

MEMORANDUM

State of Alaska  
Department of Transportation & Public Facilities  
Northern Region Right of Way

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To: Rod Platzke, P.E.  
Design Group Chief  
Northern Region

Date: May 9, 1989

File No:

Telephone No: 474-2413

From: John F. Bennett, P.L.S.  
Engineering Supervisor

Subject: Copper River Highway  
Project No. 64669

Based upon Location's memo of April 27, 1989 (attached) identifying areas of realignment along the Chitina route, we have prepared the attached estimate addressing the necessary activities and costs to acquire Right of Way.

As a part of defining the Right of Way necessary to acquire for this project it is also necessary to determine the location and limits of the existing Right of Way. Unfortunately, we do not have all of the necessary information to make an accurate determination. The following are comments addressing the problems in making an accurate determination at this time:

1. The Attorney General's Opinion dated April 18, 1989 makes a very strong case for the validity of the Copper River Railroad Right of Way of 100' on each side of the railroad centerline, however, it must be noted that the location of the Right of Way is based upon the Maps of Definite Location as filed with the General Land Office. The Railroad Right of Way Relinquishment to the US Government in 1945 defined the area relinquished by reference to those maps. I have consulted with the author of the AGO opinion, Jack McGee, and he feels we would have a very difficult time claiming railroad right of way along an alignment not in conformance with the original maps. Therefore, in areas where the railroad was rerouted away from the original alignment, and an amended map was not filed, there may be no valid railroad right of way. These areas can only be identified by performing an as-built survey of the railroad grade and comparing it with the original alignment as mapped.
2. The Copper, Tiekel, and Tasnuna Rivers are all accepted as navigable water bodies for title purposes and therefore any right of way or material sources required below the ordinary high water line falls under the jurisdiction of the State of Alaska, Department of Natural Resources.
3. The AGO Opinion makes reference to a 300' wide right of way that may have been created by DO 2665 on September 15, 1956 across unreserved federal lands. The existence and location of this 300' right of way is based the construction or staking dates of the Copper River Highway and a determination that the lands were not entered under federal land laws prior to the dates construction or staking. The Alaska Road Commission documents that are referred to as evidence of construction in the AGO opinion relate to the Chitina-McCarthy and the Cordova

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areas. I have seen little documentary evidence establishing dates of construction for the section of the Copper River Highway that we are currently interested in. Although I am sure that there is documentary evidence that would clearly establish the dates that sections of the railroad grade were converted to highway use, it is probably not readily available.

4. Another cloud on the concept of a 300' wide right of way is the designation of the Copper River Highway as a Federal Aid Secondary Class "A" route in the Omnibus Act. Typically, routes in this classification were considered "feeder" routes and had a right of way width of 100' on each side of centerline. I discussed this with Jack McGee and he felt that wherever we had evidence to support a DO 2665 right of way, the 300' width should hold over the implied 200' width in the Omnibus Act.

In order to minimize the cost of development of this project it would be wise to restrict the proposed alignment to the 200' right of way width as defined by the original alignment of the Copper River Railroad according to the approved location maps wherever possible. Possible existing rights of way in excess of the railroad corridor would require a good deal of research and documentation to defend.

Please note that this estimate and right of way status report is based upon a proposed alignment derived from 10 year old aerial photography and a cursory review of land title. A detailed estimate and right of way determination can only be made after a locations survey has been performed and formal title examination has taken place.

The following is a Township by Township land status report including parcelization of right of way needed for the realignments:

T13S, R5E, CRM

1. Location: Sections 17 & 18 to the Allen River  
Status: Existing Right of Way  
Size: 100 feet each side of centerline  
Owner: DOT/PF Project S-0851(12) BLM ROW Grant A-058258 2/23/63  
Note: "Million Dollar Bridge to Allen River" ROW Dwg #3323  
Adjoining lands IC'd to Chugach Natives, Inc.
2. Location: Sections 8, 9, & 4  
Status: Existing Right of Way, Copper River Railroad.  
Size: 100 feet each side of railroad centerline as per approved map.  
Owner: State of Alaska as to ROW, Remainder of Township is BLM/USA  
Note: Possible DO 2665 300' wide ROW not clearly documented.

T12S, R5E, CRM

1. ACQUISITION PARCEL No. 1  
Location: Section 33

Status: Realignment required outside of existing ROW  
Size: 200' x 1000' = 4.59 Acres  
Owner: Chugach Natives, Inc., IC #887 - Surface and Sub-surface

2. Location: Sections 28, 21, 16, 17, & 18  
Status: Existing ROW, Copper River Railroad, No realignment required.  
Size: 100 feet each side of centerline of railroad.  
Owner: Chugach Natives, Inc., IC #887 - Surface and Subsurface Note:  
IC does not reference FAS 851 specifically but mention an exception  
for "existing regional road easement (100' wide) on and more or less  
along the roadbed of the CR&NW Railroad." Possible DO 2665 300' wide  
ROW not clearly documented.

#### T12S. R4E. CRM

1. Location: Sections 12 & 13  
Status:  
Size: See Item #2 for T12S, R5E, CRM (IC #887)  
Owner:  
Note:
2. ACQUISITION PARCEL No. 2  
Location: Sections 1 & 2  
Status: Realignment required outside of existing Right of Way.  
Size: 200' x 6200' = 26.47 Acres  
Owner: Chugach Natives, Inc., IC #887 - Surface and Subsurface.

#### T11S. R4E. CRM

1. ACQUISITION PARCEL No. 3  
Location: Sections 35, 34, 27, 22, 21, 16, 17, 9, 8, & 5  
Status: Realignment required outside of existing Right of Way.  
Size: 200' x 31,050' = 142.56 Acres  
Owner: IC #1005 Tatitlek Corp. - Surface, IC #1006 Chugach Natives,  
Inc. - Subsurface.
2. Location: Remainder of Section 5  
Status: Existing ROW, Copper River Railroad, no realignment required.  
Size: 100' each side of railroad centerline as per approved map.  
Owner: IC #1005 Tatitlek Corp. - Surface, IC #1006 Chugach Natives,  
Inc. - Subsurface.  
Note: IC #1005 is subject to any interest the State of Alaska may have  
in FAS 851 as per the Omnibus Act.

#### T10S. R4E. CRM

1. Location: Sections 32 & 31  
Status: Existing ROW, Copper River Railroad, no realignment required.  
Size: 100' each side of railroad centerline as per approved map.  
Owner: Chugach Natives, Inc., IC #887, Surface and Subsurface.

Note: IC does not reference FAS 851 specifically but mentions and exception for "existing regional road easement (100' wide) on and more or less along the roadbed of the CR&NW Railroad." Possible DO 2665 300' wide ROW not clearly documented.

T10S. R3E. CRM

1. ACQUISITION PARCEL #4

Location: Sections 36 & 25

Status: Realignment required outside of existing Right of Way.

Size: 200'x 8000' = 36.73 Acres

Owner: IC #1005 Tatitlek Corp. - Surface, IC #1006 Chugach Natives, Inc. - Subsurface.

2. Location: Sections 36, 25, 24, 23, 14, 15, 10, 3, & 2

Status: Existing ROW, Copper River Railroad, no realignment required.

Size: 100' each side of railroad centerline as per approved map.

Owner: IC #1005 Tatitlek Corp. - Surface, IC #1006 Chugach Natives, Inc. - Subsurface.

Note: IC #1005 is subject to any interest the State of Alaska may have in FAS 851 as per the Omnibus Act, Additional right of way required below the ordinary high water line of the Copper and Tasnuna rivers is subject to Alaska Department of Natural Resources Permit.

T9S. R3E. CRM

1. ACQUISITION PARCEL No.5

Location: Sections 26, 35, & 36

Status: Realignment required outside of existing Right of Way.

Size: 200'x 2500' = 11.48 Acres

Owner: BLM/USA Federal Power Site Classification 403, March 29, 1950.

2. ACQUISITION PARCEL No.6

Location: Sections 10, 11, & 14

Status: Realignment required outside of existing Right of Way.

Size: 200'x 1500' = 6.89 Acres

Owner: IC #1005 Tatitlek Corp. - Surface, IC #1006 Chugach Natives, Inc. - Subsurface.

3. Location: Sections 36, 26, 23, 14, 11, 10, & 4

Status: Existing ROW, Copper River Railroad, no realignment required.

Size: 100' each side of railroad centerline as per approved map.

Owner: IC #1005 Tatitlek Corp. - Surface, IC #1006 Chugach Natives, Inc. - Subsurface.

Note: IC #1005 is subject to any interest the State of Alaska may have in FAS 851 as per the Omnibus Act, Additional ROW required below the ordinary high water line of the Copper river is subject to Alaska Department of Natural Resources Permit.

T8S. R3E. CRM

1. Location: Sections 32, 31, 30, 19, 18, 17, 8, 5, & 4  
Status: Existing ROW, Copper River Railroad, no realignment required.  
Size: 100' each side of railroad centerline as per approved map.  
Owner: USA/BLM Public Domain  
Note: Also subject to any interest the State may have in FAS 851 by virtue of the Omnibus Act, subject to Native Corporation Selections, Section 32 is subject to PL 96-487, Chugach National Forest.
2. ACQUISITION PARCEL No. 7  
Location: Section 8  
Status: Realignment required outside of existing Right of Way.  
Size: 200'x 1000' = 4.59 Acres  
Owner: BLM/USA Public Domain
3. ACQUISITION PARCEL No. 8  
Location: Sections 8 & 5  
Status: Realignment required outside of existing Right of Way.  
Size: 200'x 1900' = 8.72 Acres  
Owner: BLM/USA Public Domain

T7S. R3E. CRM

1. ACQUISITION PARCEL No. 9  
Location: Sections 33 & 34  
Status: Realignment required outside of existing Right of Way.  
Size: 200'x 5000' = 22.96 Acres  
Owner: BLM/USA Public Domain  
Note: Realignment passes near or through US Survey No. 3574 at the confluence of the Copper and Tiekell Rivers. Date of Entry is 4-28-54, therefore the US Survey was subject to the original railroad right of way and the DO 2665 300' ROW if evidence exists for establishment. The realignment passes to the Westerly edge of the US Survey very close to the railroad Right of Way for the "loop line at mouth of Tiekell River" according to map approved April 29, 1914 (Juneau 01492). This map is referenced in the March 29, 1945 Relinquishment document between the Railroad and the US Government. As we do not have a copy of this map on file it is difficult to determine whether an additional private acquisition parcel should be considered and what size the parcel would be. This parcel has not been considered for the purpose of this estimate.
2. ACQUISITION PARCEL No. 10  
Location: Section 22  
Status: Realignment required outside of existing Right of Way.  
Size: 200'x 1000' = 4.59 Acres  
Owner: BLM/USA Public Domain
3. ACQUISITION PARCEL No. 11  
Location: Sections 22 & 15  
Status: Realignment required outside of existing Right of Way.

Size: 100'x 1200' = 2.76 Acres  
Owner: BLM/USA Public Domain

4. ACQUISITION PARCEL No. 12

Location: Section 15

Status: Realignment required outside of existing Right of Way.

Size: 200'x 600' = 2.76 Acres

Owner: BLM/USA Public Domain

5. Location: Sections 33, 34, 27, 22, 15, 10, & 3

Status: Existing ROW, Copper River Railroad, no realignment required.

Size: 100' each side of railroad centerline as per approved map.

Owner: USA/BLM Public Domain

Note: Also subject to any interest the State may have in FAS 851 by virtue of the Omnibus Act, additional ROW required below the ordinary high water line of the Copper river is subject to Alaska Department of Natural Resources Permit.

T6S. R3E. CRM

1. Location: Sections 34, 35, 26, 23, 24, & 13

Status: Existing ROW, Copper River Railroad, no realignment required.

Size: 100' each side of railroad centerline as per approved map.

Owner: USA/BLM Public Domain

Note: Also subject to any interest the State of Alaska may have in FAS 851 as per the Omnibus Act.

T6S. R4E. CRM

1. ACQUISITION PARCEL #13

Location: Sections 9 & 16

Status: Realignment required outside of existing Right of Way.

Size: 200'x 1000' = 4.59 Acres

Owner: IC #442 Ahtna Corp. - Surface and Subsurface.

2. Location: Sections 18, 17, 16, 9, 10, 11, 12, & 1

Status: Existing ROW, Copper River Railroad, no realignment required.

Size: 100' each side of railroad centerline as per approved map.

Owner: IC #442 Ahtna Corp. - Surface and Subsurface.

Note: IC #442 is subject to any interest the State of Alaska may have in FAS 851 as per the Omnibus Act, Additional right of way required below the ordinary high water line of the Copper river is subject to State of Alaska Department of Natural Resources Permit.

T6S. R5E. CRM

1. Location: Section 6

Status: Existing ROW, Copper River Railroad, no realignment required.

Size: 100' each side of railroad centerline as per approved map.

Owner: USA/BLM Public Domain

Note: Also subject to any interest the State of Alaska may have in FAS 851 as per the Omnibus Act.

T5S. R5E. CRM

1. ACQUISITION PARCEL #14  
Location: Section 31  
Status: Realignment required outside of existing Right of Way.  
Size: 200' x 1000' = 4.59 Acres  
Owner: IC #442 Ahtna Corp. - Surface and Subsurface.
2. ACQUISITION PARCEL #15  
Location: Section 27  
Status: Realignment required outside of existing Right of Way.  
Size: 200' x 400' = 1.84 Acres  
Owner: IC #442 Ahtna Corp. - Surface and Subsurface.
3. ACQUISITION PARCEL #16  
Location: Section 11  
Status: Realignment required outside of existing Right of Way.  
Size: 200' x 800' = 3.68 Acres  
Owner: BLM/USA Federal Power Site Classification 403, March 29, 1950.
4. Location: Sections 31, 32, 29, 28, 27, 22, 23, 14, 11, & 2  
Status: Existing ROW, Copper River Railroad, no realignment required.  
Size: 100' each side of railroad centerline as per approved map.  
Owner: IC #442 Ahtna Corp. - Surface and Subsurface.  
Note: IC #442 is subject to any interest the State of Alaska may have in FAS 851 as per the Omnibus Act, Additional right of way required below the ordinary high water line of the Copper river is subject to State of Alaska Department of Natural Resources Permit.

RIGHT OF WAY ACQUISITION SUMMARY:

A. Chugach Natives	2 parcels	Total Acreage = 33.06
B. Tatitlek/Chugach	3 parcels	Total Acreage = 186.18
C. Ahtna Inc.	3 parcels	Total Acreage = 11.02

Additional Right of Way by Permit:

D. BLM/USA	8 parcels	Total Acreage = 61.54
E. State of Alaska	Unknown areas below mean high water line	

Total Acreage for Project = 291.80

Attachments: as stated

cc: John D. Martin, P.E. Chief of Planning & Research  
Danny Johnson, P.E. Recon/Locations Engineer