easements identified and reserved?

Seldovia 17b easement

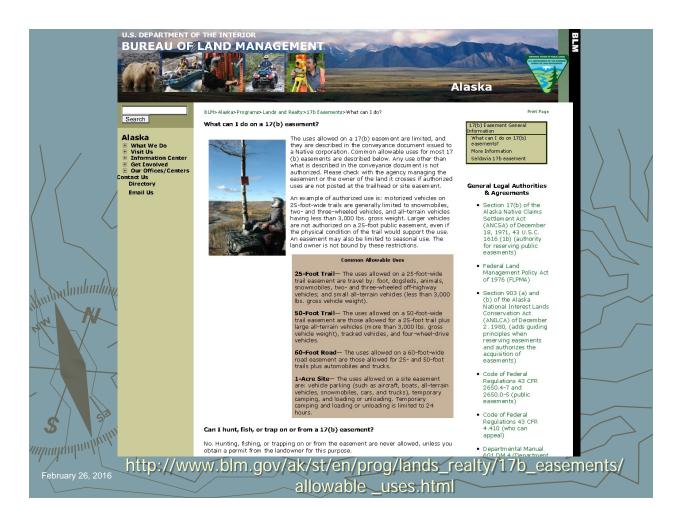
General Legal Authorities & Agreements

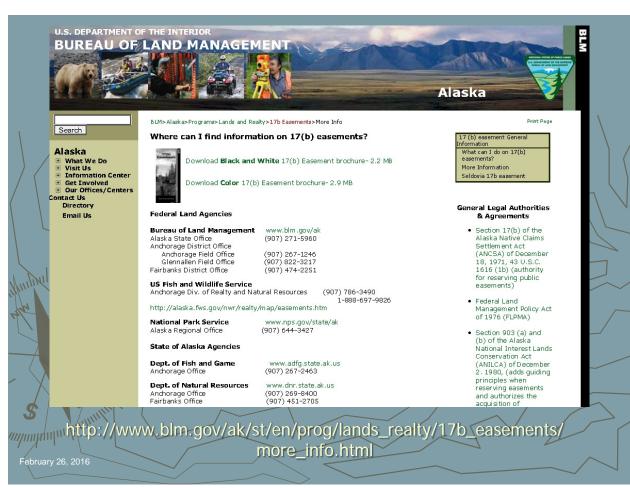
- Alaska Native Claims Settlement Act (ANCSA) of December 18, 1971, 43 U.S.C. 1616 (1b) (authority for reserving public easements)
- Federal Land Management Policy Act of 1976 (FLPMA)
- Section 903 (a) and (b) of the Alaska National Interest Lands Conservation Act (ANILCA) of December 2. 1980, December 2. 1980, (adds guiding principles when reserving easements and authorizes the acquisition of

http://www.blm.gov/ak/st/en/prog/lands_realty/17b_easements.html

February 26, 2016

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BLM ANCSA 17(b) Easement Brochure



Can 17(b) easements be terminated?

Yes, but only the BLM can terminate a 17(b) ea Yes, but only the BLM can terminate a 17(b) ease-ment, using the following process. When the BLM or the easement manager determines that an easement is no longer necessary, the BLM must provide public notice that the easement is proposed for termination and request comments from the public. After review-ing the comments and determining the easement is no longer required, the BLM issues an appealable decision terminating the easement. The BLM termi-nates the public easement when the decision is final by issuing a release of interest.



General Legal Authorities & Agreements

Section 17(b) of the Alaska Native Claims Settlement Act (ANCSA) of December 18, 1971, 43 U.S.C. 1616 (1b) (authority for reserving public easements)

Federal Land Management Policy Act of 1976 (FLPMA)

Section 903 (a) and (b) of the Alaska National Inter-ect Lands Conservation Act (ANILCA) of December 2. 1980, (adds guiding principles when reserving ease-ments and authorizes the acquisition of easements)

Code of Federal Regulations 43 CFR 2650.4-7 and 2650.0-5 (public easements)

Code of Federal Regulations 43 CFR 4.410 (who can

Memorandum of Understanding (MOU) among the BLM, NPS, and FWS dated 12/12/88 (governs which agency will administer the process for administering, and the termination of Section 17(b) assements)

MOU between the BLM and the USFS dated 9/4/90 (governs which agency will administer, the process for administering, and the termination of Section 17(b) easements)





Where can I find information on 17th) ease

Federal Land Agencies

| Bureau of Land Management | www.blm.go/dck | Alrskn State Office | (907) 271-5890 | Anchorage Field Office | (907) 267-1293 | Glennaten Field Office | (907) 267-1293 | Galtanis District Office | (907) 474-2251

(907) 786-3490

www.adfg.state.ak.us (907) 267-2463

www.dor.state.ak.us (907) 269-8400 (907) 451-2705

N	ative Regional Co	orporations	
Ahtna, Inc.	Glennalien, AK (907) 822-3476	www.ahfna-inc.com	
Alout	Anchorago, AK (907) 561-4300	www.afeutcorp.com	
Arctic Stope	Anchorage, AK (907) 339-6000	www.asrc.com	
Bering Straits	Nome, AK (907) 443-5252	www.deringstrafts.com	
Bristol Bay	Anchorage, AK (907) 278-3602	www.binc.com	
Calista	Anchorage, AK (907) 279-5516	www.calista.corp.com	
Chugach Alaska	Anchorage, AK (907) 563-8866	www.chugach-ak.com	
Cook inlet (CIRI)	Anchorage, AK (907) 274-8638	www.cirl.com	
Doyon, Limited	Fairbanks, AK (907) 459-2000	www.cloyon.com	

ANCSA 17(b) **Easements** Access to your public lands

http://www.blm.gov/pgdata/etc/medialib/blm/ak/aktest/rec/ 17b.Par.64524.File.dat/17b_easement_brochure07.pdf

Additional 17(b) Easement Resources

BLM Instruction Memorandum No. AK 2007-037

Alaska Native Claims Settlement Act Section 17(b) Easement Management

http://www.blm.gov/pgdata/etc/medialib/blm/ak/aktest/ims.Par.6478.File .dat/%20im_ak_2007_037.pdf

ANCSA 17(b) Easement Management Handbook

http://www.blm.gov/pgdata/etc/medialib/blm/ak/aktest/ims.Par.26550.File.dat/ im ak 2007 037/17bhandbook.pdf

http://www.blm.gov/pgdata/etc/medialib/blm/ak/aktest/ims.Par.75605.File.dat /im_ak_2007_037_Appendix1.pdf/

Appendix 2

http://www.blm.gov/pgdata/etc/medialib/blm/ak/aktest/ims.Par.19605.File.dat /im_ak_2007_037_Appendix2.pdf

> Alaska Public Easement Defense Fund v. Andrus 435 F. Supp. 664 (D. Alaska 1977)

https://www.courtlistener.com/akd/8itv/alaska-public-easement-defensefund-v-andrus/



ANSCA 17(b) Easements Information

WHAT ARE THEY?

The "17(b) Easements" are named after the section of the Federal Regulation, Alaska Native Claims Settlement Act "ANCSA" (PL 92-203 - 85 Stat. 688). This Federal Regulation allows reserving easements on lands which will be conveyed to Alaska Native Village and Regional Corporations in order to allow public access to public land and water. The Federal Regulations, 43 CFR 2650.4-7, describe the guidelines which are used in reserving easements in conveyance documents.

HOW CAN EASEMENTS BE USED?

There are different widths of 17(b) trail easements and site easements which allow certain uses. Please rote: <u>Departing from these easements on to Native lands without express permission from the Native Land owners is trespass</u>. Please research land <u>status before using these easements and respect the private property rights of the land owners</u>. Below is a list of how you can use each type of easement.

25-Foot Trail - The uses allowed on a 25-foot-wide trail easement are: travel by foot, dogsleds, animals, snowmobiles, two- and three-wheeled vehicles, and small all-terrain vehicles (less than 3,000 lbs. gross vehicle weight).

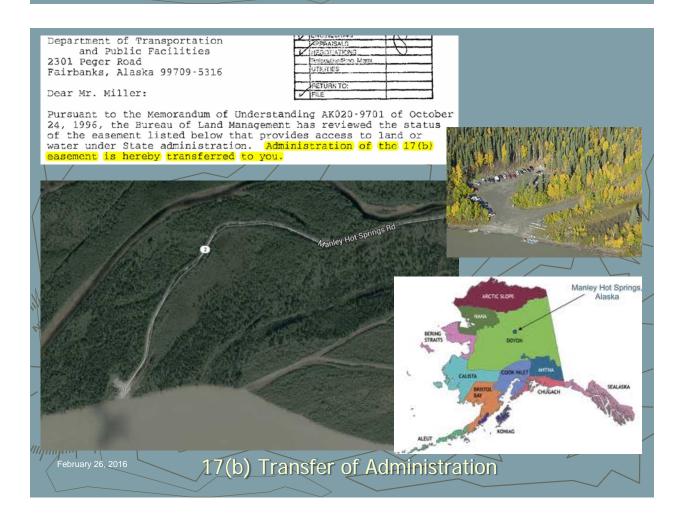
50-Foot Trail - The uses allowed on a 50-foot-wide trail easement are those allowed for a 25-foot trail plus large all-terrain vehicles (more than 3,000 lbs. gross vehicle weight), tracked vehicles, and four-wheel-drive vehicles.

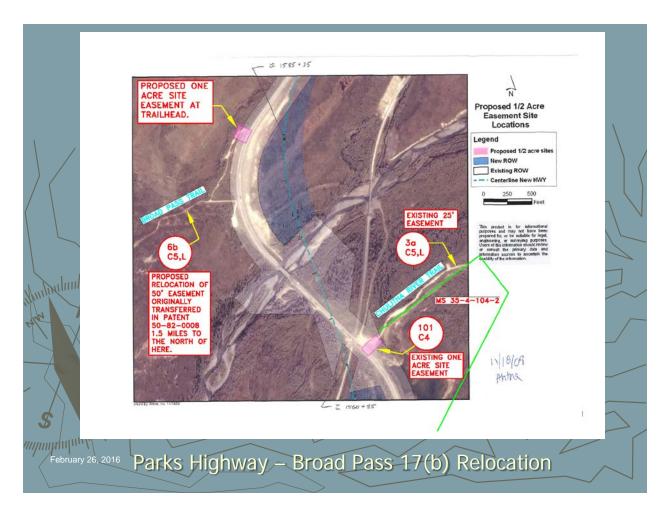
60-Foot Road - The uses allowed on a 60-foot-wide road easement are those allowed for 25- and 50-foot trails plus automobiles and trucks

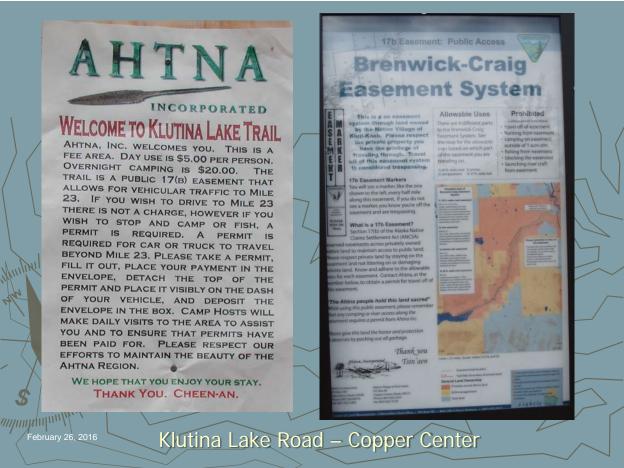
1-Acre Site - The uses allowed on a site easement are: vehicle parking (e.g., aircraft, boats, all-terrain vehicles, snowmobiles, cars, and trucks), temporary camping, and loading or unloading. Temporary camping, loading, or unloading is limited to 24 hours.

February 26, 2016

http://dnr.alaska.gov/mlw/trails/17b/







2002 AGO Opinion: Scope of Klutina Lake Road Right-of-Way

John F. Bennett

A.G. file no: 665-01-0201

July 17, 2002

Page 10

Third, the Department of the Interior recognizes that § 17(b) easements and R.S. 2477 rights-of-way may overlap and that neither easement supplants the other. The Interior Board of Land Appeals has long held that

where "BLM seeks to reserve a sec. 17(b) public easement over an existing road constructed by the State and claimed by the State as an R.S. 2477 right-of-way, the conveyance documents shall contain a provision specifying that the reserved public easement is subject to the claimed R.S. 2477 right-of-way" if valid.

February 26, 2016

http://www.law.state.ak.us/pdf/opinions/opinions_2002/ 02-015_665010201.pdf



United States Department of the Interior

BUREAU OF LAND MANAGEMENT ALASKA STATE OFFICE 222 W. 7th Avenue, #13 ANCHORAGE, ALASKA 99513-7599

This letter is in response to your inquiry of November 15, 2002, concerning the civil lawsuit, Ahtna, Inc. v. Hughes, et al., involving use of a section 17(b) easement reserved to the United States.

patent 50-2001-0492 issued to Ahtna, Inc. The U.S. rights are subject to any valid rights the State of Alaska may have under R.S 2477. (See Alaska Department of Transportation, 88 IBLA 106 [1985]).

In summary, the Hughes, as members of the public, have the right to use the Klutina River Road Sec. 17(b) easement to access the Klutina River and offload boats on the road and launch them into the river at those points where the Sec. 17(b) easement abuts State owned lands or at site easement EIN 10a C5. The Hughes cannot use the Sec. 17(b) easement for berry picking or fishing, as these uses were not reserved to the United States.

November 21, 2002 – BLM State Office

Fishing guide used Klutina Lake Road to access Klutina River without Ahtna permit...Ahtna filed trespass action.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA THIRD JUDICIAL DISTRICT AT ANCHORAGE		
AHTNA INC., Plaintiff, vs. LEON VON SCHEBEN, Commissioner, Department of Transportation & Public Facilities, State of Alaska,)))) Case No)	
Defendant.	ý	

21. Defendant and those being directed by him, fail and refuse to recognize the ownership and administrative authority of Plaintiff, fail and refuse to provide notice, fail and refuse to comply with land planning requirements, fail and refuse to restrict activities to the confines of the federal § 17(b) easements and the requirements of federal law all of which are contrary to the intend and purpose of ANCSA and the basic land ownership rights of Plaintiff.

April 2, 2008 ~ Ahtna v. Von Scheben RS-2477 vs. ANCSA 17(b)

Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b)), the following public

easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in case file AA-6658-EE, are reserved to the United States. All easements are subject to applicable Federal, State, or Municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

c. (EIN 11 C3, C5, D1, D9, L) An easement sixty (60) feet in width for an existing road from the Copper Center area in Sec. 12, T. 2 N., R. 1 W., Copper River Meridian, southwesterly to site EIN 10a C5, on the Klutina River near Klutina Lake. The uses allowed are those listed above for a sixty (60) foot wide road easement.

Kluti-Kaah Corporation Patent 50-80-0108 Ahtna, Inc. – Klutina Lake Road

February 26, 2016

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SENATE BILL NO. 94

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

"An Act vacating a portion of the Copper Center-Valdez right-of-way; and relating to rights-of-way acquired under former 43 U.S.C. 932 that cross land owned by an Alaska Native corporation."

(10) one overlap of an R.S. 2477 right-of-way and 17(b) easement involves a road and all-terrain vehicle trail that roughly parallel the Klutina River from the New Richardson Highway to partway around Klutina Lake; the road and trail form a portion of the

Sec. 19.30.430. Rights-of-way acquired under former 43 U.S.C. 932 that cross land conveyed to a Native corporation. (a) Notwithstanding AS 19.10.015(a), a right-of-way granted under former 43 U.S.C. 932 (R.S. 2477) that crosses land owned by a Native corporation is limited to the uses of the route established on October 21, 1976, and may not exceed a width of 60 feet.

mhalanlanh)

(b) A right-of-way granted under former 43 U.S.C. 932 (R.S. 2477) that crosses land owned by a Native corporation may be used only for transportation purposes and may not be used for rest areas, parking lots, overnight camping, boat launches, recreation sites, or other similar uses.

http://www.legis.state.ak.us/PDF/28/Bills/SB0094A.pdf

The End