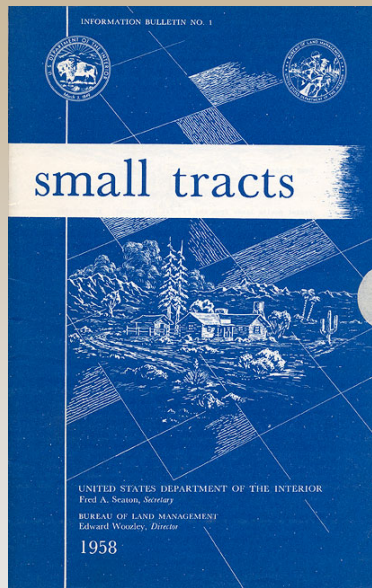


Small Tract Rights-of-Way



Alaska Surveying & Mapping Conference 2019



Small Tract ROW

- 1938 Small Tract Act (Alaska in 1945)
- “Jack Rabbit” Homesteads (5 ac. or less)
- 1954 Alaska’s most popular disposal type
- Includes ROW for Roads & Utilities
- 33’ or 50’ along one or more boundaries
- 5,600 Small Tract patents issued in Alaska
- Other disposal types include:
 - Homesteads, Homesites, HQ Sites
 - Trade & Manufacturing Sites
 - Townsite Lots, Mining Claims
 - Native Allotments

Small Tract ROW

- ROW that served other types of disposals
 - Townsites – street dedications
 - RS-2477 (Mining Law of 1866)
 - ANCSA 17(b)(2) easements
 - Generally to other public lands
 - Also protects valid existing rights
 - Stewart IBLA 84-148 Mining Claim
 - FLPMA Sec. 701(a) – existing rights

Small Tract ROW

- Patent – similar to a quitclaim deed
- Prior Existing Rights – patent “subject to”
- Small Tract Patents were “subject to” a specific road & utility right-of-way
- Right-of-Way?: The right to pass along a specific route through another’s land.
- Unless otherwise stated, a ROW is considered to be an easement interest

Small Tract ROW

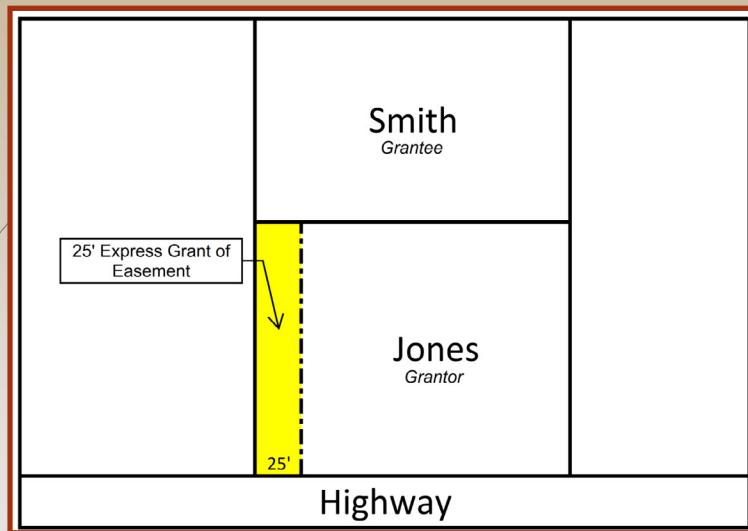
- Easement Defined: A nonpossessory interest in another's land that entitles the holder only to the right to use such land in the specified manner.
- What was meant by the term "right-of-way" in the Small Tract Patent?

Small Tract ROW

- Easement Appurtenant
 - Servient Estate: Parcel burdened by easement
 - Dominant Estate: Parcel benefiting from easement
 - Passes with the land
- Easement in Gross – Personal to holder
 - No dominant estate
 - Does not run with land
 - Assignable – i.e. Utility Easements
- How are easements established?

Small Tract ROW

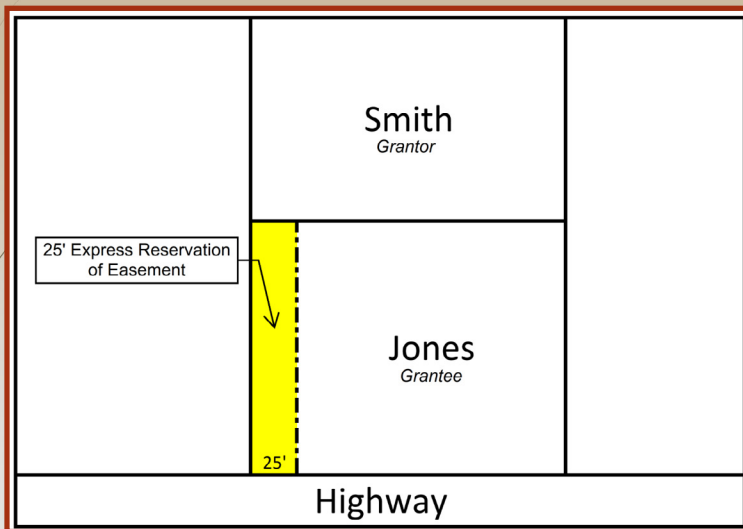
Express Grant of Easement



Jones conveys parcel to Smith along with grant of easement across Jones remaining land.

Small Tract ROW

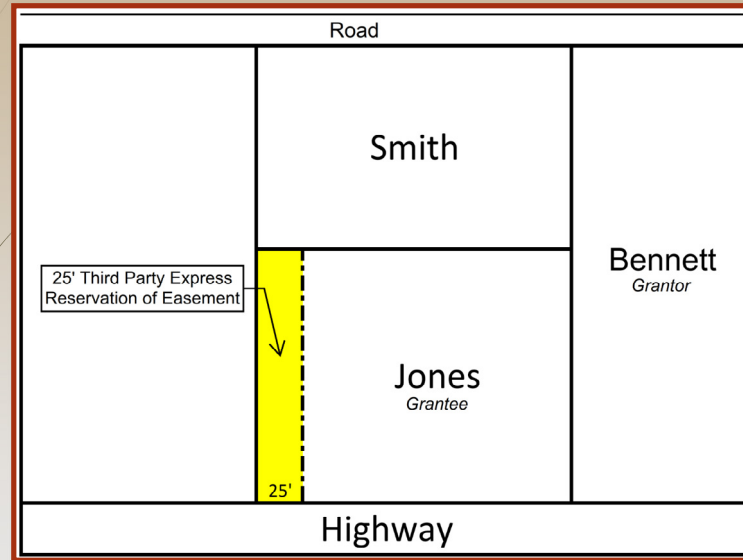
Express Reservation of Easement



Smith conveys parcel to Jones and reserves easement to remaining Smith land. (ST ROW?)

Small Tract ROW

Third Party Reservation



Bennett conveys parcel to Jones and reserves easement for benefit of Smith.

Small Tract ROW

- Dedication: An appropriation of land by the owner for the benefit of the public. Requires an Offer and an Acceptance.
- May be: Express (Clearly stated) or Implied (by factual evidence)
- Statutory Dedication
 - Conforming to provision of statute
 - Certificate of Dedication
 - Certificate of Acceptance

Small Tract ROW

- Common Law Dedication (**ST ROW?**)
 - Owner's offer of Dedication
 - Acceptance of offer by the public:
 - Acceptance by official Act
 - (1923 RS-2477 Acceptance)
 - Local Government policy
 - Acceptance by public use
 - Public maintenance
 - Photo/Map evidence of use
 - The rule in Unorganized Borough prior to DNR platting authority in 1998 -

Small Tract ROW

- What was intended in the Small Tract Patent?
- Was the ROW an Express Reservation of Easement or Common Law Dedication?
- When a court determines a deed to be ambiguous – they will interpret the intent of the parties.

Small Tract ROW

- Alaska Supreme Ct. 3-step process:
 - Look first to the four corners of the deed – can the intent of the parties be determined unambiguously?
 - If ambiguous – determine the intent
 - Examine the deed
 - Extrinsic evidence
- Rules of Construction – Ambiguities found
 - In favor of government
 - In favor of grantee
 - In favor of land free of easements

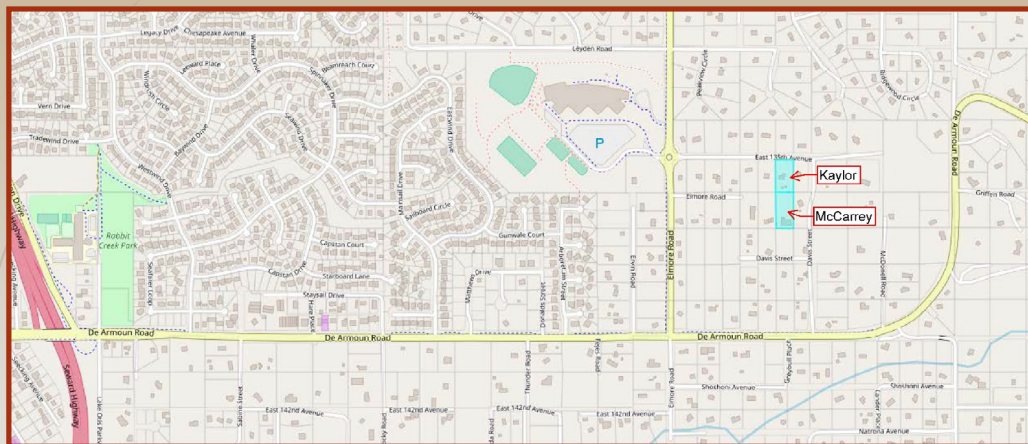
Small Tract ROW

- **McCarrey v. Kaylor** – Alaska Supreme Court - March, 2013
 - McCarrey Small Tract - 50' ROW along north boundary - E136th Avenue
 - Kaylor parcel adjoins to the north
 - E136th signed gravel road/driveway but not maintained by Municipality

Small Tract ROW

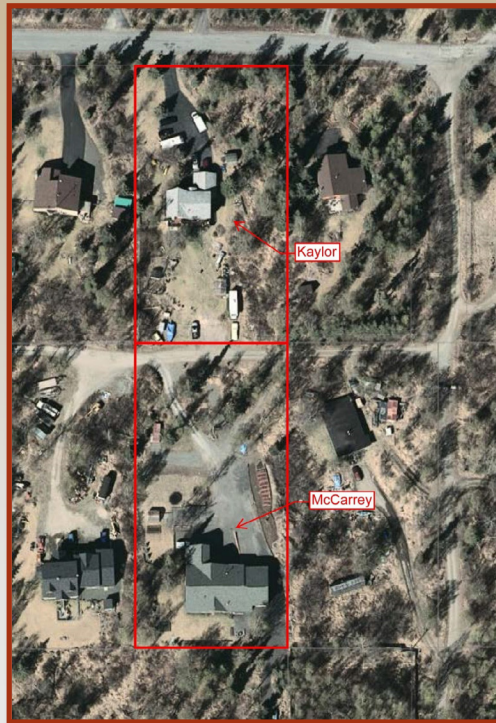
- Kaylor uses ST ROW to access south portion of lot to park motorhome, boat and other vehicles.
- McCarrey proposes fence with locked gate on common boundary – must have 72-hour notice to open ~
- 2010 Superior Ct – Kaylor filed injunction and claim of prescriptive easement: Court agrees ~

Small Tract ROW



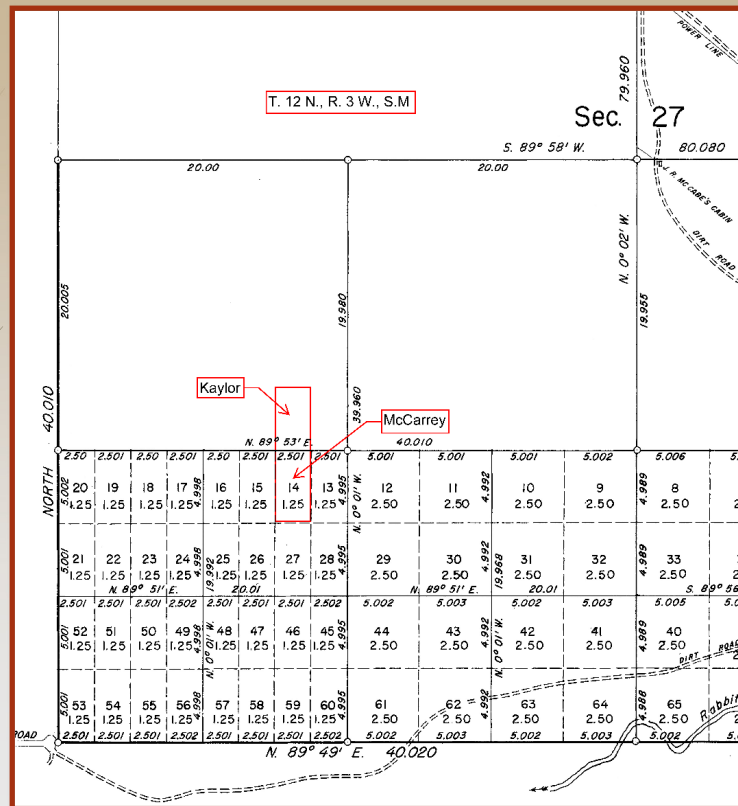
McCarrey v. Kaylor
North East of DeArmour & Elmore

Small Tract ROW



McCarrey &
Kaylor
separated by
E 136th
Avenue

Small Tract ROW



Small Tract ROW

1132192 R/W				
R/W OG Other Min	1223491 R/W OG Other Min	1220903 R/W OG Other Min	1175059 R/W OG Other Min	12-2.50
26-1.25	27-1.25	28-1.25	29-2.50	120564 R/W OG Other Min

BLM Master Title Plat

Small Tract ROW

This patent is subject to a right-of-way not exceeding 50 feet in width, for roadway and public utilities purposes, to be located along the north boundary of said land.

- Werneke Patent
- June 28, 1961
- Lot 14, Sec. 27
- T.12N, R.3W., S.M.
- "is" not "may be"
- "Subject To"
- 50-foot wide ROW
- Roadway & Utilities

Anchorage 054798

The United States of America
Do all to whom these presents shall come, greeting:

WHEREAS, a certificate of the Land Office at Anchorage, Alaska, is now deposited in the Bureau of Land Management, whereby it appears that pursuant to the act of Congress of June 1, 1928 (45 Stat. 809), as amended by the act of July 16, 1928 (45 Stat. 467), and the acts supplemental thereto, the claim of **Charles H. Werneke** has been established and that the requirements of law pertaining to the claim have been met, for the following described land:

Seward Meridian, Alaska.
T. 12 N., R. 3 W.,
Sec. 27, Lot 14.

The area described contains 1.25 acres, according to the official plat of the survey of the said land, on file in the Bureau of Land Management; **Dependent Resurvey Officially filed May 31, 1955:**

NOW KNOW YE, that the UNITED STATES OF AMERICA, in consideration of the premises, DOES HEREBY GRANT unto the said claimant and to the heirs of the said claimant the tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature, thereto, belonging, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to (1) any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; and (2) the reservation of a right-of-way for ditches or canals constructed by the authority of the United States, in accordance with the act of August 30, 1890 (50 Stat. 401, 43 U. S. C. sec. 945). There is also reserved to the United States a right-of-way for the construction of railroads, telegraph and telephone lines, in accordance with section 1 of the act of March 12, 1914 (38 Stat. 395, 48 U. S. C. sec. 965).

Excepting and reserving, also, to the United States all oil, gas and other mineral deposits, in the land so patented, together with the right to prospect for, mine, and remove the same according to the provisions of said Act of June 1, 1928.

This patent is subject to a right-of-way not exceeding 50 feet in width, for roadway and public utilities purposes, to be located along the north boundary of said land.

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat. 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

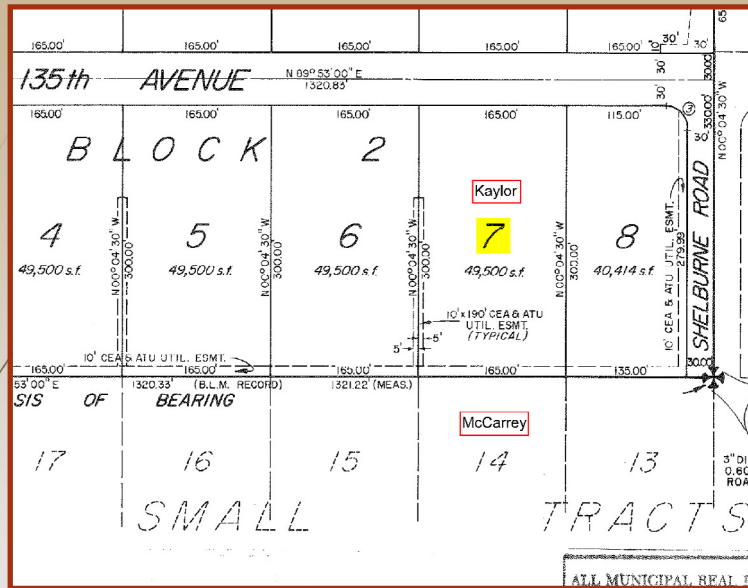
GIVEN under my hand, in the District of Columbia, the **TWENTY-EIGHT** day of **JUNE** in the year of our Lord one thousand nine hundred and **SIXTY-ONE** and of the Independence of the United States the one hundred and **EIGHTY-FIFTH**.

[SEAL]

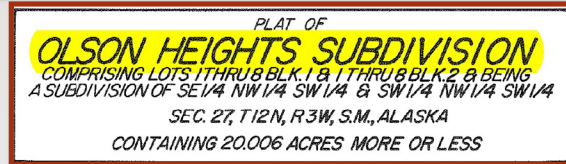
For the Director, Bureau of Land Management.
By **Ruth W. Talley**
Chief, Patents Section.

Patent Number **1220903**

Small Tract ROW



No existing ROW shown on north boundary of McCarrey lot.



Plat 79-68

Small Tract ROW

- Supreme Court – *McCarrey v. Kaylor*
- Case requires interpretation of deed
- McCarreys argue:
 - Small Tract ROW is a common law dedication (BLM IM 91-196)
 - If valid (accepted), it is only for the use of other Small Tract owners
 - Small Tract ROW authority repealed by FLPMA – ROW no longer valid.
 - IM 91-196 says offer to dedicate only available as long as Small Tract Classification Order in effect.

Small Tract ROW

- Supreme Court says:
 - Small Tract ROW “subject to” is clearly a common law offer of dedication.
 - While FLPMA terminated the Small Tract Act, it did not act as a blanket termination of ST classification orders.
 - FLPMA could not revoke or terminate the ROW in question because FLPMA did not apply to private property.
 - The dedication, if accepted is a public ROW available to all parties.

Small Tract ROW

- Supreme Court did not rule on:
 - Prescriptive easement – no argument.
 - Acceptance of dedication – no evidence provided.
- Remanded to Superior Court to determine if offer had been accepted ~

Small Tract ROW

- Superior Court – Sept. 2013 - Round 2
 - McCarrey argues against acceptance by either formal official action or public use.
 - McCarrey then argues if it was accepted the dedication is limited to the physical footprint (30') which leaves a gap between the dedication and the common lot line.

Small Tract ROW

- Kaylor argues:
 - Use of E136th for more than 15 years
 - Municipal code recognition of “double fronted” lots constitutes an official acceptance of dedication.

Small Tract ROW

- The Rest of the Story:
 - September 11, 2013 - Superior Court issues *Stipulation for Dismissal with Prejudice*
 - The Court issued no judgment regarding common law acceptance of E 136th Avenue.

Small Tract ROW

- McCarrey contact - May 2018
 - Dismissal was result of a settlement.
 - Agreed to a 30-foot ROW.
 - Was to be recorded but was not.
 - Acceptance of common law dedication never determined.
 - Parties continued to disagree over the terms of the settlement.
 - McCarrey agreed the issue was never resolved.
 - Kaylor passed in 2017 at age 75

Small Tract ROW

- What did we learn?
 - A Small Tract ROW is the offer of a common law dedication and not an express reservation.
 - The offer must be accepted by official act or public use.
 - Offer must be accepted prior to termination of ST classification.
 - FLPMA did not vacate ST ROW's.
 - FLPMA did not end ST classifications.
 - A Small Tract ROW is a public ROW.

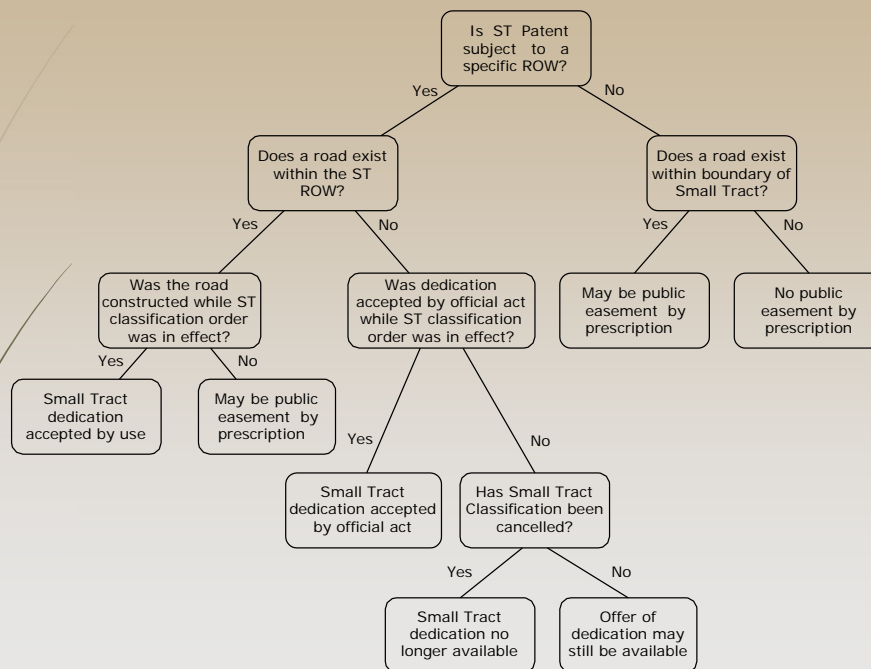
Small Tract ROW



Small Tract ROW

- **Research Methods**
 - You are assigned to survey & map GL-11 Section 17, T1S, R1W, F.M. located to the north of Davis Road in Fairbanks.
 - Given the results of McCarrey v. Kaylor, how do you determine whether a common law dedication has been accepted or whether the offer to dedicate is still available for acceptance?

Small Tract ROW



Small Tract ROW

The screenshot shows the homepage of the Bureau of Land Management's General Land Office Records website. At the top, it features the BLM logo and navigation tabs for 'Search Documents', 'Reference Center', and 'Support'. A central banner reads 'The Official Federal Land Records Site' and provides a welcome message. Below this, there is a 'Latest News and Updates' section with a post from 10/3/2018. A 'Land Patents' section is visible, with a link to 'Federal Land Patents'. On the right side, there is a circular seal of the 'UNITED STATES GENERAL LAND OFFICE' and a preview of a historical patent document.

Obtain patent from GLORecords.blm.gov

Small Tract ROW

Select "Patent Image" tab and download

The screenshot shows a search interface with two tabs: 'Search Documents By Type' and 'Search Documents By Location'. Below the tabs is a 'Document Identifier' section. Underneath, there is a 'Patent Identifiers' section with two radio buttons. The first radio button is selected and labeled 'Accession #:', with a dropdown menu set to 'Serial Patent' and a text input field containing '1158110'. The second radio button is labeled 'BLM Serial Nr:' and has an empty text input field.

This patent is subject to a right-of-way not exceeding 33 feet in width, for road-way and public utilities purposes, to be located along the west and south boundaries of said land.

Small Tract ROW

Section 17 Small Tract Patent Review

1125543 R/W								1126519 R/W	
3-2.50 1148712 R/W All Min	7-2.50 1153618 R/W All Min	6-2.50 1136935 R/W All Min	5-2.50 1195358 R/W All Min	4-2.50 1139324 R/W All Min	3-2.50 1164405 R/W All Min	2-2.50 1141771 R/W All Min	1-2.50 1143335 R/W All Min	Section 17, T1S, R1W, FM - Fairbanks Small Tracts Act of June 1, 1938 Small Tract Classification No. 20 * 64 - 2.5 acre tracts * 63 patents * 10 described by aliquot parts * 53 described by Government Lot	
9-2.50 1154724 R/W All Min	10-2.50 1150975 R/W All Min	11-2.50 1158110 R/W All Min	12-2.50 1158109 R/W All Min	13-2.50 1159923 R/W All Min	14-2.50 1163364 R/W All Min	15-2.50 1147315 R/W All Min	16-2.50 1167617 R/W All Min		
24-2.50 1146838 R/W All Min	23-2.50 1149164 R/W All Min	22-2.50 1179366 R/W All Min	21-2.50 1159922 R/W All Min	20-2.50 1154452 R/W All Min	19-2.50 1168491 R/W All Min	18-2.50 1179372 R/W All Min	17-2.50	1 - No ROW reservation (GL-6) 3 - ROW 1 side only (GL 39, 48, 49) 1 - E/W ROW reversed (GL 46) 4 - Non-specific ROW (GL 4, 47, 17, 32)	
25-2.50 1154350 R/W All Min	26-2.50 1179375 R/W All Min	27-2.50 1157083 R/W All Min	28-2.50 1154839 R/W All Min	29-2.50 1137093 R/W All Min	30-2.50 1181761 R/W All Min	31-2.50 1137095 R/W All Min	32-2.50 1133562 R/W All Min		
40-2.50 1155700 R/W All Min	39-2.50 1137094 R/W All Min	38-2.50 1154348 R/W All Min	37-2.50 1150972 R/W All Min	36-2.50 1142156 R/W All Min	35-2.50 1137541 R/W All Min	34-2.50 1195548 R/W All Min	33-2.50 1133565 R/W All Min	17 → Davis Road →	
41-2.50 1149725 R/W All Min	42-2.50 1160854 R/W All Min	43-2.50 1148039 R/W All Min	44-2.50 1185183 R/W All Min	45-2.50 1213284 R/W All Min	46-2.50 1142422 R/W All Min	47-2.50 1133566 R/W All Min	48-2.50 1137168 R/W All Min		
56-2.50 1146835 R/W All Min	55-2.50 1147313 R/W All Min	54-2.50 1151948 R/W All Min	53-2.50 1151186 R/W All Min	52-2.50 1160857 R/W All Min	51-2.50 1185184 R/W All Min	50-2.50 1179377 R/W All Min	49-2.50 1137207 R/W All Min	Hill Road	
57-2.50 1185185 R/W All Min	58-2.50 1156160 R/W All Min	59-2.50 1152920 R/W All Min	60-2.50 1168793 R/W All Min	61-2.50 1185186 R/W All Min	62-2.50 1170322 R/W All Min	63-2.50 1217561 R/W All Min	64-2.50 1153615 R/W All Min		
								1129250 R/W	

Small Tract ROW

The hard part: Finding the Classification Order

Locate Historical Index at BLM SDMS

Action Date	Section	Aliq Part	Lots	Other Desc	Acres Qty	Document ID	Kind Entry	Remarks
26-Jan-50	17	S2NW, N2SW				20	BLM O	
26-Jan-50	19	E2SW	4			20	BLM O	
26-Jan-50	30		2		287.5	20	BLM O	ST CL; PART REV DO 4/26/1960; CANC 2/12/1964

Small Tract Classification Order No. 20
 applied to Sections 17, 19 & 30 – Note
 cancellation dated 2/12/1964

Small Tract ROW

BLM SDMS “Alaska Public Laws, Orders and Directives” – Document Type: Small Tract Orders – Search for Order No. 20

ALASKA
SMALL TRACT CLASSIFICATION NO. 20
JANUARY 26, 1950.

By virtue of the authority contained in the act of June 1, 1938 (52 Stat. 609; 43 U. S. C. 682a), as amended, and Departmental Order No. 2325 of May 24, 1947 (43 CFR 4.275 (b) (3), 12 F. R. 3566), and pursuant to the authority delegated to me by the Director, Bureau of Land Management, by Order No. 319, dated July 19, 1948 (43 CFR 50.451 (b) (3), 13 F. R. 4278), it is ordered as follows:

Subject to valid existing rights, the following described lands in the Fairbanks, Alaska, land district, embracing 287.49 acres, are hereby classified as chiefly valuable for lease and sale under the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U. S. C. 682a), as amended, for home and cabin sites:

T. 1 S., R. 1 W., Fairbanks Meridian.
Sec. 17: S $\frac{1}{2}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$.
Sec. 19: Lot 4 and E $\frac{1}{2}$ W $\frac{1}{4}$.
Sec. 30: Lot 2.

ALASKA
Small Tract Classification Order Cancellations; Corrected Date

F.R. Doc. 64-1624 appearing in the issue for February 19, 1964, is hereby corrected as follows:

Paragraph 4 containing description of Small Tract Classification Order No. 20 is hereby corrected so that portion reading:

Small Tract Classification Order No. 20 of March 23, 1950 (P.R. Doc. 2642) . . .

will read:

Small Tract Classification Order No. 20 of January 26, 1950 (P.R. Doc. 50-2642) . . .

Ross A. Youngblood,
District Manager.
[F.R. Doc. 64-2007; Filed, Mar. 2, 1964; 8:46 a.m.]

Or search GPO Federal Register

Small Tract ROW

Federal Register search for February 19, 1964 and “Small Tracts” returned:

ALASKA
Cancelling Certain Small Tract Classification Orders
FEBRUARY 12, 1964.

1. Pursuant to the authority redelegated to me from Bureau Order 684, dated August 28, 1961 (26 F.R. 6215) as amended by the Alaska State Director in section 3, Delegation of Authority (28 F.R. 294) dated January 9, 1963, the following Small Tract Classification Orders are hereby cancelled as to the lands embraced thereby:

Small Tract Classification Order No. 20, as amended. 4. Small Tract Classification Order No. 20 of March 23, 1950 (F.R. Doc. 2642), as amended by the general amendment of February 19, 1957, and as modified by the partial cancellation order of April 26, 1960 (F.R. Doc. 60-4012), which classified the following lands for lease and sale for home and cabin sites under the Small Tract Act of June 1, 1938 (52 Stat. 609, 43 U.S.C., 682a), as amended:

FAIRBANKS MERIDIAN
T. 1 S., R. 1 W.,
Sec. 17, SW $\frac{1}{4}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$;
Sec. 19, lot 4 and E $\frac{1}{2}$ SW $\frac{1}{4}$.
Containing 269.33 acres.

DEPARTMENT OF THE INTERIOR
Bureau of Land Management
ALASKA
Small Tract Classification Order No. 20; Cancellation (Partial)
APRIL 26, 1960.

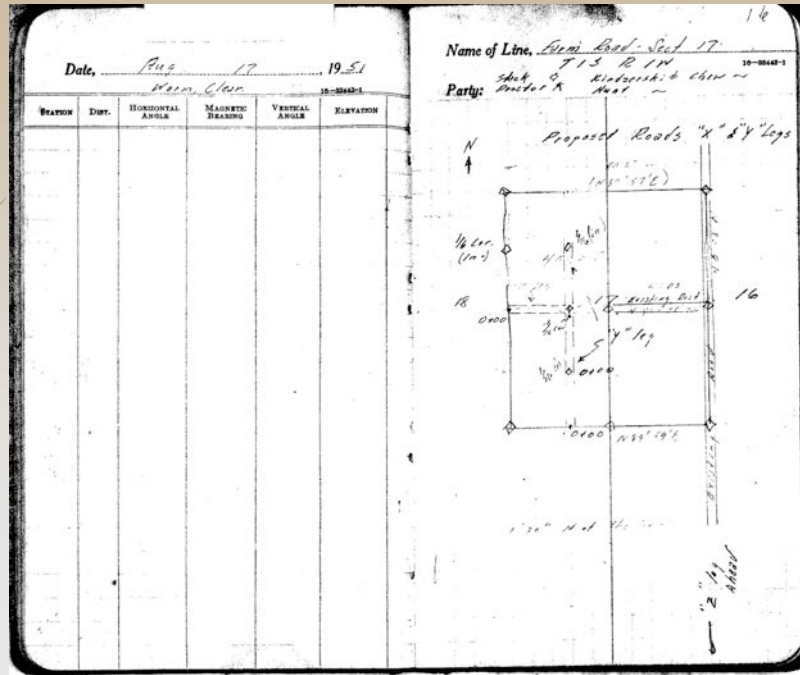
Effective April 26, 1960, Small Tract Classification Order Number 20, dated January 26, 1950, as pertaining to the following described public land, is cancelled:

FAIRBANKS MERIDIAN
Section 30: Lot 2.
Containing 18.16 acres.

RICHARD L. QUINTUS,
Operations Supervisor,
Fairbanks.
[F.R. Doc. 60-4012; Filed, May 3, 1960; 8:49 a.m.]

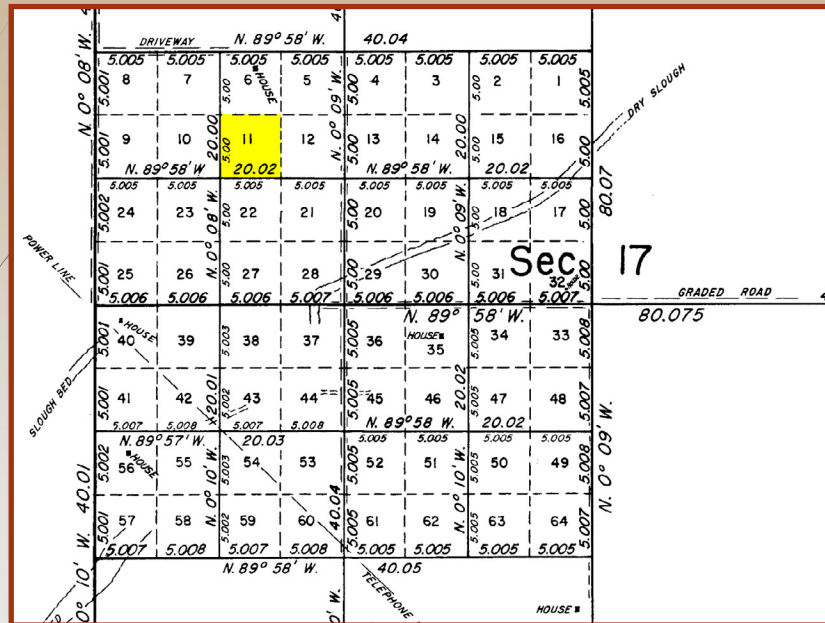
Small Tract ROW

Alaska Road Commission field book
August 17, 1951 – Davis & Alston Roads

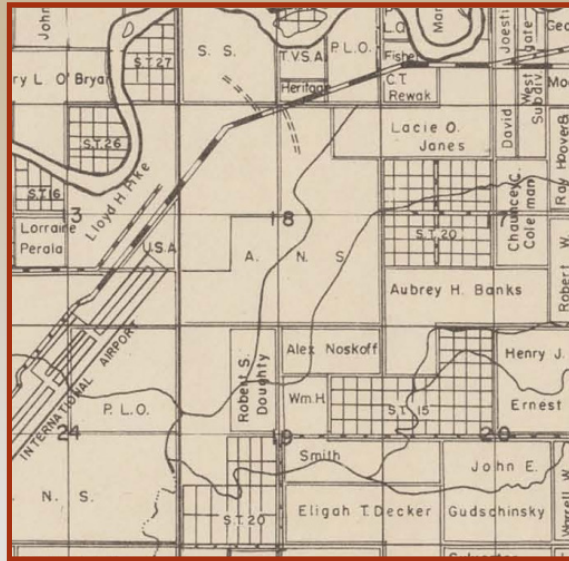


Small Tract ROW

Evidence of road construction & use



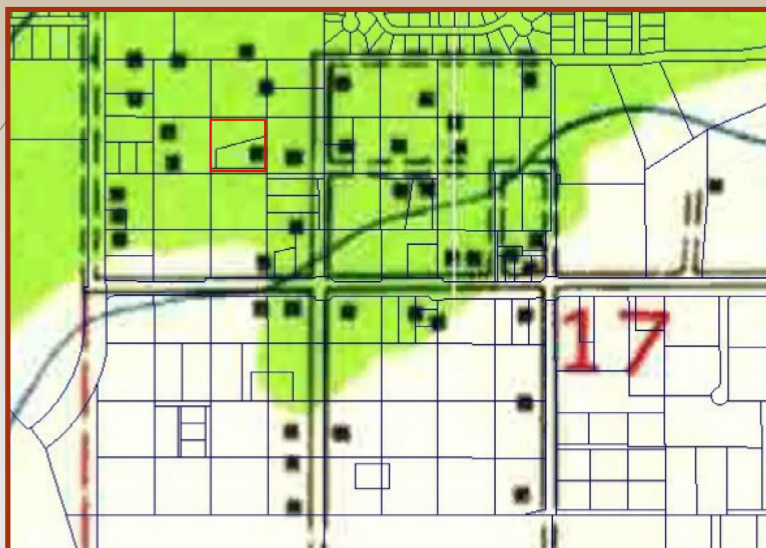
Small Tract ROW



MAP
of
FAIRBANKS SCHOOL DISTRICT
FOURTH JUDICIAL DISTRICT TERRITORY OF ALASKA
DRAWN AUGUST 1, 1953 BY ALASKA ARCHITECTURAL & ENGINEERING CO.

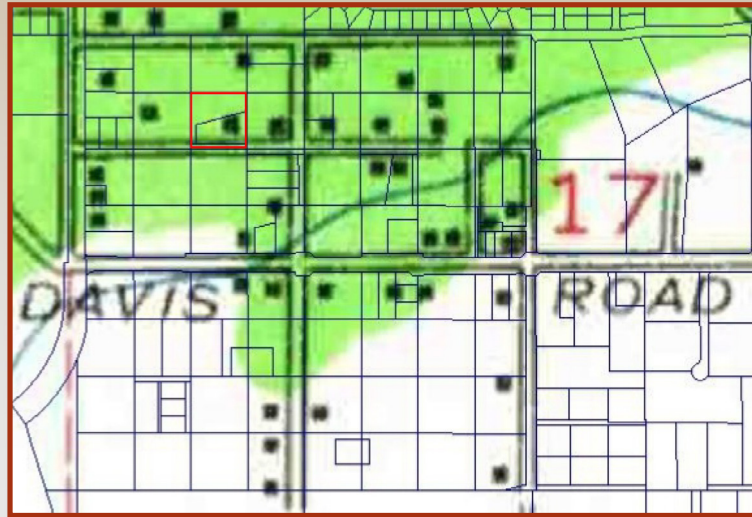
Small Tract ROW

USGS Quad – 1959 Ed. – “culture” (roads)
revised based on 1954 aerial photos – lot lines
from FNSB GIS: GL-11 Holden Road?



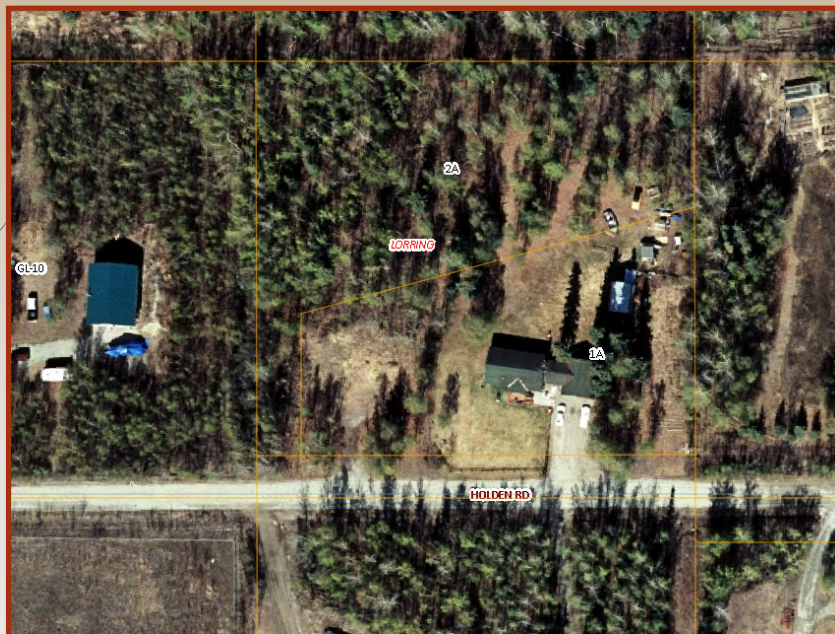
Small Tract ROW

USGS Quad – 1965 Ed. – Holden Road now shown as light duty on S. boundary of GL-11.
Lot lines from FNSB GIS



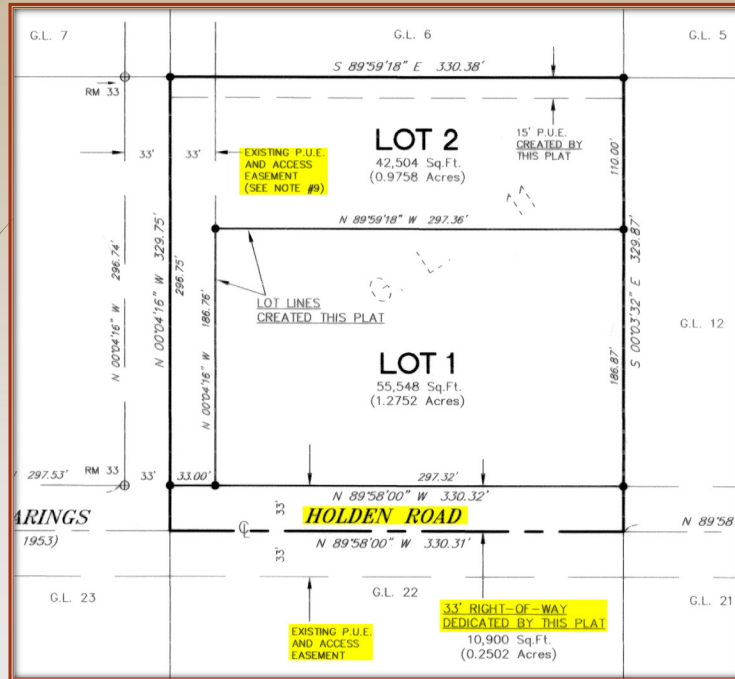
Small Tract ROW

FNSB GIS: 2003 Photography



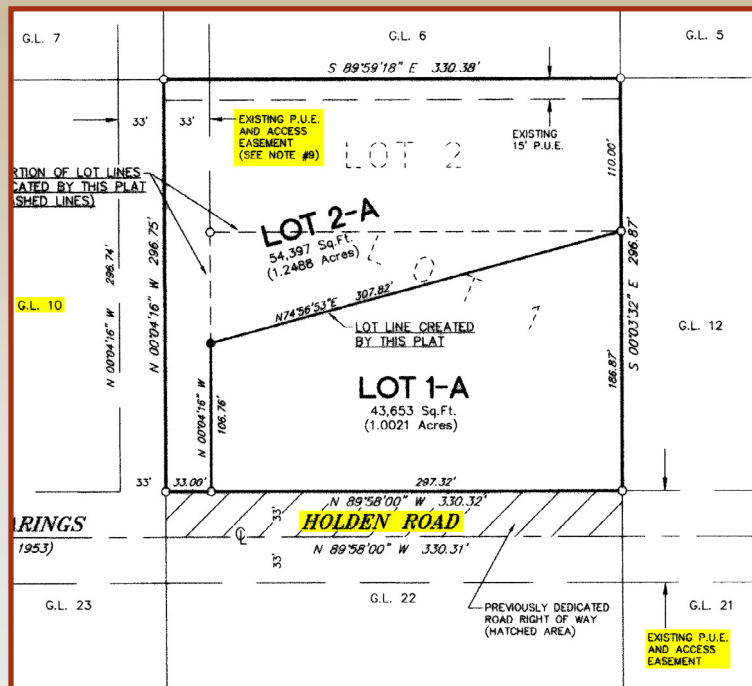
Small Tract ROW

2004-62 Loring Subd. Showing ST ROW



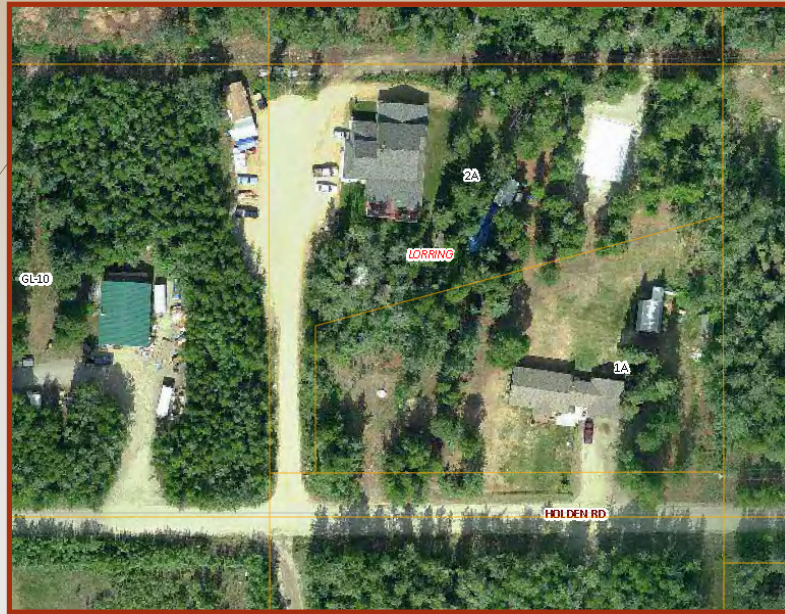
Small Tract ROW

Replat 2005-134 Loring Subdivision



Small Tract ROW

FNSB GIS: 2009 Photography – Note encroachment into GL -10 (ST ROW?)

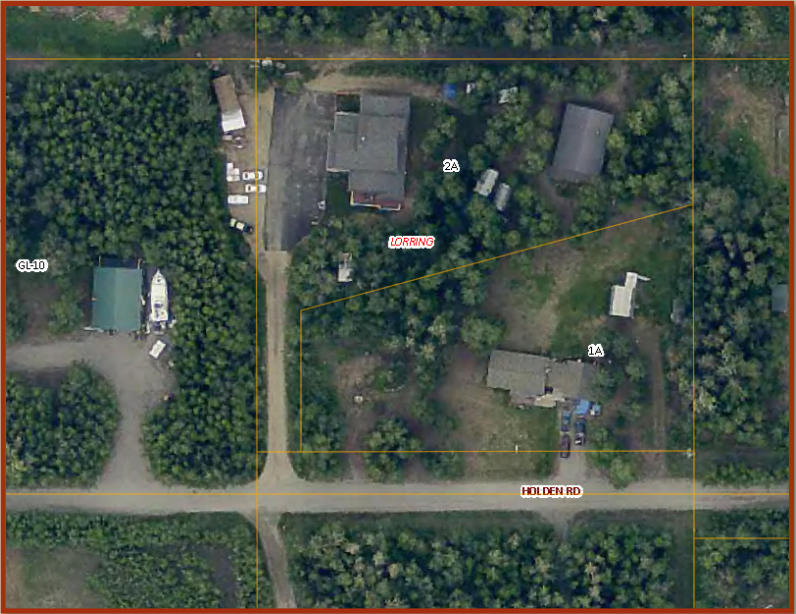


Small Tract ROW

- Conclusion:
 - ST ROW Classification Order No. 20 Terminated February 1964.
 - ST ROW for Holden on GL-11 S. bdy. likely valid by use prior to termination and also by plat dedication.
 - ST ROW on GL-10 E. bdy. not valid.
 - ST ROW on GL-11 W. bdy. not valid by use. Plat calls “existing”. Valid by plat dedication/reference?

Small Tract ROW

FNSB GIS: 2013



R O W

The End