

R.S. 2477

an overview and case law update

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R.S. 2477 Primer

- Mining Act of 1866 (July 26, 1866)
 - Section 8 of the Act later codified in the Revised Statutes as section 2477

THIRTY-NINTH CONGRESS. Sess. I. Ch. 262, 263. 1866.

Sec. 8. *And be it further enacted,* That the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.

- For most States, the grant remained in effect for 110 years (1866 to 1976)

Overview of Today's Presentation

1. Provide a Primer on RS 2477
2. Address two recent trial court decisions
 - a. Summary judgment order in *Ahtna v. State*
 - b. Findings & Conclusions in Iditarod Trail Case (*Dickson v. State*)

Self-Executing Grant

- ROW automatically comes into existence if accepted
- No formalities needed
 - No applications
 - No permits
 - No recording
 - No official acknowledgment from Feds
- R.S. 2477 ROWs exist or not as a matter of historic fact
- Legal existence is confirmed in court

FLPMA

- Federal Land Policy & Management Act (October 21, 1976)
- FLPMA § 706(a) repealed R.S. 2477
- FLPMA § 701(a) preserved all valid R.S. 2477 ROWs existing as of the date of repeal
- Had the effect of “freezing” the rights as they were in October 1976
- Ability to accept R.S. 2477 ROWs in Alaska likely ended on **December 14, 1968**. PLO 4582 withdrew federal land statewide. Known as the “Land Freeze.”

How to Accept an R.S. 2477 ROW

- “Public Lands” Requirement
 - Determined at the time of acceptance
 - Does aboriginal title preclude R.S. 2477?
- Methods of Acceptance (borrow state law)
 - Official Action by Public Authority
 - Public Use
- Scope of ROW – borrow state law

Acceptance by Public Use

- Use as a “Highway”
- “Sufficient” Public Use takes into account:
 - Extent/Frequency of use
 - Duration of use
 - Nature of use
 - Character of the land
 - Definite Character of the route
- Termini Requirement
- Route must be Necessary or Convenient to Public

ANCSA

- Land conveyed is subject to valid existing rights (43 U.S.C. § 1613(g))
- Even if those existing rights are not recorded or otherwise identified
- Most land selections were made without any knowledge of whether State-claimed R.S. 2477s crossed the property

The State of Alaska's "RS 2477 Project"

- 1980s/1990s – DNR researched and identified R.S. 2477 trails
 - Over 650 trails identified, traversing thousands of miles of Alaska terrain
- 1998 – Legislature enacted AS 19.30.400
 - Codified the State's claim to trails identified by DNR
- 2010s – Litigate
 - Dep't of Law hires R.S. 2477 attorney
 - Initiates and defends litigation involving R.S. 2477s

PAAD Unit

(Public Access Assertion & Defense)

- Mission: “Protecting Alaska’s future through the assertion and defense of access to Alaska’s public lands and waters.”
- Preserve public access to public lands for:
 - Resource development
 - Hunting
 - Fishing
 - Recreation
- Has attempted to start recording R.S. 2477 ROWs it has identified

PAAD is Seeking Information from the Public

Firefox Request For Trail Use Information dnr.alaska.gov/mlw/trails/paad/index.cfm

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Request For Trail Use Information

The State of Alaska Public Access Assertion and Defense needs your assistance to help preserve public access on Alaska roads and trails!

Do you have personal knowledge of historical use of any secondary or primitive road or trail in Alaska before 1968? If you have this knowledge, please share that information with us:

Alaska Trail Use Information Form

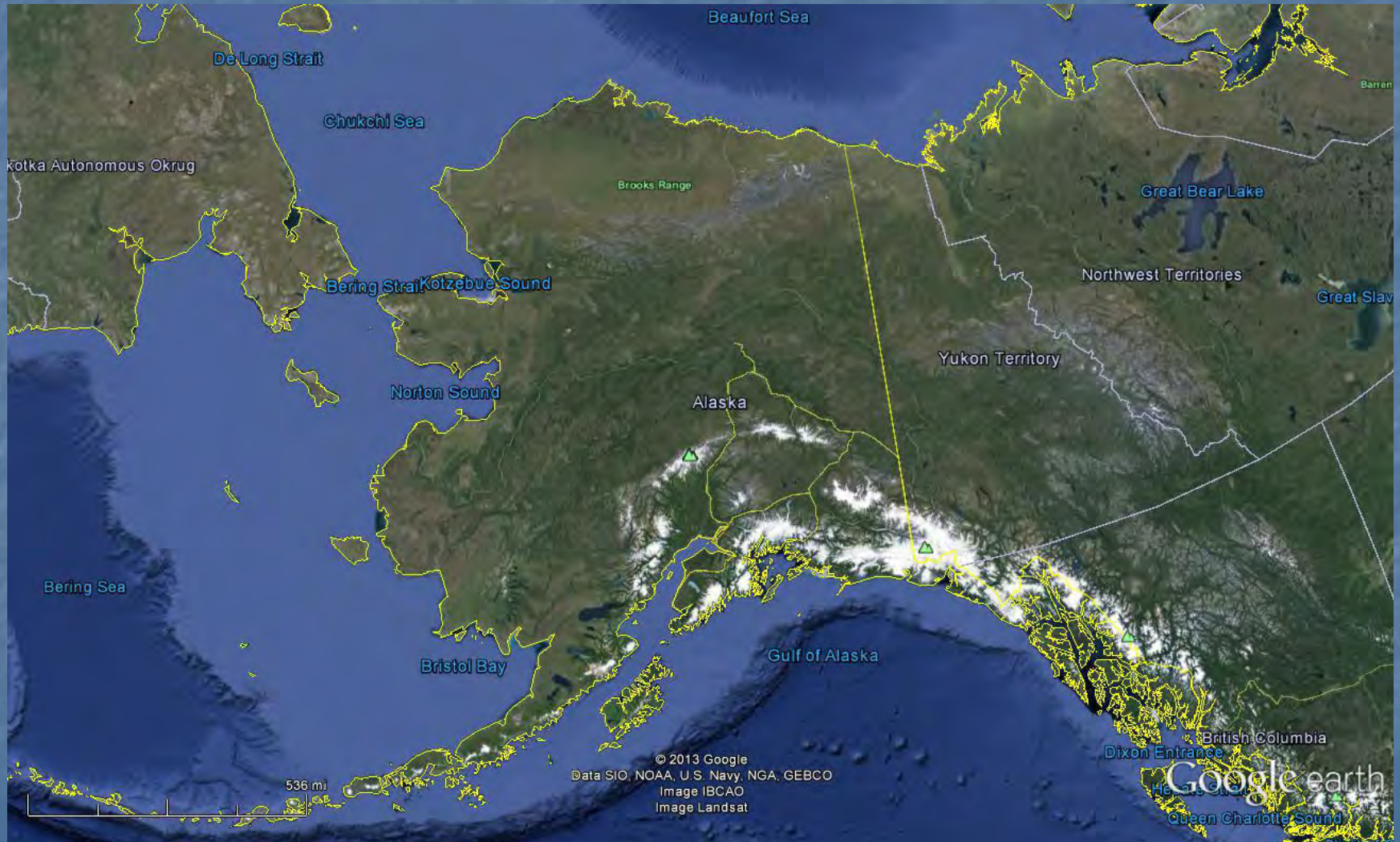
A sample of the information that we need is described below:

1. Local name of the trail, if established.
2. Provide the best trail description possible from one point to the next. Useful information would include section, township, range, meridian, USGS quadrangle map coordinates, survey or other geographical descriptions.
3. Let us know if you have any supporting documentation such as photographs or maps that you would like to share with us. We may ask you to send a copy via mail or email.

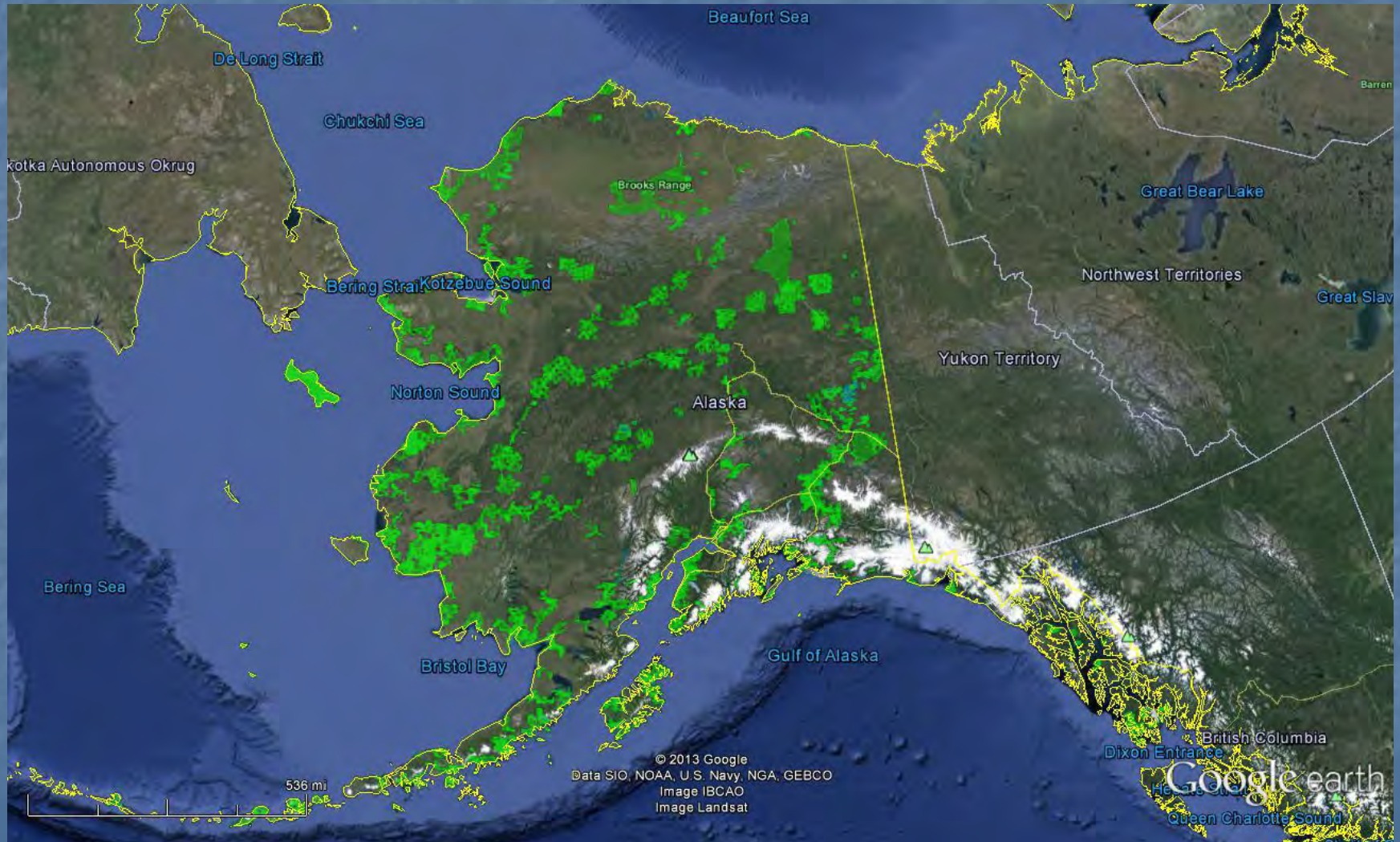
Trails and Public Access

- 17B Easements
- Easement Atlases - Public Access
- Iditarod Trail Easement Project
- Rex Trail Management Program
- RS2477 Trails
- Navigability Program - Submerged Lands
- Public Easements - New Regulations

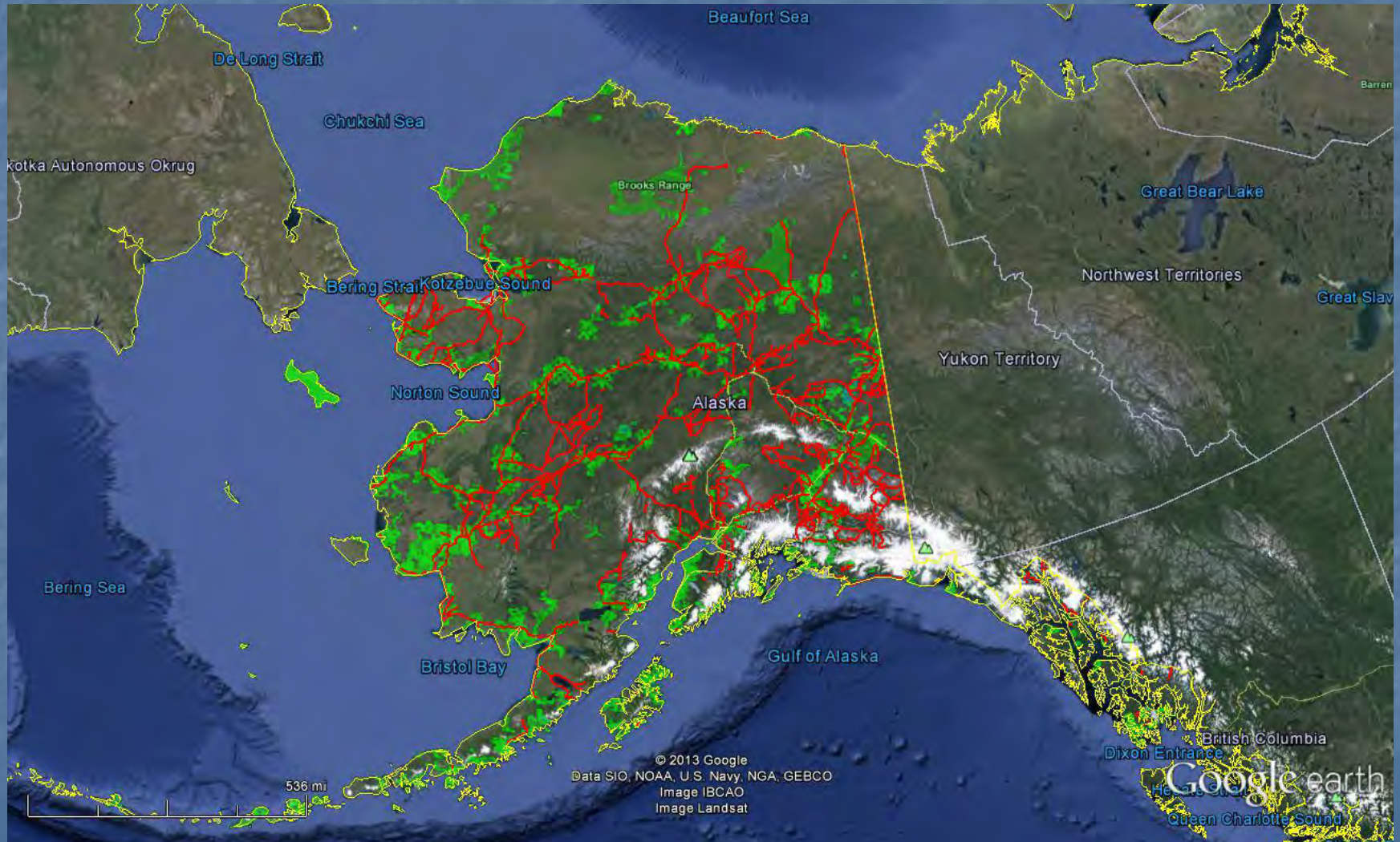
Alaska State Highways



ANCSA Lands



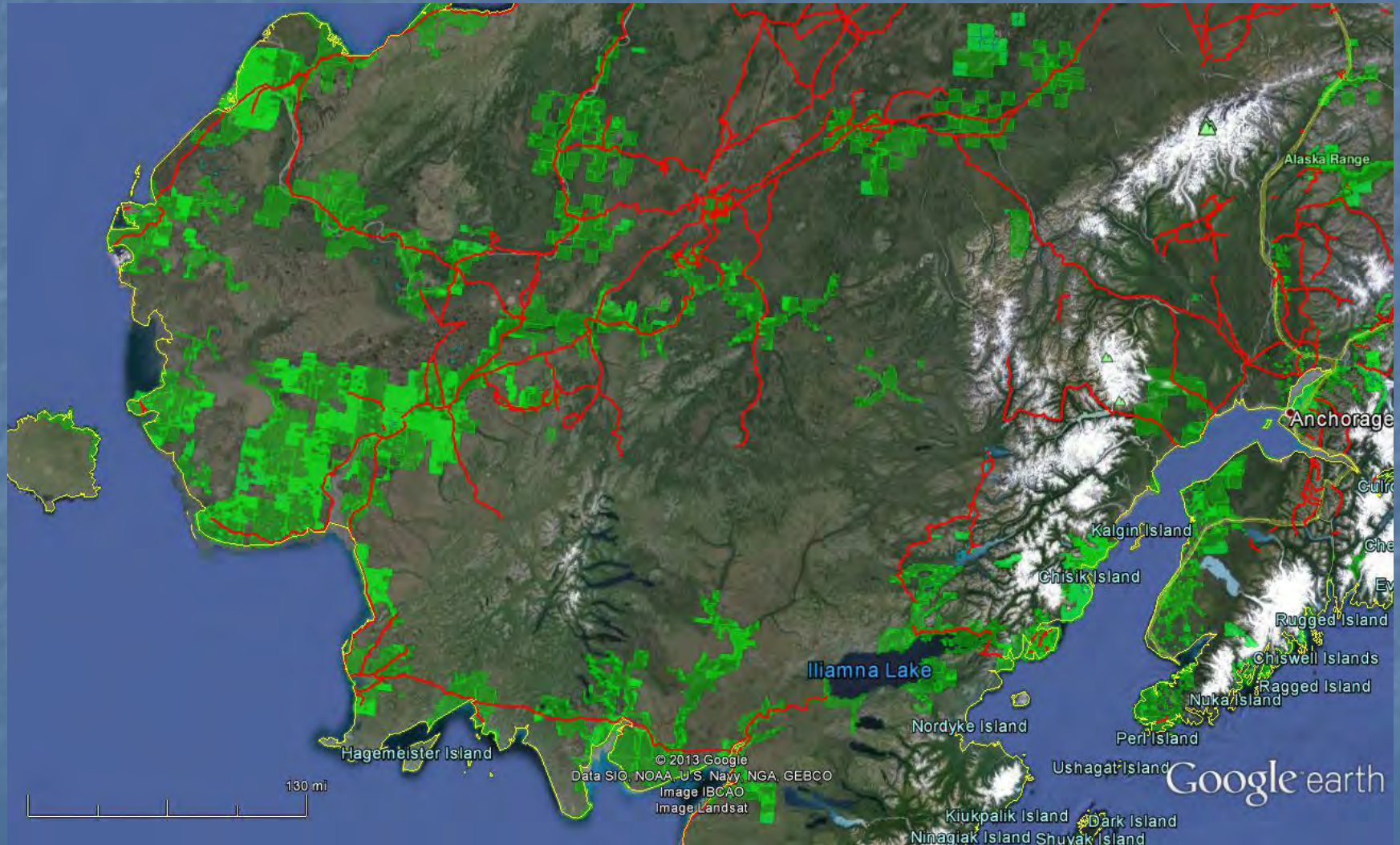
State's Claimed RS 2477 ROWs



CIRI, Chugach, Ahtna Regions



Bristol Bay, Calista, CIRI Regions



Aluet, Bristol Bay, Koniag Regions



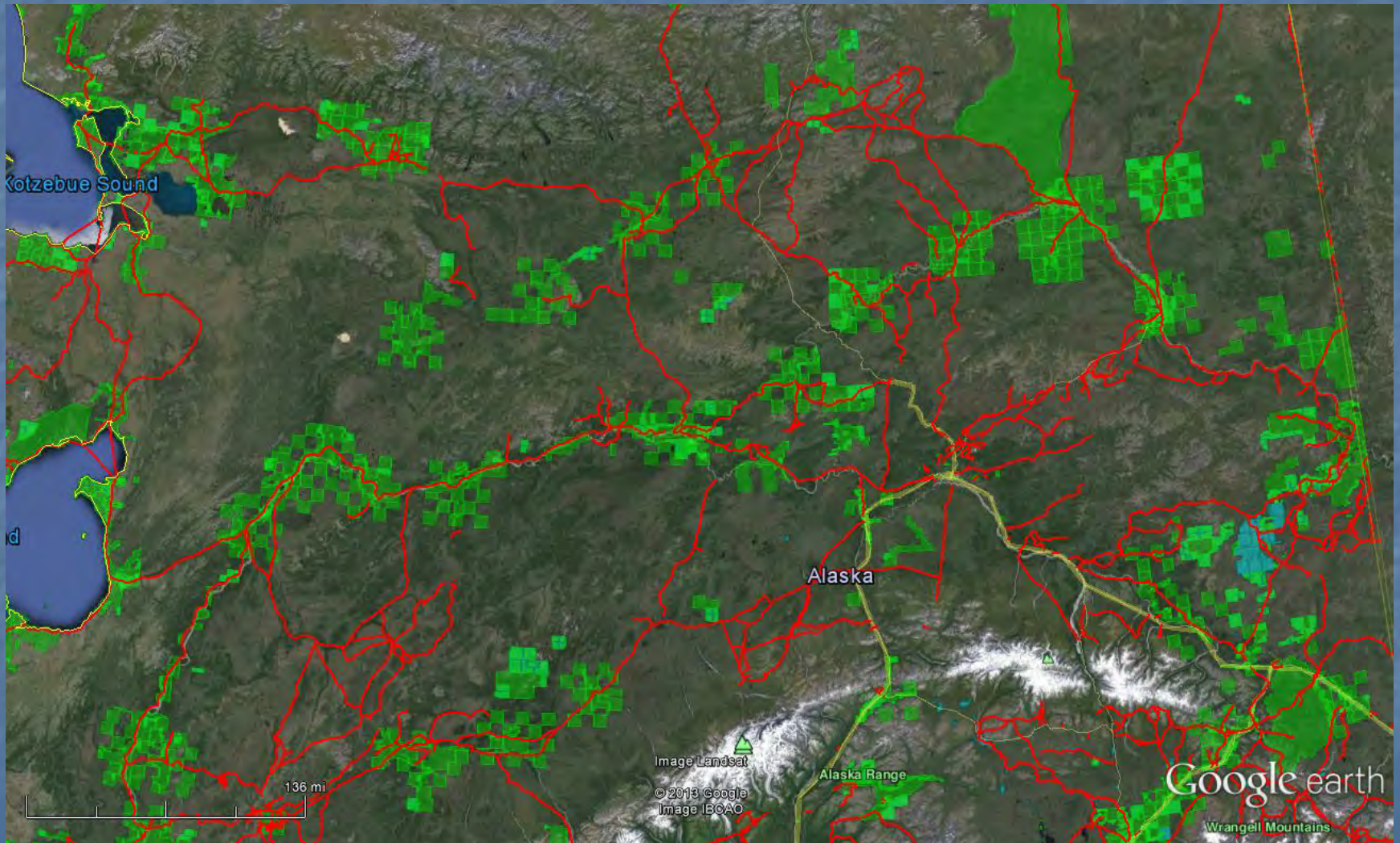
Bering Strait, NANA, Doyon Regions



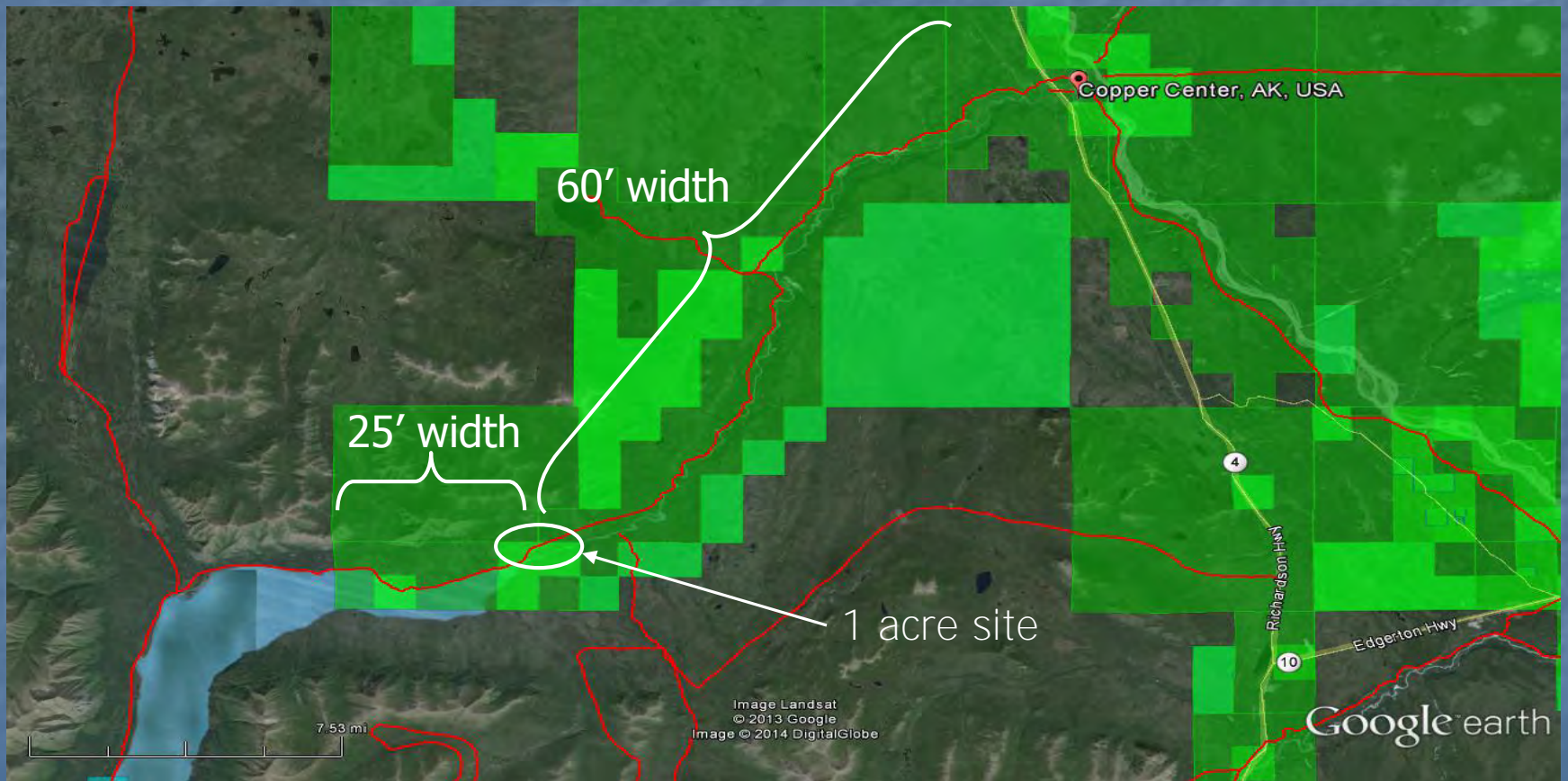
Arctic Slope, NANA, Doyon Regions



Doyon Region

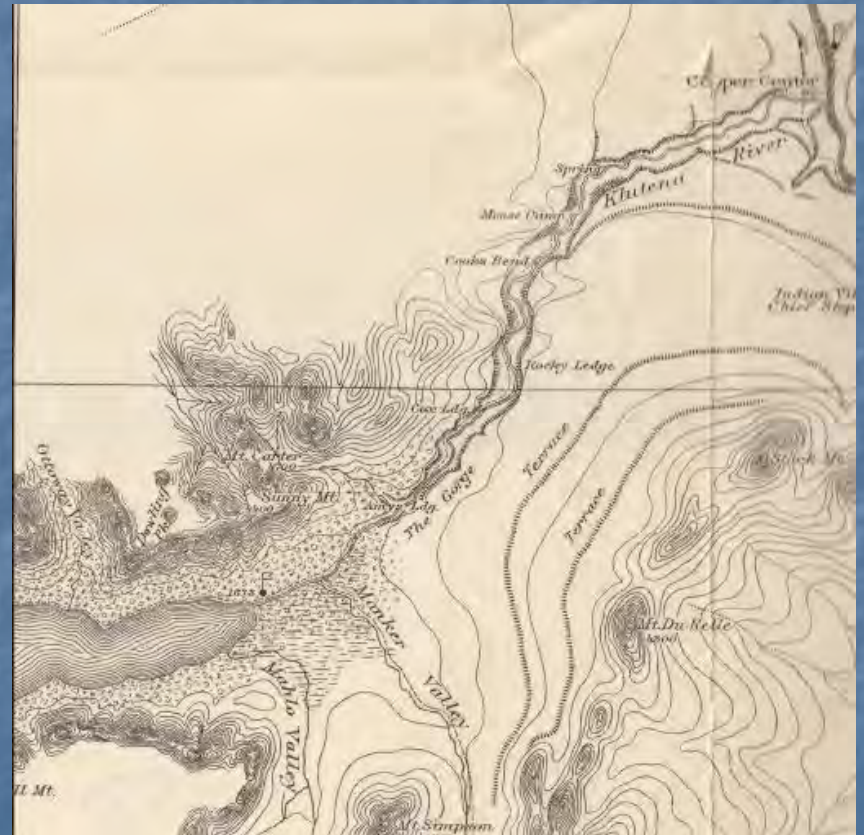


Case Update: Brenwick-Craig Road



R.S. 2477 Counterclaim: Historical Use Theory

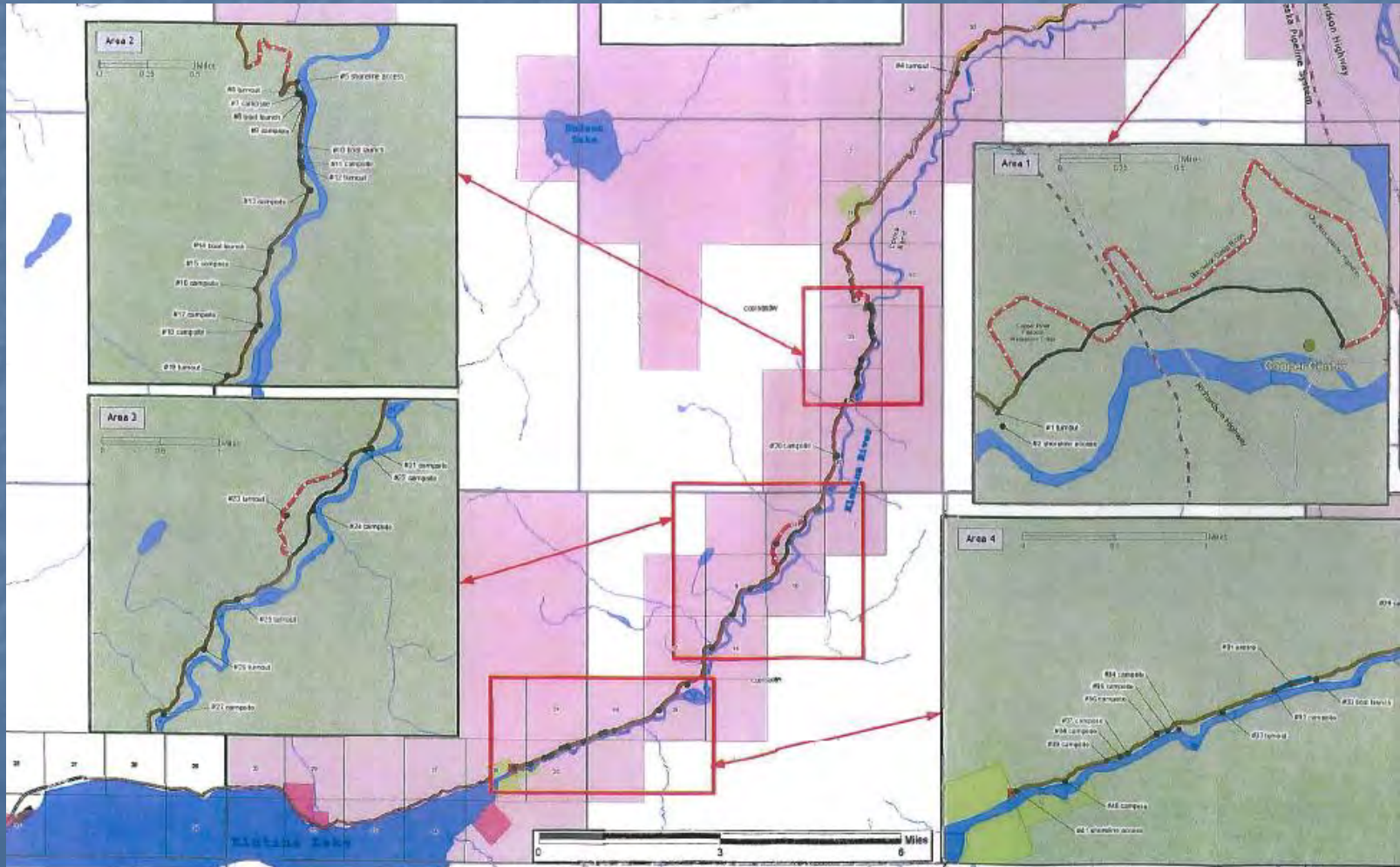
- 1898-1899 – “All American” Route to Klondike gold fields



R.S. 2477 Counterclaim: “Modern” Construction & Use Theory

- 1960s - Brenwick-Craig Road Construction
 - Leonard Brenwick & Oscar Craig constructed the Road to reach Native Allotments at the Lake
 - State funded a portion of road construction and subsequent maintenance work
- Subsequent use of road by general public
 - Travel to river, lake, private allotments
 - Sightseeing, berry-picking, camping
 - Boat launching, fishing, hunting

Spurs & Arterials



The State's Claim

- 41 “spurs & arterials” – Recreational Amenities
 - Campsites, pullouts, day-use sites, picnic areas, boat launches, fishing/river access points, scenic overlooks
- Exist outside scope of alleged Road ROW
- Claim that these sites were used by pioneers
 - Part and parcel with use of the Road/Trail
- R.S. 2477 ROWs or Secondary Easements
- Significant burden to Ahtna lands
 - Greater than 1 site per mile
 - Develop for public use (Kenai River North)

Ahtna's Position

If there is an R2 2477, it is an
easement for ingress/egress, not
recreation

RS 2477 is a "highway" easement,
not a site easement

Judge Guidi's Order

- Granted summary judgment to Ahtna
- Rejected the State's claim to campgrounds, day use sites, and boat launches
- RS 2477 conveyed "the right to pass over the land, and nothing more. It did not grant easements for recreational uses unrelated to 'travel between two definite points.'"

Order

- RS 2477 “did not—and cannot now, 40 years after its repeal—convey the right to develop that land for recreational and commercial purposes.”

Case Update: Iditarod Trail Dispute

- *Dickson v. State*
- Quiet Title action on 240 acres of former homestead property in the Big Lake
- State asserted that two different RS 2477s ran across the property, as well as a public prescriptive easement
- Court found an RS 2477 across the property & small prescriptive easement

Dickson v. State

- 27-day bench trial over 3 months
- Expert testimony from historians, photogrammetrist, land surveyors, GIS software, LiDAR
- Neighbors, former owners, current owners, dog mushers

Dickson v. State

What is Significant?

- Highlights the unusually fact-intensive nature of these disputes
- Expert witnesses
- Complexity
- Cost

Thank you

If you have any questions or comments, please contact me:

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