

**Anchorage Chapter 49
of the
International Right of Way Association**

Presents

**ACCESS LAW AND ISSUES
AFFECTING PUBLIC AND PRIVATE LANDS
IN ALASKA**

**Daniel W. Beardsley, SR/WA
P. J. Sullivan, SR/WA
John F. Bennett, SR/WA**

**Anchorage, Alaska
February 22, 2007**

AGENDA

<u>TIME</u>	<u>SUBJECT</u>	<u>SPEAKER</u>
8:00 - 8:30	Registration	
8:30 - 8:40	Introduction	Dan Beardsley
8:40 - 9:00	General Alaska Easement Law	Dan Beardsley
9:00 - 9:30	RS 2477 History	P.J. Sullivan
9:30 - 9:45	Break	
9:45 - 10:15	RS 2477 Development	P.J. Sullivan
10:15 - 10:45	Section Line Easement Research	John Bennett
10:45 - 11:00	Break	
11:00 - 11:45	Section Line Easement Cases	Dan Beardsley
11:45 - 1:00	Lunch	
1:00 - 2:00	Public Land Order Rights of Way	John Bennett
2:00 - 2:30	Public Land Order Cases	Dan Beardsley
2:30 - 2:45	Break	
2:45 - 3:15	ANCSA 17(b) Easements	P.J. Sullivan
3:15 - 3:45	Public Prescriptive Rights Across Private Lands	Dan Beardsley
3:45 - 4:00	Break	
4:00 - 4:15	Cases of Alaska Interest	Dan Beardsley
4:15 - Adjourn	Panel Discussion - Open Question and Answer Session	All

GENERAL ALASKA EASEMENT LAW

GENERAL ALASKA EASEMENT LAW

The following cases have been summarized to provide basic easement concepts. These summaries are solely for the purpose of identifying the cases and the issues. As with any case, the application of the law applies to the particular facts of each case. Please consult your own attorney in determining the applicability and accuracy of the summaries as they apply to your individual requirements.

1. Freightways Terminal Company, v. Industrial and Commercial Construction, Inc., 381 P.2d 977 (1963).

This case involved creation of an easement by implication and estoppel. It also defines the term easement and addresses several of the legal principals of easements.

Easement Defined: "[E]asement is the right which the owner of one parcel of land has by reason of such ownership to use the land of another for a specific purpose, such use being distinct from the occupation and enjoyment of the land itself." At 982. The property subject to the easement is the servient tenement and the land enjoying the use of the easement is the dominant tenement. At 982. The servient and dominant estates or tenements do not have to be contiguous or adjoining. At 983.

A person cannot have an easement across his own property; however, the Court recognizes the theory of "quasi easement" whereby one part of the property is used for the benefit of another part of the property.

Implied Easement: If there is a severance of a property and at the time of the severance there was a use of one portion of the property for another (quasi easement) then an easement may be created by implication. At the time of the severance the use must be apparent, continuous and necessary. Essentially there must be a visible, existing continuous use at the time the property is subdivided.

Since creation of an easement by implication only applies when a conveyance is silent as to an easement interest, the general rule is implied easements are not favored. Creation of an implied easement across land conveyed to the grantee in favor of the grantor is deemed an implied reservation; one in favor of the grantee across the grantor's land is an implied grant.

The degree to which the implication of an easement is necessary for the owner's use and enjoyment of the property ranges from strictly necessary (there is no other alternative) to mere convenience of use. Some courts make a distinction about the degree of necessity required to imply an easement based on whether it is an implied grant or reservation, with the greater burden on the grantor to prove a reservation. The rule of necessity in Alaska "is whether the easement is reasonably necessary for the beneficial enjoyment of the property as it existed when the severance was made, regardless of whether the easement is one of implied grant or of implied reservation." At 984.

Estoppel: An easement may be created by an oral grant and improvements made by the grantee. This is typically referred to as the doctrine of part performance, but is essentially creation by estoppel.

2. **Wessells v. State Department of Highways, 562 P.2d 1042 (1977).**

Wessells, an assignee, had a lease from the State of Alaska, Division of Land, (ADL), which contained a paragraph reserving the right to grant an easement or right of way across the leased property. The lessee would be entitled to compensation for any improvements or crops subject to the right of way grant. The entire leasehold was necessary for the right of way and was conveyed to the Department of Highways, (DOH), by an interagency land management transfer (ILMT). DOH contended its only obligation was to pay Wessells for improvements.

Right of Way Defined: "A 'right-of-way' is generally considered to be a class of easement." Footnote 5, page 1046.

"Reserves the right to grant": ADL reserved the right to grant easements or rights of way in the lease. The Court determined that language was ambiguous. Wessells argued that technically a grant is a conveyance to a third party. An ILMT is not a grant but a transfer of management authority within the state. The state argued that a transfer from ADL to DOH reasonably constituted a grant since the two agencies have very specific and different statutory authorities. The Court construed the language to reflect what it believed was the reasonable expectation of the parties. In this case the Court found that the right to grant an easement to another entity of the state was a reasonable interpretation of the lease.

Scope of Easement: The state argued that the terms easement and rights-of-way created an unlimited easement which could in effect terminate the entire estate. In this instance use of the entire 12 acre tract was not deemed

reasonable. The court reasoned that 100 feet was a typical highway width due to the 100 feet dimensions listed in AS 19.10.015 and 19.10.010 even though neither specifically applied in this case.

In determining the scope of the easement the Court discussed the rules of construction and the doctrine of unlimited use. As a general rule ambiguities are to be construed against the lessor and the drafter of the instrument. Also, ambiguous lease provisions should be interpreted to permit the continued performance of the lease. On the other hand, in construing the terms of an unspecified easement according to the doctrine of unlimited reasonable use the court stated in footnote 29, page 1050:

Where an ambiguity surrounds the word "easement," the doctrine of "unlimited reasonable use" may be at odds with extrinsic evidence or other rules of construction, such as resolving ambiguities against the drafter. While we agree with the general policy behind the unlimited reasonable use doctrine, we will not blindly apply the doctrine and ignore other rules of construction or extrinsic evidence which show that unlimited reasonable use is not a reasonable expectation of the parties. The doctrine of unlimited reasonable use is but one factor to be considered.

Consequently the Court has indicated that it will use the doctrine of unlimited reasonable use as one of the factors it will use in determining the scope of use of an easement.

3. Swift v. Kniffen, 706 P.2d 296 (1985).

Several owners of property in a subdivision filed suit against the subdivider claiming a roadway easement. The claims were based on the theories of common law dedication, estoppel, private prescriptive easement, and public prescriptive easement.

Common Law Dedication: Implied dedication requires (1) an intent to dedicate the road or easement to a public use, and (2) an acceptance of that dedication on behalf of the public. Filing of a preliminary plat showing a roadway did not establish an intent to dedicate when that plat was subsequently rejected. Acquiescence in the public's use of a roadway is not sufficient proof of intent to dedicate, some affirmative acts of dedication by the owner must be shown.

Estoppel: "[A] private easement is created by estoppel only upon a showing of an oral grant and detrimental reliance." At 301. "[E]stoppel may be the basis for finding an implied intent to dedicate property for a public use..." At 301. If the

claimant can show detrimental reliance by the public along with an oral grant then estoppel will apply.

Prescriptive Easement: Citing Dillingham Commercial Co. v. City of Dillingham and Alaska National Bank v. Linck, 559 P.2d 1049, 1052 (1977), at page 302 the Court found that:

[t]o establish a claim for prescriptive easement, a claimant must show essentially the same elements as for adverse possession. ...the three basic requirements for adverse possession...: (1) the possession must have been continuous and uninterrupted; (2) the possessor must have acted as if he were the owner and not merely one acting with the permission of the owner; and (3) the possession must have been reasonably visible to the record owner. The main purpose of these requirements is to put the record owner on notice of the existence of an adverse claimant.

One of the prescriptive easement issues was the continuity of use. The court found that failure to plow a road during a Fairbanks winter was not sufficient to show either abandonment or non-use. At 303.

Due to a lack of factual findings by the lower court the Supreme Court remanded the case on the issues of private and public prescriptive easements, but reaffirmed the right to establish a public easement by prescription.

4. Laughlin v. Everhart, 678 P.2d 926 (1984)

An owner's failure to properly subdivide a property does not constitute an implied dedication. The case also dealt with implied easements, it cites Freightways Terminal Co.

The owner of dominant tenement may be the holder of implied easement. The dominant estate owner may subdivide the dominant estate and use the implied easement for access. However, only those properties that were a part of the original dominant estate are entitled to use the easement. The owner of the dominant estate cannot convey his rights to benefit another property that is not part of the dominant estate.

5. Demoski v. New, 737 P.2d 780 (1987)

This is a sister case to the Laughlin case. It affirms the law of implied easements. However, even if the elements of an implied easement exist, there

will not be an implied easement where the parties intend that such an easement does not exist. A section line easement was sufficient to prevent easement by necessity where there was no showing that beneficial use of the property was for subdivision purposes.

The casual use by hunters and sight-seers in this case was insufficient to create public road by implied dedication.

6. Methonen v. Stone, 941 P.2d 1248 (1997)

Methonen purchased lot 10 which had a well house and water lines running from it to other lots in the subdivision. The subdivision plat noted the location of the wellhouse but did not delineate easements to other lots in the subdivision. Methonen took title subject to "well site as delineated on the subdivision plat, but the deed did identify any obligation to supply water to other lots or reserve or except easements for the water lines to the other properties. At the time Methonen purchased the property there was a prior unrecorded water agreement under which the prior owner of lot 10 had agreed to provide water to the other lots. That agreement was recorded 9 years after Methonen bought the property. The water lines were visible at the time Methonen purchased the property and testimony indicated he discussed the water lines with the real estate agent but was lead to believe he did not need to maintain the system or provide anyone water. Methonen shut off the water the neighbors sued.

The Supreme Court ruled that neither the language making the property subject to the well site or the subdivision plat created an easement stating:

It is well established that the intention to create a servitude must be clear on the face of an instrument; ambiguities are resolved in favor of use of land free of easements. Neither the Ostrosky deed to Methonen nor the subdivision plat identifies an easement for a community water system based on the well located on Lot 10. Neither document indicates that the owner of Lot 10 is obligated to supply water to any of the remaining subdivision lots. In short, these documents did not provide either actual or constructive notice to Methonen of the existence of a community water system agreement at the time he purchased Lot 10 in 1976. [Citations omitted.]

Methonen also claimed bona fide purchaser status under the recording laws arguing the unrecorded water agreement was invalid against him since he did not have actual notice.¹ The Court noted Alaska's recording statute species actual

¹ AS 40.17.080:

notice but construed actual notice to include constructive notice (presumed knowledge of a properly recorded document) as well as the common law doctrines of implied easement and inquiry notice. In its decision to remand the case to the trial court the Supreme Court denied Methonen's arguments by finding:

Methonen's knowledge of the well, and even his actual or constructive knowledge that a well was depicted on the subdivision plat, or that a well site was referred to in his deed from Ostrosky, technically is not "actual notice" of an easement. However, courts have construed the actual notice exception in state recording statutes to incorporate common law theories of constructive notice. Legislative enactments are presumed not to abrogate the common law, except where the intent to do so is manifest. We therefore conclude that a purchaser is bound by an unrecorded easement under AS 40.17.080's actual notice provision when it would be valid against him under the common law doctrines of implied easement or inquiry notice.

.....

It is well established that a purchaser will be charged with notice of an interest adverse to his title when he is aware of facts which would lead a reasonably prudent person to a course of investigation which, properly executed, would lead to knowledge of the servitude. The purchaser is considered apprised of those facts obvious from an inspection of the property.

.....

If a purchaser or incumbrancer, dealing concerning property of which the record title appears to be complete and perfect, has information of extraneous facts, or matters in pais, sufficient to put him on inquiry respecting some unrecorded conveyance, mortgage, or incumbrance, or respecting some outstanding interest, claim, or right which is not the subject of record, and he omits to make proper inquiry, he will be charged with constructive notice of all the

Effect of recording on title and rights; constructive notice. (a) Subject to (c) and (d) of this section, from the time a document is recorded in the records of the recording district in which land affected by it is located, the recorded document is constructive notice of the contents of the document to subsequent purchasers and holders of a security interest in the same property or a part of the property.

(b) A conveyance of real property in the state, other than a lease for a term of less than one year, is void as against a subsequent innocent purchaser in good faith for valuable consideration of the property or a part of the property whose conveyance is first recorded. An unrecorded conveyance is valid as between the parties to it and as against one who has actual notice of it. In this subsection, "purchaser" includes a holder of a consensual interest in real property that secures payment or performance of an obligation.

facts which he might have learned by means of a due and reasonable inquiry.

....

Generally, a proper investigation will include a request for information from those reasonably believed to hold an adverse interest. Should these sources mislead, the purchaser is not bound. Reliance on the statements of the vendor, or anyone who has motive to mislead, is not sufficient.

[Citations Omitted.]

On the matter of implied easement the Supreme Court held:

An easement will be implied upon the severance of an estate when the use made of the servient parcel is manifest, continuous and reasonably necessary to the enjoyment of the dominant parcel.

....

Once an easement is implied, it runs with the land and is enforceable against subsequent purchasers of the servient estate so long as it retains its continuous and apparent nature and remains reasonably necessary to the enjoyment of the dominant estate.

[Citations omitted.]

**RS 2477 RIGHTS OF WAY
HISTORY AND DEVELOPMENT**

THE HISTORY AND DEVELOPMENT OF RS 2477

I. History of the Act.

- A. The acquisition of territories west of the Mississippi.
 - 1. Encouraging settlement of the lands.
 - 2. Lack of congressional comprehensive legislation.
 - 3. Local rules and customs governed Mining Districts.
 - 4. The Homestead Act of 1862.

- B. The Honorable William M. Stewart, U.S. Senator from Nevada, was the author of the Act.

II. The Act.

- A. "An Act Granting the Right-of-Way to Ditch and Canal Owners over the Public Lands, and Other Purposes."

- B. The 1866 Lode Mining Act.

- C. The Federal Highway Grant Act.

- D. Section 8 of the Act, commonly referred to as RS 2477.

- E. Repeal by passage of the Federal Land Policy and Management Act of October 21, 1976.

III. "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."

- A. A Grant.
- B. A Grant for construction.
- C. A Grant for construction of highways.
- D. A Grant for construction of highways across public lands.
- E. A Grant for construction of highways across public lands not reserved for public purposes.

IV. Judicial and Legislative interpretation.

- A. Jennison v. Kirk, 90 U.S. 241, an 1878 case, Justice Field. The U.S. government, by its conduct and encouragement, was bound to protect the miners' rights and the rights of settlers in the western territories (i.e. legalize the adverse possession and use of public domain lands).
- B. The offer and acceptance.
 - 1. By official act.
 - 2. By expenditure of public funds.
 - 3. By user.
 - 4. Central Pacific Railway v. Alameda County, 284 U.S. 463 (1932).
Small v. Burleigh County, 225 NW 2d 295 (1974 North Dakota).
Hammerly v. Denton, 359 P. 2d 121 (1961).

V. The Test.

The existence of an RS 2477 over a particular parcel hinges on three basic tests:

- A. Were the lands public (i.e. Federal) lands between July 26, 1866 and October 21, 1976?
- B. Were the lands unreserved?
- C. Did acceptance occur at the time when the lands were public and unreserved?

If the answer to all questions is yes, an RS 2477 right-of-way exists.

VI. Chapter 19 of Session Laws of Alaska, April 6, 1923.

"A tract four rods wide between each section line in the Territory dedicated for use as public highway." The 1949 compiled Session Laws of Alaska repealed this Act by implication. The 1951 Session Laws, Chapter 123 SLA 1951, reserved a right-of-way 100 feet wide, 50 feet on each side of a section line of Territorial lands. Chapter 35, Session Laws of Alaska 1953, provided for a right-of-way 33 feet wide on each side of a section line on Federal lands within the Territory of Alaska.

VII. Introduction of the Federal Position.

In the 1993 Appropriations Act for the Department of the Interior, Congress requested that the Department prepare a report concerning the history and management of RS 2477. The draft of this report was published in March 1993, and the final report was published in June 1993. Prior to the compilation of this report, but in line with its conclusions, is the Federal position on RS 2477. That position is as follows:

- A. That the Grant offered by Congress could not come into existence until there was acceptance of the offer and thereby a contract, and that the scope of the congressional offer is defined by Federal law, and acceptance by a State or an instrumentality of the State is defined by State law only to the degree that the acceptance is within the scope of the Federal offer.
- B. Most of the judicial opinions have been from the State courts where the Federal government was not a party, and such decisions are not binding on the Federal government.
- C. RS 2477 rights-of-way can only be created on unreserved public lands, and withdrawn, appropriated or reserved lands are not available.
- D. RS 2477 rights-of-way will not be recognized by a Federal agency until the requirements of Hammerly have been satisfied, and the party claiming the public highway has proven that the highway was located over unreserved public lands, and the character of the use was such as to constitute acceptance by the public of the statutory grant.

- E. The party claiming that the road had become a public highway under the statute had the burden of proving that the highway was located over public lands with the character of use that was such as to constitute acceptance by the public of the statutory grant.
- F. That construction or sufficient use must have taken place for an RS 2477 Grant to have been accepted, and that passage of a territorial or state law does not equal construction. Therefore, a section line easement that had not been constructed or used while the lands were unreserved public lands is not a valid RS 2477 right-of-way.
- G. It is the Federal position that the RS 2477 Grant is for vehicular, animal or pedestrian travel, and not for pipelines, powerlines, telephone or other communication facilities; and it is of a specific width and not a transportation corridor.
- H. That under a valid offer and acceptance, the interest of the Department of the Interior is that of owner of the subservient estate and the adjacent lands and resources. It is the Department's position that the Department had no management control over the property uses of the highway right-of-way unless there was unnecessary degradation of the subservient estate or unreasonable and harmful impacts on adjacent Federal lands and resources.

VIII. Introduction of the State's position.

The State's position is that dedication of section lines as provided in the Session Laws and Alaska Statutes is sufficient to enable an RS 2477 Grant. In fact, there are some indications from some authorities in the State that the filing of protractors on unsurveyed section lines may be sufficient dedication. It is also the State's position that the RS 2477 issues be resolved in accordance with State, and not Federal, statutes. In 1992, the State promulgated statutes and regulations for the nomination, identification and management of RS 2477 rights-of-way. There are 5 basic differences between the State and the Federal positions concerning RS 2477:

1. Does the State or the Federal court have jurisdiction?
2. Does the passage of the State law constitute acceptance?
3. Can auxiliary uses be allowed within a right-of-way?
4. What is the width of the right-of-way?
5. Who manages the RS 2477 right-of-way?

IX. A Discussion of Shultz v. United States Army.

RS 2477 Cases

1. Hamerly v. Denton, 359 P.2d 121 (1961).

At issue was whether a roadway across Hamerly's home site was a public highway for RS 2477 establishment purposes. The case involved questions on acceptance of the RS 2477 grant, segregation of public lands by homestead entry, dedication of public roads and prescriptive easement.

RS 2477 (43 U.S.C.A. sec. 932): Alaska recognizes the grant of right of way for public highways.

But before a highway may be created, there must be either some positive act on the part of the appropriate public authorities of the state, clearly manifesting an intention to accept a grant, or there must be public user for such a period of time and under such conditions as to prove that the grant has been accepted.

At 123.

Since there was not an act by a state entity, public use was required in this case. Consequently Denton had the obligation to prove "(1) that the alleged highway was located 'over public lands', and (2) that the character of its use was such as to constitute acceptance by the public of the statutory grant." At 123.

The court defined public lands on page 123 as: "lands which are open to settlement or other disposition under the land laws of the United States. It does not encompass lands in which the rights of the public have passed and which have become subject to individual rights of a settler." Once there is a valid entry the land is segregated from the public domain.

In this case there were a number of entries which were subsequently relinquished or closed prior to the Hamerly's home site entry which went to patent. The public usage needed to accept the grant had to occur when the land was not subject to an entry. The court found that there was no evidence of public user during the times the land was not subject to an entry. "Where there is a dead end road or trail, running into wild, unenclosed and uncultivated country, the desultory use thereof established in this case does not create a public highway." At 125.

Dedication: "There is a dedication when the owner of an interest in land transfers to the public a privilege of use of such an interest for a public purpose." At 125. In finding that Denton did not meet the burden of proof the court stated on page 125:

Dedication is not an act or omission to assert a right; mere absence of objection is not sufficient. Passive permission by a landowner is not in itself evidence of intent to dedicate. Intention must be clearly and unequivocally manifested by acts that are decisive in character.

Prescriptive Use: "Use alone for the statutory period - even with the knowledge of the owner - would not establish an easement." Such use is presumed to be permissive unless the claimant proves the use was "openly adverse to the owner's interest by ... distinct and positive assertion of a right hostile to the owner of the property." At 126. The burden is on the claimant of the prescriptive use to show that his claim is not permissive and is in derogation of the true owner's rights.

2. **Dillingham Commercial Company, Inc. v. City of Dillingham, 705 P.2d 410 (1985).**

City claimed fee title to a roadway by virtue of 43 U.S.C. 932 (RS 2477) or by adverse possession. It also claimed alleys on two other boundaries of the Dillingham Commercial Company property under the same theories.

Section 932: In citing Hamerly v. Denton, 359 P.2d 121,123 (1961), the Supreme Court ruled:

Case law has made it clear that section 932 is one-half of a grant - an offer to dedicate. In order to complete the grant "there must be either some positive act on the part of the appropriate public authorities of the state, clearly manifesting an intention to accept a grant, or there must be public user for such a period of time and under such conditions as to prove that the grant has been accepted.

In this case the roadway was used prior to the original homestead entry. The original homesteader squatted on the land prior to making the entry; however, official action such as a homestead entry was required to withdraw the land to withdraw the land from the public domain, mere possession did not suffice.

The public's acceptance of the grant required public use for a period of time and under conditions proving the grant had been accepted. That use must have specific termini and a definite location. Once the public use and location is established "it may be used for any purpose consistent with public travel." At 415.

Section 932 grants a right of way and according to the court's ruling in Wessells v. State Department of Highways, 562 P.2d 1042, 1045 n. 5 (1977) the general rule in Alaska is that a "right of way" is synonymous with 'easement'. At 415.

Adverse Possession: The Court ruled that adverse possession was not applicable due to the lack of uninterrupted and continuous possession. Consequently the city did not get fee simple title. However, the Court did rule that a public highway may be created by prescriptive use.

At page 416, the Dillingham Court applied the three tests for adverse possession established in Alaska National Bank v. Linck, 559 P.2d 1049, 1052 (1977), to prescriptive easements.

- (1) the possession must have been continuous and uninterrupted;
- (2) the possessor must have acted as if he were the owner and not merely one acting with the permission of the owner; and (3) the possession must have been reasonably visible to the record owner.

Adverse possession involves the fee simple interest therefore the true owner must be excluded. The occupancy by the adverse possessor must be exclusive; whereas, a prescriptive easement does not require exclusive use. The use makes the property subject to an easement, but it does not divest the owner of the underlying fee title.

Implied Dedication: Alternatively the theory of implied dedication was discussed. Implied dedication requires (1) an intent to dedicate the road or easement to a public use, and (2) an acceptance of that dedication on behalf of the public. Establishment of the intent to dedicate must be "clear and unequivocal", a heavy burden on the party claiming the dedication. At 416.

3. **Shultz v. Department of the Army, United States of America,** **10 F.3d 649 (9th Cir. 1993)**

Paul Shultz filed a quiet title action claiming a public right of way across Fort Wainwright. His claims was that an RS 2477 right of way, or other forms of easements, existed prior to establishment of the army base. The Federal District Court ruled that no right of way existed, or in the alternative, the statute of limitations for Shultz to bring a quiet title action against the Army had expired. A three judge panel of the Ninth Circuit Court of Appeals reversed the decision of the District Court.

FACTS: The panel's factual recitation on pages 652 and 653 follows:

Shultz owns property to the northeast of Fort Wainwright and east of Fairbanks. To get to Fairbanks, he must cross the base. Fort Wainwright is situated on land acquired by the federal government in a series of purchases and withdrawals beginning in 1937. All of the acquisitions were made "subject to valid existing rights." Shultz traces his title through George Nissen who homesteaded in the first half of the century and through Nissen's successors. Nissen was a German immigrant who made entry on the property in October 1907, built his cabin the following month and, by February 1908, established residency. He was among a handful of homesteaders occupying land along the Chena River and for a while raised potatoes and other vegetables with great success. He transported a portion of his crop to market in Fairbanks every year. Nissen left the area in 1918. The homestead patent, for which he had filed in 1914, was issued in 1924.

In the early days of homesteading the routes to Fairbanks across present day Fort Wainwright were difficult to travel. At trial one witness described swimming horses in the summer across sloughs lacking bridges. These same sloughs served as frozen highways in the winter. Much of the land surrounding Shultz' property, especially to the north, is swampy, due to the underlying permafrost that prevents the melted snow from draining. In Alaska, more than in most locations, the season dictates the nature and means of passage. The trial involved the introduction of extensive evidence of the various historical routes across the land now occupied by the Army.... No other land route is available. Without access through Fort Wainwright, Shultz is landlocked.

The modern base roads essentially follow the river and "[i]n part they follow the same course as the trails and wood paths used by early settlers in the Chena River area." Page 654. In 1981 the Army instituted a pass system for the base. Mr. Shultz refused to obtain a pass. Ultimately he filed the quiet title action in 1986.

Three major issues were addressed by the decision: Mr. Shultz's standing to bring the quiet title action, the validity of the RS 2477 claim, and the statute of limitations to bring the action.

STANDING: The Army challenged Shultz's right to bring the litigation on the grounds that Shultz did not have standing, or the legal right, to bring a quiet title action for any roads that did not abut his property. Its contention was that since Shultz was not an abutter to the roads on the base, he did not have "a 'special and vital interest' in roads that do not abut his property." At page 653. The panel dismissed that argument and ruled that Shultz did have standing because he:

has a "particularized" interest in crossing the base to reach roads that lead to his property. Not to have access to those roads would "affect [him] in a personal and individual way" by sealing him off from his property. Second, Shultz seeks to quiet title as against the Army which asserts an unrestricted right to regulate access to Fort Wainwright's roads. A clear causal connection exists between his claim and the restrictions he challenges. Finally, were Shultz able to prove that the combination of roads leading to his property do constitute public rights of way the "favorable decision" would redress the injury he asserts. [Citations and footnote omitted].

At page 653.

RS 2477 RIGHT OF WAY: The panel determined that Alaska's conditions presented unique situations that relate to RS 2477 rights of way.

Due to its geography, its weather, and its sparse and scattered population, Alaska's "highways" frequently have been no more than trails and they have moved with the season and the purpose for the transit--what traveled best in winter could be impassable knee-deep swamp in summer; what best accommodated a sled was not the best route for a wagon or a horse or a person with a pack. By necessity routes shifted as the seasons shifted and the as the uses shifted. What might be considered sporadic use in another context would be consistent or constant use in Alaska. We conclude that as long as the termini of the right of way are fixed (the homesteaders' cabins on one end, Fairbanks on the other), to establish public right of way the route in between need not be absolutely fixed (as it might be in other settings)... Right of access is the issue, not the route. [Footnotes omitted].

At page 655

Although RS 2477 is a federal grant, acceptance of the grant is a matter of state law. In referring to Standard Ventures, Inc. v. Arizona, 499 F.2d 248, 250 (9th Cir. 1974), Sierra Club v. Hodel, 848 F.2d 1068, 1083 (10th Cir. 1988), and Fisher v. Golden Valley Electric Association, Inc., 658 P.2d 127, 130 (Alaska 1983), at page 655, the panel stated: "An RS 2477 right of way comes into existence 'automatically when a public highway [is] established across public lands in accordance with the law of the state.' Whether a right of way has been established is a question of state law." However, doubts to the extent of the RS 2477 right of way must be construed in favor of the government.

Moreover, at pages 655 and 656, the court recognized two methods under Alaska law to establish RS 2477 rights of ways:

[B]efore a highway may be created, 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.

Hamerly v. Denton, 359 P.2d 121, 123 (1961). "To prove RS 2477 rights by the second of these methods, a claimant must show "(1) that the alleged highway was located 'over public lands,' and (2) that the character of its use was such as to constitute acceptance by the public of the statutory grant." Hamerly, 359 P.2d at 123. Shultz at page 656.

The panel determined that A.S. 19.45.001(9) "broadly defines 'highway' to include a 'road, street, trail, walk, bridge, tunnel, drainage structure and other similar or related structure or facility, and right-of-way thereof.'" At page 656. Lands that have been withdrawn or entered are not public lands available for an RS 2477 claim.

Public user is necessary to create the acceptance.

Although the law of RS 2477 rights of way suggests that "infrequent and sporadic" use is insufficient, Hamerly, 359 P.2d at 125, and that "regular" and "common" use by the public is necessary, Kirk v. Schultz, 110 P.2d 266, 268 (Idaho 1941), and that travel across the route may not be "merely occasional," the test is what is "substantial" under the circumstances, Ball v. Stephens, 158 P.2d 207, 210 (Cal. 1945).

At page 656.

In finding a foot path was sufficient to establish an RS 2477 right of way under Alaska law, the panel found: "we have noted the manner of travel (by foot or beast or vehicle) is legally irrelevant to the RS 2477 determination. What matters is that there was travel between two definite points." At page 658. Footnotes 10 and 11 on page 658 expand on the preceding quote in regard to the Army's contention that since a neighbor, who entered his property later than Nissen, had to build a road to his homestead there was no basis for a road to Nissen's property. The panel stated:

Both the judge and the Army clearly misunderstood the import of A.S. 19.45.001(9) for RS 2477 law. Such a right of way need not be "buil[t]" or constructed". Nor need it be "susceptible to wagon or motor vehicle use". An unimproved trail suffices as a "road" for the purposes of this law. The government pose the problem incorrectly. It argued to the court that "if you're going to find an RS-2477, you have to know not only that he got from Fairbanks to his property, but how he did it."

As long as it is clear that Nissen traveled overland, how he did it is immaterial.

Public Prescriptive Easement: The fact that the public used a route does not automatically qualify it as an RS 2477. It must cross public lands that were not withdrawn or reserved prior to establishment of the use. While the Panel did not find that all segments of the trail were established under RS 2477, it did rule that Shultz was not required to show that all portions of the trail were created under RS 2477. The panel concluded Alaska law allows for public prescriptive easements. It cited Dillingham, and listed the three tests for prescriptive easement as stated in McGill v. Wahl, 839 P.2d 393 397 (Alaska 1992): "To establish a prescriptive easement a party must prove that (1) the use of the easement was continuous and uninterrupted; (2) the user acted as if he or she were the owner and not merely one acting with the permission of the owner; and (3) the use was reasonably visible to the record owner." The panel dismissed the lower court's finding that no public prescriptive easement existed. As to the route along the Chena River the panel stated at page 661:

To assert a public easement by prescription, the public need only act "as if [it] were claiming a permanent right to the easement." Swift, 706 P.2d 296. Since overland travel to Fairbanks from the homesteads of the base clearly required some kind of right of way, all interested parties were on notice that an easement was being established. [Citations omitted]. Moreover, the public nature of the route, and its shared use, reinforce Shultz's claim that at the very least an easement by prescription took hold. The route was there. The homesteaders used it. No one challenged their right."

Quiet Title Action: The Army alleged that Shultz did not bring his quiet title action for the easement claim within the 12 statute of limitations under 28 § U.S.C. 2409a(g). Even though the military base was established in 1937, the panel found that Shultz was not put on notice that Army disputed the right of way until it blocked the road in 1981. Consequently, his suit, filed in 1986 was within the statute of limitations.

**NOTE: The above opinion was
withdrawn by the 9th Circuit.**

Opinion 1996 WL 532312 (9th Cir.(Alaska)) decided September 20, 1996, in its entirety states:

The government's petition for rehearing is granted, the opinion of November 30, 1993 at 10 F.3d 649 is withdrawn, and the following opinion is substituted in its place.

Paul G. Shultz appeals the district court's judgment in favor of the government in his quiet title action under 28 U.S.C. § 2409a. Schultz argued that he has a right-of-way across Fort Wainwright to get back and forth between Fairbanks and his property under either R.S. 2477, 43 U.S.C. § 932, or Alaska common law, or both. Because we ultimately agree with the district court that Shultz has not sustained his burden to factually establish a continuous R.S. 2477 route or a right-of-way under Alaska common law, we affirm the district court. We do not reach Shultz's argument that the district court erred by holding that his action was time barred by 28 U.S.C. § 2409a(g).

Circuit Judge Alarcon's dissent was:

I respectfully dissent.

I would deny the petition for a rehearing and reverse the district court's judgment for the reasons set forth in Judge Fletcher's scholarly opinion in *Shultz v. Department of the Army*, 10 F.3d 649 (9th Cir. 1993).

Section Line Easements

&

Public Land Order Rights of Way

Evaluation Examples

Research Technique

(Dates for land status & legislative action)

1. Review the Federal Master Title plat and note the patent number or serial number of any action which affects the section line in question.
2. Using either BLM's land status database or Historical Index, determine the date of reserved status or the date of entry leading to patent.
3. From BLM's township survey plats, extract the date of plat approval.
4. Review the dates and track the status of the lands involved to determine if they were unreserved public lands at any time subsequent to survey approval and prior to entry or appropriation.

Particular attention should be made towards any applicable federal actions reserving or appropriating lands.

In order for section line easements to have been created, the lands must have been unreserved public lands at some time between April 6, 1923 and January 17, 1949, or between March 21, 1953 (Marcy 26, 1951 in the case of lands transferred to the State or Territory) and March 24, 1974.

Always check to see that the SLE has not been vacated.

Section Line Easement - Bullwinkle

1. MTP - T1S, R1W, FM
Note: Govt. Lot 10, Sec. 8. - Pat. No. 1211125
Original Survey Accepted 6/7/1913
2. Case File Abstract
Note: Application Received 8/1/47
3. Note: When township survey was complete, the RS 2477 grant had not yet been accepted by the Territory. However, immediately upon the date of acceptance, April 6, 1923, if the land was still unreserved, the section line easement was established.
4. Bullwinkle claimed that the easement could not have taken effect because the land (Section 8) was withdrawn by EO No. 1967-A (June 23, 1914) for Townsite and Railroad purposes.
5. This was correct, however, the subsequent EO No. 2236 (August 17, 1915) eliminated Section 8 from the previous EO.
6. In addition to these actions, EO 2226 (July 31, 1915) created a Timber reserve 5 miles wide on each side of the proposed railroad right of way all the way to Fairbanks. This reservation was eliminated with respect to Section 8 by EO 4107 dated 11/26/1924.
7. Further reservations were made which would affect the section line easement on Bullwinkle's property including an Oil permit in 1931 and a prior homestead entry on in 1942. The oil permit was revoked and the homestead entry was relinquished the same day as Bullwinkle's entry (8/1/47).
8. Since the date of enabling legislation (April 6, 1923), there were two large gaps in time in which a section line easement along the East boundary of Govt. Lot 10 could have been created.
 - The time between the revocation of EO 2217 (11/26/24) and the issuance of the Oil Permit (3/9/31).
 - The time between the Oil Permit cancellation date of 9/16/36 and the first homestead entry dated 3/3/42.
9. One might also argue that the section line easement could have been created in that instant between the relinquishment of the first homestead entry and Bullwinkle's filing as they are noted as being on the same day.
10. Fortunately, we did not have to argue that issue and Superior court issued an order confirming the section line easement.

SURVEYED TOWNSHIP 1 SOUTH RANGE 1 WEST OF THE FAIRBANKS MERIDIAN, ALASKA

STATUS OF PUBLIC DOMAIN
LAND AND MINERAL TITLES
AND ACQUIRED LANDS

MTP

RESURVEY	ORIGINAL SURVEY	R. SECT.	SUBDIVISION
17	17	17	17
18	18	18	18
19	19	19	19
20	20	20	20
21	21	21	21
22	22	22	22
23	23	23	23
24	24	24	24
25	25	25	25
26	26	26	26
27	27	27	27
28	28	28	28
29	29	29	29
30	30	30	30
31	31	31	31
32	32	32	32
33	33	33	33
34	34	34	34
35	35	35	35
36	36	36	36

FOR ORDERS PERTAINING TO THE DEPOSIT OR USE OF ORIGINAL SURVEY PLATS, CONTACT THE BUREAU OF LAND MANAGEMENT, WASHINGTON, D.C. 20250. FOR OTHER PUBLIC PURPOSES REFER TO INDEX OF MISCELLANEOUS DOCUMENTS.

ADDRESS SEE WITHIN TO EAST FAIRBANKS, ALASKA, AND A PORTION OF SEC. 2, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

SEC. 2, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

SEC. 3, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

SEC. 4, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

SEC. 5, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

SEC. 6, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

SEC. 7, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

SEC. 8, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

SEC. 9, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

SEC. 10, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

SEC. 11, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

SEC. 12, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

SEC. 13, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

SEC. 14, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

SEC. 15, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

SEC. 16, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

SEC. 17, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

SEC. 18, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

SEC. 19, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

SEC. 20, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

SEC. 21, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

SEC. 22, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

SEC. 23, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

SEC. 24, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

SEC. 25, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

SEC. 26, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

SEC. 27, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

SEC. 28, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

SEC. 29, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

SEC. 30, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

SEC. 31, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

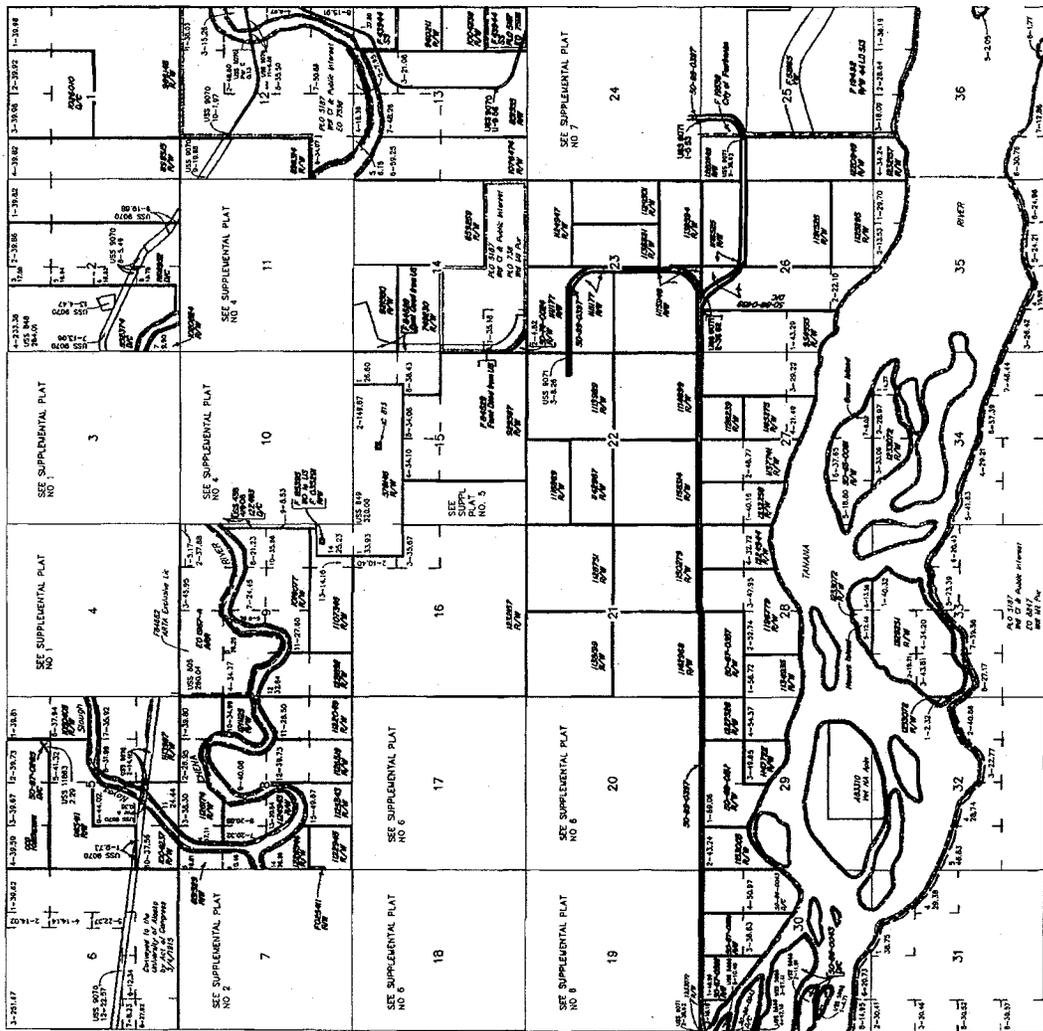
SEC. 32, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

SEC. 33, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

SEC. 34, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

SEC. 35, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.

SEC. 36, T.1S. R.1W. AND T.1S. R.2W. SOUTH OF ALPHEA RIVER.



64°12'36.62\"/>

147°30'23.888\"/>

Scale in feet

0 10 20 30

0 10 20 30

0 10 20 30

0 10 20 30

0 10 20 30

0 10 20 30

0 10 20 30

0 10 20 30

0 10 20 30

0 10 20 30

0 10 20 30

0 10 20 30

0 10 20 30

0 10 20 30

0 10 20 30

CURRENT TO	FOR	BY	DATE
7-28-2006			

Acq
R 1 W
T 1 S

64

15

15

15

15

15

15

15

15

15

15

15

15

15

15

15

Notes: 1. See Bureau's Record of Deeds and should be read in connection with the same. 2. See also the original survey plat for a complete description of the land. 3. See also the original survey plat for a complete description of the land. 4. See also the original survey plat for a complete description of the land. 5. See also the original survey plat for a complete description of the land. 6. See also the original survey plat for a complete description of the land. 7. See also the original survey plat for a complete description of the land. 8. See also the original survey plat for a complete description of the land. 9. See also the original survey plat for a complete description of the land. 10. See also the original survey plat for a complete description of the land. 11. See also the original survey plat for a complete description of the land. 12. See also the original survey plat for a complete description of the land. 13. See also the original survey plat for a complete description of the land. 14. See also the original survey plat for a complete description of the land. 15. See also the original survey plat for a complete description of the land. 16. See also the original survey plat for a complete description of the land. 17. See also the original survey plat for a complete description of the land. 18. See also the original survey plat for a complete description of the land. 19. See also the original survey plat for a complete description of the land. 20. See also the original survey plat for a complete description of the land. 21. See also the original survey plat for a complete description of the land. 22. See also the original survey plat for a complete description of the land. 23. See also the original survey plat for a complete description of the land. 24. See also the original survey plat for a complete description of the land. 25. See also the original survey plat for a complete description of the land. 26. See also the original survey plat for a complete description of the land. 27. See also the original survey plat for a complete description of the land. 28. See also the original survey plat for a complete description of the land. 29. See also the original survey plat for a complete description of the land. 30. See also the original survey plat for a complete description of the land. 31. See also the original survey plat for a complete description of the land. 32. See also the original survey plat for a complete description of the land. 33. See also the original survey plat for a complete description of the land. 34. See also the original survey plat for a complete description of the land. 35. See also the original survey plat for a complete description of the land. 36. See also the original survey plat for a complete description of the land.

SE TYPE: 256700 HE ALASKA STATUS: CLOSED
 DISTRICT: FAIRBANKS (87) CONVEYED
 RES. AREA: YUKON <---CHECK NEW DISTRICT MAP ***

APPLICANT: 27789 BULLWINKLE WALTER
 69 TIMBERLAND DRIVE
 FAIRBANKS AK 99701

HISTORY:	DATE	ACT PC	ACTION TAKEN	UNIT CODR	SURVEY	AMOUNT
1.	08/01/1947	124	APPLICATION RECEIVED	PSF	DLC	
2.	08/01/1947	347	FILING FEE RCVD/RFND	PSF	DLC	5.00
3.	01/04/1954	213	FINAL PROOF FILED	AJA	DLC	
4.	10/08/1954	009	FIELD REPORT APPROVED	AJA	ADP	
5.	04/11/1960	291	PROOF OF PUBL RECEIVED	AJA	DLC	
6.	07/28/1960	271	PATENT ISSUED	AJA	DLC	
7.	07/29/1960	212	FINAL CERTIFICATE ISSUED	AJA	DLC	
8.	08/24/1960	099	CASE CLOSED - TITLE TRSF	PSA	DLC	

FINANCIAL: FILING FEE: 5.00

(CONTINUED)

Alt-Z FOR HELP° VT102 ° HDX ° 1200 071 ° LOG CLOSED ° PRINT OFF ° ON-LINE

8. 08/24/1960 099 CASE CLOSED - TITLE TRSF PSA DLC

FINANCIAL: FILING FEE: 5.00

(CONTINUED)

LAND DESCRIPTION

REC NO	P	DISPOSITION	RES	M	TWP	RNG	CASETYPE	BLK	LOT	ACRES
RESOURCE AREA: YUKON				BOROUGH: FBX/NO. STAR NATIVE REGION: DOYON						
0115211		PA01211125	R	F	1S	1W	256700/HE ALASKA			
				8	E2		M		10	34.990
SELECTION ACREAGE:										0.000
PATENTED ACREAGE:										34.990

END OF FILE

Alt-Z FOR HELP° VT102 ° HDX ° 1200 071 ° LOG CLOSED ° PRINT OFF ° ON-LINE

180

4-2-14

Part reworked 3-30-36
FR# 101 REF 485
see also #'s 200, 206, 236,
253, 281, 292,

Executive Order.

ORDER OF WITHDRAWAL

378A

Alaska Townsite and Railroad Withdrawal No. 2.

Under and pursuant to the provisions of the Act of Congress approved March 12, 1914 (Public No. 69), entitled "An Act to authorize the President of the United States to locate, construct, and operate railroads in the Territory of Alaska, and for other purposes," it is hereby ordered that the following lands, be, and the same are hereby, withdrawn from settlement, location, sale, entry, or other disposition, and reserved for townsite purposes and in connection with railroad or other construction work contemplated by the act.

Fairbanks Meridian.

- T. 1 S., R. 1 W., Sec. 2, all ✓
- Sec. 3, all. *Part 10, 1921*
- Sec. 4, all *part withdrawn - see #251*
- Sec. 5, all ✓
- Sec. 8, all ✓
- Sec. 9, all
- Sec. 10, all
- Sec. 11, all

- T. 1 S., R. 2 W., Sec. 28, all *see #251*
- Sec. 32, all. *see also L-3 and A-3-1-E-1*

WOODROW WILSON

THE WHITE HOUSE,
23 June, 1914.

[No. 1967-A.]

*3 copies
b/g*

Handwritten signature and date: June 23/14

20

8/17/15

L

Executive Order.

Alaskan Townsite.

Under and pursuant to the provisions of the Act of Congress approved March 12, 1914 (38 Stat., 305), entitled "An Act to authorize the President of the United States to locate, construct and operate railroads in the Territory of Alaska and for other purposes", it is hereby ordered that the following described lands, withdrawn by executive order of June 23, 1914, and reserved for townsite purposes under said Act, be, and the same are, hereby eliminated from said order, to wit: In Township 1 South, Range 1 West, Fairbanks Meridian: All of Sections No. 2, 5, 8, 11, and the north half of Sec. 4, Lots 1, 2, 3, 4, 5, 7, 8, 9, and 11 in Section 3, and Lots 6, 7, 8, 9, 10, 11, 12, 13, and 14, W. 1/2 of SE. 1/4, and S. 1/2 of SW. 1/4 of Sec. 9, Lots 9, 10, 11, and 12 in Sec. 10.

Said elimination shall not affect the withdrawal of any other lands by said executive order of June 23, 1914.

WOODROW WILSON

THE WHITE HOUSE,
17 August, 1915.

[No. 2236.]

see ~~file~~ 180
also 13 what 71 2

MEMORANDUM

State of Alaska Department of Transportation & Public Facilities

TO: Paul Lyle
Assistant AG
Northern Region

DATE: March 22, 1990

FILE NO:

TELEPHONE NO: 474-2413

FROM: John F. Bennett 
Engineering Supervisor
Northern Region

SUBJECT: Project RS-RRS-M-000S(52)
Geist-Peger to College
Parcel 6 - Bullwinkle

As you requested, we have reviewed the Parcel 6 title information for the above referenced project with respect to the existence of a section line easement and report the following:

Parcel 6: Government Lot 10, Section 8
Township 1 South, Range 1 West, F.M.
Original Survey Accepted 6/7/1913
Entryman - Walter H. Bullwinkle - 8/1/47
Patent - 7/28/60 - No. 1211125

The BLM Historical Index indicates that there were only two orders which temporarily withdrew the subject property from settlement. Executive Order No. 1967-A dated June 23, 1914 known as the Alaska Townsite and Railroad Withdrawal No. 2, withdrew among other properties, all of Section 8, Township 1 South, Range 1 West, Fairbanks Meridian. Executive Order No. 2236 dated August 17, 1915 eliminated Section 8, T. 1 S., R. 1 W., F.M. among other areas from the withdrawal for EO No. 1967-A. Executive Order No. 2217 dated July 31, 1915 amended EO No. 2217 which created the Alaska Timber Reserve No. 1. This amendment essentially withdrew a tract of land five miles wide on each side of the proposed right of way for the government railroad including the line through Goldstream Creek to Fairbanks. Executive Order No. 4107 dated November 26, 1924 revoked the portion of EO 2217 regarding the line through Goldstream Creek to Fairbanks. Copies of the EO's are attached.

There were however, other actions which temporarily reserved or withdrew the subject property. On March 9, 1931, an Oil Permit was issued covering several lots within Section 8 including Government Lot 10. This permit was canceled on September 16, 1936. On 3/3/1942, a Homestead Entry was made on Govt. Lot 10 within Section 8. This entry was relinquished on 4/7/1942. On 6/9/1942, a Homestead Entry was made on Govt. Lot 10 within Section 8. This entry was relinquished on 8/1/47. On this same day Walter Bullwinkle filed his entry on Govt. Lot 10.

Since April 6, 1923, the date of the enabling legislation for section line easements, there appear to be two large gaps in time in which a section line easement along the East boundary of Govt. Lot 10 could have been created. The first gap was between the revocation of EO 2217 dated 11/26/1924 and the Oil Permit dated 3/9/31, and the second gap was between the Oil Permit cancellation date of 9/16/36 and the first homestead entry dated 3/3/42.

attachments: as stated

JFB/jfb

AGO
(Lyle)

AP

THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

STATE OF ALASKA,

Plaintiff,

vs.

0.947 acres more or less;
WALTER H. BULLWINKLE; FAIRBANKS
NORTH STAR BOROUGH; and also
all other persons or parties
unknown claiming a right, title,
estate, lien, or interest in the
real estate described in the
complaint in this action,

Defendants..

FILED in the Trial Courts
State of Alaska, Fourth District

SEP 16 1991

By _____ Deputy

Project No. RS-RRS-M-000S(52)
Parcel No. 6
Case No. 4FA-86-2479 Civil

ORDER CONFIRMING SECTION LINE EASEMENT
AND NOMINAL DAMAGES

This matter comes before the court upon the motion of the state to confirm a section line easement and determine nominal damages. The court has considered the following:

1. Motion for Summary Judgment - Section Line Easement
2. Affidavit of John Bennett
3. Answer to Mr. Bennett's Affidavit (Opposition filed by Mr. Bullwinkle)
4. Reply to Opposition to Motion for Summary Judgment - Section Line Easement
5. Mr. Bullwinkle's Supplemental Opposition
6. Supplemental Reply to Motion for Summary Judgment - Section Line Easement

I certify that on	9-9-91
copies of this form were sent to:	AGO(Lyle)
CLERK:	Bullwinkle (PROSE)

7. Reply to Supplemental Reply to Motion for Summary Judgment - Section Line Easement
8. Supplemental materials submitted by Mr. Bullwinkle at oral argument

The court heard oral argument on August 27, 1991. Having considered all the pleadings and arguments this court finds that no genuine issues of material fact exist and hereby grants summary judgment to the state.

This condemnation is a partial taking of 0.947 acres of property belonging to Mr. Bullwinkle. The land is a strip of property on the East side of Government Lot 10 bordering Peger Road. Peger Road is built on the section line between section 8 and 9 of Township One South (T1S), Range One West (R1W), Fairbanks Meridian. Mr. Bullwinkle contends that no section line easement for Peger Road exists and therefore the state must compensate him for the land underlying Peger Road.

Mr. Bullwinkle asserts that the Federal Land Policy Act of 1976 revoked the R.S. 2477 Easement for Peger Road. However, the R.S. 2477 section line easement survived pursuant to the Act's saving provision for existing rights of way. 43 U.S.C.A. § 1701. The section line easement in question was a valid existing right of way and was not revoked.

Mr. Bullwinkle asserts that actual road construction was required prior to his entry to perfect any R.S. 2477 easement. This court finds Girves v. Kenai Peninsula Borough, 536 P.2d 1221, 1224-27 (Alaska 1975) controlling. The Alaska

Supreme Court found that only a "positive act" was needed by a state or territory to establish R.S. 2477 easements and the legislative enactment 35 SLA 1953 (AS 19.10.010) constituted such an act. Actual construction is not required in Alaska. The legislative act is sufficient. Brice v. State, 669 P.2d 1311, 1314-15 (Alaska 1983). Mr. Bullwinkle argues that the Alaska Railroad Transfer Act of 1982 vacated the R.S. 2477 easement. The railroad easement was set forth in Mr. Bullwinkle's patent under the 1914 Alaska Railroad Act, 43 U.S.C.A. § 975, et seq. Any revocation by the 1982 Railroad Transfer Act applies only to railroad reservations and does not by its language or subsequent statutory or case law apply to R.S. 2477 easements.

Mr. Bullwinkle asserts that repeal of 19 SLA 1923 vacated R.S. 2477 easements. Brice v. State, 669 P.2d 1311, 1315-16 (Alaska 1983) is controlling. Brice held that the repeal of 19 SLA 1923 did not operate retroactively to vacate previously accepted grants of easements. Mr. Bullwinkle asserts that the Alaska Territorial Legislature had no authority to accept the R.S. 2477 grant from the Federal Government. Girves v. Kenai Peninsula Borough, 536 P.2d 1221 (Alaska 1975) is controlling. Girves expressly rejected Alaska Attorney General Opinion No. 11 (July 26, 1962), and found that the legislature did have authority to accept the R.S. 2477 grant.

Finally, Mr. Bullwinkle argues that federal court decisions and BLM's position should be controlling, not state

law. However, the general rule is applicable as set forth in United States v. Oklahoma Gas & Electric Co., 318 U.S. 206 (1943). The United States Supreme Court stated that "[a] conveyance by the United States of land which it owns... is to be construed, in the absence of any contrary indication of intention, according to the law of the state where the land lies." This rule of law was adopted by the Alaska Supreme Court in Fisher v. Golden Valley Elec. Ass'n., Inc., 658 P.2d 127, 130 (Alaska 1983). Therefore, this court finds state law controlling ~~and confirms the section line easement.~~

The state asserts that \$100.00 is a reasonable nominal compensation amount. There is no evidence of special value attaching to the fee underlying the highway easement on this property. There is no assertion or evidence by Mr. Bullwinkle that \$100.00 is not a reasonable nominal amount of damages. Therefore, this court finds there is no genuine issue of material fact and determines \$100.00 is a reasonable amount to be awarded for nominal damages for the easement. Therefore,

IT IS HEREBY ORDERED that

1. The existence of the section line easement for Peger Road is hereby confirmed.

2. Walter H. Bullwinkle is entitled to nominal compensation for the taking of the fee underlying the section line easement. \$100.00 is a reasonable figure for nominal compensation.

ORDER

State v. 0.947 acres, et al.

Case No. 4FA-86-2479 Cr.

Page 4

3. The issue of compensation for the remaining 0.947 acres taken by the state is still to be decided.

DATED this 6 day of September, 1991, at Fairbanks, Alaska.


NIESJE J. STEINKRUGER
Superior Court Judge

Section Line Easement - Badger Road

1. MTP - T1S, R2W, FM

- Note: Govt. Lot 4, Sec. 18. - Pat. No. 1126720
- Original Survey Accepted 7/13/1921

2. Case File Abstract

- Note: The Historical index noted two entries on Govt. Lot 4. First was a homestead entry on 8/3/39 which was relinquished on 5/30/44, then a homestead entry on 5/31/44 which went to patent on 7/15/49.

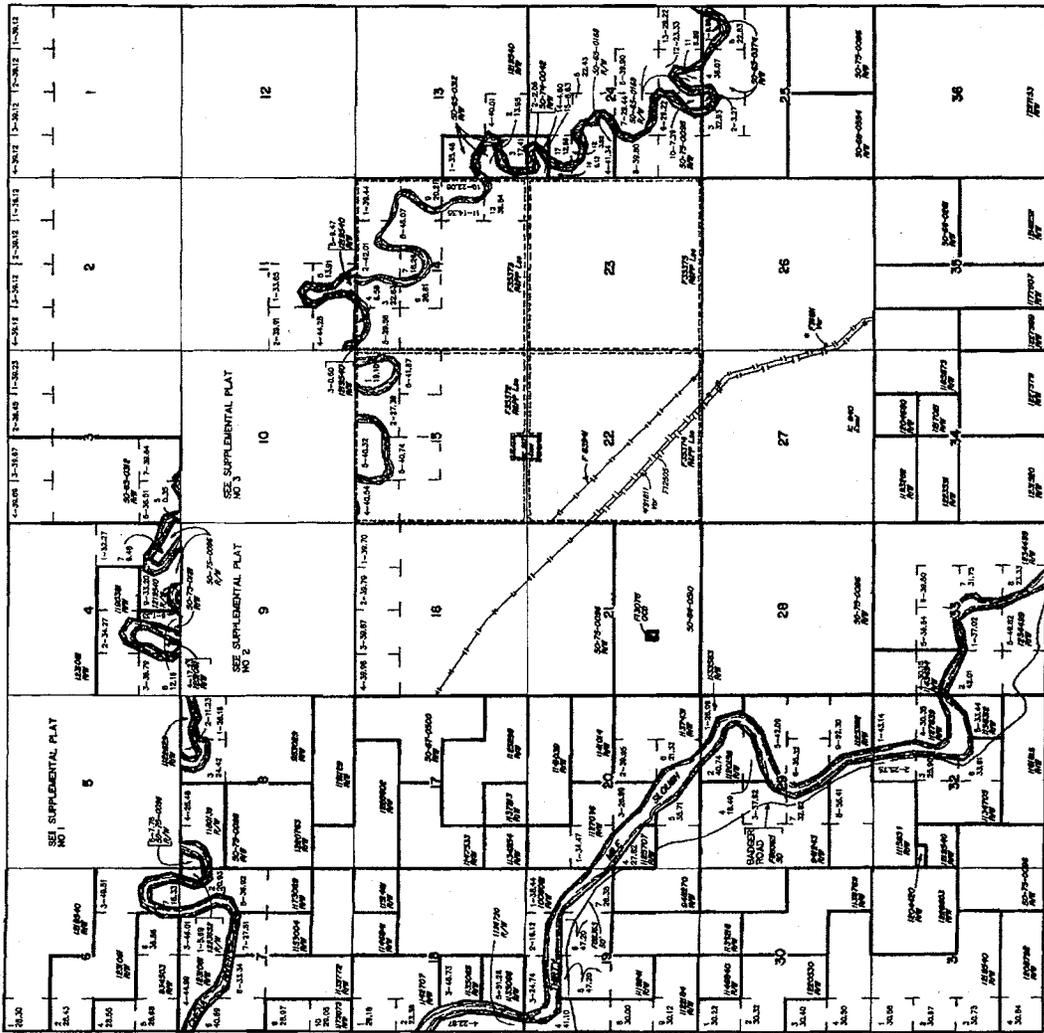
3. When township survey was complete, the RS-2477 grant had not yet been accepted by the Territory. However, immediately upon the date of acceptance, April 6, 1923, if the land was still unreserved, the section line easement was established.

SURVEYED TOWNSHIP 1 SOUTH RANGE 2 EAST OF THE FAIRBANKS MERIDIAN, ALASKA

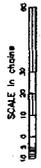
STATUS OF PUBLIC DOMAIN
LAND AND MINERAL TITLES

MTP

FOR ORDERS AFFECTING DISPOSAL OR USE OF UN-
DEVELOPED LANDS WITHIN THE PUBLIC DOMAIN,
APPLICANTS SHOULD REFER TO THE PUBLIC LANDS
REPORT TO AGENCIES OF RELEVANT AGENCIES.
2.0. 5/09 THE U.S. BUREAU OF LAND MANAGEMENT
AND CONSERVATION
7448007 TWP. 1 S. R. 2 E.
*20071 AND 20072 BY THE D.P.M. ENGINEER



Lat 64°45'35.00"N
Long 147°15'20.00"W



SCALE IN INCHES
0 10 20 30

CURRENT TO	PLN. MER
10-20-2006	T 1 S
	R 2 E

1 d

TERM= 73,USERID=001005002,LOGGED IN 11:03 AM 2/04/92

STR F 004120

F 004120 (280698) CASE FILE ABSTRACT PAGE 1
02/04/92 (11:03)

CASE TYPE: 256700 HE ALASKA STATUS: CLOSED
DISTRICT: FAIRBANKS (80)
RES. AREA: YUKON <---CHECK NEW DISTRICT MAP ***

APPLICANT: 84004 WEILER FRED
GENERAL DELIVERY
FAIRBANKS AK 99701

HISTORY:	DATE	ACT PC	ACTION TAKEN	UNIT	CODR	SURVEY	AMOUNT
1.	08/03/1939	124	APPLICATION RECEIVED	DAL	GDH		
2.	05/30/1944	146	CASE CLOSED-NO CONVEYNCE	DAL	GDH		

LITIGATION SERIAL# ACCESSION# 49 FRC# RIP BOX 274 OF
(LAND DESCRIPTION NOT ON FILE)

END OF FILE

Alt-Z FOR HELP° VT102 ° HDX ° 1200 N81 ° LOG CLOSED ° PRINT OFF ° ON-LINE

END OF FILE
STR F 005708

F 005708 (254968) CASE FILE ABSTRACT PAGE 1
02/04/92 (11:04)

CASE TYPE: 251101 HE ORIGINAL STATUS: CLOSED
DISTRICT: FAIRBANKS (87) CONVEYED
RES. AREA: YUKON <---CHECK NEW DISTRICT MAP ***

APPLICANT: 71067 ENDECOTT JAMES W
BOX 1205
FAIRBANKS AK 99701

HISTORY:	DATE	ACT PC	ACTION TAKEN	UNIT	CODR	SURVEY	AMOUNT
1.	05/31/1944	198	ENTRY APPLICATION RECVD	PSF	BJD		
2.	05/31/1944	197	ENTRY ALLOWED	PSF	BJD		
3.	06/08/1949	212	FINAL CERTIFICATE ISSUED	PSF	BJD		
4.	07/15/1949	271	PATENT ISSUED	PSF	BJD		
5.	07/15/1949	099	CASE CLOSED - TITLE TRSF	PSF	BJD		

(CONTINUED)

Alt-Z FOR HELP° VT102 ° HDX ° 1200 N81 ° LOG CLOSED ° PRINT OFF ° ON-LINE

(CONTINUED)

F 005708 (254968) CASE FILE ABSTRACT PAGE 2

With regard to our area of acquisition for this project, only the 33 foot wide section line easement strip east of the line common to section 13 of Township 1 South, Range 1 East and section 18 of Township 1 South, Range 2 East has been considered. The 33 foot wide easement strip to the west of the section line lies within the existing right of way for Badger Road.

Based upon the BLM township survey plats, the historical indices, and title information from the BLM land records system we determined the following.

1. The survey plat for T.1S., R.1E, F.M. which includes the section line in question was approved October 9, 1913. The survey plat for T.1S., R.2E., F.M. which includes the previously surveyed section line as the westerly boundary for section 18 was approved on July 13, 1921.
2. The historical index notes two entries on Government Lot 4, Section 18, T.1S., R.2E., F.M. This lot would eventually include what is now Tract A of Endecott Subdivision. The first entry for a homestead was by a Fred Weiler on 8/3/39. His claim was relinquished on 5/30/44. The same claim was filed by James W. Endecott on 5/31/44 and was taken to patent on 7/15/49.
3. There are no indications of entries or reservations of Lot 4 prior to Weiler's entry.

As the township survey plats were approved prior to the Territorial acceptance or the RS-2477 right of way grant (April 6, 1923), and the earliest entry was not until 8/3/39, the eventual patent by Endecott would have been taken subject to a 33' wide easement on each side of the section line.

This evaluation was based upon research techniques as outlined in the 1969 Opinions of the Attorney General No. 7, Section Line Dedications for Construction of Highways.

We also investigated DNR, FNSB, and DOT&PF files to verify that this section line easement had never been vacated.

PLO Research - Davis Road
(Road name confusion – Level of Research)

1. Plot Plan

- Note: Davis Road 33' each side of centerline. This is a center 1/4 line and the building is now where DOT&PF ROW and Construction now resides.
- In 1988 we prepared ROW plans in anticipation of acquiring ROW for the widening of Davis Road.
- The Lot in question is Govt. Lot 25, a lot within a Small Tracts Subdivision. FNSB Base maps also indicated an existing ROW of 33'. (Based upon specific patent reservation)
- This lot had been subject of several previous plot plans and surveys and had been insured at one time or another by 5 separate Title insurance companies.

2. ARC Maps

- We had some documents in our files that indicated potential conflicting ROW widths.
- Note: ARC 1951 ROW map. ROW 50 feet each side.
- Note: 12/10/51 ARC map indicating Davis/Alton roads as local roads under jurisdiction of ARC.
- Note: August 11, 1951 - ARC order No. 40 listing Route No. 132.1 as including Davis Road, 1.0 miles in length.

3. Research Summary

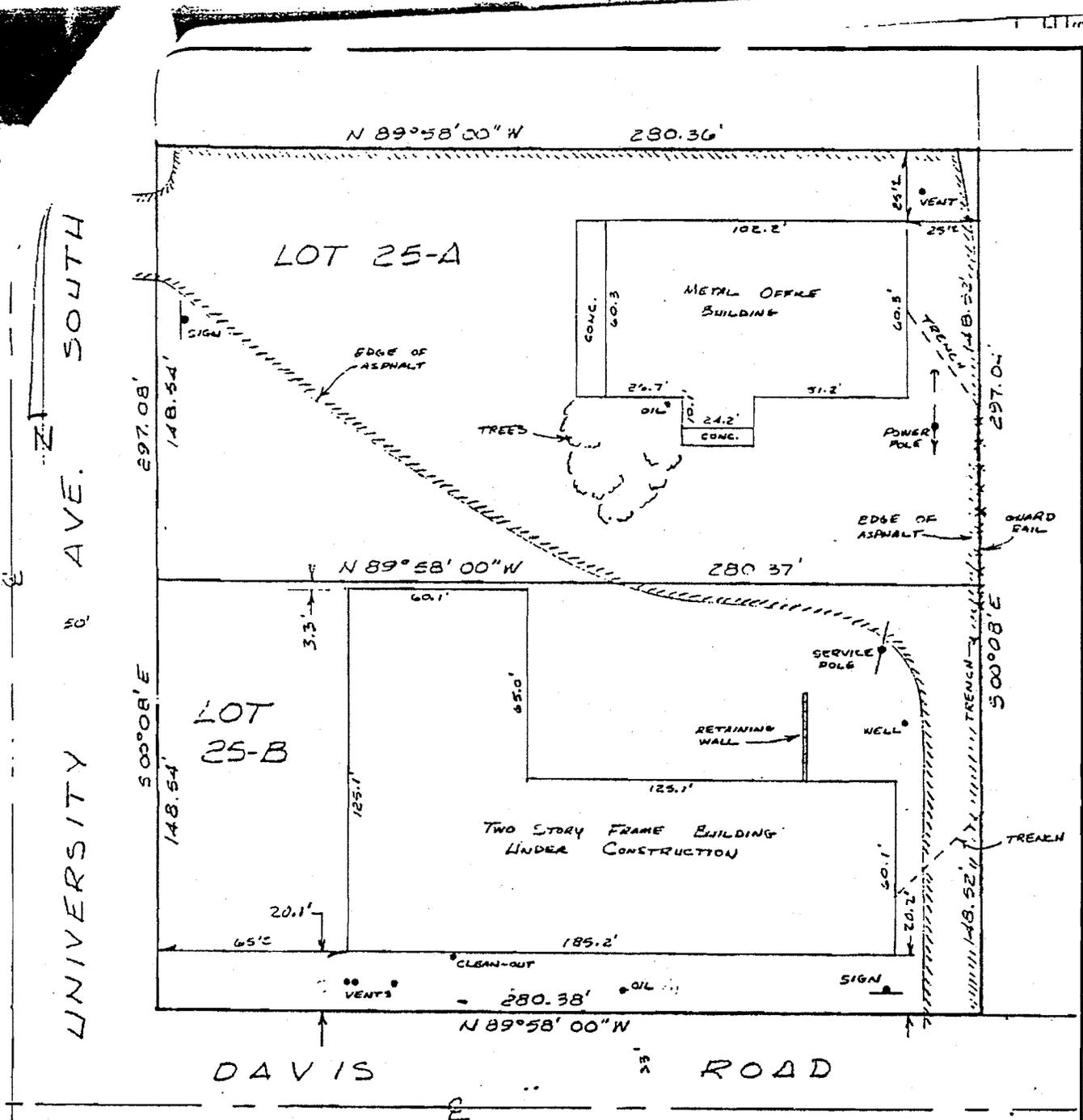
- A run of the historical index and abstracts at BLM provided dates of when small tracts leases were issued. For Lot 25 the lease was issued on 4/14/52.
- Additional evidence was required to conclusively fix when Davis road was constructed. 1050 pages of documents were requested from the National Archives of which 19 pages proved relevant.
- Due to the inconsistency of references to "Davis" road, it was necessary to trace the paper chain from the initial petition to final construction.

4. Field Notes

5. Petition

6. Summary of Date

7. Omnibus Act – Route 5621 “Davis” road & Route 6611 “Alston – Davis”



FB = 165-A

SCALE: 1" = 50'

I, NEIL K. EKLUND, a Registered Land Surveyor, hereby certify that I am familiar with the above described property and that the improvements located thereon lie wholly within the property lines and do not overlap onto the property adjacent thereto and that no improvements on the adjacent property encroach onto the property in question and that there are no roadways, transmission lines or other visible easements except as indicated hereon.

Dated: 6/25/95

Neil K. Eklund



Airport Road

T18

8 9

18 17

17 16

Found

$\frac{1}{16}$ Sec. Cor. Found

$\frac{1}{4}$ Sec. Cor. Found

Right of Way Line 50' from E

Center $\frac{1}{4}$ Sec.
Cor. Found

100'

$\frac{1}{4}$ Sec. Cor. Found

$\frac{1}{16}$ Sec. Cor. Found

Section 17
T1S, R1W

18 17

17 16

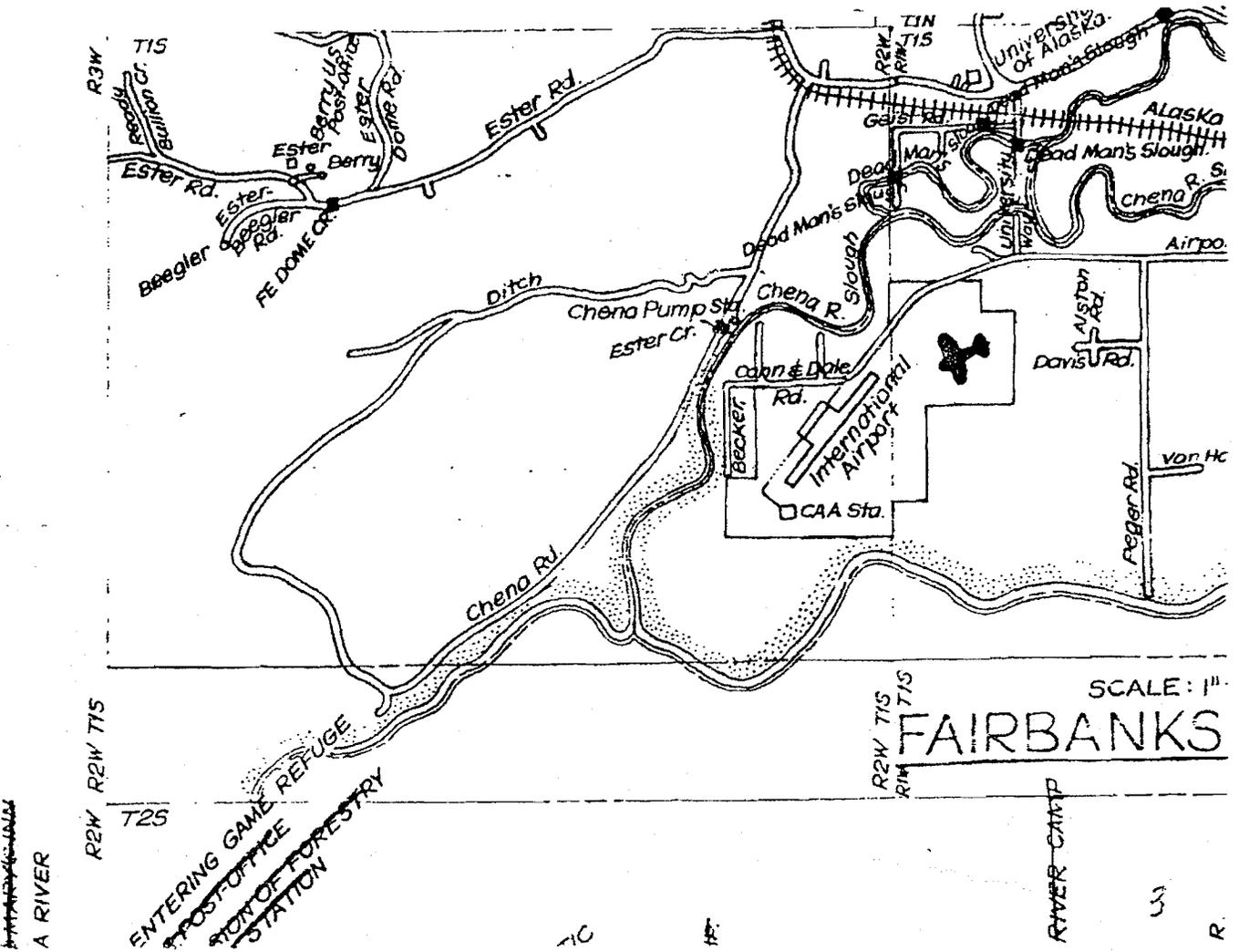
19 20

20 21

Scale: 1" = 800'

ALASKA ROAD COMMISSION
FAIRBANKS, ALASKA
RIGHT of WAY MAP
AUGUST 1951
f.c.

UNITED STATES DEPARTMENT OF THE INTERIOR
ALASKA ROAD COMMISSION
 FAIRBANKS DISTRICT
**LOCATION OF ROADS, BRIDGES &
 SMALL WOOD TRESTLES, RESERVES,
 & LANDMARKS IN FAIRBANKS DISTRICT**
 COMPILED BY: G.A. Novak, Jr. CHECKED BY: *Robert A. Smith*
 DRAWN BY: G.A. Novak, Jr. APPROVED BY: *R. F. Goodson*
 P. 9 OF 9 SHEETS. DATE: 12/10/51.



Donner



UNITED STATES
DEPARTMENT OF THE INTERIOR
ALASKA ROAD COMMISSION
Juneau, Alaska

August 11, 1952

ARC ORDER NO. 40, Supplement No. 1

Subject: Numbering System for Alaska Roads

Sheets 4 to 12 inclusive, of ARC Order No. 40 dated February 6, 1951, are revoked in their entirety and the attached sheets are to be substituted therefor.

The revised sheets have been compiled from data received from the various districts and reflect the district changes and recommendations as well as such changes as deemed advisable by Headquarters.

As changes have occurred either in route numbers or mileage in all districts, it is requested that the revised sheets be reviewed carefully by District Personnel and any errors or omissions reported to Headquarters on a marked copy of the revised sheets, together with comments, not later than October 15, 1952. Negative reports are requested if no corrections are required.

LOCAL ROADS

<u>ROUTE NO.</u>	<u>NAME</u>	<u>NEW LENGTH</u>
120.1	Valdez-Mineral Creek	10.7
120.2	Robe Lake Branch	0.5
121.1	Chitina-Native School	1.0
121.2	Chitina-Chitina River	1.0
130.1	Cushman St. Extension	1.9
	West Fairbanks	3.4
130.2	Badger Farm Road Loop	12.1
	Brock Road	2.0
	Peede Road	3.6
	Thirty Mile Slough Road	2.2
130.3	Old Richardson Highway	14.5
130.4	Lake Harding Branch	2.8
	Birch Lake Branch	1.7
130.5	Richardson Highway-Democrat Cr.	4.0
130.6	Big Delta Firing Range Road	17.1
132.1	Alston Road	0.5
	Becker-Dale-Conn Road	2.1
	Davis Road	1.0
	Peger Road	2.6
	Van Horn Road	0.5
310.1	Mountain View Loop	2.0 ✓ 1.5 4
	Lake Otis Road	6.7 ✓
	Abbott Road	0.5 0.5

Priority 6

9
Eielson Air Force Base
Fairbanks, Alaska
May 3, 1950

Alaska Road Commission
Fairbanks, Alaska
Attention: Mr. Frank Nash
District Engineer

Dear Sir:

The U. S. Land Office recently announced that tracts of land for use as homesites and cabin sites were available to interested persons in Section 17, T. 1 S, R. 1 W, F. M. Since the announcement of availability was made claims have been filed on most of the tracts.

At present there are no roads on section 17. There is a road leading to the East side of the section, to the Kenneth Cross Homesite (tract number 3). In order that applicants can build homes or cabins and fulfill the pre-requisites for buying the tract on which they have filed claim it is necessary that some roads be built dividing the section into smaller sub-sections. It is therefore requested by the undersigned that the Alaska Road Commission build roads, so far as is within their means, on section 17. Enclosed is a sketch showing breakdown of section into tracts and the numbers which have been assigned to them. Proposed roads as shown on sketch in U. S. Land Office are shown drawn in red.

Robert A. Isaacson

ROBERT A. ISAACSON
Eielson A. F. B.
% A. I. O.
Fairbanks, Alaska

Dennis Vanhorn

DENNIS VANHORN
General Delivery
Fairbanks, Alaska

Carl L. Asplund

CARL L. ASPLUND
Tract number 13

Robert Shafer
ROBERT SHAFER
Tract number 32

Yours truly,

Leonard F. VIK

LEONARD F. VIK
1st Lt., USAF
Tract number 17

Ormond H. Hammond

ORMOND H. HAMMOND
Tract number 18

Zed N. McCauley, Jr.

ZED N. MCCAULEY, Jr.
Tract number 34

Anthony A. Alston

ANTHONY A. ALSTON
Tract number 33

Bill Chumbley

BILL CHUMBLEY
Tract number 30

CONFIDENTIAL
ATTORNEY / CLIENT
COMMUNICATION

APPENDIX A

COLOR CODE

Strong Argument for 50 foot ROW
Clear Case for 50 foot ROW
Clear case for 33 foot ROW

G.L. 25

08/17/51 Davis Road staked
10/19/51 D.O. 2665
04/14/52 Lease issued
12/08/53 Maps shows Davis Road built.
Conclusion - 50 foot ROW applies.

G.L. 25

08/17/51 Davis Road staked
10/19/51 D.O. 2665
12/08/53 Map shows David Road as part of ARC system.
01/25/55 As built on David Road
06/01/55 Lease issued
Conclusion - 50 foot ROW applies.

For you files and future reference, if necessary, are documents retrieved from the National Archives in Seattle which establish a date of construction for Davis Road.

The major problem in establishing the date of construction was due to the fact that what we now know as Davis-Alston roads were at the time referred to by many designations. A review of the attached documents will reveal the links that establish that the project was referred to as, "Small Tracts Road", "Work Order #349", "Farm Road Priority Number Six and Nine", and "Route No. 132.14".

1. The first documents are the Petitions for roads within Section 17, Township One South, Range One West, Fairbanks Meridian, labeled "Priority 6" and "Priority 9". These are dated May 3, 1950 and July 20, 1950. An attached map also shows the West one-half mile of Davis Road labeled "Small Tracts".
2. On July 8-11, 1950 we have original field notes indicating a preliminary survey was performed by Alaska Road Commission personnel along Davis Road.
3. A document dated December 18, 1950, outlines the general program for Maintenance and Construction for the 1951 season. The description of project "Priority Number Six" is clearly the Davis-Alston road.
4. Original field note on file indicate staking for construction commenced August 17, 1951.
5. A September 10, 1951 Situation Report states that work on a farm road referred to as "Work Order #349" was commenced and is fifty percent complete.
6. The October 8, 1951 Situation Report states that work on a farm road referred to as "Work Order #349" was completed.
7. The November 28, 1951 report for the 1952 general program states under "Local Roads"...recently constructed during the 1951 season there was included a road referred to as "Small Tracts" and also a cross reference as "Priority #6 and #9 as listed in the 1950 recommendations".
8. The December 3, 1951 Annual Report cross references "Priority #6 and #9" as Work Order #349.
9. The February 20, 1952 change in recommendations - 1952 operating shows Small Tracts Road as part of Route 132.1.

Based upon this documentation, I feel safe to say that we have sufficient evidence to establish the Date Construction began at least by September 10, 1951.

Given this date, and in comparison with Lease issue dates of the Government Lots that you believed we have only a strong argument for a fifty foot right of way, I feel we can move these into the category of "Clear case for fifty foot right of way". Note below:

G.L. 25	lease issued 4/14/52
G.L. 28	lease issued 9/2/52
G.L. 37	lease issued 5/14/52
G.L. 40	lease issued 5/14/52

Although it appears that there is a great deal of valuable information within the National Archives, relating to right of way issues, unfortunately it has taken since October 3, 1988 to have our request processed. Also, due to the method of long distance research, a shotgun approach required the retrieval and purchase of over 1,050 pages of documents from a total of 19 pages that were deemed pertinent.

PAGE 211
 Anchorage Recording District
 BOOK 3011
 Rampart Recording District
 Manley Hot Springs ALASKA
 FEDERAL-AID SECONDARY HIGHWAY SYSTEM, CLASS "B" ROUTES
 Nenana Recording District
 Page 40
 Recording District
 Fort Gibbon Recording District
 Nulato Recording District
 PAGE 212
 BOOK 7
 Mt McKinley Recording District
 E-15
 Kuskokwim Recording District

Route No.	Name	Description	Highway District No.	Constructed Mileage	System Mileage
5621	Davis Road	From a point on FAS Route 562 approx. 0.9 mile southwest of junction at FAS Route 562 and 570, southwest 0.7 mile.	10	0.7	0.7
56	Peters Creek Road	From junction of FAP Route 42 and FAS Route 559, easterly to cross Peters Creek and north-erly to return to FAP Route 42.	10	1.1	1.1
5641	Plumly Road	From a point on FAP Route 42 approx. 2.5 miles north of Knik River Bridge, east 1.5 miles with a spur (Marth Road) north 0.5 mile, and 0.2 mile west to FAP Route 42 to form a loop.	10	2.2	2.2
5651	Griffith Road	From a point on FAS Route 565 approx. 1 mile north of 4 Corners intersection of FAP Route 35 and FAS Route 565 easterly 0.6 mile.	10	0.6	0.6
5661	Springer Branches (Central)	From a point on FAS Route 566 approx. 1.25 mile south of Palmer, east 0.5 mile and spur west 0.2 mile from same point.	10	0.7	0.7
56	McLeod Road	From a point on FAS Route 568 approx. 3 miles south of City of Palmer, southerly to Matanuska River.	10	0.7	0.7
5682	Springer Branches (EAST)	From a point on FAS Route 568 starting approx. 1 mile south of City of Palmer east 0.2 mile; from a point on FAS Route 568, 1 1/2 mile south of City of Palmer, east 0.2 mile; from a point on FAS Route 568, 1.75 mile south of Palmer, south 0.2 mile, thence east 0.2 mile.	10	0.8	0.8

BOOK 391 PAGE 57
 Anchorage Recording District
 BOOK 224 PAGE 112
 Rampart Recording District
 BOOK 177 PAGE 50
 Nenana Recording District
 Book 8 Page 49
 Manley Hot Springs Recording District
 ALASKA
 FEDERAL-AID SECONDARY HIGHWAY SYSTEM, CLASS "B" ROUTES

BOOK 7 PAGE 135
 Fort Gibbon Recording District

B-24

FAS Route No.	Name	Description	Highway District No.	Constructed Mileage	System Mileage
6491	Ester Dome Road-St. Patrick's Goldstream	From FAR Route 37 branching north and west through the Ester Dome mining area. The north branch loops northeasterly to FAS Route 651.	20	<u>7.8</u>	7.8
5501	Bennett Road	From FAS Route 6502 southeasterly to FAS Route 650.	20	1.5	1.5
6502	Steele Creek Branch	From FAR Route 61 looping north and then easterly through the Steele Creek homestead area to FAS Route 650.	20	3.9	3.9
6570	Becker-Dale-Conn Road	From Fairbanks International Airport west and south to Becker-Dale-Conn subdivisions with a spur north to Chena River.	20	2.7	2.7
6571	Pikes Landing Road	From FAR Route 62 spur west and north to Pike's Landing.	20	1.0	1.0
6611	Alston-Davis Spurs	Two spurs southwest of Fairbanks, one leading north and one leading south into homestead areas from FAS Route 661 at the same point.	20	0.5	0.5
6651	Moore-Cartwright Road	From FAS Route 665 westerly into a homestead area.	20	2.0	2.0
6652	Peger Road	From FAS Route 665 south through an industrial area to the Tanana River.	20	1.0	1.0
6653	Cushman Street Extension	From FAS Route 665 south through an industrial area.	20	0.7	0.7

Old Glenn Highway
(Adjoining owner's rights to centerline of road)

1. Property owner requested evaluation of old ROW at MP 143.
2. This section of road had been realigned about 1975-76. Common owner of USS 5637 & 4824 requested vacation of old Glenn. *(Memorandum of Agreement)*
3. Subsequent owner of USS 4824 had built house in old Glenn ROW and requested a vacation of the old ROW that he thought had already been vacated.
4. USS 5637 boundary went to CL & had old Glenn vacated, USS 3336 went to ROW but acquired PLO 1613 highway lot (USS 3336A - also had a part of old Glenn vacated). Owner of 4824 assumed he also had rights to centerline of old Glenn but vacation did not take place as there was no ownership to CL. *(See individual surveys & abstracts)*
5. DNR owned underlying fee estate of old Glenn ROW not previously patented. *(See DNR ownership)*
6. DOT vacated offending ROW, property owner acquired land from DNR under a preference right sale.

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
NORTHERN REGION, RIGHT OF WAY

2301 PEGER ROAD, MAIL STOP 2553
FAIRBANKS, ALASKA 99709-5316
PHONE: (907) 474-2400

October 29, 1992

Re: Project F-042-3(9)
Old Glenn Highway

Charles E. Farmer
P.O. Box 542
Glennallen, AK 99588
(PH 822-3820)

Dear Mr. Farmer,

I received your package of maps the other day and I now believe I understand what the problem is.

You happen to live in an area where BLM dealt with the Glenn highway right of way adjoining the U.S. Surveys in three different ways. The southerly boundary of U.S. Survey 5637 was defined by BLM as being coincident with the centerline of the Old Glenn highway. Therefore when the right of way was vacated in September of 1991, the owner's of U.S.S. 5637 obtained full control and use of that portion of the U.S. Survey up to the old centerline.

The northerly boundary of your neighbor in U.S. Survey No. 3336 is the southerly right of way line of the Glenn highway, or 150 feet to the south of the centerline. However, he then purchased from BLM the highway lot designated as U.S. Survey No. 3336-A. This highway lot was essentially that portion of the Glenn highway right of way adjoining U.S.S. 3336. When this highway lot was created, it was still subject to the Glenn right of way but the owner had a future right to the full use of the lot should the right of way eventually be vacated. The southerly 100 feet of the highway lot was vacated in June of 1989.

U.S. Survey No. 4824 is similar to U.S.S. 3336 in that its northerly boundary is coincident with the southerly right of way line of the Glenn highway. The primary and critical difference between U.S.S. 4824 and 3336 is that BLM never created a highway lot adjoining U.S.S. 4824 that could be acquired by the land owner.

This fact is the primary area of confusion. I have enclosed a copy of the 1975 DOT&PF Memorandum of Agreement with the McGinley's in which we agreed to vacate that portion of the existing Glenn right of way adjoining U.S. Surveys 5637 and 4824. As I mentioned above, we have vacated the right of way within U.S.S. 5637. In 1975 both DOT&PF and the McGinleys were under the mistaken impression that the McGinleys owned the underlying interest in the right of way adjoining U.S.S. 4824. The Warranty Deed that you have

Example of FLO 1613 Highway Lots & erroneous assumptions.

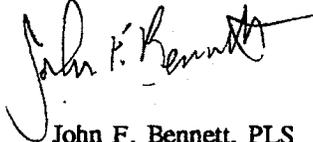
enclosed indicates that the McGinleys intended to convey to Allen Farmer, U.S.S. 4824 and "that portion of the existing State of Alaska Right of way of the Old Glenn Highway adjacent to U.S. Survey No. 4824, to be relinquished by the State of Alaska at the time of completion of the new highway". It may have been that they believed that the State owned the area of the right of way in fee and could convey it to whomever we wanted to. In reality, the Glenn right of way is only an easement and when it is vacated, it automatically reverts to the owner of the underlying interest. In this case, that owner appears to be the State of Alaska, DNR.

At this time we cannot vacate any of the area highlighted in yellow on the attached print as I do not believe that you have any interest in it. You may however, purchase the underlying interest from DNR and then request a vacation, or DNR could request a vacation and then sell you their interest.

I know this is not the answer you wanted to hear and you may wish to consult an attorney in order to verify that my analysis is correct. I have also attached a copy of our guidelines for requesting a vacation of right of way should we reach that point.

Feel free to call me at 474-2413 should you have any further questions.

Sincerely,



John F. Bennett, PLS
Right of Way Engineering Supervisor

jfb

attachments: partial print ROW plans
BLM plat USS 5637
BLM plat USS 4824
Vacation plat USS 5637
Vacation plat USS 3336-A
Memorandum of Agreement - McGinley
Vacation Guidelines

TONY KNOWLES, GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
NORTHERN REGION, RIGHT OF WAY

2301 PEGER ROAD, MAIL STOP 2553
FAIRBANKS, ALASKA 99709-5399
PHONE: (907) 474-2400
TDD: (907) 451-2383
1-800-475-2464

September 8, 1995

Re: Project F-042-3(9) Glenn Highway
Right of Way Status at Nelchina

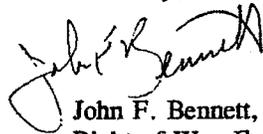
Mr. Norman Wilkins
HC 1 Box 2440
Glennallen, AK 99588

Dear Mr. Wilkins:

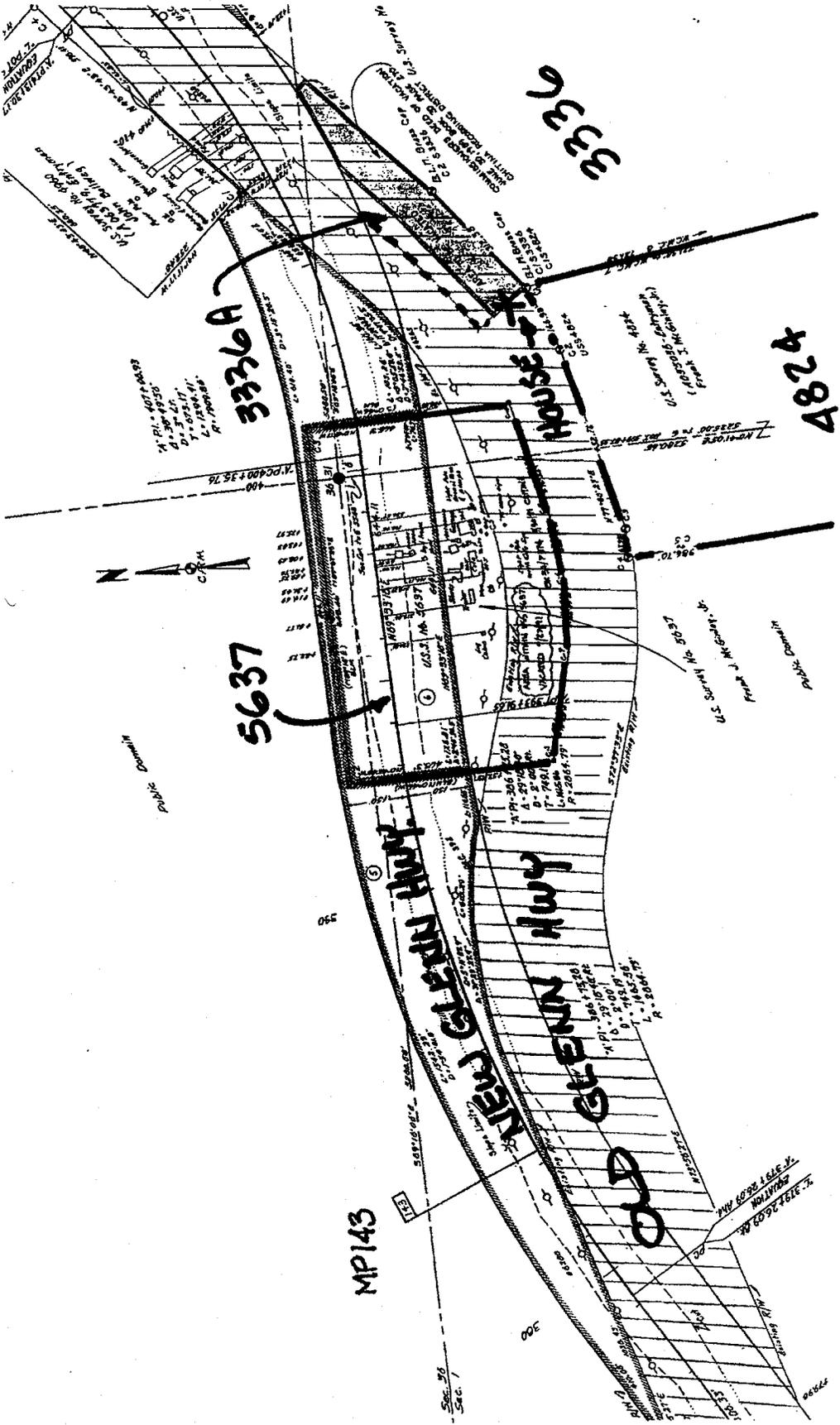
As we discussed on the phone, I have enclosed an updated copy of the right of way plans for the Glenn highway adjoining your property within U.S. Survey No. 3336. I have also attached two Commissioner's Deeds of Vacation. The first was issued to Robert Rudbeck in February of 1994. It eliminated a 106 foot wide strip of the old highway easement fronting U.S. Survey No. 3336. As I mentioned on the phone, the boundary of U.S. Survey No. 3336 is the southerly right of way line of the old Glenn highway. At a later date, BLM surveyed U.S. Survey No. 3336-A, which is the 150 foot wide strip between the centerline of the old Glenn and the southerly right of way line. Rudbeck's predecessor purchased U.S. Survey No. 3336-A subject to the highway easement. So when the right of way vacation was granted to Rudbeck, the 106 foot wide strip became unencumbered property available for use by the adjoining owners of U.S. Survey No. 3336. If Rudbeck conveyed a portion of USS 3336 to you without mentioning the 106 foot wide vacated strip, it is presumed by statute to have been conveyed to you. I have also enclosed a copy of that statute.

I have also enclosed another Deed of Vacation to the Department of Natural Resources. This came about because the owner of USS 4824 had built his house in the highway easement. We told him that we would vacate a portion of the highway easement but that he did not own the land under the easement, DNR did. Therefore, he went to DNR to get a "preference rights" sale to a piece of the land so when it was vacated he would have clear title to it. DNR is supposed to be in the process of platting this loop of the old Glenn highway so that no one is left without legal access. I hope this answers your questions.

Sincerely,



John F. Bennett, PLS
Right of Way Engineer
Northern Region



3333

3336A

A824

5637

MP143



Public Domain

U.S. Survey No. 4874
1855-56 (part of)
from

U.S. Survey No. 4874
1855-56 (part of)
from

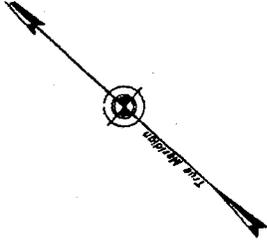
Public Domain

U.S. Survey No. 4874
1855-56 (part of)
from

Sec. 36
Sec. 1

300

3000



U.S. 3336A

ET

N. 56° 22' W.

S. 33° 38' W. 1.23
N. 33° 38' E. 1.50

S. 41° 15' W. 10.17
N. 41° 15' E. 10.460

S. 78° 03' W. 25.56
N. 48° 03' E. 24.227

GLENN HIGHWAY

U.S. SURVEY No. 3336A

U.S. SURVEY No. 3336

S. 39° 26' E. 2.27
N. 54° 34' E. 4.7332

S. 39° 26' E. 2.27
N. 54° 34' E. 4.7332

S. 39° 26' E. 2.27
N. 54° 34' E. 4.7332

S. 39° 26' E. 2.27
N. 54° 34' E. 4.7332

S. 39° 26' E. 2.27
N. 54° 34' E. 4.7332

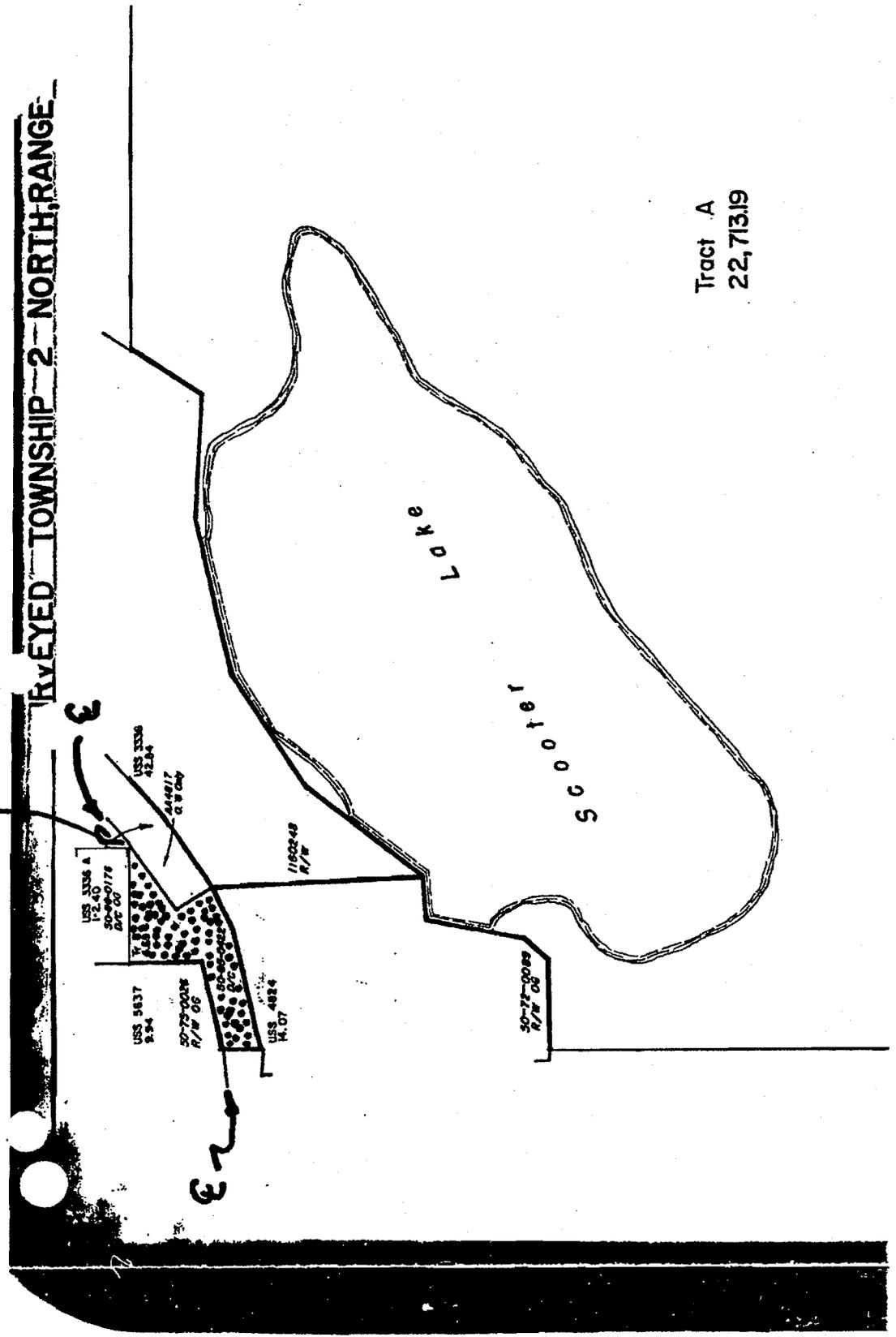
Row line

U.S. 3336

161

OWNER: DNR

RYEYED TOWNSHIP 2 NORTH, RANGE



Tract A
22,71319

APPLICANT: 11246 MCGINLEY FRANK J JR
 MILE 143 GLENN HIGHWAY
 STAR ROUTE C BOX 205
 PALMER AK 99645

USS 5637

HISTORY:	DATE	ACT PC	ACTION TAKEN	UNIT	CDR SURVEY	AMOUNT
1.	03/22/1962	403	CLAIM LOCATED OR POSTED	AJA LH		
2.	06/26/1967	247	LOC NOTICE FILED	PSA LR		
3.	06/04/1969	198	ENTRY APPLICATION RECVD	PSA LR		
4.	06/04/1969	213	FINAL PROOF FILED	PSA LR		

APPLICANT: 11246 MCGINLEY FRANK J JR
 MILE 143 GLENN HIGHWAY
 STAR ROUTE C BOX 205
 PALMER AK 99645

USS 4824

HISTORY:	DATE	ACT PC	ACTION TAKEN	UNIT	CDR SURVEY	AMOUNT
1.	06/28/1961	403	CLAIM LOCATED OR POSTED	AJA LH		
2.	07/03/1961	247	LOC NOTICE FILED	AJA LH		
3.	10/02/1964	213	FINAL PROOF FILED	AJA LH		
4.	10/02/1964	198	ENTRY APPLICATION RECVD	AJA LH		
5.	04/19/1965	043	SPECIAL INSTR. APPROVED	SUR ADP U04824		
6.	07/08/1965	051	ASSIGNED TO SURVEYOR	SUR ADP U04824		
7.	07/22/1965	052	FIELD SURVEY COMMENCED	SUR ADP U04824		
8.	03/26/1965	053	FIELD SURVEY COMPLETED	SUR ADP U04824		

Cust Name: TARBERT CLARENCE V
 Cust Address: GENERAL DELIVERY
 PALMER

AK 99645

USS 3336

Date	Code/Description	Remarks	Doc Id	Ofc	Emp
25-JUN-1952	001 Application Filed	APPLICATION RECEIVED			
14-MAY-1954	980 Special Instr Appv-Sr			PSA	
29-MAY-1954	982 Field Survey Complete			SUR	ADP
18-APR-1955	159 Survey Approved			SUR	ADP
25-JUL-1955	984 Srvy Plat Offic'Ly Fi			SUR	ADP
05-JUN-1956	879 Patent Issued			SUR	ADP
			PA01160248	AJA	BED

Custid: 000072124 Int Rel: Applicant
 Cust Name: RUDBECK KAHREN M
 Cust Address: STAR ROUTE C BOX 8728
 PALMER AK 99645
 Pct Int: .00000
 Custid: 000072130 Int Rel: Applicant
 Cust Name: RUDBECK ROBERT E
 Cust Address: STAR ROUTE C BOX 8728
 PALMER AK 99645
 Pct Int: .00000

USS 3336A

Date	Code/Description	Remarks	Doc Id	Ofc	Emp
21-OCT-1970	980 Special Instr Appv-Sr				
08-JUN-1972	159 Survey Approved			SUR	ADP
17-JUL-1972	984 Srvy Plat Offic'Ly Fi			SUR	ADP
08-SEP-1984	001 Apln Recd/Case Establ			SUR	ADP
15-NOV-1984	158 Survey Requested			PSA	JC
16-JAN-1985	140 Mineral Exam/Rpt Rqst			AJA	AMS
14-FEB-1985	518 Min Rpt Recd W/Val Ls			AJA	
27-JUN-1985	114 Appraisal/Reappr Rqst			AJA	
20-AUG-1985	115 Appraisal/Reappr Appv			AJA	AMS
10-SEP-1985	166 Srvy Conformance Noti			AJA	AMS
10-SEP-1985	087 Purchase Price Reques			AJA	AMS
15-NOV-1985	006 Apln Rej/Denied	REJECTED OTHER		AJA	AMS
24-APR-1986	879 Patent Issued		PA50860176	AJA	AMS

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
NORTHERN REGION, RIGHT OF WAY

2301 PEGER ROAD, MAIL STOP 2553
FAIRBANKS, ALASKA 99709-5316
PHONE: (907) 474-2400

May 25, 1993

Re: Glenn Highway - Richardson
Highway Junction Right of Way

Mr. Jasper Hall
P.O Box 276
Glennallen, AK 99588

Dear Mr. Hall

Recently you contacted Patricia Thayer of our office regarding the status of the Glenn Highway right of way adjoining your property. Your question has been forwarded to me as my section deals primarily with the research into the status of various rights of way.

As I began researching the history of the right of way fronting your lot, I quickly realized that the definition of the highway right of way near the Glenn - Richardson junction is fuzzy at best. The following is a chronological summary of my research into this issue. Although it does not make for very exciting reading, you may wish to pass it on to your title company for their information.

1. The property in question is Government Lot 43, Section 19, Township 4 North, Range 1 West, Copper River Meridian.
2. The original township survey for section 19 was approved on February 28, 1914. This plat shows the "Military Trail", now known as the Richardson, passing through section 19.
3. Executive Order 9145, dated April 23, 1942 reserved public lands for the use of the Alaska Road Commission in connection with the construction and maintenance of the Palmer-Richardson Highway (now known as the Glenn Highway). The right of way width created by this order was 200 feet or 100 feet on each side of centerline.
4. Public Land Order 46 dated October 8, 1942 withdrew public lands for classification. Lands under this order included Sections 19 and generally consisted of the lands 3 miles north, 2 miles south and 6 miles west of the Glenn/Richardson junction.
5. BLM issued a revised plat for T.4N., R.1W., CRM for the subdivision of sections including section 19. This plat was approved on July 22, 1947. The subdivision created 10 acre small tracts straddling the Richardson and Glenn highways. The

Glenn highway right of way is graphically depicted and in accordance with E.O. 9145, appears to be 200 feet in width.

6. Public Land Order No. 601 dated August 10, 1949 classified the Glenn Highway as a through road and reserved by withdrawal a strip of land 300 feet in width being 150 feet on each side of the centerline. As PLO 601 was subject to "valid existing rights and to existing surveys and withdrawals for other than highway purposes", it had no effect on the withdrawn lands in the Glennallen area.
7. Public Land Order No. 616 dated November 15, 1949 partially revoked PLO 46 so far as it affected certain lands in the Glennallen area including the NE 1/4 and W 1/2 of Section 19. However, the lands released "shall not become subject to the initiation of any rights or to any disposition under the public land laws...." until the lands were made available for entry under the Small Tracts Act. These lands were therefore still unaffected by the PLO 601 300' wide right of way.
8. Public Land Order No. 757 dated 10/16/51 essentially released the Feeder and Local road classifications created by PLO 601 from withdrawal status. However, the Glenn highway as a "Through" road, was still withdrawn from all forms of appropriation and reserved for highway purposes. The right of way width remained 300 feet.
9. Public Land Order 1613 dated April 7, 1953 converted the "Through" road withdrawals to easements and made the land under these easements available for purchase by adjoining land owners. Therefore, at this time the Glenn highway right of way became an easement.
10. On October 1, 1953, BLM approved a plat titled "Segregation of the Glenn and Richardson Highway Rights of Way" This plat parcelized the rights of way as "highway lots" as provided by PLO 1613 and created the subject Government Lot 43. The right of way for the Glenn and Richardson was dimensioned as being 200 feet in width.
11. Between August 1955 and May 1956 there were additional BLM plats creating lots in the vicinity and Public Land Orders revoking the original classification PLO 46 and creating the Glennallen Townsite. None of these appear to affect Government Lot 43 of Section 19.
12. Department of Highways right of way plans for Project F-042-3(6) "Glenn B-3" dated May 1960 shows the BLM Government Lots and depicts the Glenn and Richardson Highway rights of way as being 200 feet in width. The Glenn Highway is shown as widening to the 300 foot right of way when it crosses the range line between T.2W. and T.3W.
13. A May 11, 1961 Department of Highways file memo between the Assistant State Right of Way Agent and the State Road Design Engineer regarding Project F-042-3(5) indicates that the existing right of way for the Glenn Highway is 200 feet wide

between the junction and the R.2W./R3W. range line, widening to 300 in width as it proceeds from the range line towards the West.

14. The May 22, 1961 right of way plans for project F-042-3(5) "Glennallen Junction - Tolsona Creek" does not show the BLM lots but does show the Glenn right of way to be 200 feet in width up to the range line between R.2W. and R.3W.
15. The August 5, 1963 right of way plans for Project F-071-2(5) "Glennallen Junction to Tazlina River" depicts the Glenn right of way as 200 feet in width and the Richardson highway right of way as 200 feet in width until it passes through the southerly boundary of the Glennallen Townsite. At that point the right of way widens to 300 feet.
16. The January 20, 1981 right of way plans for Project RF-071-2(18) "Richardson Highway Mile 115 to 125" shows a right of way line at both 100 feet on each side of centerline and 150 feet on each side of centerline from the junction northerly through section 19.

The way we normally determine the width of a particular Public Land Order right of way such as the Glenn highway is to review the BLM land records and determine whether there had been any entries, reservations or withdrawals prior to the date of the effective land order that would have prevented it from taking effect. In this case, all of the land actions we found in the vicinity of your property had taken place after April 23, 1942 (EO 9145), therefore we are confident that the 200 foot wide right of way applies to your property. This interpretation is also supported by all of the BLM plats which show the Glenn highway right of way as being 200 feet wide.

The next step would be to see whether your lot was vacant, unappropriated and unreserved at the time PLO 601 came into effect (August 10, 1949), or at any point in time during which PLO 601 and eventually PLO 1613 were effective. If it was, then your lot would be subject to a 300 foot wide right of way for the Glenn highway.

You mentioned on the phone to me that your lot was originally patented from the State of Alaska and that the patent referred to a reservation for the Glenn highway right of way according to PLO 1613. Although I have not seen the documents relating to your property, this suggests to me that your lot did meet the tests outlined above and that it was subject to the 300 foot wide right of way. A patent to the State of Alaska would have had to have taken place after statehood, therefore leaving a fairly large window between the federal order which made the small tract lots available for entry and the date that the State had applied for the lands. The effect of the Glenn highway right of way on the lots they received was probably researched prior to the issuance of the State patent to the private property owner and therefore PLO 1613 was noted in the patent.

In conflict with the 300 foot wide right of way is the fact that Department of Transportation documents and plans dating back to 1960 and BLM plats back to 1947 have indicated a 200

foot wide right of way. And as I mentioned on the phone, confusion has reigned to the point where as I noted in the above item #16, the right of way plans for the Richardson heading north from the junction show a right of way line at 100 feet from centerline and 150 feet from centerline.

I also mentioned the 1983 Alaska Supreme Court case involving the Alaska Land Title Association. In this decision the court ruled that the Public Land Orders as published in the Federal Register provided constructive notice such that a title company could be held liable under the terms of its policy for neglecting to report the effect of PLO right of way. As you see, researching these rights of way can be fairly complex, therefore most title companies will report a potential encumbrance if there is the slightest hint that a PLO right of way is involved.

In summary, the conflict is that DOT&PF has traditionally only claimed a 200 foot wide right of way adjoining your property, while according to the State patent for your property and by applying the appropriate public land orders, your property is actually subject to a 300 foot wide right of way.

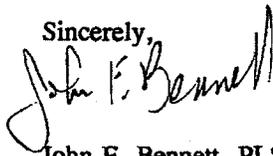
The final question is how to resolve this conflict so you know where you stand with respect to the highway right of way fronting your property.

I believe the most expedient method would be for you to apply for a Commissioner's Deed of Vacation for the right of way beyond 100 feet from centerline fronting Government Lot 43. I have enclosed a copy of the guidelines for the application and the relevant right of way plan sheets. Once the application is received, it will be reviewed by our design, planning, maintenance and right of way sections to determine whether it is in the public's interest to vacate this right of way. I do not see a major problem with granting this vacation request due to the Department's past representations of the right of way width (200') and the fact that there may be little justification for a 300 foot wide right of way passing through a community such as Glennallen.

Your future contacts in monitoring the progress of the vacation request should you submit it will be either Pat Thayer at 474-2419 or Dan Baum, Property Management Supervisor at 474-2401.

Should you require any additional information, I can be reached at 474-2413.

Sincerely,



John F. Bennett, PLS
Right of Way Engineering Supervisor

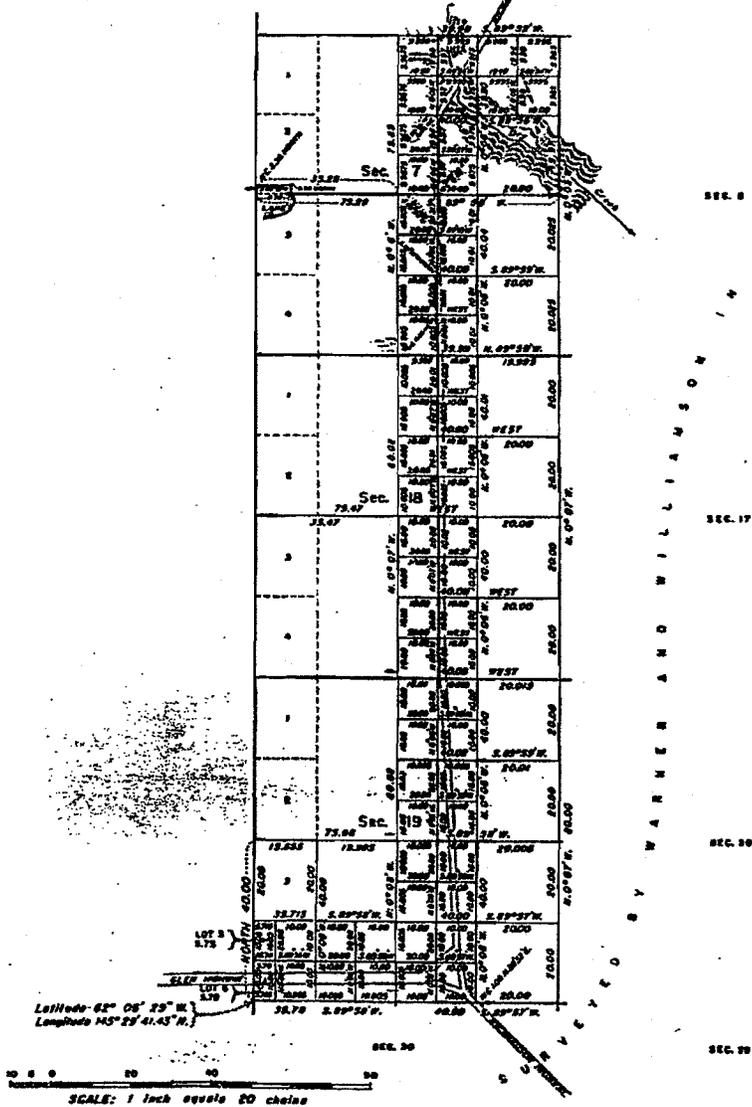
enclosures: as stated

cc: Dan Baum, Property Management

Glenn/Richardson Junction
(Subsequent PLO changes classification and width)

1. Property owner of a BLM small tract adjoining the Glenn Highway in Glennallen requested confirmation of the ROW.
2. His title report stated that his lot was subject to a ROW 150' each side of the Glenn highway. The BLM plat depicted a ROW 100' from centerline. *(1955 BLM plat)*
3. DOT drawings indicated a 200' wide ROW along the Glenn from the junction through Glennallen widening out to 300'. The ROW plans for the Richardson north of the junction depicted a ROW at 100' and 150'. Memos from mid 60's Glenn projects evaluated the ROW width as variable based upon the date of entry. *(Glenn and Richardson drawings)*
4. The ROW for the Glenn highway was initially 200' in width according to EO 9145 on April 23, 1942.
5. PLO 601 (August 10, 1949) classified the Glenn as a "Through road" with a ROW width of 300' across unreserved public lands.
6. In January of 1949, the BLM administrator sent a letter to Col. John Noyes of the ARC. This letter suggested that as the small tracts had already been platted with a 200' ROW, that perhaps this area could be an exception to PLO 601. *(letters)*
7. Col. Noyes responded in agreement, however no evidence can be found which excludes this area from the application of PLO 601.
8. As the dept. had been operating under the interpretation that the ROW should have been 200' and we were not utilizing more than that, the outer fifty feet were vacated in order to clear title.

SHIP No. 4 NORTH, RANGE No. 1 WEST of the COPPER RIVER MERIDIAN, ALASKA.
 SUBDIVISION OF SECTIONS 7, 18 & 19.



UNITED STATES DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT

DENVER, COLORADO, OCTOBER 28, 1944.

WASHINGTON D. C., JULY 28, 1947.

30' 15\"/>

BY WHOM SURVEYED	GROUP No.	DATE OF SPECIAL INSTRUCTIONS	WHEN SURVEYED	
			BEGUN	COMPLETED
F. W. Williamson, Chief Cadastral Engineer, G. L. O.	50	April 30, 1942	May 21, 1945	July 7, 1945

THIS PLAT OF THE SUBDIVISION OF SECTIONS 7, 18, AND 19, TOWNSHIP 4 NORTH, RANGE 1 WEST, OF THE COPPER RIVER MERIDIAN, ALASKA, IS STRICTLY CONFORMABLE TO THE FIELD NOTES OF THE SURVEY THEREOF, WHICH HAVE BEEN EXAMINED AND APPROVED.

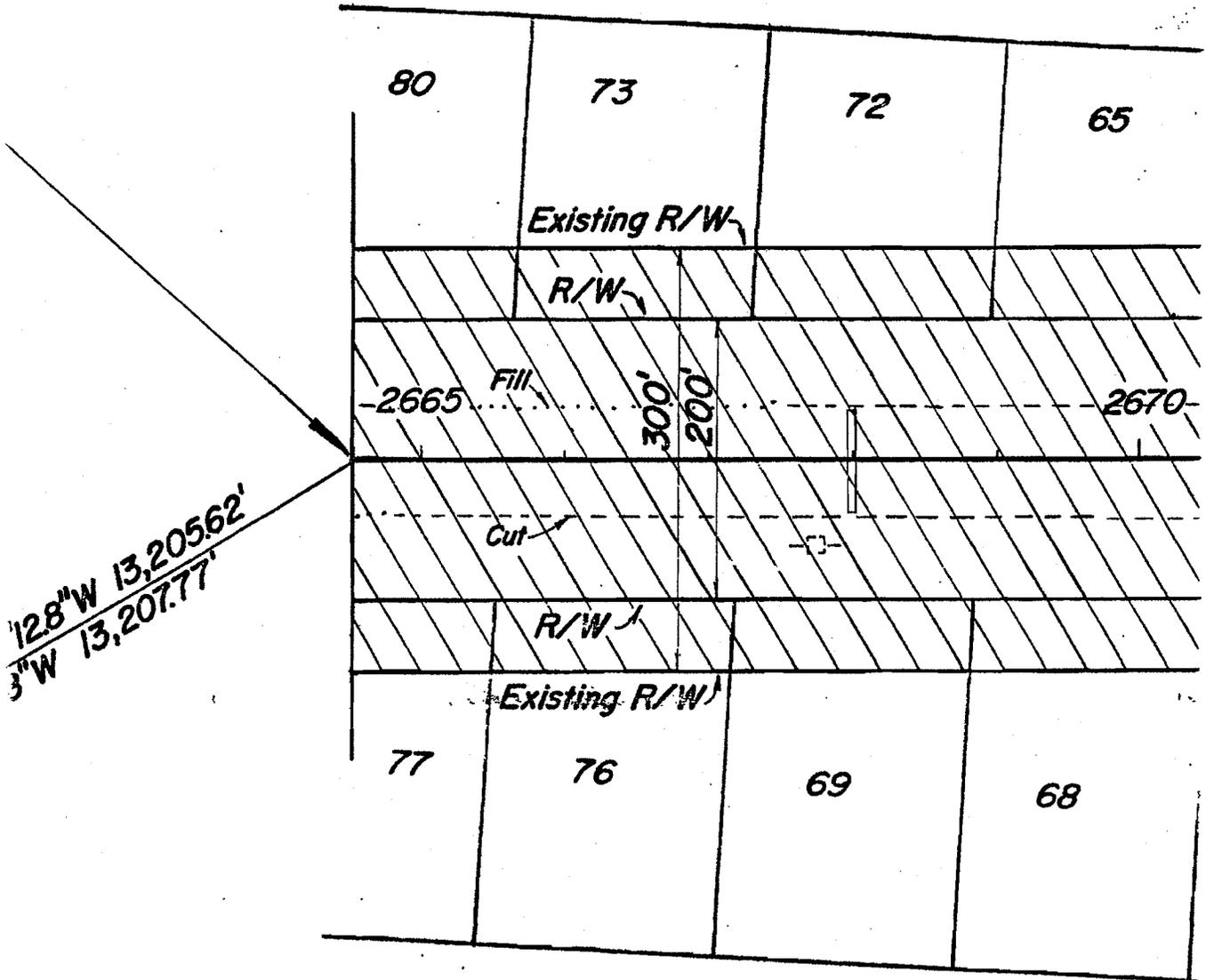
THE SURVEY REPRESENTED BY THIS PLAT HAVING CORRECTLY EXECUTED IN ACCORDANCE WITH THE REG. OF LAW AND THE REGULATIONS OF THIS OFFICE IS ACCEPTED.

[Signature]
 ACTING CHIEF CADASTRAL ENGINEER.

[Signature]
 ASSISTANT DIR. REC.

Project RF-071-2(18)
 RL Ahd=Sta.2664+49.40 Bk.
 1-2(5)

TAZLINA
 50-76



Correct Bearings

TAZL
 50



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Anchorage, Alaska

R:LMP

January 6, 1949

Colonel John Noyes,
Commissioner of Roads,
Alaska Road Commission
Juneau, Alaska



Col. Noyes
IPP
APC
GMT
WHD
GHS

Dear Colonel Noyes:

In connection with our efforts to make available small tracts at Glenallen, some of which will no doubt be obtained by employees of the Alaska Road Commission, I have suggested to my Washington office the advisability of retaining the 200-foot right-of-way for a short distance along the Glenn Highway.

11/1-12

Small tracts have already been surveyed, and it was my thought that perhaps less confusion and more land would result if the width was not disturbed there.

[Handwritten initials]

It is my suggestion that the right-of-way be retained at 200 feet through Sections 19 and 30 (on the common line), T. 4 N., R. 2 W., CRM, and proceeding eastward through and bordering Sections 20, 29, 21, 22, 23 and 24, into Section 19, T. 4 N., R. 1 W., to the junction with the Richardson Highway.

The small tracts continue northward along the Richardson Highway, which has no established right-of-way for the road. It appears to me that if the 200-foot right-of-way is retained to the junction as outlined above, it would be consistent to set the Richardson width of 200 feet from the junction northward through Sections 19, 18 and 17, T. 4 N., R. 1 W., CRM.

Col. Noyes, for his review

OK [initials]

It should be made clear, though, that the Highway was not used as a base line for the survey, as the survey was made by subdividing existing sections into aliquot parts, without regard to the location of the road. A change in the right-of-way, however, will add just another matter to be taken into consideration in determining the size and boundaries of the small tracts.

The suggestion is passed on to you, however, so that you may form your own conclusion and make recommendations accordingly.

I hope the New Year is a happy one for you and the ARC.

Lowell M. Puckett
Lowell M. Puckett,
Regional Administrator.

cc: Mr. Kadow

January 14, 1949

Mr. Lowell M. Puckett,
Regional Administrator,
Bureau of Land Management,
Department of the Interior,
Anchorage, Alaska.

Dear Mr. Puckett:

Receipt is acknowledged of your letter dated January 6, 1949, in which you discuss the advisability of retaining a 200 foot right-of-way for a short distance (about seven sections) along the Glenn Highway near its junction with the Richardson Highway and for about three sections along the Richardson Highway north of the junction.

In general, I dislike to recommend an exception to a ruling so recently made. However, in this instance I cannot deny the logic of your conclusion and must reluctantly concur in the suggestion you have made. Thank you for bringing this matter to my attention.

Very truly yours,

John R. Noyes,
Commissioner of Roads for Alaska.

GMT/lcs

24/226



**RS 2477 SECTION LINE EASEMENT
& TRAIL CASES**

RS 2477 Trail Cases

1. Hamerly v. Denton, 359 P.2d 121 (1961).

At issue was whether a roadway across Hamerly's home site was a public highway for RS 2477 establishment purposes. The case involved questions on acceptance of the RS 2477 grant, segregation of public lands by homestead entry, dedication of public roads and prescriptive easement.

RS 2477 (43 U.S.C.A. sec. 932): Alaska recognizes the grant of right of way for public highways.

But before a highway may be created, there must be either some positive act on the part of the appropriate public authorities of the state, clearly manifesting an intention to accept a grant, or there must be public user for such a period of time and under such conditions as to prove that the grant has been accepted.

At 123.

Since there was not an act by a state entity, public use was required in this case. Consequently Denton had the obligation to prove "(1) that the alleged highway was located 'over public lands', and (2) that the character of its use was such as to constitute acceptance by the public of the statutory grant." At 123.

The court defined public lands on page 123 as: "lands which are open to settlement or other disposition under the land laws of the United States. It does not encompass lands in which the rights of the public have passed and which have become subject to individual rights of a settler." Once there is a valid entry the land is segregated from the public domain.

In this case there were a number of entries which were subsequently relinquished or closed prior to the Hamerly's home site entry which went to patent. The public usage needed to accept the grant had to occur when the land was not subject to an entry. The court found that there was no evidence of public user during the times the land was not subject to an entry. "Where there is a dead end road or trail, running into wild, unenclosed and uncultivated country, the desultory use thereof established in this case does not create a public highway." At 125.

Dedication: "There is a dedication when the owner of an interest in land transfers to the public a privilege of use of such an interest for a public purpose." At 125. In finding that Denton did not meet the burden of proof the court stated on page 125:

Dedication is not an act or omission to assert a right; mere absence of objection is not sufficient. Passive permission by a landowner is not in itself evidence of intent to dedicate. Intention must be clearly and unequivocally manifested by acts that are decisive in character.

Prescriptive Use: "Use alone for the statutory period - even with the knowledge of the owner - would not establish an easement." Such use is presumed to be permissive unless the claimant proves the use was "openly adverse to the owner's interest by ... distinct and positive assertion of a right hostile to the owner of the property." At 126. The burden is on the claimant of the prescriptive use to show that his claim is not permissive and is in derogation of the true owner's rights.

2. **Dillingham Commercial Company, Inc. v. City of Dillingham, 705 P.2d 410 (1985).**

City claimed fee title to a roadway by virtue of 43 U.S.C. 932 (RS 2477) or by adverse possession. It also claimed alleys on two other boundaries of the Dillingham Commercial Company property under the same theories.

Section 932: In citing Hamerly v. Denton, 359 P.2d 121,123 (1961), the Supreme Court ruled:

Case law has made it clear that section 932 is one-half of a grant - an offer to dedicate. In order to complete the grant "there must be either some positive act on the part of the appropriate public authorities of the state, clearly manifesting an intention to accept a grant, or there must be public user for such a period of time and under such conditions as to prove that the grant has been accepted.

In this case the roadway was used prior to the original homestead entry. The original homesteader squatted on the land prior to making the entry; however, official action such as a homestead entry was required to withdraw the land from the public domain, mere possession did not suffice.

The public's acceptance of the grant required public use for a period of time and under conditions proving the grant had been accepted. That use must have specific termini and a definite location. Once the public use and location is established "it may be used for any purpose consistent with public travel." At 415.

Section 932 grants a right of way and according to the court's ruling in Wessells v. State Department of Highways, 562 P.2d 1042, 1045 n. 5 (1977) the general rule in Alaska is that a "'right of way' is synonymous with 'easement'". At 415.

Adverse Possession: The Court ruled that adverse possession was not applicable due to the lack of uninterrupted and continuous possession. Consequently the city did not get fee simple title. However, the Court did rule that a public highway may be created by prescriptive use.

At page 416, the Dillingham Court applied the three tests for adverse possession established in Alaska National Bank v. Linck, 559 P.2d 1049, 1052 (1977), to prescriptive easements.

- (1) the possession must have been continuous and uninterrupted;
- (2) the possessor must have acted as if he were the owner and not merely one acting with the permission of the owner; and
- (3) the possession must have been reasonably visible to the record owner.

Adverse possession involves the fee simple interest therefore the true owner must be excluded. The occupancy by the adverse possessor must be exclusive; whereas, a prescriptive easement does not require exclusive use. The use makes the property subject to an easement, but it does not divest the owner of the underlying fee title.

Implied Dedication: Alternatively the theory of implied dedication was discussed. Implied dedication requires (1) an intent to dedicate the road or easement to a public use, and (2) an acceptance of that dedication on behalf of the public. Establishment of the intent to dedicate must be "clear and unequivocal", a heavy burden on the party claiming the dedication. At 416.

3. Shultz v. Department of the Army, United States of America, 10 F.3d 649 (9th Cir. 1993)

Paul Shultz filed a quiet title action claiming a public right of way across Fort Wainwright. His claims was that an RS 2477 right of way, or other forms of easements, existed prior to establishment of the army base. The Federal District Court ruled that no right of way existed, or in the alternative, the statute of limitations for Shultz to bring a quiet title action against the Army had expired. A three judge panel of the Ninth Circuit Court of Appeals reversed the decision of the District Court.

FACTS: The panel's factual recitation on pages 652 and 653 follows:

Shultz owns property to the northeast of Fort Wainwright and east of Fairbanks. To get to Fairbanks, he must cross the base. Fort Wainwright is situated on land acquired by the federal government in a series of purchases and withdrawals beginning in 1937. All of the acquisitions were made "subject to valid existing rights." Shultz

traces his title through George Nissen who homesteaded in the first half of the century and through Nissen's successors. Nissen was a German immigrant who made entry on the property in October 1907, built his cabin the following month and, by February 1908, established residency. He was among a handful of homesteaders occupying land along the Chena River and for a while raised potatoes and other vegetables with great success. He transported a portion of his crop to market in Fairbanks every year. Nissen left the area in 1918. The homestead patent, for which he had filed in 1914, was issued in 1924.

In the early days of homesteading the routes to Fairbanks across present day Fort Wainwright were difficult to travel. At trial one witness described swimming horses in the summer across sloughs lacking bridges. These same sloughs served as frozen highways in the winter. Much of the land surrounding Shultz' property, especially to the north, is swampy, due to the underlying permafrost that prevents the melted snow from draining. In Alaska, more than in most locations, the season dictates the nature and means of passage. The trial involved the introduction of extensive evidence of the various historical routes across the land now occupied by the Army.... No other land route is available. Without access through Fort Wainwright, Shultz is landlocked.

The modern base roads essentially follow the river and "[i]n part they follow the same course as the trails and wood paths used by early settlers in the Chena River area." Page 654. In 1981 the Army instituted a pass system for the base. Mr. Shultz refused to obtain a pass. Ultimately he filed the quiet title action in 1986.

Three major issues were addressed by the decision: Mr. Shultz's standing to bring the quiet title action, the validity of the RS 2477 claim, and the statute of limitations to bring the action.

STANDING: The Army challenged Shultz's right to bring the litigation on the grounds that Shultz did not have standing, or the legal right, to bring a quiet title action for any roads that did not abut his property. Its contention was that since Shultz was not an abutter to the roads on the base, he did not have "a 'special and vital interest' in roads that do not abut his property." At page 653. The panel dismissed that argument and ruled that Shultz did have standing because he:

has a "particularized" interest in crossing the base to reach roads that lead to his property. Not to have access to those roads would "affect [him] in a personal and individual way" by sealing him off from his property. Second, Shultz seeks to quiet title as against the Army which asserts an unrestricted right to regulate access to Fort Wainwright's roads. A clear causal connection exists between his

claim and the restrictions he challenges. Finally, were Shultz able to prove that the combination of roads leading to his property do constitute public rights of way the "favorable decision" would redress the injury he asserts. [Citations and footnote omitted].

At page 653.

RS 2477 RIGHT OF WAY: The panel determined that Alaska's conditions presented unique situations that relate to RS 2477 rights of way.

Due to its geography, its weather, and its sparse and scattered population, Alaska's "highways" frequently have been no more than trails and they have moved with the season and the purpose for the transit—what traveled best in winter could be impassable knee-deep swamp in summer; what best accommodated a sled was not the best route for a wagon or a horse or a person with a pack. By necessity routes shifted as the seasons shifted and the as the uses shifted. What might be considered sporadic use in another context would be consistent or constant use in Alaska. We conclude that as long as the termini of the right of way are fixed (the homesteaders' cabins on one end, Fairbanks on the other), to establish public right of way the route in between need not be absolutely fixed (as it might be in other settings).... Right of access is the issue, not the route. [Footnotes omitted].

At page 655

Although RS 2477 is a federal grant, acceptance of the grant is a matter of state law. In referring to Standard Ventures, Inc. v. Arizona, 499 F.2d 248, 250 (9th Cir. 1974), Sierra Club v. Hodel, 848 F.2d 1068, 1083 (10th Cir. 1988), and Fisher v. Golden Valley Electric Association, Inc., 658 P.2d 127, 130 (Alaska 1983), at page 655, the panel stated: "An RS 2477 right of way comes into existence 'automatically when a public highway [is] established across public lands in accordance with the law of the state.' Whether a right of way has been established is a question of state law." However, doubts to the extent of the RS 2477 right of way must be construed in favor of the government.

Moreover, at pages 655 and 656, the court recognized two methods under Alaska law to establish RS 2477 rights of ways:

[B]efore a highway may be created, 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.

Hamerly v. Denton, 359 P.2d 121, 123 (1961). "To prove RS 2477 rights by the second of these methods, a claimant must show "(1) that the alleged highway was located 'over public lands,' and (2) that the character of its use was such as to constitute acceptance by the public of the statutory grant." Hamerly, 359 P.2d at 123. Shultz at page 656.

The panel determined that A.S. 19.45.001(9) "broadly defines 'highway' to include a 'road, street, trail, walk, bridge, tunnel, drainage structure and other similar or related structure or facility, and right-of-way thereof.'" At page 656. Lands that have been withdrawn or entered are not public lands available for an RS 2477 claim.

Public user is necessary to create the acceptance.

Although the law of RS 2477 rights of way suggests that "infrequent and sporadic" use is insufficient, Hamerly, 359 P.2d at 125, and that "regular" and "common" use by the public is necessary, Kirk v. Schultz, 110 P.2d 266, 268 (Idaho 1941), and that travel across the route may not be "merely occasional," the test is what is "substantial" under the circumstances, Ball v. Stephens, 158 P.2d 207, 210 (Cal. 1945).

At page 656.

In finding a foot path was sufficient to establish an RS 2477 right of way under Alaska law, the panel found: "we have noted the manner of travel (by foot or beast or vehicle) is legally irrelevant to the RS 2477 determination. What matters is that there was travel between two definite points." At page 658. Footnotes 10 and 11 on page 658 expand on the preceding quote in regard to the Army's contention that since a neighbor, who entered his property later than Nissen, had to build a road to his homestead there was no basis for a road to Nissen's property. The panel stated:

Both the judge and the Army clearly misunderstood the import of A.S. 19.45.001(9) for RS 2477 law. Such a right of way need not be "buil[t]" or constructed'. Nor need it be "susceptible to wagon or motor vehicle use". An unimproved trail suffices as a "road" for the purposes of this law. The government pose the problem incorrectly. It argued to the court that "if you're going to find an RS-2477, you have to know not only that he got from Fairbanks to his property, but how he did it." As long as it is clear that Nissen traveled overland, how he did it is immaterial.

Public Prescriptive Easement: The fact that the public used a route does not automatically qualify it as an RS 2477. It must cross public lands that were not withdrawn or reserved prior to establishment of the use. While the Panel did not

find that all segments of the trail were established under RS 2477, it did rule that Shultz was not required to show that all portions of the trail were created under RS 2477. The panel concluded Alaska law allows for public prescriptive easements. It cited Dillingham, and listed the three tests for prescriptive easement as stated in McGill v. Wahl, 839 P.2d 393 397 (Alaska 1992): "To establish a prescriptive easement a party must prove that (1) the use of the easement was continuous and uninterrupted; (2) the user acted as if he or she were the owner and not merely one acting with the permission of the owner; and (3) the use was reasonably visible to the record owner." The panel dismissed the lower court's finding that no public prescriptive easement existed. As to the route along the Chena River the panel stated at page 661:

To assert a public easement by prescription, the public need only act "as if [it] were claiming a permanent right to the easement." Swift, 706 P.2d 296. Since overland travel to Fairbanks from the homesteads of the base clearly required some kind of right of way, all interested parties were on notice that an easement was being established. [Citations omitted]. Moreover, the public nature of the route, and its shared use, reinforce Shultz's claim that at the very least an easement by prescription took hold. The route was there. The homesteaders used it. No one challenged their right."

Quiet Title Action: The Army alleged that Shultz did not bring his quiet title action for the easement claim within the 12 statute of limitations under 28 § U.S.C. 2409a(g). Even though the military base was established in 1937, the panel found that Shultz was not put on notice that Army disputed the right of way until it blocked the road in 1981. Consequently, his suit, filed in 1986 was within the statute of limitations.

**NOTE: The above opinion was
withdrawn by the 9th Circuit.**

Opinion 1996 WL 532312 (9th Cir.(Alaska)) decided September 20, 1996, in its entirety states:

The government's petition for rehearing is granted, the opinion of November 30, 1993 at 10 F.3d 649 is withdrawn, and the following opinion is substituted in its place.

Paul G. Shultz appeals the district court's judgment in favor of the government in his quiet title action under 28 U.S.C. § 2409a. Schultz argued that he has a right-of-way across Fort Wainwright to

get back and forth between Fairbanks and his property under either R.S. 2477, 43 U.S.C. § 932, or Alaska common law, or both. Because we ultimately agree with the district court that Shultz has not sustained his burden to factually establish a continuous R.S. 2477 route or a right-of-way under Alaska common law, we affirm the district court. We do not reach Shultz's argument that the district court erred by holding that his action was time barred by 28 U.S.C. § 2409a(g).

Circuit Judge Alarcon's dissent was:

I respectfully dissent.

I would deny the petition for a rehearing and reverse the district court's judgment for the reasons set forth in Judge Fletcher's scholarly opinion in *Shultz v. Department of the Army*, 10 F.3d 649 (9th Cir. 1993).

4. Fitzgerald v. Puddicomb, 918 P.2d 1017 (1996)

Fitzgerald claimed a RS 2477 right of way across Puddicomb's property. The key question was there sufficient public use to accept the RS 2477 grant. The Court extracted language from several cases to identify the criteria for examining acceptance of the RS 2477 grant by public use:

The extent of public use necessary to establish acceptance of the RS 2477 grant depends upon the character of the land and the nature of the use. See *Shultz*, 10 F.3d at 655 ("Our decision must take into account the fact that conditions in Alaska present unique questions ... What might be considered sporadic use in another context would be consistent or constant use in Alaska."); *Ball v. Stephens*, 68 Cal.App.2d 843, 158 P.2d 207, 211 (1945) ("The travel over the road ... was irregular but that was due to the nature of the country and to the fact that only a limited number of people had occasion to go that way."). Although "infrequent and sporadic" use is not sufficient to establish public acceptance of the grant, *Hamerly*, 359 P.2d at 125, continuous use is not required. *Shultz*, 10 F.3d at 656; cf. *McGill v. Wahl*, 839 P.2d 393, 397 (Alaska 1992) (requiring proof of continuous use to establish prescriptive easement). Nor does the route need to be significantly developed to qualify as a "highway" for RS 2477 purposes; even a rudimentary trail can qualify. See *Dillingham*, 705 P.2d at 414; *Shultz*, 10 F.3d at 656-57.

At page 1020.

The Court went on to say with regards to the lack of a specifically defined route :
"In any event, it is not necessary . . . that the precise path of the trail be proven.
It is enough for one claiming an RS 2477 right-of-way to show that there was a
generally-followed route across the land in question." Citing Schultz, at page
1021-1022.

RS 2477 - SECTION LINE EASEMENT CASES

1. Girves v. Kenai Peninsula Borough, 536 P.2d 1221 (Ak. 1975)

During the construction of a Redoubt Drive to a junior high school, the Kenai Peninsula Borough claimed a 33 feet wide section line easement right of way across lands owned by Ms. Girves. Ms. Girves entered on the property in 1958 and received patent in 1961. Neither the notice of allowance of entry or the patent issued to Ms. Girves reserved an easement for highway purposes along the section line. Ms. Girves disputed the Borough's authority to construct the roadway, the validity of a section line easement across her property and the award of attorney fees to the Borough.

AUTHORITY TO CONSTRUCT ROAD: At the time of the suit, the Kenai Peninsula was a second class borough. Road construction was not one of the statutorily enumerated powers of a second class borough. In response to Ms. Girves' argument that the Borough did not have the authority to acquire, construct or maintain roads, the court found that the Borough's authority to "establish, operate and maintain schools" gave it the implied power to construct roads to schools. Such implied "powers are to be strictly construed against the entity claiming them." At page 1224. Nevertheless, the court found building transportation systems for schools was implicit within the school powers.

VALIDITY OF THE EASEMENT: Ms. Girves advanced several arguments against the validity of the section line easement: 1) no express reservation in her notice of allowance or patent, 2) the territorial and state governments lacked authority to accept the 43 U.S.C. Section 932 Grant (RS 2477), 3) the legislature did not effectively accept the grant, and 4) Chapter 35, SLA 1953 did not expressly refer to 43 U.S.C. Sec. 932.

1) No express reservation. The Borough claimed an easement under 43 U.S.C. Sec. 932. The court held that the absence of an express reservation did not preclude the borough from claiming that a valid easement existed prior to issuance of the notice or patent.

2) Territorial and state governments lacked authority to accept. Girves referred to a 1962 Attorney General's Opinion, 11 Op. Att'y Gen. at 3 (Alaska 1962), which opined that the Alaska Organic Act did not allow the territory to "dispose of primary interests in the soil" and therefore the territory could not accept the grant. In relying on a later Attorney General's Opinion, 7 Op. Att'y Gen. 1, 8 (Alaska 1969), the court determined that other states had effectively accepted the grant with similar language in their organic acts. It also cited Hamerly v. Denton, 359 P.2d 121 (Alaska 1961) and Clark v. Taylor, 9 Alaska

298 (D. Alaska 1938) as precedence that state and territorial courts had recognized the grant.

3) Legislature did not effectively accept the grant. Girves argued that the "dedication" was not an acceptance of the grant. Quoting from page 123 of Hamerly the court stated:

[B]efore a highway may be created, there must be either some positive act on the part of the appropriate public authorities of the state, clearly manifesting an intention to accept a grant, or there must be public user for such a period of time and under such conditions as to prove that the grant has been accepted.

At page 1226.

The court distinguished this case from Hamerly, in that Hamerly was a case claiming the grant by public user, here the enactment of the statute was a positive act on behalf of the state to accept the grant.

4) Chapter 35, SLA 1953 did not expressly refer to 43 U.S.C. Sec. 932. Although the statute did not specifically refer to or expressly accept to 43 U.S.C. Sec. 932, the court found: "we cannot assume that the legislature was unaware of the grant or unwilling to accept it in behalf of the territory for highways.... However, it is well recognized that a state or territory need not use the word 'accept' in order to consummate the grant." Tholl v. Koles, 70 P. 881, 882 (Kansas 1902). The grant was a standing federal offer that only needed the positive act of the state or territory to accept it. The court supported its reasoning by indicating statutes are presumed to be valid, therefore "it is fair to assume that the legislature intended the 1953 'dedication' to also constitute an acceptance of the grant under 43 U.S.C. Sec. 932 (1964)." At 1226. It also concluded that "acceptance may be implied from acts of conduct. Since it is obvious that one cannot 'dedicate' property to which one has no rights, the 1953 'dedication' must have also constituted an act of implied acceptance." At 1226, citations omitted. Lastly it reasoned that the grant doesn't make a distinction on how the highway is established. Since dedication is an accepted method of establishing a highway, the 1953 statutory dedication effectively established a highway.

ATTORNEY FEES: Due to the fact there were conflicting Attorney General's Opinions and that case litigated important public issues, the court held Ms. Girves should not be assessed attorney's fees.

2. Brice v. State, Division of Forest, Land & Water, 669 P.2d 1311 (Ak. 1983)

This case dealt with a very narrow issue: Did the implied repeal of Chapter 19 SLA 1923, Section 1, by Chapter 1, SLA 1949, repeal or vacate a section line easement?

Chapter 1, SLA 1949, Section 1, legislated:

"All acts or parts of acts heretofore enacted by the Alaska Legislature which have not been incorporated in said compilation because of previously enacted general repeal clauses or by virtue of repeals by implication or otherwise are hereby expressly repealed."

The 1949 compilation did not include 19 SLA 1923 or its subsequent reenactment by 1721 CLA 1933 (references below to 19 SLA 1923 also include 1721 CLA 1933).

Between the time 19 SLA 1923 was repealed on January 17, 1949, and the enactment of Chapter 35, SLA 1953 on March 26, 1953, which again dedicated section line easements on lands held by the federal government, Brice's predecessor in interest, entered and received patent to the property at issue. Entry was in 1950 with the patent issued in 1952.

At page 1315, the court stated:

[T]he repeal of the statute does not necessarily vacate previously created easements. The grant of 43 U.S.C. Sec. 932 was a continuing one, as was its acceptance by 19 SLA 1923. As lands came into the public domain after 1923, they became impressed with section line highway easements. 1969 Op. Att'y Gen. No. 7 at 6 (Alaska, December 18, 1969).

The court quoted the savings statute in effect at the time, 19-1-1 ACLA 1949, "[t]he repeal or amendment of any statute shall not affect any... right accruing or accrued... prior to such repeal or amendment;", and found that repeal did not vacate the prior established easement. At 1315. It further indicated a repeal of the prior easement would be retrospective and that the common law rule of law is statutes are prospective unless there is clear legislative intent the statute is to apply retroactively.

3. Andersen v. Edwards, 625 P.2d 282 (1981).

The State of Alaska reserved a 100 foot right of way along the section line in various contracts for sale. The 100 foot right of way was dedicated for use as a public highway pursuant to A.S. 19.10.010. Andersen constructed a 25 foot wide roadway, but cleared nearly the full 100 foot width. The primary question was whether clearing the full 100 foot width was reasonable for the construction of a 25 foot wide road.

Reasonable Use: Andersen claimed that there was an absolute right to clear the entire 100 feet "where there is an expressly reserved and dedicated defined highway right-of-way...." At 286. The Court found the reference to width in the reservation to be ambiguous "as to whether it refers 'to the width of the way, or is merely descriptive of the property over which the grantee may have such a way as may be reasonably necessary.'" At 287. It interpreted the legislative intent of the dedication language to only dedicate the land necessary for the use of the highway, essentially the width of the highway and area necessary to construct it. Therefore Andersen could only make reasonable use of the right-of-way. As a factual matter, Andersen's use was not found to be reasonable.

In footnote 10, page 287, the court contrasted the results in this case with Wessells v. State Dept. of Highways, 562 P.2d 1042 (1977) by stating "although grant of an easement should be interpreted according to the reasonable expectation of the parties, it is not reasonable to think parties intended extensive destruction of the property."

Trespass Damages: Since the Court found the use was not reasonable, Andersen's clearing of the full width constituted trespass. Under A.S. 09.45.730 a trespassory cutting of timber makes the trespasser liable for treble damages. The measure of damages is:

Generally speaking, damages in trespass to land are measured by the difference between the value of the land before the harm and the value after the harm, but there is no fixed inflexible rule for determining with mathematical certainty, what sum shall compensate for the invasion of the interests of the owner. Whatever approach is most appropriate to compensate him for his loss in the particular case should be adopted. Thus the damages awarded... reflected, in part, the cost of restoring the land to a condition of usefulness - by filling up stump holes and cleaning up the topplings and other debris left behind by the trespassers.

At 289 (citations omitted).

4. Fisher v. Golden Valley Electric Association, Inc., 658 P.2d 127 (1983).

This case addresses the right to use a section line easement dedicated for highway purposes to construct a powerline. The Court found that AS 19.25.010, which allows the use of highway rights-of-way for the construction of utilities, permits "powerline construction as an incidental and subordinate use of a highway easement". At 129.

Concerning the use of highway rights-of-way for construction of electric lines, the Alaska Supreme Court identified at least four different approaches used in different jurisdictions:

- 1) Construction of a powerline which does not interfere with highway travel is a proper incidental subordinate use and not an additional burden or servitude on the servient estate.
- 2) Powerlines are allowable in urban area highway rights-of-way, but are not allowed within the rights-of-way in rural areas.
- 3) Powerlines are allowable (no additional servitude) if electricity is incidental to highway travel itself, such as street lighting.
- 4) Powerlines are beyond the scope of a highway easement and constitute an impermissible additional burden on the servient estate.

In adopting rule 1 above, the Court still found that an unused reservation allowed for lesser uses of that reservation, such as a powerline, even though the section line easement was not being used for a highway. In dicta the Court recognized telephone lines as another incidental use. At 129. Footnote 5, page 129, leaves room to argue for additional incidental and subordinate uses that "are the progression and modern development of the same uses and purposes" (referring to the "transmission of intelligence, the conveyance of persons, and the transportation of commodities").

5. 0.958 Acres, More or Less (Parrish) v. State, 762 P.2d 96 (1988), modified 769 P.2d 990 (1989).

Parrishes owned an 80 acre tract bounded by Peger Road on the east and a section line on the north. The section line had an undeveloped 33 foot section line easement reservation. Parrishes subdivided the property into four 20 acre parcels through the waiver of subdivision process and ultimately owned all but 10 acres on the northeast corner of the property. The State of Alaska condemned a 100 foot wide strip of land adjacent to the section line for a controlled access highway, which precluded Parrishes right to use the section line easement.

Parrishes disputed the compensation, claiming the State was required to pay for their lost of direct access to the section line easement and that the taking damaged their remainder property due to the loss of access. The trial court denied their right of direct access, awarded nominal damages for the land encumbered by the section line easement and denied damages to the remainder. Parrishes appealed.

Direct Access: Parrishes claimed a right of direct access to the section line easement. In ruling against them, the Supreme Court stated:

"The general rule in Alaska is that an abutter to a public highway owns a right of reasonable access to it. Triangle Inc. v. State, 632 P.2d 965, 967 (Alaska 1981). In Triangle, we stated:"

All jurisdictions recognize that an owner of abutting land has a right of access to and from a public street or highway. In Alaska, this incident if ownership is limited to a "right of *reasonable access*." This rule is in accord with that adopted by a majority of jurisdictions.

In B&G Meats [Inc. V. State, 601 P.2d 252 (Alaska 1979)] we set forth the principles controlling a claim of taking caused by a change in access to streets or highways:

"No hard and fast rule can be stated, but courts must weigh the relative interests of the public and the individual and strike a just balance so that government will not be unduly restricted in its function for the public safety, while at the same time, give due effect to the policy of eminent domain to insure the individual against an *unreasonable* loss occasioned by the exercise of the police power. ... While an abutter has the right of access to the public highway system, it does not follow that he has a direct-access right to the main traveled portion thereof; circuitry of travel, so long as it is not unreasonable, is non-compensable."

Only if Parrishes remaining access was unreasonable would they be entitled to compensation for their loss of access to the section line.

The Supreme Court went on to say compensation for direct loss of access to a section line easement would be inconsistent with the purpose of AS 19.10.010 to provide an easement for the state to build highways. If the state were required to compensate for loss of direct access to the section line, the "cost could be conceivably be higher than the cost of acquiring a fee interest where no easements and thus no rights of access exist, leading to the absurd result that it could be more expensive for the state to build new highways on section line easements than elsewhere." At page 100.

Nominal Damages: The award of nominal damages for the land subject to the section line easement was affirmed. Only if Parrishes could prove that actual damages rather than nominal damages should be paid without a showing of special value, or that special value existed, would they be entitled to other than

nominal damages. They failed to raise the issue that actual damages were required, and did not show special value (mineral or resource rights) existed. The court found nominal damages were appropriate for the underlying fee interest absent any special value.

Reasonable Access: In remanding the case to the trial court to determine if the Parrishes' remaining access after the taking was reasonable, the Supreme Court enunciated the necessity to perform:

... an examination of the potential uses of the property. The use of the property will influence the number, size, and type of vehicles requiring access. Access that is reasonable for a single-family dwelling may be entirely unreasonable for an industrial subdivision. Furthermore, even if a road to the property is capable of handling the expected traffic, that road may not provide reasonable access if a river or cliff cuts it off from a major usable part of the property. In this case, the superior court erred by determining that remaining access was reasonable without finding and taking into account the highest and best use of the property. At page 101.

Common Law Dedication: One additional issue was the existence of a 25 foot wide easement along the southerly boundary of the property. A 25 foot easement along the north boundary of the property to the south was recorded. During the waiver of subdivision process, Parrishes submitted a diagram to the borough indicating a 50 foot wide easement along that south boundary. Depiction of the additional 25 foot width constituted a common law dedication. Following Swift v. Kniffen, 706 P.2d 296 (Alaska 1985), the Court found an objectively manifested intent to dedicate (the 25 foot strip on the waiver request) and acceptance by the public (the borough's approval of the waiver).

Highway Rights of Way in Alaska



*John F. Bennett, PLS, SR/WA
Right of Way Chief
Alaska Department of Public Transportation
& Public Facilities
Northern Region
2301 Peger Road
Fairbanks, AK 99709-5316
3/9/93, rev. 11/1/93
rev. 1/20/07*

Highway Rights of Way in Alaska

Table of Contents

I.	Introduction	1
II.	History	2
III.	RS 2477	
	a. Trails	5
	b. Section Line Easements	10
	c. RS 2477 Case Law Summary	15
IV.	The Act of 1947	
	a. Background	18
	b. The '47 Act	18
	c. The Right of Way Act of 1966	19
	d. '47 Act Case Law Summary	19
V.	44 LD 513	21
VI.	Public Land Orders	
	a. Introduction	22
	b. PLO summary	22
	c. Practical Applications	27
	d. Evaluation of Information	32
	e. Case Study	33
	f. Public Land Order Case Law Summary	34
VII.	Odds & Ends	38
VIII.	Appendix A - PLO text	41

Highway Rights of Way in Alaska

I. Introduction

The following is a compilation of notes relating to highway rights of way in Alaska. It is not to be construed as a comprehensive or complete statement and analysis of the legislation and legal issues upon which these rights of way are based.

The discussion in this paper is primarily limited to those highway rights of way established by State or Federal legislation and under the jurisdiction of the predecessors of the Department of Transportation and Public Facilities. Rights of way created by condemnation, conveyance, prescription, dedication, permitting by the State of Alaska and recent federal acts such as ANCSA, ANILCA, FLPMA, are not covered.

The primary intent of this presentation is to provide the land professional with an understanding of the process by which many of the highway rights of way in Alaska were established as well as some guidelines and sources of information which can be used to determine whether a particular property is impacted by these rights of way.

Daniel W. Beardsley, SR/WA and Attorney at Law is acknowledged for providing portions of the case law summaries and analyses as well as for "firing me up" to put this collection of right of way information to print.

Update: It's been more than a dozen years since this document was first prepared and presented. I am now dusting it off for a February, 2007 presentation and in recognition that there have not been many significant changes that would warrant a complete re-write of the paper, I decided to just expand upon a few things that I have learned over the years. All of the new material will be located within an editorial box such as this.

When I began working with the DOT&PF Right of Way section back in October of 1986, the presumption was that land professionals such as title examiners, professional land surveyors and attorneys were generally versed in the legal issues relating to access and right of way. Speaking for the land surveyors, the reality is that although we may have had some training or experience in subdivision street dedications or clearly defined (by deed) rights of way that may have formed a parcel boundary, we generally had little knowledge of the patchwork quilt of title interests that make up the right of way for our Alaska Highway system. I suspect the same would hold true for many of the other land and title professionals. If it's a challenge for the professional, you can imagine the difficulty the average property owner would have with this subject. So I've gained a lot of empathy for the landowner who is attempting to determine whether their land is encumbered by a highway right of way and hope that both professionals and laypersons can benefit from the presentation. jfb

II. History

The Department of Transportation and Public Facilities is the primary management authority for highways in Alaska. Therefore, it is appropriate to review the history of the agency for whose benefit many of the rights of way to be discussed were established.

Prior to the establishment of the Alaska Road Commission, there were several pieces of Federal legislation dating back to 1900 relating to the appropriation of funds for the War Department to construct military roads in Alaska. The Act of April 27, 1904 (P.L. 188 - 33 Stat. 391) was of particular interest in that it provided for mandatory service of the male population in the construction and maintenance of public roads. Specifically, it required that "all male persons between eighteen and fifty years of age who have resided thirty days in the district of Alaska, who are capable for performing labor on roads or trails...to perform two days' work of eight hours each in locating, constructing, or repairing public roads or trails...or furnish a substitute,...or pay the sum of four dollars per day for two days' labor."

The roots of the Department of Transportation and Public Facilities began with the Act of January 27, 1905 (P.L. 26 - 33 Stat. 391) which established the Alaska Road Commission under the direction of the Secretary of War. "The said board (of road commissioners) shall have the power, and it shall be their duty, upon their own motion or upon petition, to locate, lay out, construct, and maintain wagon roads and pack trails from any point on the navigable waters of said district to any town, mining or other industrial camp or settlement, or between any such towns, camps, or settlements therein."

In 1917 the Territorial legislature created a territorial Board of Road Commissioners and appropriated funds for road construction. On May 3, 1917 (Ch. 36, SLA 1917 Section 13) the legislature also addressed rights of way..."The Divisional Commission shall classify all public Territorial roads and trails in the divisions as wagon roads, sled road, or trails...The lawful width of right of way of all roads or trails shall be sixty feet (60).

Pursuant to the Act of June 30, 1932 (P.L. 218 - 47 Stat. 446)(48 USC 321a), Congress transferred administration over the roads and trails in Alaska to the Secretary of the Interior and authorized the construction of roads and highways over the vacant and un-appropriated public lands under the jurisdiction of the Department of the Interior. This statute did not specify the width of the rights-of-way which may be established.

The Secretary of the Interior's jurisdiction over the Alaskan road system ended on June 29, 1956 when Congress enacted section 107(b) of the Federal-Aid Highway Act of 1956 (70 Stat. 374), which transferred the administration of the Alaskan Roads to the Secretary of Commerce. The Commerce department operated the system as the Bureau of Public Roads.

On April 1, 1957 the Territory of Alaska enacted the Alaska Highway & Public Works Act of 1957 in order to create a Highway Division to carry out a planning, construction, and maintenance program.

The transfer of the Department of Interior's jurisdiction to the Department of Commerce was reiterated on August 27, 1958, when Congress revised, codified, and reenacted the laws relating

to highways as Title 23 of the U. S. Code. (P.L. 85-767, Sect. 119 - 72 Stat. 898).

The Alaska Omnibus Act, enacted on June 25, 1959 (P.L. 86-70 - 73 Stat. 141), directed the Secretary of Commerce to convey to the State of Alaska all lands or interests in lands "owned, held, administered by, or used by the Secretary in connection with the activities of the Bureau of Public Roads in Alaska." On June 30, 1959, pursuant to section 21(a) of the Alaska Omnibus Act, the Secretary of Commerce issued a quitclaim deed to the State of Alaska in which all rights, title and interest in the real properties owned and administered by the Department of Commerce in connection with the activities of the Bureau of Public Roads were conveyed to the State of Alaska. Although not all of the conveyed rights of way were considered "constructed", the system mileage of the rights of way included 2,200 miles classified as "primary" system routes, 2,208 miles of "secondary class A" routes, and 990 miles of "secondary class B" routes for a total of 5,399 miles of rights of way.

Update: "Schedule A - Highways" of the Omnibus Act Quitclaim Deed was not a comprehensive list of all of the roads constructed and maintained by the Bureau of Public Roads or its predecessor, the Alaska Road Commission. It appears to have been based on an inventory of roads that was more likely a planning document rather than a summary of all title interests owned or claimed for highway purposes. In the '50's this document was referred to as "ARC Order No. 40" and was revised over the years to provide the road classification, name, length and route designation. The current version of this list is the "State Highway System" as authorized under A.S. 19.10.020. Over the course of time, roads were reclassified, added or deleted from the list depending upon the changing use or need for the road. This was the case with the flare-up or demise of mining areas whose operations were often served by the Alaska Road Commission. As this dynamic inventory was used as a basis for conveying the federal interest in highways to the State of Alaska, the result is that certain rights of way that were clearly established under Public Land Orders or other legal mechanisms were not named in the 1959 conveyance document. An example would be the Rampart Road from the Elliott Highway to the village of Rampart. Although this road is referenced in the ARC documents back to 1908, only the 4.5 mile segment from Rampart to Little Minook Creek is referenced in the Quitclaim Deed. (Secondary, Class "B" Route 6259) The State has asserted an RS-2477 right of way for the full length of the Rampart road, however, the standing question is whether a PLO right of way still exists and who has management authority over it. Also note that the QCD was silent as to ROW widths and interests and only provided a crude route description and length. jfb

As the State of Alaska was not quite prepared to handle the operation of the road system, the Governor as authorized by the Omnibus Act, entered into a contract with the Bureau of Public Roads on July 1, 1959 to continue certain highway survey, design, construction and maintenance functions in connection with the Federal-aid highway program until the State Department of Public Works was suitably organized and equipped to perform these functions. The State assumed full highway functions in mid- 1960.

Legislative action in July of 1977 merged the State Department of Highways, Public Works (which included the Division of Aviation) and the Alaska Marine Highways into the Department of Transportation and Public Facilities.

Update: The merger was directed under Executive Order No. 039 and became effective on July 1, 1977. jfb

III. RS 2477

The Mining Law of 1866 - Lode and Water Law, July 26, 1866 (Section 8 - 14 Stat. 253) The Federal offer for road easements over public lands was made through the following:

"The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted."

The above referenced Section 8 of the 1866 Mining Law was re-designated as Section 2477 of the Revised Statutes 1878. (43 U.S.C. 932)

Generally, the issue of RS 2477 brings to mind remote or historic trails. However, certain portions of primary and secondary highways may exist without benefit of a clearly established right of way. In some cases, the public may claim an easement by prescription. In other areas, the easement may exist by virtue of RS 2477. In the Alaska Supreme Court case State v. Alaska Land Title Ass'n, a memo from the Chief Counsel of BLM dated 2/7/51 noted that "Prior to the issuance of Public Land Order No. 601..., nearly all public roads in Alaska were protected only by easements. Right of way easements were acquired under section 2477 of the Revised Statutes (43 U.S.C. sec. 932) by the construction of roads."

a. Trails

The interpretation and application of RS 2477 in Alaska is a highly debated and controversial subject. The opinions of the State and Federal agencies as well as those among the private sector vary considerably. The primary issues to be resolved include the matters of legal jurisdiction, allowable use, management authority, width of right of way, and determination of whether a particular trail meets the validity tests of an RS 2477 grant.

Rather than debate the entire issue in this paper, the reader is directed to review the State and Federal guidelines for RS 2477 as well as the relevant Federal and State case law which is summarized at the end of this section.

Federal position: See BLM memorandum to the Secretary of the Interior regarding Departmental policy on RS 2477 dated December 7, 1988.

In general, in order for the RS 2477 grant to be accepted under the Federal position, the following conditions must have been met:

1. The lands involved must have been public lands, not reserved for public purposes, at the time of the grant.
2. Some form of construction of the highway must have occurred.
3. The highway must be considered a public highway.

Under the Federal position the width of the right of way depends on whether at the time of acceptance, the RS 2477 trail was under the jurisdiction of a State or local government. If so, then statutory widths may apply. If not, then the width may be based upon the area in use including back slopes and drainage ditches.

In general, the Federal position is that no incidental uses are allowed. (i.e. power lines)

An accepted RS 2477 grant of right of way may be abandoned or relinquished by the proper authority in accordance with State, local or common law.

During 1992 and 1993 the Federal Government has been holding hearings and soliciting comments from any party with an interest in RS 2477. These hearings have taken place in Alaska and throughout the western states where RS 2477 is an issue. The intent is to submit a final report to the U.S. Congress in anticipation of legislation which would resolve the long standing conflicts over this issue. On June 1, 1993, the Secretary of the Interior, delivered to the Appropriations Committees of the Senate and the House of Representatives, the Report to Congress on RS 2477. In the letter which transmitted the report, the Secretary of the Interior stated:

"Until final rules are effective, I have instructed the Bureau of Land Management (BLM) to defer any processing of RS 2477 assertions except in cases where there is a demonstrated, compelling and immediate need to make such determinations."

State position: See 11 AAC 51.010 - State of Alaska Administrative Code titled Nomination, Identification, and Management of RS 2477 Rights-of-Way. Note that as of November of 1993, there is intended to be a rewrite of this regulation in order to streamline the process.

Evaluation Criteria:

1. The nominated RS 2477 crossed public land that was not reserved for public use at the time the RS 2477 grant was accepted.
2. Sufficient evidence is provided to show that public use or when relevant (Section line easements) that a positive act on the part of a public authority constitutes acceptance of the RS 2477 grant.

Essentially, the research and evaluation required to determine whether the RS 2477 grant has been accepted is similar to that required for section line easements and public land orders. Many sources of information are available to aid in the establishment of the date that a trail was constructed or in public use. Primary sources include the 1989 "Alaska Trails Database" and the 1973 "Alaska Existing Trail System" maps. The mapping consists of 153 1:250,000 USGS maps with the claimed RS 2477 trails marked and numbered. The 1989 database has over 14,000 entries of trail names, dates, and references. These sources are available for review at the Department of Transportation offices. (See section VI c. of this paper, *Public Land Orders - Practical applications - "Date of Construction"*). To determine whether the land in question was unreserved at the time the grant was accepted, the BLM land status records must be reviewed.

(See section VI c. of this paper, *Public Land Orders - Practical applications - "Land Status"* and section III b. *RS 2477 - Section Line Easements - discussion on lands not reserved for public uses.*)

Width of RS 2477 right of way: In a 1962 Superior Court case, *State of Alaska v. Fowler*, Civil Action No. 61-320 the width of Farmer's Loop Road, established under provisions of RS 2477 by a public user, was at issue. The court determined that only the 1962 width of the road would be considered a part of that right of way and deemed it "a reasonable width necessary for the use of the public generally." The State of Alaska argued that the provisions of Sec. 1 Ch. 19, SLA 1923 (establishing public highways between each section of land in the territory) indicated the local law and reflected the local custom as to the width of the rights of way established pursuant to RS-2477 (33 feet on each side of centerline or 66 feet total). This opinion had been previously stated in the 1960 Opinions of the Attorney General, No. 29. The AGO opinion concluded that the width of Alaska highways constructed under Title 43, Sec. 932 shall be 66 feet except where the actual width is specifically stated in the Public Land Order or set out by later State laws. The court concluded that taking into consideration the character and extent of the user as disclosed by the evidence in *Fowler*, the "reasonable width necessary for the use of the public" constituted only the present width of Farmer's Loop Road, thirty feet. As if in response to the court's decisions, the State legislature enacted Sec. 1, Ch. 35, SLA 1963:

Establishment of Highway Widths. (a) It is declared that all officially proposed and existing highways on public lands not reserved for public uses are 100 feet wide. This section does not apply to highways which are specifically designated to be wider than 100 feet. AS 19.10.015.

Therefore, it is argued that the 1963 legislature accepted the RS 2477 grant as it might pertain to those portions of highways still traversing unreserved public lands to the extent of 100 feet even where actual use of such highways was much more restricted. Until that time and with regards to lands which were already withdrawn from the public domain in 1963 but burdened only in part by RS 2477 rights of way, the *Fowler* decision and the precedent upon which it was predicated seem controlling: "the right of way for such a road carries with it such a width as is reasonable and necessary for the public easement of travel." (Excerpted from 2/1/83 AGO informal opinion.)

Incidental uses such as a power line or communications line are allowed under State law. See *Fisher v. Golden Valley Electric*.

Vacation: DNR regulations do not currently address vacations of RS 2477 rights of way at this time. However, in 1992 a request to vacate an adjudicated RS 2477 right of way was received for comment at DOT&PF. Upon discussion with DNR, it was determined that as the RS 2477 trail right of way was based upon the same grant as a section line easement, that the process for vacation should follow similar guidelines as that for a section line easement. The proposed rewrite to 11 AAC 53, DNR's surveying regulations is purported to deal with the issue of vacation of RS 2477 trails as well as section line easements.

RS 2477 was repealed by Title VII of the Federal Land Policy and Management Act on October 21, 1976. However, the application of the RS 2477 grant was effectively eliminated by a series

of public land orders which eventually withdrew all federal public lands in Alaska. (See section III b. *RS 2477 - Section Line Easements - discussion on lands not reserved for public uses.*)

Surveyors with an interest in the RS 2477 issue are advised to recognize that the State and Federal positions differ significantly and are currently in a state of flux. Check with BLM and DNR for the latest information regarding the RS 2477 issue.

Update: I probably should have just rewritten the RS-2477 section. Since I initially prepared this paper, I've been involved in a couple of presentations that focused on RS-2477 from the DOT perspective. Although my opinion may come into conflict with others who believe DOT should be a stronger proponent of RS-2477, the reality is that RS-2477 trail and section line easements are often on the low end of our priorities. When you think about DOT&PF facilities, you generally think of the primary highways such as the Richardson, Glenn and Parks. However, if you think with a historical perspective, you should consider such roads and trails as the Eureka to Rampart road, Ft. Gibbon to Kaltag trail and other that were constructed or maintained by DOT's federal predecessor agency, the Alaska Road Commission. As foot-noted in the 1983 Alaska Land Title Association case... "Prior to the issuance of Public Land Order No. 601..., nearly all public roads in Alaska were protected only by easements. Right-of-way easements were acquired under section 2477 of the Revised Statutes (43 U.S.C. sec. 932) by the construction of roads...". Many active roads during early mining period that were maintained by ARC now see limited use and no public maintenance. In a practical sense, DOT has little interest in current RS-2477 issue with respect to highway improvement: Trails created by path of least resistance decades ago no longer represent the best route in which to invest large sums of money. Due to alignment, grades, geology and environmental issues, these old routes may no longer be practical as primary transportation corridors. The same holds true for section line easements whose alignments conform to the rectangular system without regard to the parameters most often accepted for the construction of new roads. There are a few exceptions such as roads within the State Highway System where the existing ROW is primarily based on RS-2477 such as the Eureka to Rampart road and Brenwick-Craig (Klutina Lake) roads and section line easements where the topography and soils were suitable for road construction.

When BLM proposed it's RS2477 regulations in the 1990's, they argued that it was unreasonable for a state to develop new infrastructure based on an access law that was repealed more than 2 decades ago (1976) given that Congress had provided alternatives in the form of ANCSA 17(b) easements, ANILCA Title XI grants and FLPMA Title V grants. In my experience, DOT Northern Region has in fact utilized FLPMA Title V rights of way for several projects, particularly where only state funding is available. We have incorporated a 17(b) easement only once and have had little success in securing any rights of way under ANILCA Title XI. What the feds left unstated was the fact that the 17(b)'s provide only limited widths, uses and

management authority and incorporating them into a highway project can involve more complex negotiations than if we had set out to acquire a new right of way in the first place. Title XI grants are difficult to impossible to secure. We have found that no matter how much information we provide with our application and subsequent transmittals, it never seems to be enough. The acquisition of a FLPMA Title V grant is a relatively straightforward process. However, it is difficult to get BLM to issue more than a limited duration grant. Fortunately, we have the ability to appropriate certain federal lands for highways under the USC 23 Highways using the authority of the Federal Highway Administration. As most of our highway program is federally funded, Title 23 Grants are the most common.

The DOT/DNR jurisdictional authority for RS-2477 is now defined by the following:

11 AAC 51.100 MANAGEMENT OF RS 2477 RIGHTS-OF-WAY.

(a) The commissioner has management authority over the use of any RS 2477 right-of-way that is not on the Alaska highway system.

Sec. 19.30.400. Identification and acceptance of rights-of-way.

(a) The state claims, occupies, and possesses each right-of-way granted under former 43 U.S.C. 932 that was accepted either by the state or the territory of Alaska or by public users. A right-of-way acquired under former 43 U.S.C. 932 is available for use by the public under regulations adopted by the Department of Natural Resources unless the right-of-way has been transferred by the Department of Natural Resources to the Department of Transportation and Public Facilities in which case the right-of-way is available for use by the public under regulations adopted by the Department of Transportation and Public Facilities.

RS-2477 vs. ANCSA 17(b) Easements

In order to avoid dealing with the RS-2477 issue, BLM will generally superimpose an ANCSA 17(b) easement over what the State asserts as a valid RS-2477 ROW. This has occasionally led to conflict where the State and the public assert a greater width and scope of use than is provided by the relatively limited 17(b). A notable conflict is over the Klutina Lake Road off of the Richardson Highway near Copper Center. This is also referred to as the Brenwick-Craig road. The dispute flared in 2002 when Ahtna, Inc. filed a trespass suit against a fishing guide claiming that accessing the Klutina River for a commercial guide operation (even though the river could be entered from within the ROW) was beyond the scope of an RS-2477 ROW and a 17(b) easement. Ahtna argued at various time that the RS-2477 did not exist or that the 17(b) superseded any valid RS-2477 ROW. BLM responded that under 88 IBLA 106 (1985) that the 17(b) easement would be subject to the RS-2477 ROW if valid. BLM also noted that the 17(b) easement was also intended for access to major

waterways and public owned lands and considered the fishing guides use to be appropriate.

b. Section Line Easements

The offer of a right of way for highways across unreserved, un-appropriated Federal lands provided in the aforementioned Mining Law of 1866 is also the basis for Section line rights of way. The position of Federal agencies suggests that section line easements cannot exist on Federal lands as the construction requirement of the RS 2477 grant was not fulfilled. The State position on section line easements is outlined in the 1969 Opinions of the Attorney General No. 7 dated December 18, 1969 entitled Section Line Dedications for Construction of Highways.

The acceptance of the offer became effective on April 6, 1923, when the Territorial legislature passed Chapter 19 SLA 1923 which provided that "A tract of 4 rods wide between each section of land in the Territory of Alaska is hereby dedicated for use as public highways..."

The section line easement law remained in effect until January 18, 1949. On this date the legislature accepted the compilation of Alaska law which also repealed all laws not included. By failing to include the 1923 acceptance, the section line easement law was therefore repealed.

On March 26, 1951, the legislature enacted Ch. 123 SLA 1951 which stated that "A tract 100 feet wide between each section of land owned by the Territory of Alaska or acquired from the Territory, is hereby dedicated for use as public highways..." The 1953 law was amended on March 21, 1953 by Ch. 35 SLA 1953, to include "a tract 4 rods wide between all other sections in the Territory..." (See Alaska Statute AS 19.10.010 Dedication of land for public highways.)

For a section line easement to become effective, the section line must be surveyed under the normal rectangular system. On large areas such as State or Native selections, only the exterior boundaries are surveyed, therefore no section line easements could attach to interior section lines unless further subdivision surveys were carried out. The 1969 Opinion of the Attorney General regarding section line easements states that an easement can attach to a protracted survey, if the survey has been approved and the effective date has been published in the Federal Register. The location of the easement is however subject to subsequent conformation with the official public land survey and therefore cannot be used until such a survey is completed.

Land surveyed by special survey or mineral survey are not affected by section line easements since such surveys are not a part of the rectangular net. However, the location of a special or mineral survey which conflicts with a previously established section line easement cannot serve to vacate the easement.

Acceptance of the RS 2477 offer can only operate upon "public lands, not reserved for public uses". Therefore, if prior to the date of acceptance there has been a withdrawal or reservation by the Federal government, or a valid homestead or mineral entry, then the particular tract is not subject to the section line dedication. The offer of the RS 2477 grant was still available until its

repeal by Title VII of the Federal Land Policy and Management Act (90 Stat. 2793) on October 21, 1976. However, prior to the repeal, the application of new section line easements was effectively eliminated by a series of public land orders withdrawing Federal lands in Alaska. Public Land Order 4582 of January 17, 1969 withdrew all public lands in Alaska not already reserved from all forms of appropriation and disposition under the public land laws. PLO 4582 was continued in force until passage of the Alaska Native Claims Settlement Act on December 18, 1971. While repealing PLO 4582, ANCSA also withdrew vast amounts of land for native selections, parks, forests and refuges. A series of PLO's withdrew additional acreage between 1971 and 1972. PLO 5418 dated March 25, 1974 withdrew all remaining unreserved Federal lands in Alaska. Therefore it is noted that as of March 25, 1974, there could be no new section line easements applied to surveyed Federal lands.

The Alaska Supreme Court has decided that a utility may construct a power line on an unused section line easement reserved for highway purposes under AS 19.10.010 Use of rights-of-way for utilities. Alaska Administrative Code 17 AAC 15.031 Application for Utility Permit on Section Line Rights-of-way provides for permitting by the Department of Transportation. The process for vacating a section line easement is provided in the DNR Administrative Code 11 AAC 53. A section line vacation requires approval from the Departments of Transportation and Natural Resources and the approval of a platting authority, if one exists in the area of the proposed vacation.

Research Technique

1. Review the Federal Status Plat and note the patent number or serial number of any action which affects the section line in question.
2. Using either BLM's land status database or Historical Index determine the date of reserved status or the date of entry leading to patent.
3. From BLM's township survey plats extract the date of plat approval.
4. Review the dates and track the status of the lands involved to determine if they were unreserved public lands at any time subsequent to survey approval and prior to entry or appropriation. Particular attention should be directed towards any applicable Public Land Orders. In order for section line easements to have been created, the lands must have been unreserved public lands at some time between April 6, 1923 and January 17, 1949, or between March 21, 1953 (March 26, 1951 in the case of lands transferred to the State or Territory) and March 24, 1974.
5. Using the date of entry or reservation and the date of survey plat approval, prepare an analysis of the data as follows:
 - a. If date of entry predated survey plat approval there is no easement.
 - b. If entry predates April 6, 1923 (date of enabling legislation for section line easements) there is no section line easement.

- c. If survey plat approval predates April 6, 1923 but date of entry is after April 6, 1923 there is a 66 foot section line easement.
- d. If survey plat approval is during the period of January 18, 1949 and March 20, 1953 and date of entry also falls within this period, there is no section line easement.
- e. If survey plat approval is during the period of January 18, 1949 and March 20, 1953 and date of entry falls after March 21, 1953, there is a 66 foot section line easement.
- f. If survey plat approval was prior to January 18, 1949 and the date of entry was during the period of January 18, 1949 and March 20, 1953, there is a 66 foot section line easement.
- g. If the land is in State ownership or was disposed of by the State or Territory after March 26, 1951, there is a 100 foot section line easement. University Grant Lands may be an exception as the application of a section line easement may be in conflict with the federal trust obligation.
- h. If survey plat approval date and the date land was disposed of by the Territory both fall within the period of January 18, 1949 and March 25, 1951, there is no section line easement.
- i. If survey plat approval was prior to January 18, 1949 and the land was disposed of by the Territory during the period of January 18, 1949 and March 25, 1951, there is a 66 foot section line easement.
- j. United States Surveys and Mineral Surveys are not a part of the rectangular net of survey. If the rectangular net is later extended, it is established around these surveys. There are no section lines through a U.S. Survey or Mineral Survey, unless the section line easement predates the special survey.

There may be many other situations which will require evaluation and decision on a case by case basis. An attachment is included to demonstrate some of the above points. Any section line easement, once created by survey and acceptance by the State or Territory remains in existence, unless vacated by the proper authority.

Update -

RS2477 SLE & Trail Vacations

In the mid-1970's DNR & DOT established a policy requiring approval by both agencies before a section line easement could be vacated. This policy recognized the highway purpose of the easement and the important access implications for all state owned lands. In recognition of local government authority, a vacation of an SLE located within the jurisdiction of a local government with platting authority required the approval of the local government, DNR and DOT. In the absence of a local platting authority, only DNR and DOT approvals are required. Although the vacations of SLE's included both federal RS2477 (66') based SLE's and State SLE's (100'), the procedure established for these vacations also seemed appropriate for the vacation of RS2477 Trails.

The vacation process is now clearly spelled out in A.S. 19.30.410 Vacations of rights-of-way and under DNR regulation 11 AAC 51.065 Vacation of Easements. The legislature was concerned about a possible attempt at mass vacations by an administration that did not appreciate the value of RS2477 rights of way. A.S. 19.30.410 ensures that an RS2477 right of way cannot be vacated unless a reasonably comparable means of access exists or can be established. In the alternative, the legislature can directly approve the vacation of an RS2477 right of way.

In the DOT Northern Region all requests and preliminary plats for section line easement vacations and other RS2477 vacations are submitted to our Planning section for review. After the platting authority has approved the vacation, the final drawing is forwarded to DOT&PF for two signatures. If the review planner's comments have been adequately addressed and the Department does not object to the vacation, the Chief of Planning will sign a certificate recommending that the Commissioner approve the vacation. The drawing is then forwarded for signature to our Regional Director who has authority to sign on behalf of the Commissioner. Several years ago the approval process had the Right of Way Chief recommending approval to the Regional Director rather than the Planning Chief. This process was changed as Planning was the lead section for plat reviews and was therefore in the best position to assure that the Department's comments had been addressed. You may find that the review and approval process varies according to Region. - jfb

Section Line Easement Determinations

In order for easements to exist, the survey establishing the section lines must have been approved or filed prior to entry on Federal lands or disposal of State or Territorial lands. The Federal lands must have been unreserved at some time subsequent to survey and prior to entry.

Surveyed Federal lands that were unreserved at any time during the indicated time period.	Effective Dates	Surveyed lands that were under State or Territorial ownership at any time during the indicated time period. (University Grant lands may be an exception.)
none	April 5, 1923	none
66'	April 6, 1923 to January 17, 1949	66'
none	January 18, 1949 to March 25, 1951	none
	March 26, 1951 to March 20, 1953	100'
66'	March 21, 1953 to March 24, 1974	
none	March 25, 1974 to Present	

Note: This table assumes the same land status on both sides of the section line. A review of the land status can result in total easement widths of 0', 33', 50', 66', 83', and 100'. A section line easement, once created by survey and accepted by the State, will remain in existence unless vacated by proper authority.

c. **RS 2477 Case Law Summary** (From DNR paper RS 2477s - Building on Experience)

1. Clark v. Taylor, 9 Alaska 928 (4th Div. Fairbanks 1938). The public may, by user, accept the RS 2477 grant, and 20 years of "adverse" public use was sufficient in this case. However, the case also intimates that there is no such thing as an un-surveyed "section line" acceptance of the RS 2477 grant.
2. Berger v. Ohlson, 9 Alaska 389 (3rd Div. Anchorage 1938). The RS 2477 grant may be accepted by the general public, through general user, even absent acceptance by governmental authorities, although there must be sufficient continuous use to indicate an intention by the public to accept the grant.
3. U.S. v. Rogge, 10 Alaska 130 (4th Div. Fairbanks 1941). Same as 2.
4. Hamerly v. Denton, 359 P.2d 121 (Alaska 1961). Same as 2. In addition, this case held that AS 19. 10.010 (the section line dedication) was equivalent to a legislative acceptance of the RS 2477 grant.

But before a highway may be created, there must be either some positive act on the part of the appropriate public authorities of the state, clearly manifesting an intention to accept a grant, or there must be a public user for such a period of time and under such conditions as to prove that the grant has been accepted.

The court defined public lands as: "lands which are open to settlement or other disposition under the land laws of the United States. It does not encompass lands in which the rights of the public have passed and which have become subject to individual rights of a settler." Once there is a valid entry the land is segregated from the public domain.

In this case there were a number of entries which were subsequently relinquished or closed prior to the Hamerly's home site entry which went to patent. The public usage to establish acceptance of the grant had to be established when the land was not subject to an entry. The court found that there was no evidence of public use during the times the land was not subject to an entry. "Where there is a dead end road or trail, running into wild, unenclosed and uncultivated country, the desultory use thereof established in this case does not create a public highway."

5. Mercer v. Yutan Construction Co., 420 P.2d 323 (Alaska 1966). Trial court was correct in finding that the issuance of a grazing lease, expressly subject to later rights of way, did not reserve the leased land such that the government could not accept the RS 2477 grant and build a right of way.

6. Wilderness Society v. Morton, 479 F.2d 842 (D.C. Cir.)(en banc), cert. denied 411 U.S. 917 1973). AS 19.40.010 (concerning the Trans-Alaska pipeline haul road) properly accepted the RS 2477 grant, the court citing Hamerly v. Denton favorably. This is the only reported federal court case dealing with an Alaska RS 2477 issue as of October 1, 1987.

7. Girves v. Kenai Peninsula Borough, 536 P.2d 1221 (Alaska 1975). Same as Hamerly v. Denton.

8. Anderson v. Edwards, 625 P.2d 282 (Alaska 1981). Where the state has not stepped in to regulate a section line right of way created via AS 19.10.010, a private citizen may use it, but only up to a width that is reasonable under the circumstances. Consequently, a citizen using a right of way who had cut too many trees to widen it must compensate the fee owner.

9. Fisher v. Golden Valley Electric Association, 658 P.2d (Alaska 1983). Utility use of an otherwise unused (i.e., it was not otherwise regulated or used by the State) RS 2477 section line right of way for a power line was permitted notwithstanding the underlying fee owners' objections. The case leaves room to argue for additional incidental and subordinate uses that "are the progression and modern development of the same uses and purposes" (referring to the "transmission of intelligence, the conveyance of persons, and the transportation of commodities.")

10. Alaska v. Alaska Land Title Association, 667 P.2d 714 (Alaska 1983). RS 2477 did not establish the width of rights of way created under it. The Department of the Interior's Order No. 2665 for certain RS 2477 roadways did, however, establish a width. See further discussion of this case in section VI f. Public Land Order Case Law Summary.

11. Brice v. State, 669 P.2d 1311 (Alaska 1983). Pre-existing section line highway easements created under AS 19.10.010 remained valid even when the law was temporarily repealed between 1949 and 1953.

12. Dillingham Commercial Co. v. City of Dillingham, 705 P.2d 4110 (Alaska 1985). This case reaffirmed the holding of Hamerly v. Denton, and then found that relatively slim evidence of user was sufficient to prove the acceptance of an RS 2477 grant. In Hamerly the court had found inadequate evidence of user. The different results of the two cases probably rest on the fact that in Hamerly the evidence of use was disputed, but in Dillingham no rebuttal evidence showing lack of use was submitted. The Dillingham court also held that once the RS 2477 road was created, it could be used for any purpose consistent with public travel.

Update:

Shultz v. Dept. of Army, USA (Shultz I) 10 F.3d 649 (9th Cir. 1993)

Shultz v. Dept. of Army, USA (Shultz II) 96 F.3d 1222 (9th Cir. 1996)
Vacating Shultz I

Fitzgerald v. Puddicombe 918 P.2d 1017 (Alaska 1996) The extent of public use necessary to establish acceptance of the RS 2477 grant depends upon the character of the land and the nature of the use. It is not necessary that the precise path of the trail be proven. It is enough for one claiming an RS 2477 right-of-way to show that there was a generally followed route across the land in question

Puddicombe v. Fitzgerald (Alaska 1999) Memorandum Decision

These cases involved the claim of an RS2477 trail across a US Survey on the Knik River. The Superior Court ruled against Fitzgerald and rejected their claims to the RS2477 right of way. Citing Alaska RS2477 cases Hamerly v. Denton, Dillingham Commercial Co. v. City of Dillingham and the 1993 9th Circuit decision Shultz v. Dep't of Army, the 1996 Supreme Court reversed the Superior Court and held that an RS2477 right of way did exist across the Puddicombe property. The Supreme Court then remanded the case to the Superior Court for a "determination of the precise location and extent of the right-of-way". On November 22, 1996, the Superior Court of Judge Brian Shortell issued an order addressing the location of the right of way (following the existing driveway) and the width of the right of way (100' in width as per A.S. 19.10.015). Shortell determined the remand order was limited to a review of the location and width of the right of way and not scope of use. Also, in a foot note, it appears that not all Superior Court judges take reversal well...." *Although I strongly disagree with the Supreme Court's factual and legal analysis in this case, the doctrine of civil disobedience is not available to me to remedy the injustice that results. I must apply the appellate court's orders and I will do so to the best of my ability.*" On February 12, of 1998, Judge Shortell issued an Order Supplementing November 22, 1996 Decision and Order on Remand. Judge Shortell decided that the Supreme Court really did intend for him to consider the scope (allowable uses) of the RS2477 right of way. Shortell stated that "Alaska views the scope of an R.S. 2477 generously" and are not necessarily limited to the historical uses as they existing in 1976 when the RS2477 grant was repealed. This Order was appealed by Puddicombe and the Supreme Court issued the Puddicombe decision in 1999 with the following notes:

1. "The Ninth Circuit's 1996 decision vacating Schultz v. Department of the Army does not affect the analysis or result reached in Fitzgerald v. Puddicombe." ["An RS2477 right of way is governed by state law. In rendering the Fitzgerald decision, the Supreme Court found an RS2477 right of way existed and defined Alaska common law on this issue. This is the common law of the state and it is this law which this court must apply, regardless of the outcome of Schultz."]
2. "The scope of an RS 2477 grant is subject to state law. The superior court's reliance on AS 19.10015 to determine the scope was not erroneous." [100-width of right of way]
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."

IV. The Act of 1947

a. Background: The Act of 1947 was one of three similar right of way reservations that are commonly noted in federal patents in Alaska. When researching title of lands along the highway system, you may find a document called a "Notice of Utilization". This notice declares the use of the right of way reservation provided by the Act of 1947. Of the three patent reservations, only the Act of 1947 specifically reserves rights of way for roads, however, the others are briefly mentioned due to the similarity of their intent.

The first act provided a right of way for "Ditches and Canals" to be noted in all patents as of August 30, 1890. (26 Stat. 391 - 43 U.S.C. 945) At the time of enactment, the United States had no canals or ditches either constructed or in the process of construction. The congress was however, concerned that disposal of land in a region under the land laws might render it difficult and costly to obtain the necessary rights-of-way when the work was undertaken. This act was eventually amended to require payment for land even if it was patented subject to the reservation.

The second act provided a right of way for the future construction of "Railroads, telegraph and telephone lines. (38 Stat. 30 - 43 U.S.C. 975 March 12, 1914) Section 615(a)(i) of The Alaska Railroad Transfer Act of 1982 (ARTA), P.L. 97-468 revoked 43 U.S.C. 975 in its entirety. The United States consequently has no remaining authority to utilize the 975d reservations. Section 609 of ARTA specifically states the requirement that future rights-of-way be obtained from current land owners under applicable law.

b. The '47 Act: The Act of July 24, 1947 (Pub. L. 229 - 61 Stat. 418)(48 U.S.C. 321d) applied only to lands which were entered or located after this date. This act reserved rights of way for roads, roadways, highways, tramways, trails, bridges, etc. Also commonly known as the "'47 Act".

"In all patents for lands hereafter taken up, entered, or located in the Territory of Alaska, and in all deeds hereafter conveying any lands to which it may have reacquired title in said Territory not included within the limits of any organized municipality, there shall be expressed that there is reserved, from the lands described in said patent or deed, a right of way thereon for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures constructed or to be constructed by or under the authority of the United States or any State created out of the Territory of Alaska. When a right of way reserved under the provisions of Sections 321a-321d of this title is utilized by the United States or under its authority, the head of the agency in charge of such utilization is authorized to determine and make payment for the value of the crops thereon if not harvested by the owner, and for the value of any improvements, or for the cost of removing them to another side, if less than their value."

The U.S. Senate Committee on Public Lands submitted a report leading to the passage of the "'47 Act" stating the following: "The bill is designed to facilitate the work of the Alaska Road Commission. As the population of Alaska increases and the Territory develops, the Road Commission will find it increasingly difficult to obtain desirable highway lands unless legislative provision is made for rights-of-way. The committee believes that passage of this legislation will help to eliminate unnecessary negotiations and litigations in obtaining proper rights-of-way throughout Alaska."

This act provided for a taking of right of way across land subject to the reservation without

compensation except for the value of crops and improvements. The act only authorized the first take. Subsequent acquisitions required compensation for the land taken.

Width of Right of Way: This Act did not specify right-of-way widths. However, a right-of-way of any width could be acquired over such lands by merely setting it by some sort of notice, either constructive or actual insofar as new roads are concerned, and since it did not limit the reservation to new roads only, it would also affect subsequent settlements on existing roads.

The Act of 1947 was repealed by Section 21 of the Alaska Omnibus Act, P.L. 86-70, June 25, 1959 (73 Stat. 146). The repeal became effective on July 1, 1959. This repeal only eliminated the insertion of the reservation into the patents of lands as of July 1 date, therefore lands patented or entered after this date are not subject to the act. Lands patented before the repeal were still subject to the reservation.

c. Right of Way Act of 1966 - This act repealed the use of '47 Act reservations by the State of Alaska (HB 415 Ch. 92, 1966 - April 14, 1966)

"Section 1. PURPOSE. This Act is intended to alleviate the economic hardship and physical and mental distress occasioned by the taking of land by the State of Alaska, for which no compensation is paid to the persons holding title to the land. This practice has resulted in financial difficulties and the deprivation of peace of mind regarding the security of one's possessions to many citizens of the State of Alaska, and which, if not curtailed by law, will continue to adversely affect citizens of this state. Those persons who hold title to land under a deed or patent which contains a reservation to the state by virtue of the Act of June 30, 1932, ch. 321, sec.5, as added July 24, 1947, ch. 313, 61 Stat. 418, are subject to the hazard of having the State of Alaska take their property without compensation because all patents or deeds containing the reservation required by that federal Act reserve to the United States, or the state created out of the Territory of Alaska, a right-of-way for roads, roadways, tramways, trails, bridges, and appurtenant structures either constructed or to be constructed. Except for this reservation the State of Alaska, under the Alaska constitution and the constitution of the United States, would be required to pay just compensation for any land taken for a right-of-way. It is declared to be the purpose of this Act to place persons with land so encumbered on a basis of equality with all other property holders in the State of Alaska, thereby preventing the taking of property without payment of just compensation as provided by law, in the manner provided by law."

The Alaska Statutes also reflect the elimination of the '47 Act in AS 09.55.265 and AS 09.55.266. AS 09.55.265 Taking of property under reservation void states that "After April 14, 1966, no agency of the state may take privately owned property by the election or exercise of a reservation to the state acquired under the Act of June 30, 1932, ch 320, sec. 5, as added July 24, 1947, ch.313, 61 Stat. 418, and taking of property after April 14, 1966 by the election or exercise of a reservation to the state under that federal Act is void. (2 ch 92 SLA 1966)" AS 09.55.266 Existing rights not affected. states that "AS 09.55.265 shall not be construed to divest the state of, or to require compensation by the state for, any right of way or other interest in real property which was taken by the state, before April 14, 1966, by the election or exercise of its right to take property through a reservation acquired under the Act of June 30, 1932, ch 320, sec. 5, as added July 24, 1947, ch.313, 61 Stat. 418.

d. '47 Act Case Law Summary:

1. Hillstrand v. State, 181 F. Supp 219 (1960) Once right of way has been selected and

defined, later improvements, necessitating utilization of land upon which road is not already located, can only be accomplished pursuant to condemnation and compensation provisions.

2. Myers v. U.S., 210 F. Supp, 695 (1962) Where the United States issued patent which stated that lands conveyed were subject to a reservation for right of way for roads, and grantees accepted patents with full knowledge of reservation, grantees received and held titles subject to such reservation.

3. SOA v. Crosby - Alaska Supreme Ct. No. 322, February 3, 1966. All lands disposed by BLM under the Small Tract Act (Act of June 1, 1938, 52 Stat. 609) which was made applicable to the State of Alaska in 1945 (Act of July 14, 1945, 59 Stat. 467) are not subject to the Act of 1947. This exception applies even if the small tract patent contains a '47 Act reservation.

V. 44 LD 513

A 44 LD 513 notation is not a "public" right of way in the sense of an RS 2477 or a PLO right of way. However, as they are noted on the BLM master title plats and historical indices, the question often arises as to whether they are available for general use. Therefore, a short discussion of their intended purpose is presented with the following excerpts from a June 15, 1979 letter from the Department of the Interior to the General Services Administration regarding the Haines-Fairbanks pipeline.

Prior to the enactment of the Federal Land Policy and Management Act, there was no general statutory provision for the setting aside of rights-of-way for Federal agencies, and the Bureau of Land Management customarily employed the procedures set out in the 44 LD 513 (Page 513, Volume 44 of Land Decisions of the Department) Instructions to accomplish that purpose. The 44 LD 513 Instructions, issued in 1916 pursuant to the Secretary of the Interior's general management authority over the public lands, advised the General Land Office (now BLM) regarding procedures to: put the public on notice of the existence and location of Federal improvements on the public lands; and to protect those improvements when the public lands upon which they were constructed were conveyed out of Federal ownership. The Instructions directed the Bureau to make appropriate notations in the tract books to accomplish the first purpose and to insert exception clauses in the land patents to accomplish the second.

The principle underlying the Instructions is that the construction of a Federal facility on public lands appropriates the lands to the extent of the ground actually used and occupied by that facility and for so long as the facility is used and occupied by the United States. When a federal agency no longer needed the facility, the agency would send a "Notice of Intention to Relinquish" to the BLM. BLM would then determine whether the lands would be turned over to the General Services Administration for disposal or returned to the public domain.

Unlike withdrawals and reservations, 44 LD 513 notations do not continue in effect once the Federal Government's use and occupancy terminates. The notations draw the efficacy from the Federal use and occupation. They have no existence separate and apart from that Federal use and occupancy. Once the Federal use and occupancy terminates in fact, the notations have no segregative effect even though they still remain on the land records. Therefore, it is not possible for any Federal agency to transfer 44 LD 513 notations to third parties.

Update: 44 LD 513 is very similar to an ILMA (DNR Interagency Land Management Assignment) at the federal level. It was intended to be between federal agencies and would be shown on the status plat. Although we have few of these interests in the Northern Region, I understand that many roads established by the Forest Service under 44 LD 513 in our Southeast Region were named in the 1959 Omnibus Act Quitclaim Deed. jfb

VI. Public Land Orders

a. Introduction

It is fairly clear from Alaska Supreme Court decisions that ignorance of the PLO rights of way is no defense against their effect. Professionals in the title, surveying, and real estate fields must be sufficiently knowledgeable of PLO's such that they can recognize their possible impacts on a given property. At a minimum the professional needs to be aware of the available resources that can aid in determining whether a PLO right of way exists. The following is a summary of the PLO's affecting highway rights of way in Alaska:

b. Public Land Order Summary

1. 4/23/42 E.O. 9145

This order reserved for the Alaska Road Commission in connection with construction, operation and maintenance of the Palmer-Richardson Highway (Now Glenn Highway), a right of way 200 feet in width from the terminal point of the highway to its point of connection with the Richardson Highway. The area described is generally that area between Chickaloon and Glennallen.

2. 7/20/42 PLO 12

This order withdrew a strip of land 40 miles wide generally along the Tanana River from Big Delta to the Canadian Border. It also withdrew a 40 mile wide strip along the proposed route of the Glenn Highway from its junction with the Richardson Highway, East to the Tanana River.

3. 1/28/43 PLO 84

This order withdrew all lands within 20 miles of Big Delta which fell between the Delta and Tanana Rivers. The purpose of the withdrawal was for the protection of the Richardson Highway.

4. 4/5/45 PLO 270

This order modified PLO 12 by reducing the areas withdrawn by that order to a 10 mile wide strip of land along the now constructed highways. The highways affected by this order are as follows:

1. Alaska Highway - from Canadian Border to Big Delta
2. Glenn Highway - from Tok Junction to Gulkana

5. 7/31/47 PLO 386

Revoked PLO 84 and PLO 12, as amended by PLO 270. The order withdrew the following land under the jurisdiction of the Secretary of the Interior for highway purposes:

1. A strip of land 600 feet wide along the Alaska Highway as constructed from the Canadian Boundary to the junction with the Richardson Highway at Delta Junction.
2. A strip of land 600 feet wide along the Gulkana-Slana-Tok Road (Glenn Highway) as constructed from Tok Junction to its junction with the Richardson Highway near Gulkana. This order also withdrew strips of land 50 feet wide and 20 feet wide along the Alaska Highway for purposes of a pipeline and telephone line respectively. Pumping stations for the pipeline were also withdrawn by this order, as well as 22 sites which were reserved pending classification and survey.

6. 8/10/49 PLO 601

This order revoked E.O. 9145 as to the 200' withdrawal along the Glenn Highway from Chickaloon to Glennallen.

It also revoked PLO 386 as to the 600 foot wide withdrawal along the Alaska Highway from the Canadian Boundary to Big Delta and along the Glenn Highway from Tok Junction to Gulkana.

Subject to valid existing rights and to existing surveys and withdrawals for other than highway purposes...PLO 601 withdrew and reserved for highway purposes... a strip of land 300 feet on each side of the centerline of the Alaska Highway, 150 feet on each side of the centerline of all **Through** roads as named, 100 feet on each side of centerline of all **Feeder** roads as named, and 50 feet on each side of the centerline of all **Local** roads. **Local** roads were defined as *"All roads not classified above as Through Roads or Feeder Roads, established or maintained under the jurisdiction of the Secretary of the Interior"*.

It is important to note that PLO 601 did not create highway easements. This Order was a withdrawal *"from all forms of appropriation under the public land laws, and reserved for highway purposes."*

This was essentially the first, and therefore one of the most important acts to comprehensively classify and define the width of the rights of way over public lands in Alaska.

7. 10/16/51 PLO 757

This order accomplished two things:

1. It revoked the highway withdrawal on all "feeder" and "local" roads established by PLO 601.

2. It retained the highway withdrawal on all the "through roads" mentioned in PLO 601 and added three highways to the list.

After issuance of this order the only highways still withdrawn included the Alaska Highway (600'), Richardson Highway (300'), Glenn Highway (300'), Haines Highway (300'), Seward-Anchorage Highway (300'), Anchorage-Lake Spenard Highway (300'), and the Fairbanks-College Highway (300').

The lands released by this order became open to appropriation, subject to the pertinent easement set by Secretarial Order No. 2665, discussed below.

8. 10/16/51 S.O. 2665

The purpose of this order, issued on the same date as PLO 757, was to *"(1) fix the width of all public highways in Alaska established or maintained under the jurisdiction of the Secretary of the Interior and (2) prescribe a uniform procedure for the establishment of rights of way or easements over or across the public lands for such highways."* It restated that the lands embraced in "through roads" were withdrawn as shown under PLO 757. It also listed all the roads then classified as feeder roads and set the right of way or easement (as distinguished from a withdrawal) for them at 200'. The right of way or easement for local roads remained at 100 feet.

This Order provided what was termed a "floating easement" for new construction. Under this provision, *"rights of way or easements....will attach as to all new construction involving public roads in Alaska when the survey stakes have been set on the ground and notices have been posted at the appropriate points along the route of the new construction specifying the type and width of the roads."*

9. 7/17/52 Amendment No. 1 to S.O. 2665

This amendment reduced the 100' width of the Otis Lake Road, a local road not withdrawn in the Anchorage Land District, to 60 feet.

10. 9/15/56 Amendment No. 2 to S.O. 2665

This amendment added several roads to the "through" (300' width) road list including the Copper River Highway, the Sterling Highway, and the Denali Highway. Several highways were deleted from the "feeder" (200' width) road list including the Sterling Highway and the Paxson to McKinley Park Road. The Nome-Kougarok and Nome-Teller roads were added to the list of "feeder" roads.

11. 8/1/56 Public Law 892 - Act of August 1, 1956

The purpose of this Act (P.L. 892 - 70 Stat. 898) was to provide for the disposal of public lands within highway, telephone and pipeline withdrawals in Alaska, subject to

appropriate easements. This Act paved the way for the issuance of a revocation order (PLO 1613) which would allow claimants and owners of land adjacent to the highway withdrawal a preference right to acquire the adjacent land.

12. 4/7/58 PLO 1613

This order accomplished the intent of the Act of August 1, 1956. Briefly, it did the following:

1. Revoked PLO 601, as modified by PLO 757, and provided a means whereby adjacent claimants and owners of land could acquire the restored lands, subject to certain specified highway easements. The various methods for disposal of the restored lands are outlined in the order.
2. Revoked PLO 386 as to the lands withdrawn for pipeline and telephone line purposes along the Alaska Highway. It provided easements in place of withdrawals.

Prior to PLO 1613 the road rights of way classified as "feeder" and "local" were defined as easements whereas the "through" roads were still withdrawals. PLO 1613 effectively eliminated the last of the withdrawals established by the aforementioned Land Orders by converting the "through" roads to easements.

To more clearly relay the intent of the Federal Government in issuing PLO 1613, the following is quoted from a BLM informational memo titled -

INFORMATION REGARDING LANDS ADJOINING CERTAIN HIGHWAYS

"Between August 10, 1949, and April 7, 1958, the lands underlying the following highways in the Fairbanks Land District were withdrawn from entry for highway purposes:.....The acquisition of rights in homesteads, homesites, etc., along these highways during this period included property only up to the boundary line of the highway withdrawals. They did not include any part of the reserved area. On April 7, 1958, Public Land Order 1613 was issued revoking the withdrawals and opening the lands to application for private ownership under the public land laws. However, the Government retained an easement for highway and other purposes extending 150 feet from the centerline of each highway listed here. The effect on you, as owner of land or as an applicant for land adjoining these highways is as follows:

PRIVATE OWNERS OF PATENTED LAND:If you own land with frontage on any of the other highways listed above, there now exists 150 feet of public land between your boundary and the centerline of the highway. The same Government easement applies to this 150 feet. It cannot be used for other than highway purposes without permission of the Bureau of Public Roads. However, should the highway be changed or abandoned, the owner would have full use of the land. Owners of private lands will have a preference right of purchase at the appraised value the released land adjoining their private property. This right will extend to land only up to the center line of the highway concerned.However, at the time of purchase he must furnish proof that he is the sole owner in fee simple of the adjoining land.

CLAIMANTS WITH VALID UNPERFECTED ENTRIES OR CLAIMS FILED BEFORE APRIL 7, 1958:In this instance, you may exercise a right to amend your entry or claim to include the property (Underlying the highway easement). This additional land will not be included in the area limitation for your type of filing.

TIME LIMITATIONS: *The preference right applications mentioned above must be filed in the Land Office within 90 days of receipt of the appropriate Notice from the Land Office. If not filed within at that time, the preference right will be lost. The lands then will become subject to sale at public auction.*

As might be expected from the previous sentence, the preference right sales offered a great potential for future problems. A Department of Natural Resources internal memo to the Commissioner dated June 18, 1984 discusses the problems that arose.

The memo described a situation along the Old Glenn Highway in which BLM had sold the original patentee, Mr. Setters, a PLO 1613 highway lot based upon his preference right. Prior to this preference right sale, Mr. Setters had conveyed away his original patent and it was now owned by a Mrs. Pavék. At this point there was not a conflict as Mr. Setters' PLO 1613 Lot was subject to a highway easement and Mrs. Pavék had direct access onto the easement. However, DOT&PF had relinquished a portion of the right of way without realizing any ramifications. Mr. Setters now owned a strip of unencumbered land between Mrs. Pavék and the highway. Mr. Setters then approached Mrs. Pavék with an offer to sell access rights across his strip of land for \$30,000. Mr. Setters had paid BLM \$25 for the entire PLO 1613 highway lot.

In order to prevent additional occurrences of this problem, the Alaska Statutes were modified as follows:

A.S. Sec. 09.45.015. Presumption in certain cases.

(a) A conveyance of land after April 7, 1958, that, at the time of conveyance was made, adjoined a highway reservation listed in section 1 of Public Land Order 1613 of the Secretary of the Interior (April 7, 1958), is presumed to have conveyed land up to the center-line of the highway subject to any highway reservation created by Public Land Order 601 and any highway easement created by Public Land Order 1613.

(b) The burden of proof in litigation involving land adjoining a highway reservation created by Public Land Order 601 or a highway easement created by Public Land Order 1613 is on the person who claims that the conveyance did not convey an interest in land up to the center-line of the highway. (2 ch 141 SLA 1986)

A.S. Sec 09.25.050. Adverse Possession.

(b) Except for an easement created by Public Land Order 1613, adverse possession will lie against property that is held by a person who holds equitable title from the United States under paragraphs 7 and 8 of Public Land Order 1613 of the Secretary of the Interior (April 7, 1958)

This problem also raised the issue as to whether the State had received a fee interest or an easement interest when the highway rights of way were conveyed from the Federal Government by virtue of the 1959 Omnibus Act Quitclaim Deed. If the State had in fact received a fee interest, then there could be no sales to third parties of these highway lots and therefore no conflict. Our initial reading of the Public Land Orders suggests that by time of PLO 1613, all highway rights of way created by the PLO's existed as easements. However, over the years this has been interpreted differently by other agencies and

various informal opinions from the Department of Law. The Department of Transportation has for many years and does now treat these PLO rights of way as easements. In April of 1991 the Northern Region of DOT&PF requested a formal Attorney General's Opinion on the issue of fee or easement in order to set this question aside. On February 19, 1993 the opinion was issued concluding that "under the Alaska Omnibus Act and resulting Quitclaim Deed, the State of Alaska received, in general, easements for its roads at statehood."

13. 6/11/60 Public Law 86-512 - Act of June 11, 1960

This Act amended the Act of August 1, 1956. This was a special act to allow the owners and claimants of land at Delta Junction and Tok Junction a preference right to purchase the land between their property and the centerlines of the highway. The Act was necessary since the land in both towns was still reserved for townsite purposes, even after the highway, telephone line, and pipeline withdrawals were revoked.

14. 8/19/65 DOI Memorandum - Revocation of S.O.2665 and amendments

This memo served as notification that several Secretarial Orders were to be revoked on December 31, 1965 including S.O. 2665 and its amendments.

Note: The above noted DOI Memorandum was considered to be merely a housekeeping exercise as the Omnibus Act (Public Law 86-70) of June 25, 1959, by Section 21(d)(7), repealed the Act of 1932 and the Act of 1947. These Acts were the basis for the majority of pre-statehood highway rights of way. jfb

c. Practical Applications:

One of the many points that the 1983 Supreme Court case State of Alaska v. Alaska Land Title Association established was that the publication of a public land order in the Federal Register imparted constructive notice as to the land it affected. Therefore the title companies were liable to the policy holders for not disclosing the existence of PLO rights of way which encumbered their property.

Once a person has become involved in researching several PLO rights of way, it is fairly clear that this much of the required information is obscure and of limited availability. We realize that if it is challenging research for our in-house staff that regularly work with these issues, then it will be very difficult work for private sector professionals and virtually impossible for the layman.

I have found form letters in the Northern Region Right of Way office dating to 1980 that one of the major title companies intended to submit to DOT&PF for each title report that they were to prepare. The letters each stated the following:

"We are presently engaged in a title search of the following described real property. Since alleged highway rights-of-way created by Public Land Orders 601, 757, 1613, or Department Order 2665 are not recorded by property description, please advise us if the State of Alaska is claiming a right-of-way for a local, feeder, or through road on the following property and specify the width of the right-of-way you are claiming:"

DOT's response to the form letters at the time was essentially the same as it is today. That is, our files are open to anyone who needs to research the necessary information, but unfortunately we do not have the personnel to review and respond to these requests for every title report generated in the State.

Therefore, if you have a need to know the status of a highway PLO with respect to a particular piece of property, then you also have the need to know how to perform the proper research.

In order to evaluate the effect of a PLO, you must review three items:

1. Land Status - Dates of Entry
2. Effective Date of Public Land Order
3. Date of Road Construction (or Posting)

Land Status: A common element of each PLO that served to establish a highway right of way was that they were "subject to valid existing rights". Our interpretation of that stipulation is that if the land was withdrawn or reserved prior to the effective date of a PLO, then the PLO could not act to create a right of way. These reservations or withdrawals could include homestead entries, mineral entries, military withdrawals, and such.

The primary source of information with respect to PLO validity are the Bureau of Land Management land status records. Generally the process is to -

1. Review the Master Title Plat in order to locate the property in question.
2. Review the Historical Index for actions involving the property in question and the dates that they occurred.

Caveats: Not all land actions would serve to preclude the application of a highway PLO. For example, in one particular situation involving a federal grazing lease the lease document stated that "Nothing herein shall restrict the acquisition, granting, or use of permits or rights-of-way under applicable law."

Actions that might serve to create a "valid existing right" may have preceded the earliest date noted on a BLM Historical Index. For example, some very early mining claim and homestead location notices were filed in the Federal Magistrate's office (now the Recorder's office) and are not noted on the Historical Index.

There may be gaps in the "valid existing rights" that would allow a PLO right of

way to take effect. For example, a homestead entry that may have precluded the application of a PLO right of way at one point in time may be relinquished, returning the land to the public domain. Upon relinquishment, the PLO right of way may be created.

Effective Date of Public Land Order: This may be the easiest part of a PLO right of way review. Assuming that you have copies of all of the pertinent Land Orders, the process can be as follows:

1. Review the PLO's to see when the road in question is specifically named. (For example, the Taylor Highway and the Manley Hot Springs to Eureka roads were named as Feeder roads with a ROW of 100' each side of centerline in DO 2665, but were not specifically named at all in PLO 601.) This exercise is necessary in order to establish the earliest date that a PLO highway right of way may have been created.

Caveat: It may be the easiest part of the research but it isn't foolproof. For example, the Edgerton Cutoff and New Edgerton highway have long been a point of confusion. The Edgerton Cutoff is the old road which has been noted in the ARC report since the 1920's as a cutoff from the Richardson to Chitina. It is the road that is specifically referenced in PLO 601 and SO 2665 as a "feeder" road (200' ROW). The new Edgerton highway was also created under SO 2665 but was not specifically mentioned as it was created under the "posting" requirements for new construction. An ARC public notice dated 9/15/56 designated the new Edgerton as a "feeder" road under SO 2665 as staked.

If you do not have copies of the PLO's available, bound volumes of all Alaska Land Orders can be viewed or copied at the BLM public room. Another interesting resource within BLM is the index of "Orders Affecting Public Lands in Alaska". This index lists the Order number, reference number, date, description, approximate land area involved, and a cross reference to other relevant land orders.

Date of Road Construction (or posting): This is likely to be the most difficult aspect of the research due to the relatively unorganized state of the documents that will establish such a date. The date of construction is particularly important when attempting to establish whether an unnamed local road right of way is subject to a conflicting land reservation or withdrawal.

1. **Alaska Road Commission Annual Reports:** These reports, dating from 1905 to 1954 name each road that was constructed and maintained under ARC jurisdiction along with the amount of public funds expended. Many of these reports can be viewed at the BLM Resource Library in Anchorage, DOT&PF Right of Way offices in Anchorage and Fairbanks, the University of Alaska Rasmussen Library in Fairbanks, DOT&PF Northern Region Planning in Fairbanks, and the Alaska Branch of the National Archives in Anchorage.
2. **As-built plans, Field Books - ARC/BPR:** Each DOT&PF Regional office has retained some records from the Alaska Road Commission and the Bureau of Public Roads. For

example the Northern Region (Fairbanks) has ARC field books dating as early as 1907. We also have some road as-builts from the 1940's and 1950's.

3. USGS Mapping Base Photography and other Historical Aerial Photos: Private Photogrammetry firms often have an extensive photo archive which can fix a date for certain improvements such as roads. Aeromap USA of Anchorage claims to have archive photos dating back to the 1940's. Early 1950's and later photography which was the basis for the USGS quadrangle mapping is also a prime source for fixing dates on roads. Note that just because a road is shown on a USGS quad does not mean it truly exists. There have been a few occasions where roads were placed on USGS quads based upon proposed plans but for some reason were never constructed.

4. Federal Records Center/National Archives Documents: After statehood, a large amount of the archived records of the ARC/BPR were retained by the Federal Highway Administration and transferred to their regional headquarters in Portland, Oregon. These records were eventually sent to the Federal Records Center in Seattle for storage and eventual transfer into the National Archives. Almost two years ago, the National Archives opened a branch office in Anchorage (Old Federal Courthouse), and received records relating to Alaska from the Seattle office. In their possession are dozens of cases of correspondence, weekly/monthly/annual reports, field books and plans relating to the construction of roads in Alaska. A few years ago, the DOT&PF Northern Region Planning office hired U of Alaska history professor Klaus Naske to research these records for information relating to certain RS-2477 roads. The result was a 14,000 record database indexing references to particular roads as found in the ARC Annual Reports, Miscellaneous ARC/BPR documents in possession of the Federal Records Center, and references from the files of the U of Alaska Rasmussen Library (mostly newspaper clippings). Also submitted with the database were xerox copies of all of the documents referenced. Although this database has served to facilitate access to thousands of the available archived documents, there still exist many thousands of additional un-indexed documents in the ARC/BPR files at the National Archives.

5. Miscellaneous Mapping, Surveys, and Reports: Other sources of information that can be used to date the existence of a particular road can be the plats and field notes of GLO/BLM surveys. Generally the plats and running field notes for U.S., Mineral, and Township surveys will note the intersection of survey lines with existing roads and trails. Also references of access can be found in the mineral reports of the U.S. Geological Survey. Descriptions of control monumentation established by the U.S. Coast and Geodetic Survey have also served to establish the dates of roads.

Update: Sometimes you will have to go the extra mile in gathering evidence to make the correct PLO evaluation, particularly when the date of a particular PLO is very close to the date of entry. The question that might arise is whether the entryman had vested rights based on occupation prior to the reported date of entry or application noted in the BLM records. An example of this was our research into the PLO ROW for the Richardson Highway in the vicinity of the Meier Lake Lodge. Our assertion of the full 300-foot wide ROW across USS 3318 was based on the fact that the effective date of PLO 601 (8/10/49), which established the Richardson Highway right of way, preceded the application date leading to the patent of USS 3318 (9/22/49 according to the BLM ALIS Online abstract). Only 44 days separated the PLO from the application date. A site survey indicated several buildings and other improvements for the lodge were located within the highway right of way. We ordered the T&M Site case file from the National Archives and along with other historical information located on-line and at the library, we found that the Meier Lake Roadhouse dates back to its construction by Charles J. Meier in 1906. The roadhouse burned down in 1925 and was rebuilt between 1928 and 1929. Between 1943 and 1950, Adler and Maude Tatro (Patentees) managed the business until the main building was again destroyed by fire in 1950. The preceding statement identifying the patentees/entrymen as having occupied the site since 1943 was found in a manuscript titled "Roadhouses of the Richardson Highway II". We then noted that the federal law governing T&M sites was revised near the time that PLO 601 was implemented. *"The Act of April 29, 1950 43 USC §687a-1 (1970), provides that anyone initiating a T&M site claim must file a notice of location in the appropriate land office within 90 days of initiating the claim, or else the claimant will receive no credit for occupancy maintained prior to the filing of the notice of location or application to purchase."* However, 43 CFR 81 (1949 Edition) governed the sale of public lands for T&M Sites at the time of the Tatro's application on 9/22/49. Part 81.6 states that *"The application to enter must show; (a) That the land is actually used and occupied for the purpose of trade, manufacture or other productive industry, when it was first so occupied,..."* As Tatro's occupancy and application occurred prior to the 1950, their claim would not be subject to the location notice provision. In support of the proposition that the Tatro's rights commenced upon occupation of the public lands prior to the effective date of PLO 601 rather than their date of application, see the following: IBLA 74-153 cited Vernard E. Jones, 76 I.D. 133, 137 (1970) *"The mere filing of a notice of location for a trade and manufacturing site creates no rights in the land, 'the establishment of such rights being entirely dependent upon the acts performed in occupying, possessing and improving land and their relationship to the requirements of law under which the settler seeks to obtain title'"*. Often there is little or no documentary evidence supporting an occupancy date prior to the reported entry/application date. In those cases our only option is to evaluate the PLO with those dates. However, if a site inspection indicates historical improvements that might suggest occupation prior to date of entry/application, you should carry your research to the next level. jfb

d. Evaluation of Information: Many times it will be necessary to perform a cost/benefit analysis in order to establish what level of research is warranted. Although each evaluation will necessarily include a comprehensive review of the "land status" and the "effective date of PLO" portions of the research, the "date of construction" portion can easily involve a seemingly endless number of man hours. Once you have invested an amount of research into these areas that balances with the risk you may incur, then the evaluation of whether a PLO right of way exists is fairly straight forward. For example:

1. A local (secondary) road crosses your property. The State of Alaska claims jurisdiction for the road, however the right of way was never specified in your homestead patent and you have never given a specific easement for the road. Is the road subject to a PLO right of way?

a. If your homestead date of entry preceded August 10, 1949 (PLO 601) then there is no PLO easement.

b. If your homestead date of entry was after August 10, 1949 but preceded the date of construction (or posting when allowed by SO 2665), there is no PLO easement.

c. If your homestead date of entry was after August 10, 1949 and after the date of construction (or posting when allowed by SO 2665), there will be a PLO right of way easement.

Update: Note that the above example deals only with PLO 601. If you are considering a road covered under earlier PLO's such as the Alaska or Glenn highways, you will need to use the effective dates of the earlier PLO's. jfb

Caveats: Some items to be aware of when evaluating your research data are as follows:

1. Road re-classifications and name changes - Note that PLO 601 classified the Nome-Solomon road as a "feeder" road. SO 2665 maintained the "feeder" classification but extended the route and changed the name to the "Nome-Council" road. Under PLO 601, the "Taylor" highway would have fallen under the classification of an unnamed "local" road. SO 2665 upgraded the classification to a "feeder" road. SO 2665 classifies the Paxson to McKinley Park road as a "feeder". Amendment No. 2 to SO 2665 changes the name of the road to "Denali Highway" and reclassifies it to a "Through" road.

2. Note that the preceding research and evaluation will only establish whether a PLO right of way exists or not. It generally does not take into account the location of the physical road with respect to a particular piece of property or the fact that they road may have shifted by maintenance or construction realignment over a period of time.

3. Note that in some records - particularly BLM status maps and land adjudication documents, that a right of way may be noted as a "50' CL", "100' CL", or a "150'CL".

Many people have erroneously interpreted these notations to mean total right of way widths when in fact they represent the half widths. (i.e. 50' on each side of centerline).

e. Case Study:

The following excerpts from IBLA case 88-589 provide a good discussion of the history of roads in Alaska and the application of laws relating to PLO rights of way.

April 29, 1991 (IBLA 88-589 Frank Sanford Et. Al.) Alaska: Native Allotments

A decision recognizing that a Native allotment is subject to an easement for highway purposes extending 50 feet on each side of the centerline of a road conveyed to the State of Alaska by a quitclaim deed issued pursuant to the Alaska Omnibus Act, P.L. 86-70, 73 Stat. 141, will be affirmed where an easement of that width had been established under the Act of June 30, 1932, 47 Stat. 446.

The quitclaim deed cited in BLM's decision refers to Schedule A which is a list of highways. FAS Route No. 8921 is listed as a secondary class "B" highway named the Mentasta Spur with 7.0 miles constructed and described as follows: "From a point on FAS Route 46 approximately 10 miles west of Little Tok River, west to Mentasta Lake." Although this describes the road crossing Sanford's parcel, the conveyance does not indicate its width. The State contends that a 100-foot right-of-way is proper; other parties contend either that the road was abandoned or, alternatively, that only a 60-foot right-of-way is appropriate.

In a recent decision, Lloyd Schade, 116 IBLA 203 (1990), we provided a brief outline of the history of the administration of roads in Alaska:

Pursuant to the Act of January 27, 1905, 33 Stat. 616, as amended by the Act of May 14, 1906, 34 Stat. 192, Congress authorized the Secretary of War to administer the roads and trails in Alaska. In 1932, Congress transferred administration over those roads and trails to the Secretary of the Interior pursuant to the Act of June 30, 1932, 47 Stat. 446.

The State's response to the Sanford appeal included an affidavit by John Bennett, a registered professional land surveyor employed as Engineering Supervisor in the right-of-way division of the State's Department of Transportation and Public Facilities. Bennett states that he has examined records in an attempt to learn when the Mentasta Spur Road was established. Excerpts from a 1960 document by the Division of Highways of the Alaska Department of Public Works entitled Fifty Years of Highways is attached to Bennett's affidavit as Exhibit A. The document refers to a "Tok Cutoff Glenn Highway" as "constructed during World War II." A copy of Alaska Road Commission Order No. 40, Supplement No. 1 (August 1, 1952) includes an attachment which refers to a "Mentasta Loop." Exhibit B consists of a quadrangle map and a list of monument descriptions indicating that the road through Sanford's allotment existed in the 1940's. The map bears a hand-written notation indicating that the present location of the Tok Cutoff of the Glenn Highway which does not cross Sanford's parcel was a "1951 Reroute."

Public Land Order No. 601 of August 10, 1949, 14 FR 5048 (August 16, 1949), revoked a prior PLO and divided all roads under the Secretary's jurisdiction in Alaska into three classes: through roads, feeder roads, or local roads. That order withdrew from all forms of appropriation under the public land laws public lands within 150 feet of each side of the center line of all through roads, 100 feet of each side of the centerline of all local roads and reserved the lands for highway purposes.

On October 19, 1951, PLO 757 amended PLO 601 by revoking the general withdrawal for local and feeder roads (16 FR 10749, 10750 (Oct. 19, 1951)). Simultaneously, the Secretary issued Secretarial

Order (SO) 2665 establishing easement for, rather than withdrawals of, 50 feet on each side of the center of each local road and 100 feet on each side of the center line of each feeder road. 16 FR 10752 (Oct. 19, 1951). Because the Mentasta Spur was not listed as a through road or feeder road, the size of the easement established was 50 feet on each side of the center, or 100 feet in total width.

As authority for the establishment of these easements, the PLO cited the Act of June 30, 1932, identified earlier as the statute by which Congress transferred administration over roads and trails from the Secretary of War to the Secretary of the Interior. Section 5 of that statute required the Secretary to reserve in patents a right-of-way for roads "constructed" or to be constructed by or under the authority of the United States." Act of June 30, 1932, ch. 320 as added, Act of July 24, 1947, ch 313, 61 Stat. 418. Reference to the more recent history of the administration of Alaskan roads discloses:

The Secretary of the Interior's jurisdiction over the Alaskan road system ended in 1956 when Congress enacted section 107(b) of the Federal-Aid Highway Act of 1956, 70 Stat. 37, which transferred the administration of the Alaskan roads to the Secretary of Commerce. This change in authority was reiterated on August 27, 1958, when Congress revised, codified, and reenacted the laws relating to highways as Title 23 of the United States Code. See 23 U.S.C. 119 (1958). The Commerce Department's Bureau of Public Roads reclassified and renumbered the Alaskan roads under its jurisdiction as primary, secondary "A", and secondary "B" routes, but did not specify the widths of those classes of roads.

Section 21(a) of the Alaska Omnibus Act, 73 Stat. 145 (1959), enacted on June 25, 1959 directed the Secretary of Commerce to convey to the State of Alaska all lands or interests in lands "owned, held, administered by, or used by the Secretary in connection with the activities of the Bureau of Public Roads in Alaska." Section 21(d)(3) an (7) of that Act repealed 23 U.S.C. 119 (1958), and the Act of June 30, 1932, 47 Stat. 446, effective July 1, 1959. 73 Stat. 145-46 (1959).

Lloyd Schade, supra at 204-205. On June 30 1959, pursuant to section 21(a) of the Alaska Omnibus Act, the Secretary of Commerce issued the quitclaim deed which included the road in question.

Accordingly, we conclude that BLM properly recognized that Sanford's Native allotment is subject to an easement for highway purposes extending 50 feet on each side of the centerline of a road transferred to the State of Alaska by a quitclaim deed issued pursuant to the Alaska Omnibus Act, P.L. 86070; 73 Stat. 141, when an easement of that width had been established under the Act of June 30, 1932, 47 Stat. 446. Any issue concerning the abandonment of such a right-of-way is properly within the jurisdiction of the state courts.

f. Public Land Order Case Law Summary:

1. United States v. Anderson, 113 F.Supp., 1, 14 Alaska 349 (D. Alaska 1953) Land withdrawn by PLO 386 for the Alaska Highway was not subject to entry by individuals.
2. Matanuska Valley Bank v. Abernathy, 445 P.2d 235 (Alaska 1968) Purchasers were entitled to rescind sale agreement where there was a mutual mistake as to the status of title of land. (Land was subject to a PLO 1613 highway easement.)
3. Hahn v. Alaska Title Guaranty Co., 557 P.2d 143 (Alaska 1976) A Public Land Order published in the Federal Register constitutes a "public record" which imparts constructive notice with regard to a particular tract of real estate. The appellee, a title insurance company was determined to be liable to the extent that the right of way crossing the insured land exceeded that indicated on the policy. (PLO 601).

4. State, Dep't of Highways v. Green, 586 P.2d 595 (Alaska 1978) A 50 foot right of way reservation provided by SO 2665 for local roads applied to subject lot only if the effective date of the Small Tract Act lease was preceded by both construction of road and issuance of secretarial order.

The Greens argued that the PLO did not apply as their lot was subject to a specific reservation (33') by virtue of the Small Tract Act. SO 2665 is a general order whereas the reservation created by the small tract act was specific. The Court ruled the two conflicting orders should be "harmonized if possible" unless there is a conflict. Since the 33 foot reservation was for access streets serving interior lots and the 50 foot reservation was for local roads there was not a conflict. The court relied on the rule of construction that "where language of a public land grant is subject to reasonable doubt such ambiguities are to be resolved strictly against the grantee and in favor of the government".

5. 823 Square Feet, More or Less v. State, 660 P.2d 443 (Alaska 1983) Surveying, staking, stripping, and clearing of entire 100 feet were sufficient act of appropriation to create a 100 foot wide right of way although the road with ditches was only 48 feet wide. Discusses application of SO 2665 and PLO 601 on lots created under the Small Tract Classification order No. 22 of March 23, 1950.

6. State v. Alaska Land Title Ass'n, 667 P.2d 714 (Alaska 1983) This is the primary case for PLO rights of way. By virtue of PLOs 601, 757, and 1613 and DO 2665, the State of Alaska and the Municipality of Anchorage claimed easements for local, feeder and through roads greater than shown in the patents. Three properties, owned by Pease, Boysen and Hansen, were involved in the appeal.

PLO 601 was effective on August 10, 1949; PLO 757 and DO 2665 on October 19, 1951 and PLO 1613 on April 7, 1958.

The lease for the Pease small tract was dated May 1, 1953. The patent, issued on October 4, 1955, contained 33 foot easements along two boundaries, one of which was Rabbit Creek road, and a blanket reservation under 43 USC 321d (the '47 Act). Rabbit Creek Road was in existence at the time of the original leases.

Boysen had property bordering the Seward Highway. The date of entry was January 2, 1951 and the patent was issued on May 15, 1952 with a 47 Act reservation. The Seward highway was constructed prior to the effective date of any of the PLOs.

Hansen's property was entered on January 23, 1945 with a patent issued on June 1, 1950. Hansen's property was entered prior to 1947 therefore it was not subject to a 47 Act reservation.

As to the Hansen property, the Court ruled that the property was not subject to PLOs or DO since the entry in January, 1945 was prior to the effective date of any of them. The other two properties were found to be subject to PLO rights of way. A number of

arguments against the validity of the PLO rights of way were dismissed by the Court.

Right of Way Act of 1966: The Pease and Boysens patents were subject to a '47 Act reservation. They argued that the Right of Way Act of 1966 precluded the State and Municipality's claims for feeder and local roads under the DO 2665. The Court ruled that the ROW Act applied only to the '47 Act reservation, 43 USC 321d. DO 2665 was promulgated under 43 USC 321a, which was not repealed by the ROW Act.

Constructive Notice: The PLOs and DO were not recorded. On April 4, 1959 the Federal government conveyed its interest in the Alaska highways to the State. That deed was not recorded until October 2, 1969. Pease and Boysen claimed the State's interest was invalid against them as subsequent innocent purchasers in accordance with AS 34.15.290 which protects subsequent innocent purchasers for value who are without notice of a prior interest. The Court distinguished PLOs and the DO from a wild deed outside the chain of title. Issue in this case was whether the publication of the PLOs and DO in the Federal Register was constructive notice. The Court reaffirmed its earlier decision in Hahn v. Alaska Title Guaranty Co. that publishing in the Federal Register was constructive notice; therefore subsequent purchasers were not innocent purchasers protected by the recording statutes.

Title Company Liability: The Court was asked to overturn Hahn v. ATG, since the PLOs and DO were not recorded in Alaska. The Court refused to do so. The title companies were subject to the claims of Pease and Boysen.

Estoppel: Pease and Boysen claimed the State and Municipality were estopped from claiming an interest due to the fact that for over 20 years they had been allowed the property to be developed in a manner inconsistent with the assertion of the claimed easements. Relying on its finding that the constructive notice was imparted by the Federal Register, the Court ruled that notice made reliance by the parties unreasonable therefore the estoppel claim lacked merit.

Patent Statute of Limitations: The patents did not contain any reservation for the PLO and DO rights of way. This six year statute of limitations to contest a patent had expired long before the State claimed its easement interest. In reaffirming State, Department of Highways v. Green, the Court found that a right of way not expressed in the patent was a valid existing right and the patentee takes subject to such right.

By operation of law, land conveyed by the United States is taken subject to previously established rights of way where the instrument of conveyance is silent as to the existence of such rights of way. No suit to vacate or annul a patent in order to establish a previously existing right of way is necessary because the patent contains an implied by law condition that it is subject to such a right of way.

Staking: The lower court held that the additional widths created by DO 2665 did not apply to the rights of way for adjacent to the Pease and Boysen properties because the road had not been "staked" in accordance with the terms of DO 2665. The Supreme

Court rejected that conclusion on the basis that the staking was only required for new construction. Since the roads were in existence at the time of the DO, staking was not required.

7. State, DOT&PF v. First National Bank of Anchorage, 689 P.2d 483 (Alaska 1984) The Bank's predecessor, Pippel, on June 10, 1946, entered onto land that was secretly withdrawn for the military by PLO 95 in 1943. BLM canceled the entry, then subsequently reinstated it. A patent was issued to Pippel on October 11, 1950. PLO 95 was not revoked until April 15, 1953.

The state argued that the entry was not a valid existing right due to the invalid entry on withdrawn land, therefore the property was subject to a 300 foot wide right of way under PLO 601. However, the Court ruled that once a patent is issued, defects in the preliminary process are cured. Since the state did not contest the patent within the six year statute of limitations, the patent made the 1946 entry presumptively valid. Consequently the entry related back to 1946, prior to the PLO.

8. Resource Investments v. State, DOTPE, 687 P.2d 280 (Alaska 1984) Reaffirms the decision in the Alaska Land Titles case that a homestead entry constitutes a "valid existing right" as defined by PLO 601.

Update: Simon v. State, 996 P.2d 1211 (Alaska 2000) PLO 1613 easement allows for realignment of road within right of way and right to move or use subsurface materials. To disallow this use would defeat the purpose of the easement. jfb

VI. Odds & Ends

Update: This seems like a good spot to throw out some miscellaneous thoughts regarding our highway rights of way. jfb

What is the nature of the property interest/title conveyed to the State in highway right of way at statehood? – The Omnibus Act QCD conveyed 5,400 miles of roads to the State of Alaska. The PLO's appear to indicate that by the time the QCD was issued, all of the PLO rights of way were an easement interest. However, the question of fee or easement continued to pop up. On February 19, 1993 the Attorney General's Office issued an opinion that concluded that "in general, the State of Alaska received 'easements' from the United States rather than 'fee simple' title". This opinion overruled a 1986 opinion that the State had received the entire interest of the United States, including the fee interest, in the roads. State's rights activists assert that the State should have received the full interest held by the United States under the Equal Footing Doctrine. However, the Omnibus Act QCD on its face only conveyed the title held by the Department of Commerce. It must be recognized that some of the conveyed highway ROW might have been in fee if it was acquired in fee, however, most of it was based on '47 Act, RS-2477, PLO or other patent reservation and these are generally held to be easement interests. It is interesting to note that Alaska Road Commission memos just a few months after PLO 601 was effective recognized the potential problem that had been created by requiring withdrawals rather than easements. They intended to avoid the difficulty of determining the exact location of the road for each entry or patent. This could be accomplished with easements but withdrawals would require the survey of all of the highway rights of way to determine the boundaries for patents. This led to the subsequent PLO's that converted the withdrawals to easements. The concept that the PLO's were conveyed as an easement interest is supported in the language of A.S. 9.45.015 and A.S. 9.25.050 that speak to the protection of owners adjoining PLO 1613 highway easements.

What is the nature of property interest in our highway rights of way today? – First consider that in 1959 we received the bulk of the 5,400 mile highway system as an easement interest. The State Highway System inventory as of 4/25/06 consists of 6,217 miles of roads. Then consider that of Alaska's 375,000,000 acres, 59% is federal lands, 28% is State, and 12% is ANCSA leaving only 1% in private ownership. ROW Grants from the federal government including Title 23 Grants through FHWA and FLPMA Title V Grants are effectively easements for highway purposes. The Departments of the Army and Air Force also issued specific highway easements. DNR issues ROW permits for highways and given the nature of permits, they might be considered something less than a strong highway easement. But as DOT&PF is an agency of the State of Alaska, we generally are not in fear that they will be unilaterally revoked and so for all intents and purposes, we might consider them somewhat equivalent to a highway easement. The general ANCSA corporation policy of "no net loss" results in a general resistance to issuing a right of

way in fee. And so, unless the acquisition is for an access controlled facility in which we are required to secure a fee land interest, we have often accepted a highway easement for rural highway projects. The access controlled facilities are typically in an urban/suburban setting so our focus is to acquire a fee interest for these highways. Given the land ownership patterns and the fact that we have added less than a 1,000 miles of roads since statehood to the Alaska Highway System, I think it would be reasonable to assess that at least 95% of our highway right of way consists of easements.

What is the scope of a highway easement? – Once you have accepted that most of the highway right of way consists of easement interests, the re-occurring question is ...what can the easement be used for? This is a complex issue and there is no one straight forward answer. The largest issue appears to be the difference between lands subject to state law as opposed to lands subject to federal law. The federal agencies narrowly construe "highway purposes" and specifically do not believe it includes the right to permit utilities. When DOT permits a utility in a highway easement where the underlying fee is held by a federal agency, our utility permit is considered to be no more than a non-objection. We then inform the utility that they will need to acquire a utility permit from the federal agency. Where our easements cross lands subject to state law (state land, private and ANCSA corporation lands) DOT asserts a unilateral authority to issue utility permits within the highway easement. We base this on the Fisher v. GVEA case (see RS-2477 case law summary) that allowed utility use of a section line highway easement for incidental and subordinate uses. There are many other "scope of use" issues that are less clear such as camping, fishing and other incidental uses that have yet to be settled.

How does one locate the highway right of way on the ground? – The paper being presented is intended to assist you in determining whether a highway right of way exists, how wide it may be, and what the nature of the interest is. How one locates the right of way is a completely different subject. When the PLO's came into effect, they were uniform in nature and referenced to the physical centerline of the road. This made it relatively easy for the Road Commission or the adjoining owner to measure 50', 100' or 150' from centerline to the ROW boundary. Realignment and acquisition of new ROW have to a large degree made the location of ROW much more complex. My interpretation of how rights of way should be located is addressed in a paper I presented at the 1996 Alaska Surveying & Mapping Conference titled "Highway Right of Way Surveys". A copy of this paper can be obtained from the Alaska Society of Professional Land Surveyors website at http://alaskapls.org/references/row_surv.pdf

What about all of the other types of rights of way? – The rights of way discussed in this paper are those that are not clearly evident in the chain of title and require some amount of research and analysis to determine their validity. Along with PLO's, '47 Act ROW and RS-2477, the system also includes post-statehood federal grants from BLM, from FHWA under their Title 23 authority, FLPMA Title V grants,

DNR ROW permits and ILMA's (Interagency Land Management Assignments), ROW (fee and easements) acquired by negotiation or condemnation, federal patent reservations (other than '47 Act) such as Small Tract reservations for roads, statutory dedications (subdivision street dedications accepted by a local government), common law dedication (subdivision street dedications or dedications by deed where there was not platting authority to accept the dedication), ANCSA 17(b) easements obtained through a transfer of administration (although we try to avoid them), public easements by prescription, and probably a few others that I have missed. To the extent that these existing interests can be used for public road purposes, DOT will incorporate them into a project ROW definition. In that sense, when you look at a set of ROW plans, realize that while the corridor widths might be uniform, the nature of the ROW may represent a patchwork quilt of interests. This is important to know when considering allowable uses and methods of disposition. As the rights of way were created under a variety of authorities, the disposal or vacation of them may also be under separate authorities and require varying procedures. jfb

- a. From time to time DOT&PF is queried as to the justification for the width of rights of way. The following letter indicates that even at the time PLO 601 was being proposed, the width of rights of way was a very controversial subject.

February 22, 1949 - Letter from E. L. Bartlett to Secretary of the Interior regarding PLO 601 proposed right of way widths.

My dear Mr. Secretary:

I appreciate the opportunity afforded by your invitation of February 10 to comment on the department's proposal that the width of right-of-way for roads in Alaska should be as follows:

<i>Alaska Highway</i>	<i>600 feet</i>
<i>Other primary Roads</i>	<i>300 feet</i>
<i>Secondary Roads</i>	<i>200 feet</i>
<i>Feeder and Branch Roads</i>	<i>100 feet</i>

The proposal is simply fantastic. If adopted it would push the would-be settler back as if he were not wanted in Alaska. It would in many cases push him up a mountain, over a cliff, or into a stream or lake. It would multiply the difficulties which for him are very considerable already. It would present problems in driveway construction, maintenance, snow clearance and in the obtaining of driveway permits through your right-of-way in the first place. (Don't try to tell any Alaskan who has had dealings with the department that there would not be red tape and delay in connection with that.) It would be an open invitation to trespass.

And for what? I confess I am unable to think of a single good reason for tying up all this territory right where we want people, accommodations for travelers, service facilities, etc. I drove to Alaska over the Alaska Highway last summer and am willing to testify that, even from the standpoint of appearance and interest to the traveler, developments along the road itself are exactly what is needed.....

Reference No. 653

Federal Register Data

Published: 7/31/42
No. : 150

Volume: 7
Page: 5917

PLO No. 12
Date Signed: 7/30/42
Filed Date: 7/30/42

[Public Land Order 12]

ALASKA

WITHDRAWING PUBLIC LANDS PENDING DEFINITE LOCATION AND CONSTRUCTION OF CANADIAN-ALASKAN MILITARY HIGHWAY

By virtue of the authority vested in the President and pursuant to Executive Order 8148 of April 24, 1942, the public lands within the following described areas are hereby withdrawn, subject to valid existing rights, from all forms of appropriation under the public land laws, including the mining laws, pending definite location and construction of the Canadian-Alaskan Military Highway:

TANANA RIVER AREA, ALASKA

BIG DELTA TO ALASKA-YUKON BOUNDARY

A strip of land 40 miles wide, 20 miles on each side of the following described center line, lying east of the Richardson Highway: Beginning at Big Delta, on the Tanana River, at the mouth of Delta River:

Thence southeasterly up the center of Tanana River to the mouth of Chisana River; Southeasterly up Mirror Creek to the Alaska-Yukon Boundary.

COPPER RIVER-MENTASTA-TOK RIVER AREA, ALASKA

GULKANA TO TANANA RIVER

A strip of land 40 miles wide, 20 miles on each side of the line of general route of the proposed highway, from and east of the Richardson Highway to the Tanana River, as shown on the map dated May 28, 1942 No. 1917065, on file in the General Land Office.

The areas described, including both public and nonpublic lands, aggregate approximately 8,320,000 acres.

[SEAL] HAROLD L. ICKES,
Secretary of the Interior.

JULY 20, 1942.

[F. R. Doc. 42-7358: Filed, July 30, 1942:
10:16 a. m.]

A

Federal Register Data

Published: 8/08/47
No.: 155

Volume: 12
Page: 5387 - 5390

PLO No. 386
Date Signed: 7/31/47
Filed Date: 8/07/47

[Public Land Order 308]

ALASKA

**REDUCING WITHDRAWAL OF PUBLIC LANDS
ALONG ALASKA HIGHWAY AND OPENING
RELEASED LANDS TO SETTLEMENT AND
OTHER FORMS OF APPROPRIATION**

By virtue of the authority vested in the President and pursuant to Executive Order No. 9337 of April 24, 1943, it is ordered as follows:

Public Land Order No. 84 of January 28, 1943, and Public Land Order No. 12 of July 20, 1942, as amended by Public Land Order No. 270 of April 5, 1945, are hereby revoked.

Subject to valid existing rights, including the rights of natives based on occupancy, and the provisions of existing withdrawals, the following-described lands are hereby withdrawn under the jurisdiction of the Secretary of the Interior from all forms of appropriation under the public-land laws, including the mining and mineral leasing laws, for highway purposes:

(a) A strip of land 600 feet wide, 300 feet on each side of the center line of the Alaska Highway (formerly the Canadian Alaskan Military Highway) as constructed from the Alaska-Yukon Territory boundary to its junction with the Richardson Highway near Big Delta, Alaska.

(b) A strip of land 600 feet wide, 300 feet on each side of the center line of the Gulkana-Sienna-Tok Road as constructed from Tok Junction at about Mile 1319 on the Alaska Highway to the junction with the Richardson Highway near Gulkana, Alaska.

Subject to valid existing rights (including the rights of natives based on occupancy and the provisions of existing withdrawals), the following-described lands are hereby withdrawn under the jurisdiction of the Secretary of War from all forms of appropriation under the public-land laws, including the mining and mineral leasing laws, for right-of-way purposes for a telephone line and an oil pipe line with appurtenances:

(a) A strip of land 50 feet wide, 25 feet on each side of a telephone line as located and constructed generally parallel to the Alaska Highway from the Alaska-Yukon Territory boundary to the junction of the Alaska Highway with the Richardson Highway near Big Delta, Alaska.

(b) A strip of land 20 feet wide, 10 feet on each side of a pipe line as located and constructed generally parallel to the Alaska Highway from the Alaska-Yukon Territory boundary to the junction of the Alaska Highway with the Richardson Highway near Big Delta, Alaska.

(c) A tract of land containing 65 acres, situated on the north side of the Alaska Highway, to include the pumping plant and accessories at Pumping Station "I", Canal Project, more particularly described as follows:

Beginning at a point on the center line of the Alaska Highway opposite the pump house at Mile Station 1249.7, thence by metes and bounds:

Southeasterly along center line of Alaska Highway approximately 15 chains:
N. 48° E., 24 chains;
N. 42° W., 30 chains;
S. 48° W., 22 chains to center line of Highway;

Southeasterly along center line of Alaska Highway approximately 15 chains to point of beginning.

(d) A tract of land containing 60 acres, situated on the north side of the Alaska Highway, to include the pumping plant and accessories at Pumping Station "J", Canal Project, more particularly described as follows:

Beginning at a point on the center line of the Alaska Highway opposite the pump house at Mile Station 1288.6, thence by metes and bounds:

S. 40° 32' E., 15 chains;
N. 49° 28' E., 20.00 chains;
N. 40° 32' W., 20.00 chains;
S. 49° 28' W., 20.00 chains to center line of Highway;

S. 40° 32' E., along center line of Alaska Highway approximately 15 chains to point of beginning.

(e) A tract of land containing 60 acres, situated on the north side of the Alaska Highway, to include the pumping plant and accessories at Pumping Station "K", Canal Project, more particularly described as follows:

Beginning at a point on the center line of the Alaska Highway opposite the pump house at Mile Station 1330.1, thence by metes and bounds:

S. 80° 56' E., 13 chains;
N. 9° 04' E., 20 chains;
N. 80° 56' W., 30 chains;
S. 9° 04' W., 20 chains;
S. 80° 56' E., along center line of Alaska Highway approximately 15 chains to point of beginning.

(f) A tract of land containing 60 acres, situated on the north side of the Alaska Highway, to include the pumping plant and accessories at Pumping Station "L", Canal Project, more particularly described as follows:

Beginning at a point on the center line of the Alaska Highway opposite the pump house at Mile Station 1370.0, thence by metes and bounds:

S. 53° E., 15 chains;
N. 38° E., 20 chains;
N. 53° W., 30 chains;
S. 38° W., 20 chains;
S. 53° E., along center line of Alaska Highway approximately 15 chains to point of beginning.

(g) A tract of land containing 60 acres, situated on the north side of the Alaska Highway, to include the pumping plant and accessories at Pumping Station "M", Canal Project, more particularly described as follows:

Beginning at a point on the center line of the Alaska Highway opposite the pump house at Mile Station 1409.5, thence by metes and bounds:

S. 58° 29' E., 15 chains;
N. 31° 31' E., 20 chains;
N. 58° 29' W., 30 chains;
S. 31° 31' W., 20 chains;
S. 58° 29' E., 15 chains to the point of beginning.

(h) A tract of land containing 3.45 acres located on the northeast side of the Alaska Highway at Mile 1285, more particularly described as follows:

Beginning at a point at latitude 63° 00' N., and longitude 141° 47' W., indicated by a wood post 4" x 6" x 5", marked ROW, RM USER, from which point the center line of the Alaska Highway bears S. 57° 54' W., 165 feet, thence by metes and bounds:

S. 57° 54' W., 133 feet to point 32 feet from center line of the Alaska Highway;
S. 32° 08' E., 500 feet parallel to and 32 feet from center line of the Alaska Highway;
N. 87° 54' E., 300 feet;
N. 32° 08' W., 500 feet;
S. 57° 54' W., 167 feet to the point of beginning.

(i) A tract of land containing 3.45 acres, located on the north side of the Alaska Highway at approximately Mile 1264.8, more particularly described as follows:

Beginning at a point 32 feet north of the center line of the Alaska Highway from which the southeast corner of the ACS Repeater Station Building bears north, 123 feet, thence by metes and bounds:

West, 350 feet;
North, 300 feet;
East, 500 feet;
South, 300 feet;
West, 150 feet to the point of beginning.

(j) A tract of land containing 8.45 acres located on the northeast side of the Alaska Highway at approximately Mile 1429, more particularly described as follows:

Beginning at a point from which the intersection of the center lines of the Alaska Highway and the Richardson Highway, latitude 64° 02' 37" N., longitude 148° 48' W., bears S. 31° 24' W., 32 feet, N. 58° 56' W., 280 feet, thence by metes and bounds:

S. 58° 56' E., 500 feet;
N. 31° 24' E., 300 feet;
N. 58° 56' W., 300 feet;
S. 31° 24' W., 300 feet to the point of beginning.

Federal Register Data

Published: 8/08/47
No. : 155

Volume: 12
Page: 5387 - 5390

Reference No. 811 (cont.)
Page 2 of 4

PLO No. 386
Date Signed: 7/31/47
Filed Date: 8/07/47

Subject to valid existing rights, including the rights of natives based on occupancy, and the provisions of existing withdrawals (including the withdrawal of a 60-foot strip along the Alaska-Yukon Territory boundary, made by Proclamation of May 3, 1913, 37 Stat. 1741), the following-described lands are hereby withdrawn from all forms of appropriation under the public-land laws, including the mining and the mineral leasing laws, for classification and survey:

ALASKA-YUKON TERRITORY BOUNDARY

A tract of land containing 800 acres situated on both sides of the Alaska Highway, adjacent to the International boundary between the United States and Canada, more particularly described as follows:

Beginning at a point on the International boundary between the United States and Canada 22.50 chains south of the center line of the Alaska Highway, between Mile Stations 1221 and 1222 thereof, in approximate latitude 62°52' N., longitude 141°00' W., thence by metes and bounds:

West 80 chains;
North 100 chains;
East 80 chains to a point on the International boundary;
South 160 chains along the International boundary to the point of beginning.

GARDINER CREEK

A tract of land containing 480 acres lying on both sides of the Alaska Highway at the crossing of Gardiner Creek, more particularly described as follows:

Beginning at a point in the center line of the Alaska Highway at Mile Station 1247, in approximate latitude 63°50' N., longitude 141°25' W., thence by metes and bounds:
S. 80° W., 40 chains;
N. 40° W., 80 chains;
N. 80° E., 80 chains;
S. 40° E., 80 chains;
S. 80° W., 20 chains to the point of beginning.

LAKEVIEW

A tract of land containing approximately 370 acres lying on both sides of the Alaska Highway in the vicinity of Mile Station 1267, more particularly described as follows:

Beginning in the center line of the Alaska Highway at Mile Station 1257.5, in approximate latitude 62°35' N., and longitude 141°40' W., thence by metes and bounds:
N. 68° E., 22 chains;
S. 22° E., 80 chains;
S. 68° W., 48 chains more or less to the east shore of a lake;
Northerly with the meanders of the lake shore, 81 chains more or less;
N. 68° E., 18 chains more or less to the point of beginning.

JUNCTION OF NORTHWAY ACCESS ROAD AND ALASKA HIGHWAY

A tract of land containing 160 acres at the junction of Northway Road and the Alaska Highway, more particularly described as follows:

Beginning at a point in the center line of the Alaska Highway, 20 chains southeasterly from the junction of Northway Road, near Mile Station 1255, in approximate latitude 63°3' N., and longitude 141°47' W., thence by metes and bounds:
Southwesterly, at right angles to the Alaska Highway, 20 chains;
Northwesterly, parallel to the center line of said highway, 40 chains;
Northeasterly, parallel to the first course of this description, 40 chains;
Southeasterly, parallel to the second course of this description, 40 chains;
Southwesterly, parallel to the third course of this description, 20 chains to the point of beginning.

LITTLE BEAVER CREEK

A tract of land containing approximately 40 acres lying on the south side of the Alaska Highway, more particularly described as follows:

Beginning at a point in the center line of the Alaska Highway 30 chains westerly from Mile Station 1269, in approximate latitude 63°05' N., and longitude 141°31' W., thence by metes and bounds:
Southerly at right angles to the Alaska Highway, 20 chains;
Westerly, parallel to the Alaska Highway, 20 chains;
Northerly, at right angles to the Alaska Highway, 20 chains;

Easterly, with the center line of the Alaska Highway, 20 chains to the point of beginning.

MIDWAY LAKE

A tract of land containing approximately 1070 acres lying on both sides of the Alaska Highway and bordering on the north shore of Midway Lake, more particularly described as follows:

Beginning at a point in the center line of the Alaska Highway at Mile Station 1293.4, in approximate latitude 63°15' N., and longitude 142°15' W., thence by metes and bounds:
North 20 chains;
S. 82° E., 115 chains more or less;
S. 80° E., 72 chains more or less;
N. 78° E., 125 chains more or less;
S. 39° E., 40 chains more or less;
Southwesterly, at right angles to the center line of the Alaska Highway and crossing the same at Mile Station 1289.75, 68 chains more or less to the north shore of Midway Lake;

Westerly, with the meanders of the north shore of Midway Lake, 235 chains more or less to a point due south of the point of beginning;
North 27 chains more or less to the point of beginning.

JUNCTION OF THE FORTY MILE ROAD AND ALASKA HIGHWAY

A tract of land containing 160 acres situated at the junction of the Forty Mile Road and the Alaska Highway, more particularly described as follows:

Beginning at a point on the center line of the Alaska Highway 20 chains easterly from its intersection with the center line of the road to the Forty Mile area, said intersection being 200 feet west from Mile Station 1308 on the Alaska Highway, thence by metes and bounds:
Southerly, at right angles to the Alaska Highway, 20 chains;
Westerly, parallel to the Alaska Highway, 40 chains;
Northerly, crossing the Alaska Highway at right angles, 40 chains;
Easterly, parallel to the Alaska Highway and crossing the Forty Mile Road, 40 chains;
Southerly, 20 chains, to the point of beginning.

TOK JUNCTION

A tract of land containing approximately 3940 acres situated at the junction of the Alaska Highway and the Tok-Tok Road and lying on both sides of said roads, more particularly described as follows:

Beginning at a point in the center line of the Alaska Highway at Mile Station 1317.75, in approximate latitude 63°21' N., and longitude 143°00' W., thence by metes and bounds:
Southwesterly, at right angles to the center line of the Alaska Highway, 150 chains;
Northwesterly, at right angles to the preceding course, 160 chains;
Northeasterly, parallel to the first course of this description, 240 chains;
Southeasterly, parallel to the second course of this description, 160 chains;
Southwesterly, parallel to the third course of this description, 80 chains to the point of beginning.

CATHEDRAL RAPIDS

A tract of land containing approximately 150 acres situated on both sides of the Alaska Highway, more particularly described as follows:

Beginning at a point in the center line of the Alaska Highway at Mile Station 1343.25, thence by metes and bounds:
Southwesterly at right angles to the center line of the Alaska Highway, 10 chains;
Southeasterly, approximately parallel to the center line of the Alaska Highway, 40 chains;
Northeasterly, crossing the center line of the Alaska Highway at right angles to the Tanana River;
Northwesterly, by the meanders of the Tanana River to a point which bears northeasterly from the point of beginning;
Southwesterly at right angles to the center line of the Alaska Highway to the point of beginning.

Federal Register Data

Published: 8/08/47
No. : 155

Volume: 12
Page: 5387 - 5390

PLO No. 386
Date Signed: 7/31/47
Filed Date: 8/07/47

JOHNSON RIVER

A tract of land containing 38.88 acres lying on both sides of the Alaska Highway and south of the Johnson River, more particularly described as follows:

Beginning at a point which bears N. 58° 55' E. from Mile Station 1386, thence by metes and bounds:

S. 58° 35' W., 21.22 chains;
N. 27° 10' W., 21.57 chains to the Johnson River;

Thence by meanders of south bank of the Johnson River northeasterly approximately 25 chains to a point which bears N. 35° 54' W. from point of beginning;

S. 35° 54' E., 15.08 chains to the point of beginning.

ROBERTSON RIVER

A tract of land containing approximately 540 acres situated near the confluence of the Tanana and Robertson Rivers, lying on both sides of the Alaska Highway, more particularly described as follows:

Beginning at a point in the center line of the Alaska Highway at Mile Station 1331.1, in approximate latitude 63° 29' N., and longitude 143° 32' W., thence by metes and bounds:

West 60 chains;
North 80 chains;
East 67 chains more or less to the west bank of the Tanana River;

Southerly, with the meanders of the west bank of the Tanana River, 91 chains more or less to a point due east of the point of beginning;

West 24 chains more or less to the point of beginning.

BERRY CREEK

A tract of land containing 480 acres lying on both sides of the Alaska Highway at the crossing of Berry Creek, more particularly described as follows:

Beginning at a point in the center line of the Alaska Highway at Mile Station 1377.5, in approximate latitude 63° 42' N., and longitude 144° 17' W., thence by metes and bounds:

North 40 chains;
East 60 chains;
South 80 chains;
West 60 chains;
North 40 chains to the point of beginning.

MILE 1387

A tract of land containing approximately 635 acres lying on both sides of the Alaska Highway and bordering on the west bank of Tanana River near the confluence of Johnson River, more particularly described as follows:

Beginning at a point in the center line of the Alaska Highway at Mile Station 1387.35, in approximate latitude 63° 44' N., and longitude 144° 40' W., thence by metes and bounds:

S. 33° W., 35 chains;
N. 57° W., 80 chains;
N. 33° E., 109 chains more or less to the west bank of the Tanana River;

Southeasterly, with the meanders of the west bank of Tanana River, 83 chains more or less;

S. 33° W., 50 chains more or less to the point of beginning.

BUNDEA VISTA

A tract of land containing approximately 10 acres on the Alaska Highway, more particularly described as follows:

Beginning at a point on the northerly right-of-way line of the Alaska Highway, approximately at Mile Station 1389.5, in approximate latitude 63° 44' N., and longitude 144° 40' W., thence by metes and bounds:

Easterly and northerly along the right-of-way line of the Alaska Highway 165 feet from the center line thereof), 13.50 chains;
N. 29° W., 9.75 chains;
S. 2° 30' W., 11.80 chains to the point of beginning.

BUFFALO CREEK

A tract of land containing approximately 5440 acres at the junction of the Alaska Highway and the Richardson Highway, on the east bank of Delta River, more particularly described as follows:

Beginning at a point in the center line of the Alaska Highway at Mile Station 1427, in approximate latitude 64° 1' N., and longitude 145° 41' W., thence by metes and bounds:

South 80 chains;
West 185 chains, more or less, crossing Jarvis Creek and Richardson Highway to the east bank of Delta River;

Northerly, with the meanders of the east bank of Delta River 334 chains, more or less, to a point on the bank of said river which is 240 chains in northing from the point of beginning of this description;

East 180 chains, more or less, crossing Richardson Highway to a point due north of the point of beginning of this description;

South 240 chains to the point of beginning.

CLEARWATER CREEK

A tract of land containing 680 acres lying on both sides of the Siana-Tok Road at the crossing of Clearwater Creek, more particularly described as follows:

Beginning at a point in the center line of the Siana-Tok Road at Mile Station 376.7, in approximate latitude 63° 10' N., and longitude 142° 11' W., thence by metes and bounds:

West 10 chains;
North 80 chains;
East 60 chains;
South 80 chains;
West 50 chains to the point of beginning.

MINERAL LAKES

An area of approximately 600 acres lying on both sides of the Siana-Tok Road and on Mineral Lakes, more particularly described as follows:

Beginning at a point in the center line of the Siana-Tok Road at Mile Station 372, in approximate latitude 62° 55' N., and longitude 143° 25' W., thence by metes and bounds:

North 75 chains;
East 60 chains;
South 100 chains crossing the Siana-Tok Road and Mineral Lake;

West 60 chains;
North 25 chains to the point of beginning.

COBB LAKES

A tract of land containing 480 acres lying on both sides of the Gulkana-Siana Road, north of Cobb Lakes, more particularly described as follows:

Beginning at a point in the center line of Gulkana-Siana Road at Mile Station 59.75 from the Richardson Highway, approximately in latitude 62° 43' N., and longitude 144° 5' W., thence by metes and bounds:

South 30 chains;
West 80 chains;
North 60 chains;
East 80 chains;
South 30 chains to the point of beginning.

MILE TWENTY-FIVE

A tract of land containing 300 acres lying on both sides of the Gulkana-Siana Road more particularly described as follows:

Beginning at a point in the center line of Gulkana-Siana Road at Mile Station 23 from the Richardson Highway, approximately in latitude 62° 26' N., and longitude 144° 34' W., thence by metes and bounds:

North 20 chains;
East 60 chains;
South 50 chains;
West 60 chains;
North 30 chains to the point of beginning.

GULKANA JUNCTION

A tract of land containing 160 acres lying on both sides of the Richardson Highway, approximately one-half mile north of the Gulkana River, more particularly described as follows:

Beginning at a point in the center line of the Richardson Highway 20 chains south of its intersection with the center line of the Gulkana-Siana-Tok Road, thence by metes and bounds:

East 20 chains;
North 40 chains;
West 40 chains crossing the Richardson Highway;
South 40 chains;
East 20 chains to the point of beginning.

NORTHWAY

A tract of land lying on the south side of the Tanana River, more particularly described as follows:

Beginning at a point on left bank of Tanana River, opposite the mouth of Gardiner Creek, approximate latitude 62° 50' N., approximate longitude 141° 32' W., U. S. G. S. map, Topographic Reconnaissance Map Upper Tanana Valley 1922.

Thence S 45° W., 10 miles;
Thence N. 55° W., approximately 22 miles, crossing Nabesna River to east bank of the Kasiluk River;

Thence northwesterly following east bank of Kasiluk to the south bank of the Tanana River;

Thence southeasterly upstream, following left bank of Tanana River to the place of beginning;

containing an estimated area of 325 sq. mi. (207,000 acres).

D

Federal Register Data

Published: 8/08/47
No. : 155

Volume: 12
Page: 5387 - 5390

PLO No. 386
Date Signed: 7/31/47
Filed Date: 8/07/47

TANANNA

A tract of land lying on the north side of the Tanana River, more particularly described as follows:

Beginning at a point on right bank of Tanana River, approximate latitude 63°23'40" N., longitude 143°40' W., U. S. G. S. map, Topographic Reconnaissance Map Upper Tanana Valley 1922, and about 10 miles by airline downriver from Tanacross Indian Village;

Thence northwesterly approximately 2 miles to the summit of the divide between the streams flowing westerly into the Tanana River and streams flowing northerly and easterly into Lake Mansfield drainage basin;

Thence northerly along said divide to the watershed between the tributaries of George Creek and the streams flowing into Lake Mansfield drainage;

Thence northeasterly along that divide to the watershed between Wolf Creek and the streams flowing into Lake Mansfield drainage;

Thence along the divide, between streams flowing into the Yukon River Drainage and those flowing into the Tanana River, to the watershed on the west of Porcupine Creek;

Thence southwesterly along said watershed to the right bank of the Tanana River, approximate latitude 63°24' N., longitude 143°36' W.;

Thence following the right bank of Tanana River westerly, down-stream, to the place of beginning;

This area includes the drainage basin on the north side of the Tanana River between the initial point and the western boundary of the Porcupine Creek Valley.

This order shall not otherwise become effective to change the status of the surveyed or unsurveyed public lands which are not continued withdrawn by this order until 10:00 a. m. on October 2, 1947. At that time, subject to valid existing rights (including the rights of the United States to any lands containing improvements owned by it, and the rights of natives based on occupancy), and the provisions of then existing withdrawals, the unsurveyed lands shall become subject to settlement and other forms of appropriation in accordance with the appropriate laws and regulations, and the surveyed lands shall become subject to application, petition, location, or selection as follows:

(a) *Ninety-day period for preference-right filings.* For a period of 90 days from October 2, 1947, to December 31, 1947, inclusive, the surveyed public lands affected by this order shall be subject to (1) application under the homestead laws or the small tract act of June 1, 1938 (52 Stat. 609, 43 U. S. C. sec. 682a), as amended, by qualified Veterans of World War II, for whose service recognition is granted by the act of September 27, 1944 (58 Stat. 747, 43 U. S. C. sec. 279-283), subject to the requirements of applicable law, and (2) application under any applicable public-land law, based on prior existing valid settlement rights and preference rights conferred by existing laws or equitable claims subject to allowance and confirmation. Application by such veterans shall be subject to claims of the classes described in subdivision (2).

(b) *Twenty-day advance period for simultaneous preference-right filings.* For a period of 20 days from September 12, 1947, to October 1, 1947, inclusive, such veterans and persons claiming preference rights superior to those of such veterans, may present their applications, and all such applications, together with those presented at 10:00 a. m. on October 2, 1947 shall be treated as simultaneously filed.

(c) *Date for non-preference right filings authorized by the public-land laws.* Commencing at 10:00 a. m. on January 2, 1948, any of the surveyed lands remaining unappropriated shall become subject to such application, petition, location, or selection by the public generally as may be authorized by the public-land laws.

(d) *Twenty-day advance period for simultaneous non-preference right filings.* Applications by the general public may be presented during the 20-day period from December 12, 1947, to December 31, 1947, inclusive, and all such applications, together with those presented at 10:00 a. m. on January 2, 1948, shall be treated as simultaneously filed.

Veterans shall accompany their applications with certified copies of their certificates of discharge, or other satisfactory evidence of their military or naval service. Persons asserting preference rights, through settlement or otherwise, and those having equitable claims, shall accompany their applications by duly corroborated affidavits in support thereof, setting forth in detail all facts relevant to their claims.

Applications for these lands, which shall be filed in the proper district land office (at Fairbanks or Anchorage, Alaska), shall be acted upon in accordance with the regulations contained in § 295.8 of Title 43 of the Code of Federal Regulations (Circular No. 324, May 22, 1914, 43 L. D. 254). Applications under the homestead laws shall be governed by the regulations contained in Parts 65 and 66 of Title 43 of the Code of Federal Regulations and applications under the small tract act of June 1, 1938, shall be governed by the regulations contained in Part 257 of that title.

Inquiries concerning these lands shall be addressed to the district land office at Fairbanks, or Anchorage, Alaska.

Very little of the land restored by this order has been surveyed. The major part of the area is of a character unsuitable for agricultural purposes.

WILLIAM E. WARNE,
Assistant Secretary of the Interior,
JULY 31, 1947.

[F. R. Doc. 47-4713; Filed Aug 7, 1947; 8:45 a. m.]

Federal Register DataPublished: 8/16/49
No. : 157Volume: 14
Page: 5048 & 5049PLO No. 601
Date Signed: 8/10/49
Filed Date: 8/15/49

[Public Land Order 601]

ALASKA

RESERVING PUBLIC LANDS FOR HIGHWAY PURPOSES

By virtue of the authority vested in the President and pursuant to Executive Order No. 9337 of April 24, 1943, it is ordered as follows:

Executive Order No. 8145 of April 23, 1942, reserving public lands for the use of the Alaska Road Commission in connection with the construction, operation, and maintenance of the Palmer-Richardson Highway (now known as the Glenn Highway), is hereby revoked.

Public Land Order No. 386 of July 31, 1947, is hereby revoked so far as it relates to the withdrawal, for highway purposes, of the following-described lands:

(a) A strip of land 800 feet wide, 300 feet on each side of the center line of the Alaska Highway (formerly the Canadian Alaskan Military Highway) as constructed from the Alaska-Yukon Territory boundary to its junction with the Richardson Highway near Big Delta, Alaska.

(b) A strip of land 600 feet wide, 300 feet on each side of the center line of the Gulkana-Siama-Tok Road as constructed from Tok Junction at about Mile 1319 on the Alaska Highway to the junction with the Richardson Highway near Gulkana, Alaska.

Subject to valid existing rights and to existing surveys and withdrawals for other than highway purposes, the public lands in Alaska lying within 300 feet on each side of the center line of the Alaska Highway, 150 feet on each side of the center line of all other through roads, 100 feet on each side of the center line of all feeder roads, and 50 feet on each side of the center line of all local roads, in accordance with the following classifications, are hereby withdrawn from all forms of appropriation under the public-land laws, including the mining and mineral-leasing laws, and reserved for highway purposes:

THROUGH ROADS

Alaska Highway, Richardson Highway, Glenn Highway, Haines Highway, Tok Cut-Off.

FEEDER ROADS

Siama Highway, Elliott Highway, McKinley Park Road, Anchorage-Fotter-Indian Road, Edgerton Cut-Off, Tok Eagle Road, Ruby-Long-Poorman Road, Nome-Selomon Road, Kana Lake-Homer Road, Fairbanks-College Road, Anchorage-Lake Umbagog Road, Circle Hot Springs Road.

LOCAL ROADS

All roads not classified above as Through Roads or Feeder Roads, established or maintained under the jurisdiction of the Secretary of the Interior.

With respect to the lands released by the revocations made by this order and not rewithdrawn by it, this order shall become effective at 10:00 a. m. on the 35th day after the date hereof. At that time, such released lands, all of which are unsurveyed, shall, subject to valid existing rights, be opened to settlement under the homestead laws and the homestead act of May 26, 1934, 48 Stat. 809 (48 U. S. C. 461), only, and to that form of appropriation only by qualified veterans of World War II and other qualified persons entitled to preference under the act of September 27, 1944, 58 Stat. 747, as amended (43 U. S. C. 279-284). Commencing at 10:00 a. m. on the 126th day after the date of this order, any of such lands not settled upon by veterans shall become subject to settlement and other forms of appropriation by the public generally in accordance with the appropriate laws and regulations.

OSCAR L. CHAPMAN,
Under Secretary of the Interior.

AUGUST 10, 1949.

[P. R. Doc. 49-6642; Filed, Aug. 15, 1949;
8:46 a. m.]

ALASKA

NOTICE FOR FILING OBJECTIONS TO ORDER RESERVING PUBLIC LANDS FOR HIGHWAY PURPOSES

For a period of 60 days from the date of publication of the above entitled order, persons having cause to object to the terms thereof may present their objections to the Secretary of the Interior. Such objections should be in writing, should be addressed to the Secretary of the Interior, and should be filed in duplicate in the Department of the Interior, Washington 25, D. C. In case any objection is filed and the nature of the opposition is such as to warrant it, a public hearing will be held at a convenient time and place, which will be announced, where opponents to the order may state their views and where the proponents of the order can explain its purpose, intent, and extent. Should any objection be filed, whether or not a hearing is held, notice of the determination by the Secretary as to whether the order should be rescinded, modified or let stand will be given to all interested parties of record and the general public.

OSCAR L. CHAPMAN,
Under Secretary of the Interior.

AUGUST 10, 1949.

[P. R. Doc. 49-6641; Filed, Aug. 15, 1949;
8:46 a. m.]

Published 8/16/49
Vol. 14 No. 157
5069

Reference No. 1138

Federal Register Data

Published: 10/20/51
No. : 205

Volume: 16
Page: 10749 & 10750

PLO No. 757
Date Signed: 10/16/51
Filed Date: 10/19/51

[Public Land Order 757]

ALASKA

**AMENDMENT OF PUBLIC LAND ORDER NO. 601
OF AUGUST 10, 1949, RESERVING PUBLIC
LANDS FOR HIGHWAY PURPOSES**

By virtue of the authority vested in the President and pursuant to Executive Order 9337 of April 24, 1943, it is ordered as follows:

The sixth paragraph of Public Land Order No. 601 of August 10, 1949, reserving public lands for highway purposes, commencing with the words "Subject to valid existing rights", is hereby amended to read as follows:

Subject to valid existing rights and to existing surveys and withdrawals for other than highway purposes, the public lands in Alaska lying within 300 feet on each side of the center line of the Alaska Highway and within 150 feet on each side of the center line of the Richardson Highway, Glenn Highway, Haines Highway, the Seward-Anchorage Highway (exclusive of that part thereof within the boundaries of the Chugach National Forest), the Anchorage-Lake Spenard Highway, and the Fairbanks-College Highway are hereby withdrawn from all forms of appropriation under the public-land laws, including the mining and mineral-leasing laws, and reserved for highway purposes.

Easements having been established on the lands released by this order, such lands are not open to appropriation under the public-land laws except as a part of a legal subdivision, if surveyed, or an adjacent area, if unsurveyed, and subject to the pertinent easement.

OSCAR L. CHAPMAN,
Secretary of the Interior.

OCTOBER 16, 1951.

[F. R. Doc. 51-12674; Filed, Oct. 15, 1951;
9:02 a. m.]

G

Federal Register DataPublished: 10/20/51
No. : 205Volume: 16
Page: 10752SECRETARIAL ORDER No. 2665
Part Affected: Hwy Rights-of-Way
Date Signed: 10/16/51

Office of the Secretary

[Order 2665]

RIGHTS-OF-WAY FOR HIGHWAYS IN ALASKA

OCTOBER 16, 1951.

SECTION 1. Purpose. (a) The purpose of this order is to (1) fix the width of all public highways in Alaska established or maintained under the jurisdiction of the Secretary of the Interior and (2) prescribe a uniform procedure for the establishment of rights-of-way or easements over or across the public lands for such highways. Authority for these actions is contained in section 2 of the act of June 30, 1932 (47 Stat. 446, 48 U. S. C. 321a).

Sec. 2. Width of public highways.

(a) The width of the public highways in Alaska shall be as follows:

(1) For through roads: The Alaska Highway shall extend 300 feet on each side of the center line thereof. The Richardson Highway, Glenn Highway, Haines Highway, Seward-Anchorage Highway, Anchorage-Lake Spenard Highway and Fairbanks-College Highway shall extend 150 feet on each side of the center line thereof.

(2) For feeder roads: Abbert Road (Kodiak Island), Edgerton Cutoff, Elliott Highway, Seward Peninsula Tram road, Steese Highway, Sterling Highway, Taylor Highway, Northway Junction to Airport Road, Palmer to Matanuska to Wasilla Junction Road, Palmer to Finger Lake to Wasilla Road, Glenn Highway Junction to Fishhook Junction to Wasilla to Knik Road, Slana to Nabesna Road, Kenai Junction to Kenai Road, University to Ester Road, Central to Circle Hot Springs to Portage Creek Road, Manley Hot Springs to Eureka Road, North Park Boundary to Kantishna Road, Paxson to McKinley Park Road, Sterling Landing to Ophir Road, Iditarod to Flat Road, Dillingham to Wood River Road, Ruby to Long to Poorman Road, Nome to Council Road and Nome to Bessie Road shall each extend 100 feet on each side of the center line thereof.

(3) For local roads: All public roads not classified as through roads or feeder roads shall extend 50 feet on each side of the center line thereof.

Sec. 3. Establishment of rights-of-way or easements. (a) A reservation for highway purposes covering the lands embraced in the through roads mentioned in section 2 of this order was made by Public Land Order No. 601 of August 10, 1949, as amended by Public Land Order No. 757 of October 16, 1951. That order operates as a complete segregation of the land from all forms of appropriation under the public-land laws, including the mining and the mineral leasing laws.

(b) A right-of-way or easement for highway purposes covering the lands embraced in the feeder roads and the local roads equal in extent to the width of such roads as established in section 2 of this order, is hereby established for such roads over and across the public lands.

(c) The reservation mentioned in paragraph (a) and the rights-of-way or easements mentioned in paragraph (b) will attach as to all new construction involving public roads in Alaska when the survey stakes have been set on the ground and notices have been posted at appropriate points along the route of the new construction specifying the type and width of the roads.

Sec. 4. Road maps to be filed in proper Land Office. Maps of all public roads in Alaska heretofore or hereafter constructed showing the location of the roads, together with appropriate plans and specifications, will be filed by the Alaska Road Commission in the proper Land Office at the earliest possible date for the information of the public.

OSCAR L. CHAPMAN,

Secretary of the Interior.

[P. R. Doc. 51-12586; Filed, Oct. 19, 1951;
8:49 a. m.]

Reference No. 1238

Federal Register Data

Published: 7/24/52
No. : 144

Volume: 17
Page: 6795

SECRETARIAL ORDER No. 2665
Part Affected: Hwy Rights-of-Way
Date Signed: 7/17/52

[Order 2665, Amdt. 1]

ALASKA

RIGHTS-OF-WAY FOR HIGHWAYS

The right-of-way or easement for highway purposes covering the lands embraced in local roads established over the public lands in Alaska by section 2 (a) (3) and section 3 (b) of Order No. 2665 of October 16, 1951 (16 F. R. 10752), is hereby reduced, so far as it affects the Otis Lake Road, to 30 feet on each side of the center line thereof over the following-described lands only:

BEWARD MERIDIAN

T. 13 N., R. 3 W.
Sec. 21, N $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$.

OSCAR L. CHAPMAN,
Secretary of the Interior.

JULY 17, 1952.

[F. R. Doc. 52-8071; Filed, July 23, 1952;
8:47 a. m.]

I

Reference No. 1573

Federal Register Data

Published: 9/21/56
No. : 184

Volume: 21
Page: 7192

SECRETARIAL ORDER No. 2665
Date Signed: 9/15/56
Filed Date: 9/20/56

Office of the Secretary

[Order 2665, Amdt. 2]

ALASKA

RIGHTS-OF-WAY FOR HIGHWAYS

SEPTEMBER 15, 1956.

1. Section 2 (a) (1) is amended by adding to the list of public highways designated as through roads, the Fairbanks-International Airport Road, the Anchorage-Fourth Avenue-Post Road, the Anchorage International Airport Road, the Copper River Highway, the Fairbanks-Nenana Highway, the Denali Highway, the Sterling Highway, the Kenai Spur from Mile 0 to Mile 14, the Palmer-Wasilla-Willow Road, and the Steese Highway from Mile 0 to Fox Junction; by re-designating the Anchorage-Lake Spenard Highway as the Anchorage-Spenard Highway, and by deleting the Fairbanks-College Highway.

2. Section 2 (a) (2) is amended by deleting from the list of feeder roads the Sterling Highway, the University to Ester Road, the Kenai Junction to Kenai Road, the Palmer to Finger Lake to Wasilla Road, the Faxson to McKinley Park Road, and the Steese Highway, from Mile 0 to Fox Junction, and by adding the Kenai Spur from Mile 14 to Mile 31, the Nome-Kougarok Road, and the Nome-Teller Road.

FRED A. SEATON,
Secretary of the Interior.

[F. R. Doc. 56-7583; Filed, Sept. 20, 1956;
8:45 a. m.]

J

Federal Register Data

Published: 4/11/58
No. : 72

Volume: 23
Page: 2376 - 2378

PLO No. 1613
Date Signed: 4/07/58
Filed Date: 4/10/58

[Public Land Order 1613]

[23896]

ALASKA

REVOKING PUBLIC LAND ORDER NO. 801 OF AUGUST 10, 1949, WHICH RESERVED PUBLIC LANDS FOR HIGHWAY PURPOSES, AND PARTIALLY REVOKING PUBLIC LAND ORDER NO. 386 OF JULY 31, 1947

By virtue of the authority vested in the President and pursuant to Executive Order No. 10385 of May 26, 1952, and the act of August 1, 1956 (70 Stat. 898) it is ordered as follows:

1. Public Land Order No. 801 of August 10, 1949, as modified by Public Land Order No. 787 of October 16, 1951, reserving for highway purposes the public lands in Alaska lying within 300 feet on each side of the center line of the Alaska Highway, and within 150 feet on each side of the center line of the Richardson Highway, Glenn Highway, Haines Highway, the Seward-Anchorage Highway (exclusive of that part thereof, within the boundaries of the Chugach National Forest), the Anchorage-Lake Spencard Highway, and the Fairbanks-College Highway, is hereby revoked.

2. Public Land Order No. 386 of July 31, 1947, so far as it withdrew the following-described lands, identified as items (a) and (b) in said order, under the jurisdiction of the Secretary of War for right-of-way purposes for a telephone line and an oil pipeline with appurtenances, is hereby revoked:

(a) A strip of land 50 feet wide, 25 feet on each side of a telephone line as located and constructed generally parallel to the Alaska Highway from the Alaska-Yukon Territory boundary to the junction of the Alaska Highway with the Richardson Highway near Big Delta, Alaska.

(b) A strip of land 50 feet wide, 10 feet on each side of a pipeline as located and constructed generally parallel to the Alaska Highway from the Alaska-Yukon Territory boundary to the junction of the Alaska Highway with the Richardson Highway near Big Delta, Alaska.

3. An easement for highway purposes, including appurtenant protective, scenic, and service areas, over and across the lands described in paragraph 1 of this order, extending 150 feet on each side of the center line of the highways mentioned therein, is hereby established.

4. An easement for telephone line purposes in, over, and across the lands described in paragraph 2 (a) of this order, extending 25 feet on each side of the telephone line referred to in that paragraph, and an easement for pipeline purposes, in, under, over, and across the lands described in paragraph 2 (b) of this order, extending 10 feet on each side of the pipeline referred to in that paragraph, are hereby established, together with the right of ingress and egress to all sections of the above easements on and across the lands hereby released from withdrawal.

5. The easements established under paragraphs 3 and 4 of this order shall extend across both surveyed and unsurveyed public lands described in paragraphs 1 and 2 of this order for the specified distance on each side of the centerline of the highways, telephone line and pipeline, as those center lines are definitely located as of the date of this order.

6. The lands within the easements established by paragraphs 3 and 4 of this order shall not be occupied or used for other than the highways, telegraph line and pipeline referred to in paragraphs 1 and 2 of this order except with the permission of the Secretary of the Interior or his delegate as provided by section 3 of the act of August 1, 1956 (70 Stat. 898), provided: that if the lands crossed by such easements are under the jurisdiction of a Federal department or agency, other than the Department of the Interior, or of a Territory, State, or other Government subdivision or agency, such permission may be granted only with the consent of such department, agency, or other governmental unit.

7. The lands released from withdrawal by paragraphs 1 and 2 of this order, which, at the date of this order, adjoin lands in private ownership, shall be offered for sale at not less than their appraised value, as determined by the authorized officer of the Bureau of Land Management, and pursuant to section 2 of the act of August 1, 1956, supra. Owners of such private lands shall have a preference right to purchase at the appraised value so much of the released lands adjoining their private property as the authorized officer of the Bureau of Land Management deems equitable, provided, that ordinarily, owners of private lands adjoining the lands described in paragraph 1 of this order will have a preference right to purchase released lands adjoining their property, only up to the centerline of the highways located therein. Preference right claimants may make application for purchase of released lands at any time after the date of this order by giving notice to the appropriate land office of the Bureau of Land Management. Lands described in this paragraph not claimed by and sold to preference claimants may be sold at public auction at not less than their appraised value by an authorized officer of the Bureau of Land Management, provided that preference claimants are first given notice of their privilege to exercise their preference rights by a notice addressed to their last address of record in the office in the Territory in which their title to their private lands is recorded. Such notice shall give the preference claimant at least 60 days in which to make application to exercise his preference right; and if the application is not filed within the time specified, the preference right will be lost. Preference right claimants will also lose their preference rights if they fail to pay for the lands within the time period specified by the authorized officer of the Bureau of Land Management, which time period shall not be less than 60 days.

Federal Register DataPublished: 4/11/58
No. : 72Volume: 23
Page: 2376 - 2378PLO No. 1613
Date Signed: 4/07/58
Filed Date: 4/10/58

8. The lands released from withdrawal by paragraphs 1 and 2 of this order, which at the date of this order, adjoin lands in valid unperfected entries, locations, or settlement claims, shall be subject to inclusion in such entries, locations and claims, notwithstanding any statutory limitations upon the area which may be included therein. For the purposes of this paragraph entries, locations, and claims include, but are not limited to, certificates of purchase under the Alaska Public Sale Act (63 Stat. 679; 48 U. S. C. 364a-e) and leases with option to purchase under the Small Tract Act (52 Stat. 609; 43 U. S. C. 682a) as amended. Holders of such entries, locations, and claims to the lands, if they have not gone to patent, shall have a preference right to amend them to include so much of the released lands adjoining their property as the authorized officer deems equitable, provided, that ordinarily such holders of property adjoining the lands described in paragraph 1 of this order will have the right to include released lands adjoining such property only up to the centerline of the highways located therein. Allowances of such amendments will be conditional upon the payment of such fees and commissions as may be provided for in the regulations governing such entries, locations, and claims together with the payment of any purchase price and cost of survey of the land which may be established by the law or regulations governing such entries, locations and claims, or which may be consistent with the terms of the sale under which the adjoining land is held. Preference right claimants may make application to amend their entries, locations, and claims at any time after the date of this order by giving notice to the appropriate land office of the Bureau of Land Management. Lands described in this paragraph, not claimed by and awarded to preference claimants, may be sold at public auction at not less than their appraised value by the authorized officer of the Bureau of Land Management, provided that preference claimants are first given notice of their privilege to exercise their preference rights by a notice addressed to their last address of record in the appropriate land office, or if the land is patented, in the Territory in which title to their private land is recorded. Such notice shall give the claimant at least 60 days in which to make application to exercise his preference right, and if the application is not filed within the time specified the preference right will be lost. Preference right claimants will also lose their preference rights if they fail to make any required payments within the time period specified by the authorized officer of the Bureau of Land Management, which time period shall not be less than 60 days.

9. (a) Any tract released by Paragraph 1 or 2 of this order from the withdrawals made by Public Land Orders Nos. 601, as modified, and 386, which remains unsold after being offered for sale under Paragraph 7 or 8 of this order, shall remain open to offers to purchase under Section 2 of the act of August 1, 1956, supra, at the appraised value, but it shall be within the discretion of the Secretary of the Interior or his delegate as to whether such an offer shall be accepted.

(b) Any tract released by Paragraph 1 or 2 of this order from the withdrawals made by Public Land Orders Nos. 601, as modified, and 386, which on the date hereof does not adjoin privately-owned land or land covered by an unpatented claim or entry, is hereby opened, subject to the provisions of Paragraph 6 hereof, if the tract is not otherwise withdrawn, to settlement claim, application, selection or location under any applicable public land law. Such a tract shall not be disposed of as a tract or unit separate and distinct from adjoining public lands outside of the area released by this order, but for disposal purposes, and without losing its identity, if it is already surveyed, it shall be treated as having merged into the mass of adjoining public lands, subject, however, to the easement so far as it applies to such lands.

(c) Because the act of August 1, 1956 (70 Stat. 896; 48 U. S. C. 420-420c) is an act of special application, which authorizes the Secretary of the Interior to make disposals of lands included in revocations such as made by this order, under such laws as may be specified by him, the preference-right provisions of the Veterans Preference Act of 1944 (58 Stat. 747; 48 U. S. C. 279-284) as amended, and of the Alaska Mental Health Enabling Act of July 28, 1956 (70 Stat. 709; 48 U. S. C. 46-5b) will not apply to this order.

10. All disposals of lands included in the revocation made by this order, which are under the jurisdiction of a Federal department or agency other than the Department of the Interior may be made only with the consent of such department or agency. All lands disposed of under the provisions of this order shall be subject to the easements established by this order.

11. The boundaries of all withdrawals and restorations which on the date of this order adjoin the highway easements created by this order are hereby extended to the centerline of the highway easements which they adjoin. The withdrawal made by this paragraph shall include, but not be limited to the withdrawals made for Air Navigation Site No. 7 of July 13, 1954, and by Public Land Orders No. 386 of July 31, 1947, No. 622 of December 15, 1949, No. 808 of February 27, 1952, No. 978 of June 18, 1954, No. 1037 of December 16, 1954, No. 1059 of January 21, 1955, No. 1129 of April 15, 1955, No. 1179 of June 29, 1955, and No. 1181 of June 29, 1955.

ROBERT EXNER,
Assistant Secretary of the Interior.

April 7, 1958.

[P. R. Doc. 58-2659; Filed, Apr. 10, 1958;
8:46 a.m.]

PUBLIC LAND ORDER CASES

Public Land Order Rights of Way and '47 Act Cases

A number of Public Land Order cases have been decided by the Alaska Supreme Court and the Federal Court system. The following are the summaries of several of those cases. These summaries are solely for the purpose of identifying the cases and the issues. Please consult your own attorney in determining the applicability and accuracy of the summaries as they apply to your individual requirements.

1. U.S. v. Anderson, 113 F.Supp 1, (D. Alaska 1953)

PLO 386 effective July 31, 1947 withdrew a 300 foot wide strip of land on each side of the centerline of the Alaska Highway from the Canadian Border to the Richardson Highway junction in Big Delta. On January 13, 1948 Anderson staked five acres after deciding the BLM clerk was in error about a reservation for the highway. He filed a notice of headquarters and business site with the territorial recorder. On the site he built a roadhouse, powerplant and other structures. Since the land was not open to entry and the parties failed to file their entry with BLM, they were "mere trespassers".

2. Hillstrand v. State, 181 F. Supp 219 (1960)

Once right of way has been selected and defined, later improvements, necessitating utilization of land upon which road is not already located, can only be accomplished pursuant to condemnation and compensation provisions.

3. Myers v. United States, 210 F.Supp 695 (D. Alaska 1962)

The road from Wasilla to Big Lake Junction was originally constructed in 1949. The property owners, Myers and Weaver, made entries in 1953. The patents issued in 1954 and 1956 were subject to a reservation under the "47 Act", 48 USC 321d, which stated: "the reservation of a right of way for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures constructed or to be constructed by or under the authority of the United States or by any State

created out of the Territory of Alaska, in accordance with the act of July 24, 1947 (61 Stat., 418, 48 USC sec. 321d)."

The road improvement was staked in 1957 and notices of utilization were given to the owners in 1958. The road was reconstructed in 1959, plaintiffs sued for damages. One issue raised by the owners was whether the initial road construction in 1949 was the only election under the "47 Act" the Bureau of Public Roads was entitled to make.

The road was originally constructed in 1949 across public domain. Anyone who later acquired title to the property would take it subject to that right of way. The construction in 1959 was the first exercise of the "47 Act" provisions. Amendment 2 of Secretarial Order 2665 increased the width of the road to 300 foot wide through road, which became effective when the BPR notified the owners and constructed the road.

MEYERS' PATENT CLAUSES

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, thereunto 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; (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 (26 Stat., 391, 43 U.S.C. sec. 945), and (3) the reservation of a right-of-way for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures constructed or to be constructed by or under authority of the United States or by any State created out of the Territory of Alaska, in accordance with the act of July 24, 1947 (61 Stat., 418, 48 U.S.C. sec. 321d). 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., 305, 48 U.S.C. sec. 305); excepting and reserving also, to the United States, pursuant to section 5 of the act of August 1, 1946 (60 Stat., 760, 42 U.S.C. sec. 1805), all uranium, thorium, or any other material which is or may be determined to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, together with the right of the United States through its authorized agents or representatives at any time to enter upon the land and prospect for, mine, and remove the same. Excepting and reserving, also to the United States all the coal in the lands so patented, and to it or persons authorized by it, the right to prospect for, mine, and remove such deposits from

the same upon compliance with the conditions and subject to the provisions and limitations of the Act of March 8, 1922 (42 Stat. 415).

4. State of Alaska Dept. of Highways v. Crosby, 410 P.2d 724 (1966)

All lands disposed by BLM under the Small Tract Act (Act of June 1, 1938, 52 Stat. 609) which was made applicable to the State of Alaska in 1945 (Act of July 14, 1945, 59 Stat. 467) are not subject to the Act of 1947. This exception applies even if the small tract patent contains a '47 Act reservation.

The Court found the legislation was for those grants where the government did not have discretionary authority to reserve a right-of-way. In the Court's opinion, the '47 Act was not intended to apply where the government had the authority to reserve a right-of-way, such as it had under the Small Tract Act.

5. Matanuska Valley Bank v. Abernathy, 445 P.2d 235 (1968)

Upon discovering that the roadhouse she had purchased from the bank was within the 300 foot wide right of way reserved for the Glenn Highway under PLO 1613, Mrs. Abernathy sued for rescission of her sale contract. The Court found mutual mistake because the sale price indicated that the beneficial use of the property was for a roadhouse. With the highway reservation eliminating the right for the building to be located where it was, the court allowed Mrs. Abernathy to rescind her agreement.

6. Hahn v. Alaska Title Guaranty Co., 557 P.2d 143 (1976)

The Hahn's purchased a title insurance policy from Alaska Title Guaranty, ATG, that indicated there was a right of way over the east 33 feet of the property. The state subsequently claimed a right of way 50 feet wide by virtue of PLO 601 dated August 10, 1949, and published August 15, 1949. The PLO was not recorded and the patent issued in 1961 did not refer to the PLO easement. In 1974 the state occupied the 50 feet. The primary issue was whether the title company was required to list the 50 foot wide right of way as an encumbrance. The title company claimed that its coverage was limited to the public records and a PLO published in the Federal Register is not a public record. The court first applied the rule of law that ambiguities are to be construed in favor of the

insured. It also found that provisions of coverage should be broadly construed while limitations are interpreted narrowly against the insured. The court held that publishing in the federal register was constructive notice. The title company argued that the terms "the recording laws" in the policy referred to Alaska's recording laws. The court refused to accept that limitation.

7. State Dept. of Highways v. Green, 586 P.2d 595 (1978)

Green and Goodman were the owners of small tracts along Tudor Road which were subject to a 33 feet wide easement reservation under the authority of the Small Tract Act. In addition the patents were subject to the 47 Act.

The lots were classified for small tracts on March 23, 1950, Goodman's predecessor allegedly leased the lot on April 12, 1950, (actual date of lease per subsequent Goodman case was June 30, 1950), Secretarial Order (SO) 2665 was published in Federal Register on October 20, 1951, and patent to the Goodman parcel was issued on April 28, 1952.

The Greens' parcel was originally leased was on September 1, 1952. It was patented on December 1, 1953.

SO 2665 established a width of 50 feet each side of centerline for local roads, all roads not classified through or feeder. Tudor was not classified in SO 2665.

Greens argued that section 321d of 48 USC and SO 2665 did not apply due to the specific reservation of an easement in the small tract act; a result previously reached in State, Department of Highways v. Crosby, 410 P.2d 724 (1966). The state however was not relying on 321d but another section 321a which turned over the authority of the Board of Road Commissioners to the Secretary of the Interior, as well as SO 2665.

SO 2665 is a general order whereas the reservation created by the small tract act was specific. The Court ruled the two conflicting orders should be "harmonized if possible" unless there is a conflict. Since the 33 foot reservation was for access streets serving interior lots and the 50 foot reservation was for local roads there was not a conflict. The court relied on the rule of construction that "where language of a public land grant is subject to reasonable doubt such ambiguities are to be resolved strictly against the grantee and in favor of the government".

As to the Goodmans the court ruled that SO 2665 applied to Goodmans only if the effective date of the lease was preceded both by construction of the road and

the issuance of SO 2665. Once construction was begun the lessee would take subject to the Secretary of the Interior's authority under 48 USC 321a.

Although the Court ruled that SO 2665 did not apply to Goodmans, the roadway may have been appropriated by construction prior to the lease. Sufficient evidence was not available to determine if construction had taken place. The court ordered the case remanded for the lower court to determine the date the road was planned and its width, the date the road was staked and its width and the date construction began.

GREEN'S (BANTZ) PATENT CLAUSES

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, thereunto 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; (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 (26 Stat., 391, 43 U.S.C. sec. 945), and (3) the reservation of a right-of-way for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures constructed or to be constructed by or under authority of the United States or by any State created out of the Territory of Alaska, in accordance with the act of July 24, 1947 (61 Stat., 418, 48 U.S.C. sec. 321d). 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., 305, 48 U.S.C. sec. 305); excepting and reserving also, to the United States, pursuant to section 5 of the act of August 1, 1946 (60 Stat., 760, 42 U.S.C. sec. 1805), all uranium, thorium, or any other material which is or may be determined to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, together with the right of the United States through its authorized agents or representatives at any time to enter upon the land and prospect for, mine, and remove the same. 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, 1938. This patent is subject to a right-of-way not exceeding 33 feet in width, for roadway and public utilities purposes, to be located along the north and east boundaries of said land.

8. 823 Square Feet, More or Less v. State (Goodman), 660 P.2d 443 (1983)

Although the actual road and ditches were only 48 feet wide, the staking, stripping and clearing 100 foot wide corridor were sufficient acts to appropriate a 50 foot wide right of way on the Goodman property since the construction took place before the issuance of the lease. Justice Burke concurred in the result but did not agree that a road could be appropriated by construction alone. He argued that PLO 601, issued prior to the construction of Tudor Road, could be applied creating a width of 50 feet.

9. State v. Alaska Land Title Association, 667 P.2d 714 (1983)

This is the primary case for PLO rights of way.

By virtue of PLOs 601, 757 and 1613 and Departmental Order 2665, the State of Alaska and the Municipality of Anchorage claimed easements for local, feeder and through roads greater than shown in the patents. Three properties, owned by Pease, Boysen and Hansen, were involved in the appeal.

PLO 601 was effective on August 10, 1949; PLO 757 and DO 2665 on October 19, 1951 and PLO 1613 on April 7, 1958.

The lease for the Pease small tract was dated May 1, 1953. The patent, issued on October 4, 1955, contained 33 foot easements along two boundaries, one of which was Rabbit Creek Road, and a blanket reservation under 43 USC 321d (the 47 Act). Rabbit Creek Road was in existence at the time of the original lease.

Boysen had property bordering the Seward Highway. The date of entry was January 2, 1951 and the patent was issued on May 15, 1952 with a 47 Act reservation. The Seward Highway was constructed prior to the effective date of any of the PLOs.

Hansen's property was entered on January 23, 1945 with a patent issued on June 1, 1950. Hansen's property was entered prior to 1947 therefore it was not subject to a 47 Act reservation.

As to the Hansen property, the Court ruled that the property was not subject to PLOs or DO since the entry in January, 1945 was prior to the effective date of any of them. The other two properties were found to be subject to PLO rights of

way. A number of arguments against the validity of the PLO rights of way were dismissed by the Court.

Right of Way Act of 1966: Both Pease and Boysen's patents were subject to a 47 Act reservation. They argued that the Right of Way Act of 1966 (ROW Act) precluded the State and Municipality's claims for feeder and local roads under the DO. The Court ruled the ROW Act applied only to the 47 Act reservation, 43 USC 321d. DO 2665 was promulgated under 43 USC 321a, which was not repealed by the ROW Act.

Constructive Notice: The PLOs and DO were not recorded. On April 4, 1959 the Federal government conveyed its interest in the Alaska highways to the State. That deed was not recorded until October 2, 1969. Pease and Boysen claimed the State's interest was invalid against them as subsequent innocent purchasers in accordance with AS 34.15.290 which protects subsequent innocent purchasers for value who are without notice of a prior interest. "An innocent purchaser must lack 'actual or constructive knowledge' of the conflicting deed or encumbrance that the purchaser seeks to avoid." At 725. The Court distinguished PLOs and the DO from a wild deed outside the chain of title as was the case in Sabo v. Horvath, 559 P.2d 1038 (1976). A deed recorded prior to issuance of the patent was a wild deed outside the chain of title. However; in this case the issue was whether the publication of the PLOs and DO in the Federal Register was constructive notice. The Court reaffirmed its earlier decision in Hahn v. Alaska Title Guaranty Co., 557 P.2d 143 (1976) that publishing in the Federal Register was constructive notice; therefore subsequent purchasers were not innocent purchasers protected by the recording statutes.

Title Company Liability: The Court was asked to overturn Hahn v. ATG, since the PLOs and DO were not recorded in Alaska. The Court refused to do so. The title companies were subject to the claims of Pease and Boysen.

Estoppel: Pease and Boysen claimed the State and Municipality were estopped from claiming an interest due to the fact that for over 20 years the State and Municipality allowed the property to be developed in a manner inconsistent with the assertion of the claimed easements. "Estoppel requires 'the assertion of a position by conduct or word, reasonable reliance thereon by another party and resulting prejudice.'" Citing Jamison v. Consolidated Utilities, Inc., 576 P.2d 97, 102 (1978) at page 726. Relying on its finding that the constructive notice was imparted by Federal Register, the Court ruled that notice made reliance by the parties unreasonable, therefore the estoppel claim lacked merit.

Patent Statute of Limitations: The patents did not contain any reservation for the PLO and DO rights of way. The six year statute of limitations to contest a patent had expired long before the State claimed its easement interest. In reaffirming State, Department of Highways v. Green, 586 P.2d 595 (1978), the

Court found that a right of way not expressed in the patent was a valid existing right and the patentee takes subject to such right.

[B]y operation of law, land conveyed by the United States is taken subject to previously established rights-of-way where the instrument of conveyance is silent as to the existence of such rights-of-way. No suit to vacate or annul a patent in order to establish a previously existing right-of-way is necessary because the patent contains an implied-by-law condition that it is subject to such a right-of-way. At 727.

Staking: The lower court held that the additional widths created by DO 2665 did not apply to the rights of way for Rabbit Creek Road adjacent to the Pease property and the Seward Highway adjacent to the Boysen property because the road had not been "staked" in accordance with the terms of DO 2665. The Supreme Court rejected that conclusion on the basis that the staking was only required for new construction. Since the roads were in existence at the time of the DO, staking was not required.

10. Resource Investments v. State Dept. of Transportation, 687 P.2d 280 (1984).

Reaffirmed decision in Alaska Land Titles case that a homestead entry was a valid existing right. The State argued that Executive Order 9337 is only partially based on the Pickett Act, which limited the Secretary of the Interior's authority to make withdrawals, such that the withdrawals would not include lands within a homestead entry. EO 9337 was also in part based on the inherent authority of President to make withdrawals and that authority does not protect a homestead entry. The court ruled against the State citing Stockley v. U.S., 260 U.S. 532, 544 (1923) finding that a valid existing right was a lawfully initiated claim which upon compliance with the land laws would ripen into a title.

11. State, Dept. of Transportation v. First National Bank, 689 P.2d 483 (1984)

Bank's predecessor, Pippel, on June 10, 1946, entered onto land that was secretly withdrawn for the military by PLO 95 in 1943. BLM canceled the entry, then subsequently reinstated it. A patent was issued to Pippel on October 11, 1950. PLO 95 was not revoked until April 15, 1953.

The state argued that the entry was not a valid existing right due to the invalid entry on withdrawn land, therefore the property was subject to a 300 foot wide right of way under PLO 601. However, the Court ruled that once a patent is issued, defects in the preliminary process are cured. Since the state did not contest the patent within the six year statute of limitations, the patent made the 1946 entry presumptively valid. Consequently the entry related back to 1946, prior to the PLO.

12. Simon v. State, 996 P.2d 1211 (2000)

Simons, the owners of property subject to a PLO 1613 easement, disputed the State's right to relocate the road within the 300 foot wide right of way contending the PLO 1613 easement limited the state to improving the road within the confines of the existing roadbed and also argued the easement did not allow the state to use subsurface materials from the easement area. The Supreme Court affirmed the trial courts ruling that "as long as the state's changes were reasonably necessary to improve the Glenn Highway, PLO 1613 allowed it to relocate the highway anywhere within 150 feet of the centerline of the original roadbed and to use any subsurface materials in the rebuilding process."

17(b) EASEMENTS

THERE ARE MANY FEDERAL STATUTES FOR RESERVATION AND MAINTENANCE OF PUBLIC ACCESS IN ALASKA.

NO SINGLE PROVISION IS SUFFICIENT TO GUARANTEE PUBLIC ACCESS TO PUBLIC LANDS AND WATERS.

43 USC 932: 2477

FLPMA

ROW PROVISIONS IN TITLE XI OF ANILCA - CORRIDORS: CUMBERSOME - NOT USED BY BEING STUDIED.

ANILCA 811 AND 1110 PROVIDE ACCESS FOR SUBSISTANCE AND GENERAL ACTIVITIES IN FEDERAL CONSERVATION SYSTEM UNITS.

EASEMENTS TO ENSURE REASONABLE PUBLIC ACCESS ACROSS PRIVATE LANDS ARE PROVIDED UNDER SEC. 17(b) OF ANCSA AND SEC. 905 OF ANILCA. SECTION 17(b) OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT OF DECEMBER 18, 1971, 43 USC 1616(b), IMPLEMENTED BY THE CODE OF FEDERAL REGULATIONS (43 CFR 2650.4-7), AND FURTHER IMPLEMENTED BY MEMORANDUMS OF UNDERSTANDING BETWEEN THE BUREAU OF LAND MANAGEMENT, THE NATIONAL PARK SERVICE, AND THE FISH AND WILDLIFE SERVICE DATED DECEMBER 12, 1988, AND A MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES FOREST SERVICE AND THE BUREAU OF LAND MANAGEMENT DATED SEPTEMBER 4, 1990, PROVIDE THE STATUTORY AUTHORITY FOR THESE EASEMENTS. THESE EASEMENTS, NOT NECESSARILY EXISTING TRAILS OR ROADS, MERELY PROVIDE A REASONABLE MEANS OF ACCESSING A BODY OF WATER OR A TRACT OF PUBLIC LAND FROM ANOTHER. BY FEDERAL REGULATIONS 17(b)'S ARE LIMITED TO SPECIAL WIDTHS, LOCATIONS, USES, AND DURATIONS.

THE ALLOWABLE USES ARE:

25-FOOT TRAIL - THE USES ALLOWED ON A TWENTY-FIVE (25) FOOT WIDE TRAIL EASEMENT ARE: TRAVEL BY FOOT, DOGSLEDS, ANIMALS, SNOWMOBILES, TWO AND THREE-WHEEL VEHICLES AND SMALL ALL-TERRAIN VEHICLES (ATV'S) (LESS THAN 3,000 LBS. GROSS VEHICLE WEIGHT (GVW)).

50-FOOT TRAIL - THE USES ALLOWED ON A FIFTY (50) FOOT WIDE TRAIL EASEMENT ARE: TRAVEL BY FOOT, DOGSLEDS, ANIMALS,

SNOWMOBILES, TWO- AND THREE-WHEEL VEHICLES, SMALL AND LARGE ALL-TERRAIN VEHICLES (ATV'S), TRACK VEHICLES, FOUR-WHEEL DRIVE VEHICLES.

60-FOOT ROAD - THE USES ALLOWED ON A SIXTY (60) FOOT WIDE ROAD EASEMENT ARE: TRAVEL BY FOOT, DOGSLEDS, ANIMALS, SNOWMOBILES, TWO- AND THREE-WHEEL VEHICLES, SMALL AND LARGE ALL-TERRAIN VEHICLES (ATV'S), TRACK VEHICLES, FOUR-WHEEL DRIVE VEHICLES, AUTOMOBILES, AND TRUCKS.

ONE ACRE SITE - THE USES ALLOWED FOR A SITE EASEMENT ARE: VEHICLE PARKING (e.g. AIRCRAFT, BOATS, ALL-TERRAIN VEHICLES (ATV'S), SNOWMOBILES, CARS, TRUCKS), TEMPORARY CAMPING, AND LOADING OR UNLOADING. TEMPORARY CAMPING, LOADING OR UNLOADING SHALL BE LIMITED TO 24 HOURS.

THE FEDERAL REGULATIONS WERE PUBLISHED NOVEMBER 27, 1978 IN VOL. 43, NO. 228, PAGE 55329 IN THE FEDERAL REGISTER.

WHY, WHEN THE BLM BEGAN CONVEYING LANDS IN 1975, WERE REGULATIONS PUBLISHED IN LATE 1978?

THE ANSWER IS SIMPLE - POLITICS.

SECTION 17(a) OF ANCSA ESTABLISHED THE JOINT FEDERAL-STATE LAND USE PLANNING COMMISSION FOR ALASKA.

THE GOVERNOR OF ALASKA, OR HIS DELEGATE, AND A MEMBER APPOINTED BY THE PRESIDENT, WERE CO-CHAIRS. ONE MAIN FUNCTION OF THIS URBAN COMMISSION WAS TO PROVIDE FOR THE ESTABLISHMENT OF "PUBLIC EASEMENTS ACROSS LANDS SELECTED BY THE ANCSA VILLAGE AND REGIONAL CORPORATIONS. THESE BECAME KNOWN AS 17(b) EASEMENTS.

THE JOINT FEDERAL-STATE LAND USE PLANNING COMMISSION REQUESTED EASEMENT NOMINATIONS FROM THE PUBLIC INTEREST GROUPS AND FEDERAL AND STATE AGENCIES.

LOUSSAC SOGN LIBRARY 1974 - A NATIVE LEADER FROM BETHEL - REQUESTED WRITTEN COMMENTS.

THUS CAME CALISTA ET AL V. ANDRUS, WHICH THE NATIVES WON AND THE SECRETARY OF THE INTERIOR AGREEMENT DATED JANUARY 18, 1977, BETWEEN THE SECRETARY OF THE INTERIOR AND BBNC, CHIGNIK LIMITED AND OTHER BRISTOL BAY VILLAGE CORPORATIONS.

THE JOINT FEDERAL-STATE LAND USE PLANNING COMMISSION

DISBANDED IN THE EARLY 1980'S.

BLM & DNR.

WHAT ARE THE PROBLEMS?

EXPERIENCE IN THE SOUTH 48 CLEARLY ILLUSTRATES THE COSTS ASSOCIATED WITH IGNORING ACCESS CONSIDERATIONS PRIOR TO PASSING PUBLIC LANDS INTO PRIVATE OWNERSHIP. CONGRESS WELL AWARE BY INCLUSION OF THE ACCESS PROVISIONS IN ANCSA AND ANILCA.

AN EXAMPLE:

ADMINISTRATION. THE VILLAGE OF TATITLIK SELECTED LANDS ALONG THE COASTLINE BETWEEN FISH AND GALENA BAYS IN PRINCE WILLIAM SOUND AS THEIR HIGHEST PRIORITY. DURING THE INITIAL EASEMENT AND REVIEW NOMINATION PROCESS, EASEMENT MAPS IDENTIFIED A LARGE BLOCK OF PUBLIC LAND TO THE NORTH AND EAST OF TATITLIK'S SELECTION AREA. ACCESS ROUTES INTO THESE PUBLIC LANDS WERE IDENTIFIED IN A MANNER THAT WOULD PROVIDE THE GREATEST OPPORTUNITIES FOR ACCESS WHILE REQUIRING THE FEWEST EASEMENTS POSSIBLE. IN 1982, A MAJORITY OF THESE PUBLIC LANDS WERE MADE A PART OF THE CHUGACH NATIVE, INC. (CNI) AGREEMENT, SO THE EASEMENTS PREVIOUSLY RESERVED NO LONGER ACCESSED PUBLIC LAND. THE LAND THAT REMAINED IN PUBLIC OWNERSHIP AMOUNTED TO THREE SQUARE MILES IN THE VERY SOUTHWEST CORNER OF THE AREA BETWEEN LANDLOCKED AND FISH BAYS, WHERE NO ACCESS HAD ORIGINALLY BEEN RESERVED. THESE THREE SECTIONS ARE NOW ONLY ACCESSIBLE VIA STEEP TERRAIN ABUTTING BILLYGOAT MOUNTAIN AND HORSESHOE FALLS. THIS HAS IN ESSENCE ISOLATED THESE PUBLIC LANDS FROM ANY PUBLIC USE. TO REMEDY THE SITUATION THE STATE REQUESTED THAT BLM ASK TATITLIK CORPORATION TO DONATE AN EASEMENT ALONG A MORE REASONABLE ROUTE. THE TATITLIK CORPORATION DECLINED THE STATE'S REQUEST. ABSENT AN EASEMENT AGREEMENT, ONCE AN IC HAS BEEN FINALIZED LEGAL TITLE PASSES TO THE CORPORATION AND IT CANNOT BE REQUIRED TO DONATE AN EASEMENT ON OR ACROSS THAT LAND IN THE FUTURE, EVEN IF IT PROVIDES THE ONLY REASONABLE MEANS OF ACCESS TO REMAINING PUBLIC LANDS.

SPECIFICALLY:

A. OVERSELECTIONS BY ANCSA AND BY THE STATE MAKE IT

IMPOSSIBLE TO GET AN ACCURATE OVERVIEW OF WHERE PUBLIC LANDS WILL ULTIMATELY BE LOCATED.

- B. EASEMENT AGREEMENTS. PRIOR TO 1976, CONTINUOUS SHORELINE AND STREAMSIDE EASEMENTS WERE RESERVED ON IC'D LANDS UNDER 17(b). BASED ON THE EXISTENCE OF THESE EASEMENTS, FEW PERIODIC SITE OR TRAILHEAD EASEMENTS WERE RESERVED. HOWEVER, IN 1976 A NUMBER OF NATIVE CORPORATIONS FILED SUIT AGAINST THE FEDERAL GOVERNMENT CHALLENGING THESE CONTINUOUS EASEMENTS AS WELL AS OTHERS. SEE ALASKA PUBLIC EASEMENT DEFENSE FUND V. ANDRUS, 435 F. SUPP. 664 (D. ALASKA 1977). BECAUSE THE COURTS FOUND THE CONTINUOUS EASEMENTS TO BE INVALID, BLM RELEASED THOSE EASEMENTS. UNFORTUNATELY, BLM WAITED UNTIL THE FINAL PATENT CONFORMANCE PROCESS BEFORE TRYING TO ESTABLISH REPLACEMENT EASEMENTS. DURING THE INTERVENING 10 TO 15 YEARS, SEVERAL OF THE CORPORATIONS HAVE SOLD IC'D LAND TO PRIVATE INDIVIDUALS, FREQUENTLY AT THE HEADS OF TRAILS, STREAMS, AND LAKES, WHERE REPLACEMENT EASEMENTS SHOULD HAVE BEEN ESTABLISHED.

Janson 2/2/04
Mellough 1/27/04

AA-8447-EE (75.04)
AA-8447-EE/INV (75.04)
AA-8447-A2 (2651)
AA-8447-B2 (2651)

United States Department of the Interior FEB 2 2004

BUREAU OF LAND MANAGEMENT

RELEASE OF INTEREST

Eyak Corporation

On December 9, 1998, Interim Conveyance (IC) No. 1772, was issued to the Eyak Corporation, pursuant to Sections 14(a) and 22(j) of the Alaska Native Claims Settlement Act of December 18, 1971, as amended, 43 U.S.C. 1613(a), 1621(j), and Section 1428 of the Alaska National Interest Lands Conservation Act of December 2, 1980, Pub. L. 96-487, 94 Stat. 2371, of the surface estate of those lands listed therein, such conveyance having been granted by the United States of America unto the above-named corporation with certain reservations of interests made to the United States; now hereto comes the United States of America and releases the interests listed below, reserved and numbered in Interim Conveyance No. 1772 and described as follows:

- a. EIN 44b C5, D1 (chcopp018a) A sixty (60) foot wide road easement for an existing road following the route of the old railroad grade from Chitina to Cordova, located in T. 13 S., R. 5 E., Copper River Meridian.
- b. EIN 300 C4 (cheyak102) An easement sixty (60) feet in width for an existing road from a beach landing area, airstrip, and storage facility in Sec. 5, T. 17 S., R. 5 W., Copper River Meridian, southwesterly, to the main communications facility on the Boswell Bay Radio Relay Site in Sec. 6, T. 17 S., R. 5 W., Copper River Meridian. This easement includes a spur road leading from the main access road to a water well and pumphouse within the site in Sec. 5, T. 17 S., R. 5 W., Copper River Meridian.
- c. EIN 301 C4 (cheyak103) An easement fifteen (15) feet in width for an existing POL (fuel supply) pipeline from a storage facility and pumphouse in Sec. 5, T. 17 S., R. 5 W., Copper River Meridian, southwesterly, to the communications facility and residence site of the Boswell Bay Relay Site in Secs. 5 and 6, T. 17 S., R. 5 W., Copper River Meridian.
- d. EIN 302 C4 (cheyak100) An easement twenty-five (25) feet in width for an existing access trail from site easement EIN 303 C4 in Sec. 5, T. 17 S., R. 5 W., Copper River Meridian, westerly, to the storage facility for the Boswell Bay Radio Relay Site in Sec. 5, T. 17 S., R. 5 W., Copper River Meridian.

- e. EIN 303 C4 (cheyak101) A one (1) acre site easement upland of the mean high tide line in Sec. 5, T. 17 S., R. 5 W., Copper River Meridian, on the north shore of Kenny Cove.
- f. EIN 304 C4 (cheyak104) An airspace easement located within Secs. 5, 6, and 7, T. 17 S., R. 5 W., Copper River Meridian, and Secs. 1 and 12, T. 17 S., R. 6 W., Copper River Meridian. This easement contains runway clear zones and approach surface zones. The runway clear zones begin 200 feet from the end of the runway, are trapezoidal in shape with an initial width of 500 feet; 1,000 feet in length; and a terminal width of 650 feet. The approach surface zones begin at the terminus of the runway clear zones and are trapezoidal in shape with an initial width of 650 feet; 4,000 feet in length; and a terminal width of 1,250 feet. The easement uses reserved include the right to clear and keep clear the lands described above from any and all obstructions infringing upon or penetrating the clear and approach zones, as such surfaces are defined in Title 14, Code of Federal Regulations, Part 77, Objects Affecting Navigable Airspace. The right to clear and keep clear includes, but is not limited to, the right to cut and remove trees, underbrush and soil, and to demolish or remove buildings or any other structure or obstruction of every description which may infringe upon or extend into or above the zones and the right to prohibit use on and remove from the above-described land any installation or object which would create electrical interference with radio communication between the airport and aircraft, or make it difficult for pilots to distinguish between airport lights and other lights, resulting glare in the eyes of pilots using the airport, or otherwise endanger the landing, taking off, or maneuvering the aircraft, together with the right of reasonable ingress and egress for the purpose of effecting and maintaining such clearances. Further, without waiving compliance with applicable Federal and State laws and regulations concerning air and water quality, the rights reserved include the right to create such noise, dust, and fumes as are inherently connected with the operation and maintenance of aircraft, by whomsoever created and wherever and whenever occurring in connection with the operation of aircraft upon the easement herein reserved.
- g. EIN 306c (cheyak112) An easement for an existing sixty (60) foot wide road (Boswell Bay Road) across Tract B, U.S. Survey No. 2679, Alaska, located in protracted Sec. 16, T. 17 S., R. 5 W., Copper River Meridian.

- h. EIN 306d (cheyak112) An easement for an existing sixty (60) foot wide road (Boswell Bay Road) across Tracts C and D, U.S. Survey No. 2765, Alaska, located in protracted Sec. 17, T. 17 S., R. 5 W., Copper River Meridian.

UNITED STATES OF AMERICA

/s/ Debbie Hollen

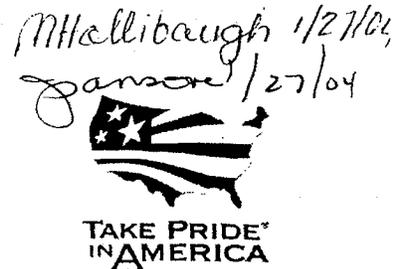
Debbie A. Hollen
Acting Chief, Branch of Lands & Realty

Interim Conveyance No. 1772:
Book: 74 Pages: 486 - 511
Cordova Recording District



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Alaska State Office
222 W. 7th Avenue, #13
Anchorage, Alaska 99513-7599
<http://www.ak.blm.gov>



AA-8447-EE (75.04)
AA-8447-EE/INV (75.04)
AA-8447-A2 (2651)
AA-8447-B2 (2651)
(932) jes

FEB 2 2004

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Eyak Corporation
P.O. Box 340
Cordova, Alaska 99574-0340

Dear Gentlemen:

Enclosed is an original Release of Interest officially modifying Interim Conveyance (IC) No. 1772, dated December 9, 1998. It should be kept in a safe place. You should immediately record it with the State Recorder for the recording district in which you recorded IC 1772. Upon recordation attach the Release of Interest to IC No. 1772.

A change in State of Alaska regulations (11 AAC 06.040) requires that in order for a document to be recorded it must contain the name and complete mailing address to whom it is to be returned and the name of the recording district into which it is to be entered into the public records. Therefore, be sure this information is on your document before submitting it for recordation.

If you have any questions as to where you should record your Release of Interest please contact the Anchorage Recorders Office, 550 West Seventh Avenue, Suite 1200, Anchorage, Alaska 99501-3564. Be sure to include property description when writing for more information.

Sincerely,

/s/ Debbie Hollen

Debbie A. Hollen
Acting Chief, Branch of Lands & Realty

State of Alaska
Department of Transportation
Northern Region, Right-of-Way Section
John F. Bennett
Chief Right-of-Way Agent
2301 Peger Road, MS 2553
Fairbanks, Alaska 99709-5316

Charles D. Branch
P.O. Box 1692
Cordova, Alaska 99574-1692

bcc:

FM, Glennallen Field Office (050)

Terry Hassett, 17(b) Easement Specialist (932)

Rory Spurlock, Realty Specialist (932)

Chugach Region Inventory Binder (932)

932:JSansone:12/10/03:3231:8447CvrRelease