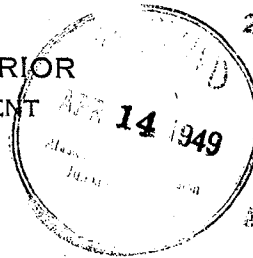




UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Anchorage, Alaska

22506 "L:REC"



April 11, 1949

MEMORANDUM

To: Director, Bureau of Land Management, Washington, D. C.
From: Lowell M. Puckett, Regional Administrator
Subject: Establishment of rights-of-way for public roads and highways in Alaska

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Reference is made to your memorandum of February 23, 1949, to the Director, Division of Territories, a copy of which was sent to this office, concerning the proposed withdrawal by public land order of rights-of-way for certain classes of roads or highways.

In the memorandum you expressed concern about obtaining approval of the order by the Department of Justice, unless a list by classes of the several roads is incorporated in the order. From this, it is presumed that the roads in question to be listed, have been actually constructed or have been surveyed on the ground for construction in the near future. In such case, it appears to me that the purpose of the proposed withdrawal may well be accomplished by filing of maps showing the location of the roads and width of the rights-of-way therefor, for notation on the land office records in accordance with Departmental instructions of January 13, 1916 (44 L.D. 513), and an exception clause inserted in any final certificate and patent which may subsequently be issued for the land on which the road is located. This would do away with the necessity for the survey of the right-of-way strip, in the event the public land surveys are extended over the areas crossed by the roads or highways. Moreover, if the right-of-way is established by a withdrawal over surveyed lands, entry of the legal subdivision affected by the withdrawal may not be made unless and until a segregation survey is made of the road right-of-way.

The filing of maps as suggested would definitely place on record the width of the right-of-way shown thereon, which, it is believed, would also be protected by R.S. 2477 (43 U.S.C. sec. 932) in the event of the subsequent disposal of the land. This general right-of-way statute is considered applicable to Alaska as well as other Federal rights-of-way laws. See statement in opinion of the Attorney General (30 Op. Atty. Gen. 387) as to the general applicability of right-of-way laws in the territory of Alaska. While the statute does not require the filing of maps or specify the width of rights-of-way that may be established thereunder, it is believed that the recordation of such right-of-way maps, taken together with notation under 44 L.D. 513, supra, would effect to definitely establish the width of the right-of-way strip appropriated. In this connection I wish to also

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call attention to the act of June 30, 1932 (47 Stat. 446, 48 U.S.C. sec. 323), which is administered by the Alaska Road Commission, and which contemplates that maps and plans shall be made showing the location of roads constructed or to be constructed thereunder.

This matter was not presented for discussion or consideration at either of the conferences held at Juneau by the representatives of the Alaska Field Staff, as it appeared that the plans for establishing rights-of-way withdrawals were well formulated and far advanced. Our discussions were more or less centered on the proposition of reaching an accord on the width of certain classes of roads rather than the method by which they were to be established. The Regional Counsel and I had the opportunity recently of discussing with Colonel Moyes and certain members of his staff the matter of establishing road rights-of-way by the filing of maps in lieu of withdrawals, as herein above indicated, and they appeared to be favorably impressed with the suggestion from a practical standpoint. I am, therefore, sending a copy of this memorandum to Colonel Moyes for his information.

If, however, it is deemed desirable that the withdrawals as contemplated be made, it is recommended that they be followed as soon as possible, with the filing of maps of definite locations, as herein above suggested, and the withdrawals thereafter lifted, so as to avoid the necessity of making segregation plats of surveys of the rights-of-way in order to permit entry and disposal of the lands adjoining.

In view of the present situation in regard to rights-of-way for existing roads, some of which are covered by withdrawals and others are not, we are meeting with some confusion and difficult problems in connection with our small tract program, which will continue until some definite policy or program is adopted for the establishment of the rights-of-way. For instance, where we have under consideration an area for small tract classification involving surveyed lands, traversed by an existing road for which no maps have been filed nor covered by a withdrawal, the question arises as to how the small tracts should be laid out with relation to such roads. We have in such cases two alternatives, (1) lay out the small tracts in the most desirable pattern without regard to the road, since the rights of the public in and to the road are fully protected by R. S. 2477, supra, or (2) in anticipation of a future withdrawal for the rights-of-way, to lay out the tracts so that they will not come within 50-100 or 150 feet from the center line of the road as constructed on the ground, dependent upon the class of road and the width to be prescribed therefor. Under alternative (1), no supplemental plat or segregation survey would be necessary, as the lessee or purchaser of the tract would take the same subject to the right-of-way. If alternative (2) is adopted, which would appear in order for the purposes of leasing, it will

be necessary to make supplemental or segregation plats of survey to give proper designation to the tracts, before sale and patent could be permitted. It is the Regional Counsel's opinion that in case of existing roads where no previous withdrawal has been made or contemplated, if any, that alternative (1) be adopted, and in case of such existing roads for which withdrawal has been made or will be made, that alternative (2) be followed, pending the announcement by the Department of a definite policy for the establishment of roads and highways in Alaska. This procedure in connection with our small tract program will be followed unless and until otherwise advised by the Washington office.


Lowell M. Tuckett

Approved:



Abe Barber
Regional Counsel

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cc: Mr. Kadow ✓
Mr. Moyes ✓