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.

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.

He built a roadhouse, powerplant and other structures.

The land was not open to entry and the parties failed to file their entry with BLM, they were "mere trespassers".

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.

Myers v. United States
210 F.Supp 695 (D. Alaska 1962)

- Wasilla to Big Lake Junction originally constructed 1949.

- Myers and Weaver entries in 1953.

- Patents issued in 1954 and 1956

- Subject to a reservation under the "47 Act", 48 USC 321d, which stated:

- road improvement staked in 1957

- notices of utilization given to the owners 1958.

- road was reconstructed 1959, landowners sued for damages.

Patents were subject to:

"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)."

Issue: Was 1949 initial road construction only election under the "47 Act"?

- Original road constructed across public domain.
- Owners entered property subject to that right of way.
- Later 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 a 300 foot wide through road when the BPR notified the owners and constructed the road.

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 ’47 Act 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.

Matanuska Valley Bank v. Abernathy
445 P.2d 235 (1968)

- Mrs. Abernathy purchased a roadhouse from the bank.
- She later discovered the roadhouse was within the 300 foot wide right of way reserved for the Glenn Highway under PLO 1613.
- Sale price indicated that the beneficial use of the property was for a roadhouse.
- The beneficial use the building at that location was eliminated by the highway reservation.
- Court allowed her to rescind contract on basis of mutual mistake.

Hahn v. Alaska Title Guaranty Co.
557 P.2d 143 (1976)

- Title insurance policy from Alaska Title Guaranty, ATG.
- Policy showed right of way over the east 33 feet of the property.
- State 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
- 1961 patent did not refer to the PLO easement.
- 1974 the state occupied the 50 feet.

Issue: Was title company required to list the 50 foot wide right of way as an encumbrance.

ATG Claim:

- coverage limited to the public records

- PLO published in the Federal Register is not a public record.

Applicable Rules of Law:

- ambiguities are to be construed in favor of the insured.

- provisions of coverage should be broadly construed while limitations are interpreted narrowly against the insured.

Court: publishing in the federal register was constructive notice.

Title company argued terms "the recording laws" in the policy referred to Alaska's recording laws. The court refused to accept that limitation.

State Dept. of Highways v. Green
586 P.2d 595 (1978)

Green and Goodman

- 33 feet wide Small Tract Act easement reservation
- Patents were subject to the 47 Act.

Classified small tracts on March 23, 1950

Goodman:

- 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
- Goodman Patent issued April 28, 1952.

Green

- Parcel leased on September 1, 1952.
- Patent 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 Claimed:

- Section 321d of 48 USC and SO 2665 did not apply due to the specific reservation of an easement in the small tract act;

State:

- Not relying on 321d
- Relying on section 321a and SO 2665.

SO 2665 is a general order whereas the reservation created by the small tract act was specific.

Court found no conflict between the statutes after stating:

- Two conflicting orders should be "harmonized if possible" unless there is a conflict.
- 33 foot reservation was for access streets serving interior lots
- 50 foot reservation was for local roads

Rule of construction "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".

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.

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.

- PLO 601 – August 10, 1949
- Survey & staking – Commenced April 26, 1950 – Completed May 3, 1950
- Staked 100 foot wide right of way, 50 feet either side
- Cleared full 100 foot width
- Road completed mid-May, 1950
- Lease Date – June 30, 1950

State v. Alaska Land Title Association
667 P.2d 714 (1983)

State of Alaska and the Municipality of Anchorage:

•Claimed easements for local, feeder and through roads greater than shown in the patents

•PLO 601 effective on August 10, 1949;

•PLO 757 and DO 2665 on October 19, 1951

Pease

- PLO 1613 on April 7, 1958.
- Small tract lease dated May 1, 1953.
- Patent dated October 4, 1955
- 33 foot easements along two boundaries,
- One was Rabbit Creek Road
- Blanket reservation under 43 USC 321d (the 47 Act)
- Rabbit Creek Road was in existence at the time of the original lease.

Boysen

- Seward Highway
- Date of entry January 2, 1951
- Patent issued May 15, 1952
- 47 Act reservation
- Seward Highway constructed prior the PLOs

Hansen

- Entered January 23, 1945
- Patent June 1, 1950
- No 47 Act reservation

Hansen was not subject to PLOs or DO – Date of entry in January, 1945 prior to the effective date of PLOs.

Pease & Boysen subject to PLO rights of way

Right of Way Act of 1966:

Pease and Boysen's patents subject to a 47 Act reservation.

Argued that the Right of Way Act of 1966 (ROW Act) precluded State and Municipality's claims for feeder and local roads under the DO.

Court Ruled:

- 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.
- Omnibus Deed was issued on April 4, 1959
- Omnibus Deed not recorded until October 2, 1969.

Argument:

- AS 34.15.290 protects subsequent innocent purchasers for value who are without notice of a prior interest.

Court:

- "An innocent purchaser must lack 'actual or constructive knowledge' of the conflicting deed or encumbrance that the purchaser seeks to avoid."

- Distinguished PLOs and the DO from a wild deed outside the chain of title as was the case in Sabo v. Horvath.

- A deed recorded prior to issuance of the patent was a wild deed outside the chain of title.

- Publishing in the Federal Register was constructive notice; therefore subsequent purchasers were not innocent purchasers protected by the recording statutes.

Estoppel Argument:

Owners claim:

- 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.

Court:

- "Estoppel requires 'the assertion of a position by conduct or word, reasonable reliance thereon by another party and resulting prejudice.'"

- Constructive notice imparted by Federal Register made reliance unreasonable, therefore the estoppel claim lacked merit.

Patent Statute of Limitations:

- No Patent reservation for the PLO and DO rights of way.

- 6 year statute of limitations to contest patent had expired before the State claimed its easement interest.

Court:

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.

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 and Seward Highways were not "staked".

Court:

Staking was only required for new construction. Roads were in existence at the time of the DO, staking was not required.

Resource Investments v. State Dept. of Transportation
687 P.2d 280 (1984).

State argued:

Secretary of the Interior's authority to make executive order withdrawals under the Pickett Act is limited, such that the Secretary's withdrawals would not include lands within a homestead entry

However; Executive Order 9337 was in part based on the inherent authority of President to make withdrawals and that authority does not protect a homestead entry.

Court ruled against the State citing Stockley v. U.S., 260 U.S. 532, 544 (1923):

- A valid existing right was a lawfully initiated claim which upon compliance with the land laws would ripen into a title.

- A homestead entry that ripened into a patent was a valid existing right.

State, Dept. of Transportation v. First National Bank
689 P.2d 483 (1984)

- Pippel entered onto the land on June 10, 1946.
- Land had been secretly withdrawn for the military by PLO 95 in 1943.
- BLM canceled the entry, then subsequently reinstated it.
- Patent was issued to Pippel on October 11, 1950.
- PLO 95 was not revoked until April 15, 1953.

State argued:

- Entry on withdrawn land was not a valid existing right.
- Invalid entry subjected the property to a 300 foot wide right of way under PLO 601.

Court ruled:

- Once a patent is issued, defects in the preliminary process are cured.
- The patent made the 1946 entry presumptively valid since the state did not contest the patent within the six year statute of limitations.
- Consequently the entry related back to 1946, prior to the PLO.

Simon v. State
996 P.2d 1211 (2000)

- Simons owned property subject to a PLO 1613 easement.
- Simons disputed State's right to relocate the road within the 300 foot wide right of way.
- They contended PLO 1613 easement limited the state to improving the road within the confines of the existing roadbed.
- They also argued the easement did not allow the state to use subsurface materials from the easement area.

Supreme Court ruled:

[A]s 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.