

# MUNICIPALITY OF ANCHORAGE



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**Mayor Ethan Berkowitz**

Bankston Gronning O'Hara  
Attn: RuthAnne Bergt  
601 West 5<sup>th</sup> Ave, Suite 900  
Anchorage, Alaska 99501

**VIA FIRST-CLASS MAIL**

April 20, 2016

Re: Public Access to Stewart Homestead Road  
Our File: 07-0253

Dear Ms. Bergt:

We have received your letters of March 28, 2016 and April 6, 2016, regarding public access to the Stewart Homestead Road. Your client, Franklin D. Pugh, Jr., together with his wife, Ms. Oksana V. Pugh, owns the first of several parcels located along the road.<sup>1</sup> You have acknowledged that Mr. Pugh is attempting to impede all public access to the road.

If your firm is not representing Ms. Pugh, we would appreciate your letting us know if she is separately represented, and, if so, by whom.

The Stewart Homestead Road, which runs through your client's parcel, has been used as a public trail for decades. It leads to property first homesteaded by Herbert I. Stewart in 1964.<sup>2</sup> Mr. Pugh purchased his property in late 2012. At that time, continuing public use of the road for hiking, biking, skiing, skijoring and snowshoeing would have been apparent.

Your letter expresses doubt about whether a public easement along the Stewart Homestead Road exists. We are aware of the applicable legal requirements,<sup>3</sup> and have no doubt that they have been met. Public use of the Stewart Homestead Road trail has been well documented.

<sup>1</sup> The parcel, the East ½ of the Southeast ¼ and the Northwest ¼ of the Southeast ¼ of Section 11 of Township 11 North, Range 3 West, Seward Meridian, has a municipal tax number 020-461-01-000. See Exhibit 1. It was first homesteaded by Earl Oscar Hutchings in 1962. See U.S. Patent # 1227237.

<sup>2</sup> See U.S. Patent Information for Document No. 50650308, BLM Serial No. AKA 052371, available at: <http://www.glorecords.blm.gov/> The property passed to Oro R. Stewart in 1987. See Deed of Distribution, recorded as 1987-020826-0. Oro Stewart subsequently recorded deeds conveying the property to the Alaska Botanical Gardens, Inc. and the Alaska Zoo. See Warranty Deed, recorded as 2001-088733-0, and Deed of Distribution, recorded as 2008-002343-0.

<sup>3</sup> See, e.g., *Interior Trails Preservation Coalition v. Swope*, 115 P.3d 530 (Alaska 2005) (citing RESTATEMENT (THIRD) OF PROP: SERVITUDES (2000) & *Price v. Eastham*, 75 P.3d 1051 (Alaska 2003)).

1. **1967: 30 Hikes in Alaska**

As early as the late 1960s, use of the Stewart Homestead Road was being advertised in popular Alaska hiking guides. *30 Hikes in Alaska*, published by the Mountaineering Club of Alaska in 1967,<sup>4</sup> instructed hikers interested in climbing McHugh Peak to use the road for access, and depicted it on a map:

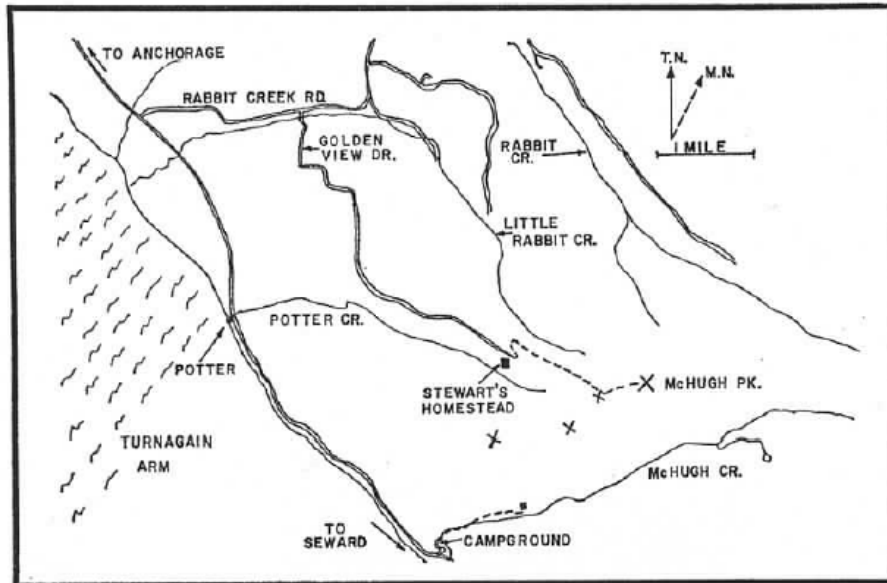


Figure 1.0: Stewart Homestead Road as depicted in *30 Hikes in Alaska* (1967)

2. **1972: 55 Ways to the Wilderness in Southcentral Alaska**

In 1972, the Stewart Homestead Road appeared in the first edition of the seminal hiking guide *55 Ways to the Wilderness in Southcentral Alaska*.<sup>5</sup> While advising that the road was “at times . . . chained off by residents to discourage hunters and use of the road when wet,” the Guide noted that “[h]ikers are welcome” and that “[t]he road makes a lovely walk.”

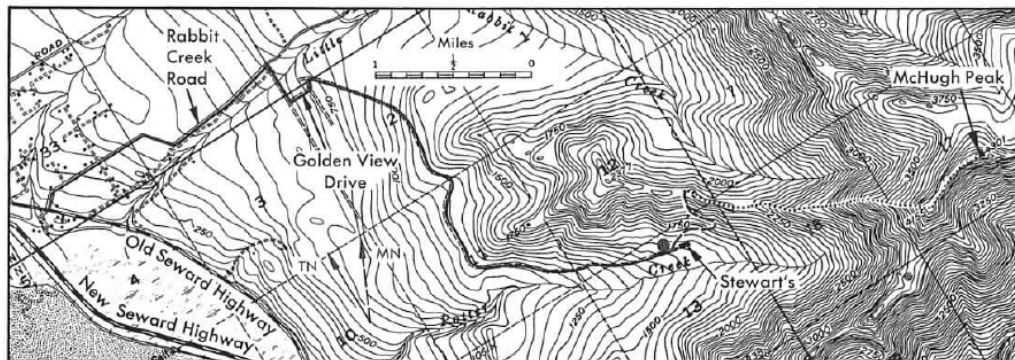


Figure 2.0: Stewart Homestead Road as depicted in *55 Ways to the Wilderness in Southcentral Alaska* (1972)

<sup>4</sup> See attached, Exhibit 2.

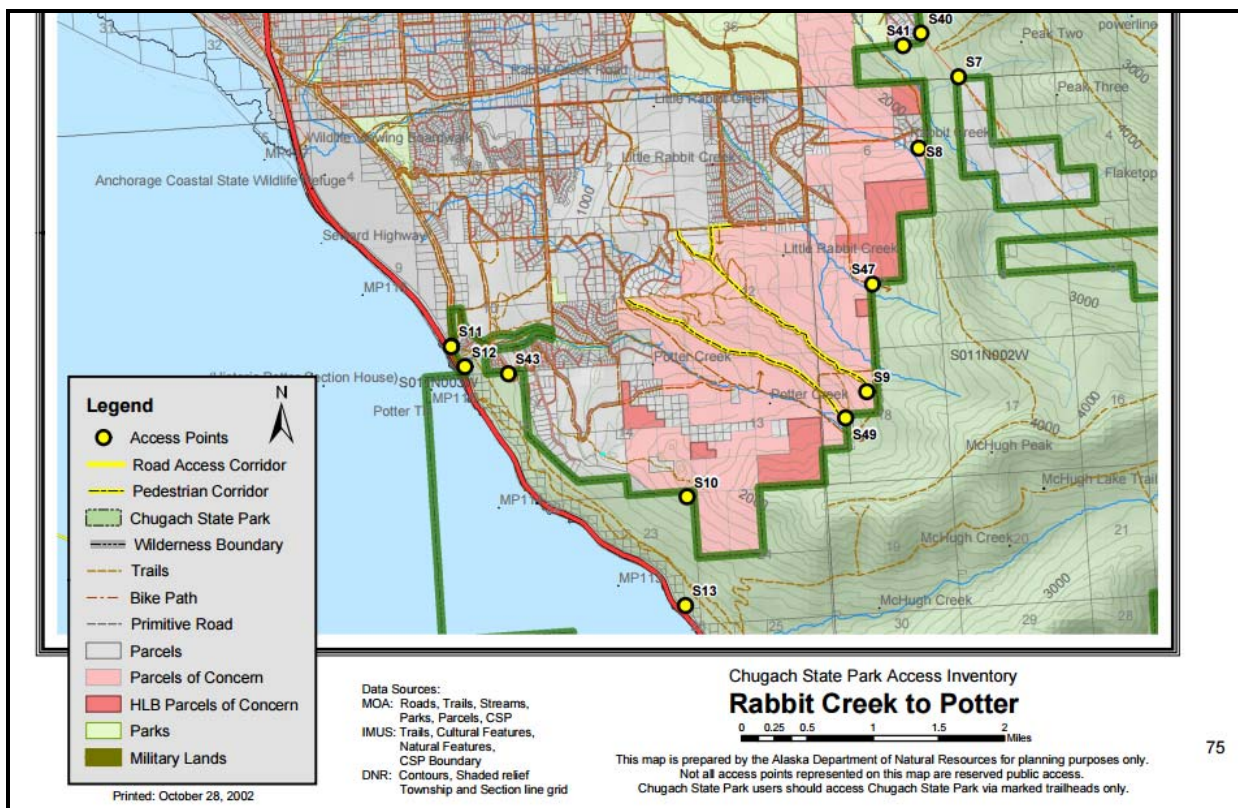
<sup>5</sup> See attached, Exhibit 3.

### 3. 2002: Chugach State Park Access Inventory

Early and continuing public use of the trail was confirmed by the State of Alaska at least by 2002, when the Alaska Department of Natural Resources completed a Chugach State Park access inventory.<sup>6</sup> DNR categorized the road as a “Traditional Access” point, and remarked on its use by local residents:

The Stewart Road is located in T11N, R3W, Sections 11, 12 and 13 running from Mountain Side Village Subdivision along the base of the Northwest Rib of McHugh Peak above Potter Creek. Residents of this area use the Stewart Road to access the McHugh Peak Complex. Residents currently run, ski, bike, hike, skijour and snowshoe along this road and up the switchback trail to the northwest rib of McHugh and as an approach to climbing McHugh Peak in Chugach State Park.<sup>7</sup>

DNR depicted the road as a “Road Access” and “Pedestrian” Corridor:



**Figure 3.0:** Excerpt from ALASKA DNR’S CHUGACH STATE PARK ACCESS INVENTORY (2002)

<sup>6</sup> See ALASKA DEPARTMENT OF NATURAL RESOURCES, CHUGACH STATE PARK ACCESS INVENTORY, ANALYSIS AND RECOMMENDATIONS (Oct. 2002), available at: <http://dnr.alaska.gov/parks/plans/cspaccess/cspaccess.htm> Excerpts from Appendix C attached as Exhibit 4.

<sup>7</sup> *Id.* at 63 (emphasis added).

#### 4. 2005: Rabbit Creek Trail Plan

In 2005, the Rabbit Creek Community Council took steps to develop a “Trails Plan.” The third draft of the plan, released September 10, 2005, addressed the Stewart Homestead Road.<sup>8</sup> It noted that the road was not a “new trail”<sup>9</sup> and that “[a] public right is probably legally established by the history of use”:

**Goldenview to Stewart Homestead.** A public right is probably legally established by the history of use. Highly suitable location for Chugach State Park Access. This contours along a very steep south-facing hillside that has early- and late-season habitat value because it loses its snow.<sup>10</sup>

#### 5. 2007/2010: Hillside District Plan

Public use of the Stewart Homestead Road as a trail is also documented in the Hillside District Plan adopted by the Municipality.<sup>11</sup> A 2007 “Hillside Issues, Goals and Choices” report, developed as part of the planning effort, depicted the road as a “major unpaved” portion of the “existing pedestrian network” that was “well-used.”<sup>12</sup>

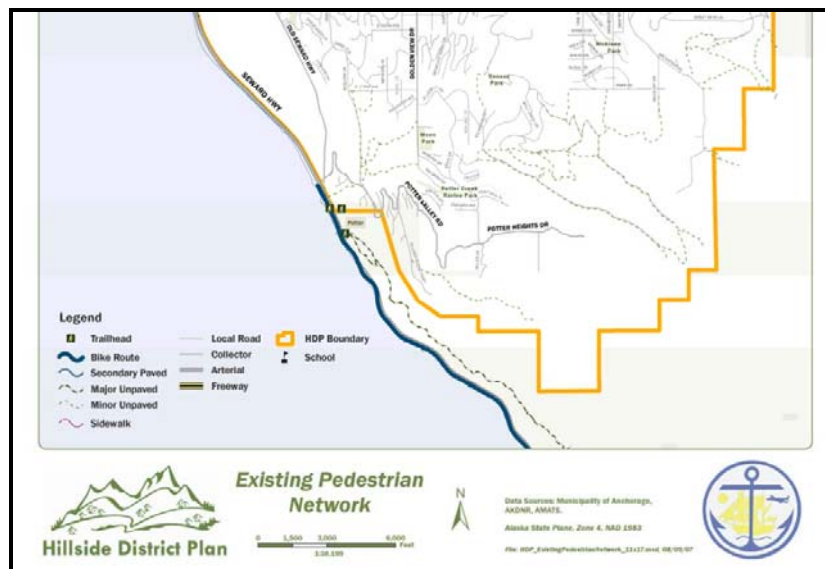


Figure 5.0: Except from draft chapter of Hillside District Plan (2007)

<sup>8</sup> See RABBIT CREEK COMMUNITY COUNCIL, TRAIL PLAN 2005 Draft Version 3.0 (Sept. 10, 2005). Excerpts attached as Exhibit 5.

<sup>9</sup> *Id.* at 7, table 1.

<sup>10</sup> *Id.* at 4.

<sup>11</sup> See MUNICIPALITY OF ANCHORAGE, HILLSIDE DISTRICT PLAN (April 13, 2010), available at: <http://www.muni.org/Departments/OCPD/Planning/Publications/Documents/HillsideDistrictPlan-April2010-Web.pdf> Excerpts attached as Exhibit 7.

<sup>12</sup> See *Hillside Issues, Goals and Choices Report* (Aug. 7, 2007) at 35, available at: [http://www.agnewbeck.com/pdf/downloads/Galena/Hillside\\_DCON/](http://www.agnewbeck.com/pdf/downloads/Galena/Hillside_DCON/) . Excerpts attached as Exhibit 6.



When later adopted in 2010, the final Hillside District Plan proposed that the Stewart Homestead Road be considered a “Primary Trail”:



Figure 5.1: Except from Hillside District Plan (2010)

## 6. 2016: Alaska Trails Survey

Shortly after becoming aware that your client was attempting to block the public’s historic access to the Stewart Homestead Road, we learned that the nonprofit organization Alaska Trails had independently conducted a survey to document historic use of the Road.<sup>13</sup>

We have subsequently learned that Alaska Trails has so far received responses from over 70 individuals who report having made personal use of the trail. Of those, 42 respondents report continuous personal use of the trail beginning prior to 2003—with some respondents reporting continuous use since the 1960s. Respondents also denied ever asking for or receiving permission to use the road.

\* \* \*

As stated in our letter of March 2, 2016, the Municipality has an obligation to protect the public’s interest in the Stewart Homestead Road trail, which has enjoyed decades of continuous public use since the 1960s. We therefore reiterate our request for your client to restore the gate at the head of the road to its prior state by removing the additional metal, chains, webbing and signage that your client added after purchasing the property in 2012, and which is impeding the public’s ability to access the trail.

<sup>13</sup> See, e.g., ALASKA TRAILS, *Newsletter* (April 2016), available at: [http://www.alaska-trails.org/newsletters/archive/AKTrls\\_Nwsltr\\_201603.pdf](http://www.alaska-trails.org/newsletters/archive/AKTrls_Nwsltr_201603.pdf)

**RuthAnn Bergt**

**April 20, 2016**

Re: Frank Pugh and Steward Homestead Road

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If forced to take this matter to court, the Municipality believes it would have little difficulty marshalling substantial documentary and testimonial evidence to confirm that a public easement was established for the Stewart Homestead Road years before your client acquired his property in late 2012.

However, and as also previously communicated, the Municipality would much prefer to resolve this matter without a lawsuit. We welcome the opportunity to discuss options that would be acceptable to your client.

We also note that we have not encouraged, and do not encourage, the behavior apparently documented in your letter of April 6. It may further underscore, however, the desirability of bringing this matter to a relatively speedy resolution.

A copy of this letter is being provided to the recipients listed below, each of whom was also provided with a copy of our March 2, 2016 correspondence.

Please do not hesitate to contact me if you have any questions. I can be reached at 907-343-4545.

Sincerely,



William D. Falsey  
Municipal Attorney

Cc: Bill Evans, Assembly  
John Weddleton, Assembly  
Jennifer Johnson

John Rodda, Director, Parks & Recreation  
Steve Cleary, Alaska Trails