

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
ALASKA ROAD COMMISSION  
JUNEAU, ALASKA

April 24, 1952

RIGHT OF WAY SECTION  
ANCHORAGE DISTRICT

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TO: A. F. Ghiglione, Commissioner of Roads for Alaska  
✓ Wm. J. Hiemi, Chief Engineer

FROM: Wm. B. Adams, Chief, Real Estate Branch

The attached brief was prepared as a result of a study of all applicable Land Laws, Land Orders and Secretarial Orders as they pertain to rights-of-way under the jurisdiction of the Department of the Interior, the Alaska Road Commission.

The resultant analysis, reduced to logical sequence, will serve as a reference guide to the essence of the various laws and orders, and in some measure will take the confusion out of the mass data as reflected by numerous files of pre-dated correspondence.

If conclusions, which are normally not a part or purpose of a sequential brief, are permitted, it can be said that too great an area of confusion still exists regarding Public Law 229, Land Order 601 and Secretarial Order 2665. And this being so, and because our future activities in terms of cadastral inquiry are to be closely identified with these laws and orders, it would seem to be the logical course of action to perhaps make a test of Public Law, Land Order or Secretarial Order, to determine just what can or cannot be done.

A ruling or decision by the Solicitor of the Department will not be sufficient to, for example, decide on a course of encroachment action following predetermined cadastral inquiry.

It would seem therefore that a panel discussion of Public Laws, Land Orders and Secretarial Orders, could logically be a function of sub-committees of the Alaska Field Committee, which committees would study all pertinent laws and orders as have direct effect upon the activities of any of the participating Department of Interior Bureaus or Agencies.

Facts concerning Alaska lands in Public Domain and lands covered by Patent as they both pertain to rights-of-way under the jurisdiction of the Alaska Road Commission.

1.

The greater part of the land area on which the operations of the Alaska Road Commission are conducted is public domain land outside of natural forests and the location of rights-of-way on such land presents no serious problem.

However, for the proper location of roads and in the interest of public service, it is necessary in some instances to cross lands to which title has passed from the United States.

These instances are becoming more numerous as the population of the Territory increases, and obtaining rights-of-way over such lands will, in a number of cases, present difficulties requiring court action and the expenditure of Federal funds.

2.

Just prior to January 9, 1946, a draft of a proposed bill to amend the act entitled "An Act Providing for the Transfer of the Duties Authorized and Authority Conferred by Law Upon the Board of Road Commissioners in the Territory of Alaska to the Department of the Interior and for Other Purposes; approved June 30, 1932" was presented to the Speaker of the House of Representatives, Washington, D. C.

The purpose of the draft was to provide for the reservation by the United States in patents or deeds to land in Alaska, of rights-of-way for trails, roads, highways, tramways, bridges and appurtenant structures constructed or to be constructed by the authority of the United States or of any future state created in Alaska.

The proponent of the draft, the Secretary of the Interior, stated that such legislation was desirable to facilitate the work of the Alaska Road Commission.

3.

The legislation proposed by that draft was similar to the provisions of the Act of August 30, 1890 (26 Stat. 391, 43 U.S.C. Sec. 945), which reserves rights-of-way for ditches and canals constructed by the authority of the United States west of the 100th Meridian.

A similar provision is also found in the Act of March 12, 1914 (38 Stat. 305, 48 U.S.C. Sec. 305), by which rights-of-way for railroads were reserved to the United States in all patents for lands thereafter taken up in the Territory of Alaska.

The proposed legislation was applicable to both public domain and acquired lands of the United States. Moreover, it would authorize the head of the agency utilizing such reserved right-of-way to make payment for the full value of the crops and improvements thereon.

4.

A bill, incorporating all of the points mentioned, was submitted to Congress on January 14, 1947. It was approved by Congress in July 24, 1947, and is known as Public Law 229.

The language of Public Law 229 is as follows:

"In all patents for lands hereafter taken up, entered, or located in the Territory of Alaska, and in all deeds by the United States 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 of any state created out of the Territory of Alaska. When a right-of-way reserved under the provisions of this Act is utilized by the U. S. 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 site, if less than their value."

The wording of Public Law 229 would seem to indicate that it is applicable only to lands since filed upon (meaning since July 24, 1947) and would have no application to lands previously filed upon (previous to July 24, 1947) although patent had not yet been issued.

Accordingly, on December 1, 1948, the Division of Territories and Island Possessions, Washington, D. C. was requested to obtain clarification on this point either from the Solicitor or the Bureau of Land Management.

5.

On January 27, 1949, Chief Counsel of Bureau of Land Management, Washington, D. C. replied as follows:

"While I shall not attempt to discuss every type of land disposal made in Alaska, <sup>where</sup> it is my opinion that requirements of Public Law 229 do not apply <sup>either</sup> a valid settlement or a valid filing leading to patent has been made, prior to the date of the Act, on lands open to settlement or to such filing. Thus the deciding factor will not necessarily be the date of the filing. This Bureau, of course, will decide at the time a patent is issued, in each case, whether or not the reservation should be inserted."

So much for the opinion of Chief Counsel, Bureau of Land Management, by his letter of January 27, 1949. Now let us read what Regional Administrator, Bureau of Land Management, Anchorage, says by his letter of April 3, 1952:

"The Act of July 24, 1947, 61 Stat. 418, 48 U.S.C. Sec 321d (meaning, of course, Public Law 229) provided for the reservation of right-of-way for roads in patents and deeds on lands, the rights-to which were inaugurated after the effective date of the Act. This Act did not, however, specify the widths of the rights-of-way."

Note that Mr. Puckett did not use the qualifying terms "valid filing" or "valid settlement", neither does he say, as did Chief Counsel, that the deciding factor will not necessarily be the date of filing, and that the Bureau will decide at the time a patent is issued, in each case, whether or not the reservation should be inserted.

Two things should be remembered at this point in the sequence of events as they pertain to Alaska Road Commission rights-of-way problems, the first that there is an area of disagreement between the opinion of Chief Counsel of Bureau of Land Management, Washington, D. C. and Regional Administrator, Bureau of Land Management, Anchorage, as to just what Public Law 229 means, the second that Public Law 229 did not specify the widths of rights-of-way to be reserved in the patents.

6.

Subsequent to the date of Public Law 229 (July 24, 1947) and for 25 months thereafter, considerable undefined confusion existed until August 10, 1949, when Public Land Order 601 was issued. This important but nevertheless controversial order provided firstly, for the establishment of a reservation for highway purposes by the following language:

3

"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 centerline of the Alaska Highway, 150 feet on each side of the centerline of all other through roads, 100 feet on each side of the centerline of all feeder roads and 50 feet on each side of the centerline of all local roads, \*\*\*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 Cutoff.

Feeder Roads - Steese Highway, Elliott Highway, McKinley Park Road, Anchorage-Potter, Indian Road, Edgerton Cutoff, Tok-Eagle Road, Ruby-Long-Poorman Road, Hons-Solomon Road, Kenai Lake-Homer Road, Fairbanks-College Road, Anchorage-Lake Spenard 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.

7.

The establishment of the reservation for highway purposes by 601 had the effect of operating as a complete segregation of the land from all forms of appropriations under the public land laws, including the mining and the mineral leasing laws.

Unless under the law or regulation such right or claim could embrace non-contiguous land, a right or claim to public land in the Territory fronting on a withdrawal made by Land Order 601 and initiated on or after August 10, 1949, was restricted to land on one side of the withdrawn area, except that a homestead settlement or entry could be made for land crossed by the strip withdrawn in connection with a local road exclusive of such strip.

Every applicant for public lands in Alaska, whose right for claim did not antedate the withdrawal (August 10, 1949) was required to state in his application, or in a written statement furnished with the application, whether or not the land applied for was crossed by a public road. If it was, such road had to be identified by name or otherwise.

Public lands on either side of the area reserved for highways, both surveyed and unsurveyed, if available, could be included in claims extending up to but not including a part of the reserve.

Where the land had been surveyed under the rectangular system and the surveys had not been closed on the reserved area, applications could be filed and entries allowed for portions of the legal subdivisions outside of the reserved area without creating additional surveys.

Where the surveys had been closed on the reserved area, the land had to be identified in terms of such surveys.

Every application made for public land abutting on the reserved area, not described in the terms of an official plat of survey closing on that area, was subject to adjustment, both as to description and area, after such an official survey had been made.

### 3.

Two orders followed 601, both issued and effective on the same day, October 16, 1951.

The first was Public Land Order No. 757 which amended Land Order 601 so as to eliminate provisions affecting feeder roads and local roads.

The second was Secretarial Order 2665, the most important of the two, which fixed the width of all public highways in Alaska established or maintained under the jurisdiction of the Secretary of the Interior and, in addition, prescribed a uniform procedure for the establishment of rights-of-way or easements over and across the public lands for such highways (47 Stat. 446, 48 U.S.C. 321a).

Order 2665 fixed the width of public highways in Alaska as follows:

For the Alaska Highway, 300 feet on each side of the centerline.

For the Richardson, Glenn, Haines, Seward-Anchorage, Anchorage-Lake Spenard and Fairbanks-College Highways 150 feet on each side of the centerline.

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, Kanai 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, Parson-McKinley Park Road, Sterling Landing-Ophir Road, Iditarod-Flat Road, Dillingham-Wood River Road, Ruby-Long-Poorman Road, Nome-Council Road shall each extend 100 feet on each side of the centerline thereof.

For Local Roads: All public roads not classified as through roads or feeder roads shall extend 50 feet on each side of the centerline thereof.

Order 2665 established a right-of-way or easement for highway purposes covering the lands embraced in the feeder roads and local roads equal in extent to the width of such roads as established by 2665 (200 feet for feeder roads and 100 feet for local roads).

Order No. 2665 further provides that the reservation (supra) covering the lands embraced in the through roads and the rights-of-way or easements covering the lands embraced in the feeder roads and the local roads, 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.

And finally, Order 2665 provides that 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 dates for the information of the Public.

The History of Land Order No. 601 of August 10, 1949, and how it relates to Section 4 of Order No. 2665 of October 16, 1951.

1.

On September 7, 1949, Mr. Puckett wrote to Alaska Road Commission in part: "The Bureau of Land Management feels that the changing economy of Alaska must be reflected by changes in the Bureau's policies and procedures of managing, protecting, and disposing of the Public Domain lands and their resources. As you know, there has been a large increase in population in central Alaska with the result that community areas are developing and much land along the highway system is being entered for residential, agricultural or business purposes.

"The Alaska Road Commission has embarked on a program of highway construction, as opposed to access road construction only. It is therefore felt that mutual policies should be established and our individual goals explained, so as to avoid unnecessary technical or procedural difficulties. The following points are brought specifically to your attention:

"Rights-of-Ways: The recent Public Land Order No. 601 dated August 10, 1949, has sharpened the need for the early filing of your road location maps in the Anchorage and Fairbanks District Land Offices. My specific comments will be the subject of a separate letter' ."

2.

It should be stated at this point of sequence that Mr. Puckett is undoubtedly basing his contention for road location maps upon the Act of June 30, 1932, (47 Stat. 446, 48 U.S.C. Sec. 321a) under which the Alaska Road Commission is authorized to construct roads and highways over public lands in Alaska. This Act contemplates that maps of definite locations of roads so constructed shall be filed with the Bureau of Land Management.

3.

In commenting upon maps submitted by Alaska Road Commission covering the Fairbanks-Chena Hot Springs, Paxson-McKinley Park and the Fortymile roads, Mr. Puckett says: "These maps are excellent for general information, but they do not show the width of the lateral limits of the right-of-way with relation to the legal subdivisions of the public lands where surveyed \*\*\*\*\* unless the lateral limits are shown, where the lands are surveyed, it cannot be definitely determined for the purpose of posting, what subdivisions are affected".



4.

On December 1, 1949, Headquarters office in a letter to the Director of Division of Territories and Island Possessions said in part: "The immediate problem is our deficiency in accurate maps of old roads which are required by the District Land Offices in connection with locating entrymen and in issuance of patents.\*\*\*\*\*By the time entrymen apply for patents in the future it is planned to have available in the District and Land Offices accurate maps of our roads.

"We believe the best solution of this problem would be a revision of Public Land Order 601.\*\*\*\*\*It is our contention that this law was intended to avoid the difficulty of determining for each entry or patent the exact location of the road.\*\*\*\*\*It will be noted that the act provides for a blanket reservation for rights-of-way for roads constructed or to be constructed,\*\*\*\*\*It is recommended favorable consideration be given to a revision of Public Land Order 601 to permit the Alaska Road Commission full latitude of operation under Public Law 229".

So much for Alaska Road Commission confusion in 1949 concerning the intent and purpose of Land Order 601. Now lets record the confusion of Mr. Puckett in relation to the same Land Order.

5.

Mr. Puckett in October 1950 stated "It has not been possible for the Alaska Road Commission to survey all of their roads and tie them in exactly with the existing corners of the rectangular net of survey.\*\*\*\*\*There is accumulating in the Land Offices, files of applications by veterans who have complied with the regulations and who now want to obtain patents.\*\*\*\*\*But these papers cannot be processed because withdrawal strips run through the land. The veteran must await a survey, which must be forthcoming this field season and may be forthcoming next field season.

"After the survey has been made on the ground it is necessary for the field notes to be processed, the plats to be produced from the drafting boards, the completed plat to be sent to Washington, the plat to be approved in the Washington office, and then returned to the proper Land Office for official filing. It is optimistic to assume that the plat will be finally filed in the proper Land Office within one year of survey on the ground. During all this time the veteran has been unable to publish his final proof because his land cannot be adequately described in the notice of publication.\*\*\*\*\*

"We do not know how many roads are located within the rectangular surveys at present, nor do we know how many roads are to be built by the Alaska Road Commission in the future".

As a result of a meeting held in Assistant Secretary Warner's office with associate Director Bureau of Land Management and Commissioner of Roads for Alaska on December 14, 1949, the following procedure was adopted:

- a. The areas reserved for roads will continue to be administered as withdrawn areas in accordance with the provisions of Public Land Order 601, dated August 10, 1949.
- b. The Bureau of Land Management will determine the centerlines of the constructed roads in those areas which have been previously surveyed under the rectangular system of surveys and where title is still in the Government, in order that supplemental plats may be prepared to show areas and designations for the public lands bordering on the rights-of-way.
- c. The Bureau of Land Management in executing new cadastral surveys will, where necessary, determine the centerlines of the constructed roads as the proper basis for platting them through the sections. The plats representing the cadastral surveys will give the areas and designations of the lands abutting on the withdrawn area.
- d. The Alaska Road Commission will reimburse the Bureau of Land Management for the cost of the field work in those cases where it is necessary to determine the centerlines of the constructed highways as the basis for computing the areas of the public lands adjacent to the reserved areas for highway purposes.
- e. The Alaska Road Commission will proceed as rapidly as possible to prepare maps of definite locations for all constructed roads in Alaska and file copies of these maps with the Regional Administrator, Bureau of Land Management, at Anchorage.

On May 10, 1950, Chief Engineer of Alaska Road Commission in letter to Regional Chief, Bureau of Land Management, Juneau, reduced the Washington agreement to the field level and stated as follows:

"Reference is made to our recent conversation concerning the survey work and map preparation in connection with the definite location of constructed roads in Alaska for use by the Bureau of Land Management in administering adjacent to highways.

"By letter of December 14, Mr. Roscoe E. Bell, Associate Director of the Bureau of Land Management and Colonel John R. Koyas Commissioner of Roads for Alaska, agreed to a procedure for accomplishing this work in which the Bureau of Land Management would determine centerline of constructed road where necessary in executing cadastral surveys on a reimbursable basis with the Alaska Road Commission paying for that portion of the work involved in the highway resurveys. It was also agreed that the Alaska Road Commission would proceed as rapidly as possible to prepare maps of definitive locations for all constructed roads in Alaska and file copies of these maps with the Bureau of Land Management.

"As we discussed, this latter procedure would not be of sufficient value to the Bureau of Land Management in the cases where the roads were through lands already sectionalized by rectangular surveys since our methods of survey would not be of sufficient accuracy for land description purposes. Such work would, in effect, be a duplication of surveys that would have to be handled by the Bureau of Land Management and, therefore, we propose that the work be undertaken entirely by your office with the costs reimbursed by the Alaska Road Commission. We will continue to prepare and file copies of location maps for new roads being surveyed through unsectionalized public domain.

"Since the Alaska Road Commission had previously agreed in conference with Mr. Puckett, Regional Administrator, Bureau of Land Management, that we would place one party in the field this season for the specific purpose of obtaining centerline descriptions of existing roads through previously surveyed lands, it is still the desire of the Alaska Road Commission to finance the accomplishment of a similar amount of work by your organization. If this procedure meets with your approval, it is requested that you so advise and also submit an estimate of the costs that would be chargeable to the Alaska Road Commission."

## SUMMARY

1.

It would appear that the Alaska Road Commission possesses no legal right to any right-of-way in any patent issued in Alaska previous to July 24, 1947.

2.

It would appear that the Alaska Road Commission possesses no legal right to any right-of-way in any patent issued after July 24, 1947 providing the entry was a valid entry and the filing was a valid filing and such entry and filing was made previous to July 24, 1947.

3.

It would likewise appear that Alaska Road Commission does possess a legal right to right-of-way in any patent issued after July 24, 1947 if the entry was not a valid entry and the filing was not a valid filing and such entry and filing was made previous to July 24, 1947.

4.

Alaska Road Commission is undoubtedly legally entitled to a right-of-way in all patents issued after July 24, 1947 where entry and filing were made after July 24, 1947.

5.

The width of right-of-way to which the Alaska Road Commission is entitled in patents issued between the period July 24, 1947 and August 10, 1949, is a width no greater than necessary to permit the construction and maintenance of a roadway to the prevailing standard in the area concerned.

6.

The width of right-of-way to which the Alaska Road Commission is entitled in patents issued after August 10, 1949, is a width determined by the classification of the class of road crossing the land area in question.

7.

There is no law, except perhaps Territorial law, which established legal road and highway widths previous to August 10, 1949.

SUMMARY (Continued)

Chap. 19, Session Laws of Alaska, 1923, Section 1721, reserved a strip between sections ¼ rods wide for public highways with the section line being the center of such highway. However, the 1923 law is listed as invalid in the new Alaska Code and the Attorney General considers this act invalid. No action was ever brought to test the validity of the law.

8.

The origin of the adoption of 60 or 66 feet for the standard width of roads and highways in Alaska prior to August 10, 1949 is obscure. No law sustains either width.

9.

And finally, the acquiring of road rights-of-way and their respective widths previous to July 24, 1947 was by agreement, purchase or condemnation.

Jim  
to your informant

July 22, 1952

BRIEF

Statutes and orders under which rights-of-way for roads and highways may be established over lands in Alaska by the Alaska Road Commission

INTRODUCTION

Rights-of-way for the construction of public roads and highways in Alaska may be established by the Alaska Road Commission under the authority of R.S. 2477 (43 U.S.C. 932); Act of June 30, 1932 (47 Stat. 446; 48 U.S.C. 321a), as amended by the Act of July 24, 1947 (61 Stat. 418; 48 U.S.C. 321a); Public Land Order No. 601 of August 10, 1949, as amended by Public Land Order No. 757 of October 16, 1951; Departmental Order No. 2065 of October 10, 1951.

APPLICATION OF AUTHORITY

1. R.S. 2477, grants rights-of-way for the construction of highways over public lands not reserved for public uses. The grant becomes effective upon the establishment of the highway in accordance with State or other applicable laws. The statute does not specify any width for rights-of-way so established and unless maps of definite location showing the width of the right-of-way appropriated are filed and recorded in the proper recording district, the width would be limited, as against subsequent valid claims, to that recognized by the courts, which I understand is 66 feet or 33 feet on each side of the center line in the Territory of Alaska.

2. The Act of June 30, 1952, authorizes the construction of roads and highways over the vacant and unappropriated public lands under the jurisdiction of the Department of Interior. This statute, like R.S. 2477, does not specify the width of the rights-of-way which may be established thereunder. Therefore, unless maps were filed in the proper land offices, as contemplated by the 1932 Act, showing the width of the right-of-way appropriated, the right-of-way would also be limited to 66 feet or 33 feet on each side of the center line of the road or highway, as against valid claims or entry subsequently initiated prior to Public Land Order No. 601 of August 10, 1949.

3. The Act of July 24, 1947, added section 5 to the Act of June 30, 1932, which provided that "In all patents for lands taken up, entered, or located in the Territory of Alaska, and in all deeds by the United States hereafter conveying lands to which it may have reacquired title in said Territory . . . there shall be expressed that there is reserved from the land described in said patent or deed, a right-of-way thereon for roads, roadways, highways, . . . constructed or to be constructed by or under the authority of the United States or of any State created out of the Territory of Alaska." Again, this statute did not specify the width of the rights-of-way reserved, so that any valid claim or entry initiated, after the Act and prior to Public Land Order No. 601 of August 10, 1949, as amended by Public Land Order

No. 757 of October 16, 1951, would be subject to the reservation of 66 feet for road right-of-way purpose, or 33 feet on each side of the center line of the road only. If an additional width were required, in such cases, it would be necessary to obtain it by easements from the claimant or entryman or by condemnation proceedings.

4. Public Land Order No. 601 of August 10, 1949, established right-of-way for all roads and highways in Alaska, by withdrawal, and specified the width as follows:

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.

50 feet on each side of the center line of all local roads.

The order was made "Subject to valid existing rights and to existing surveys and withdrawals for other than highway purposes." The withdrawal, therefore, did not affect any valid existing claims or entry initiated prior to the date of the order or have the effect of increasing the width of rights-of-way over such claims to that specified in the order for roads previously constructed or may hereafter be constructed. Valid claims or entries initiated prior to the order and subsequent to the 1947 Act are subject to the reservation provided by said Act, only (commonly recognized as 66 feet).

5. Public Land Order No. 757 of October 16, 1951, amended Public Land Order 601 by specifying the through roads for which the rights-of-way would remain under withdrawal, that is, the Alaska Highway, Richardson Highway, Glenn Highway, Reines Highway, Seward-Anchorage Highway, (exclusive of part in Chugach National Forest), Anchorage-Lake Spenard Highway, and the Fairbanks-College Highway. The rights-of-way for all other roads (feeder and local roads), to be established as easements. The effect of the amendment permitted claims to be initiated to or entry made for lands crossed by rights-of-way or to straddle the roads which were established as easements and released from the withdrawal.

6. Departmental Order No. 2665 of October 16, 1951, Sec. 2, definitely fixed the width of all rights-of-way for road and highway purposes in Alaska; Alaska Highway, 600 feet; through roads, 300 feet; feeder roads, 200 feet; local roads, 100 feet. Sec. 3(a) of the Order points out that a reservation for highway purposes covering lands embraced in the rights-of-way for through roads was made by P.L.O. 601, as amended by P.L.O. 575, and operates as a complete segregation of the lands from all forms of appropriation under the public land laws, including the mining and mineral leasing laws.

Sec. 3(b) definitely established easement for feeder and local roads over and across public lands to the extent of the width specified in Sec. 2 of the Order.

From the foregoing it necessarily follows that:

(a) The ARC has no right to establish a road right-of-way over land to which a valid *claim* or entry was initiated prior to the Act of 1947, without the consent of the claimant or entryman, and the patent subsequently issued for such claim or entry would not contain the reservation provided by that Act.

(b) The ARC is entitled to the establishment of road rights-of-way over patented lands for any claim or entry initiated after the 1947 Act.

(c) The width of rights-of-way to which the ARC is entitled to over patented lands based on claims or entries initiated after the 1947 Act and prior to P.L.O. 601, as amended by P.L.O. 757, October 16, 1951, would be limited to that recognized as the prevailing standard in the particular area (normally 66 feet). It should be noted that none of the land reserved under P.L.O. 601 was subject to disposal prior to the amendment Order No. 757 of October 16, 1951.

(d) The width of rights-of-way over lands patented to claims or entries initiated after P.L.O. 757 of October 16, 1951, is that fixed by Departmental Order No. 2665 of October 16, 1951, depending on the class or road established.

(sgd) Abe Barber

Abe Barber  
Member of Alaska Field  
Staff Subcommittee



## ACQUISITION OF RIGHTS-OF-WAY WIDTHS

The various Statutes, Public Land Orders and Department Orders effecting the acquisition of rights-of-way in Alaska are as follows:\*

R.S. 2477 (43 U.S.C. 932)  
-43 Stat. 446 (48 U.S.C. 321a) June 30, 1932  
-61 Stat. 418 (48 U.S.C. 321d) July 24, 1947  
-Public Land Order 601 August 10, 1949  
-Public Land Order 757 October 16, 1951  
-2665 Amendment 1 July 17, 1952  
2665 Amendment 2 September 15, 1956  
-Public Land Order 1613 April 7, 1958  
Public Law 86-70 (Omnibus Act) June 25, 1959

7145-?

1. R.S. 2477, grants rights-of-way for the construction of highways over public lands not reserved for public uses. The grant becomes effective upon the establishment of the highway in accordance with State or other applicable laws. The statute does not specify any width for rights-of-way so established and unless maps or definite locations showing the widths of the right-of-way appropriated are filed and recorded in the proper recording district or Bureau of Land Management land office, the width would be limited, as against subsequent valid claims, to that recognized by the Courts, which is 66 feet or 33 feet on each side of the center line in the Territory of Alaska. Presumably, this is based on common usage or sufficient width, the only actual authority for such widths existing in the Alaska statutes, for section line rights-of-way.

In connection with this authority, then, the mere filing of a plat as prescribed above, would be an appropriation of the right-of-way indicated thereon, without any further action on the part of the State. Posting of notice of right-of-way width when survey stakes are set would have same effect.

2. The Act of June 30, 1932, authorizes the construction of roads and highways over the vacant and unappropriated public lands under the jurisdiction of the Department of the Interior. This statute like R.S. 2477, does not specify the width of the right-of-way which may be established thereunder. Therefore, unless maps were filed in the proper land offices, as contemplated by the 1932 Act, showing the width of the right-of-way appropriated, the right-of-way would also be limited to 66 feet or 33 feet on each side of the center line of the road or highway, as against valid claims or entry initiated subsequent to this Act but prior to Public Land Order No. 601 of August 10, 1949.

The Act of July 24, 1947 (61 Stat. 418, 48 U.S.C. 321d), amended the Act of June 30, 1932, by adding the reservation for rights-of-way over "lands taken up, entered or located" after July 24, 1947. Since this Act did not specify widths, it remained, in that respect, similar to R.S. 2477. 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, there

\* Pertinent to this Memorandum Brief

could be no doubt that it effects subsequent settlements on existing roads. Until the promulgation of the first Public Land Order setting right-of-way widths for the existing roads, compensation was required for all crops and improvements located within new takings.

3. On August 10, 1949, the Secretary promulgated the first of several Public Land Orders, No. 601, providing for the withdrawal from all forms of settlement, the following strips of land in Alaska:

- 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 (named herein);
- 100 feet on each side of the center line of all feeder roads (named herein);
- 50 feet on each side of the center line of all local roads.

This Order does not, by its language, purport to establish highway rights-of-way as such, but is a mere withdrawal of lands along the enumerated existing highways and classes of highway. There does not appear to be any intent to establish any future rights-of-way in this order.

Since this Order was promulgated subsequent to the Act of 1947, there is some question as to its effect on lands previously settled but subject to the Act. There can be no doubt that lands settled prior to the Act could not be affected by the Order since it also states, "Subject to valid existing rights and to existing surveys. . ."

The Cases all hold that once a claim is made for public lands under the law, the claim acts as a segregation of that land from the public domain for the benefit of the claimant (entryman) and there can be made no order subsequent to that claim, effecting any rights the entryman may have. Therefore, a withdrawal order promulgated subsequent to an entry, is invalid as against that entry. In connection with this point what then is the effect of this Order and subsequent orders on lands settled after the Act of 1947 but prior to the Order?

The Act of 1947 does not set out any procedure by which a specific amount of land may be acquired for the purposes set forth in the Act. There is no requirement for giving notice to the interested party of the amount being taken nor is there set out any other requirement. Since, then, there is no form of notice, the entryman had no way of determining which land on an existing road he could utilize for his own purposes prior to this Order. Many built improvements or planted crops within a few feet of the highway shoulders. Apparently, the greater majority of these remained outside the 33 foot line, but inside the areas described in Public Land Order 601.

It is this writer's opinion that the public land orders do not effect lands subject to the Act of 1947, and settled prior to the orders on the grounds that it would be unconstitutional as being "ex post facto" in nature. Now, then, the only situations with which we should be concerned are those where the lands along existing roads (at time of the orders) are settled subsequent to their promulgatory dates.

Now we are left with one more important phase of this general situation: What effect would the orders have on the rights of a party who constructs improvements or plants crops within the designated right-of-way after the date of the order when his land is subject to the 1947 Act? All along I have been asserting that the orders were constructive notice to all interested parties that the lands encompassed by the orders, were being thereafter utilized for highway rights-of-way. However, Public Land Order 601, is expressly limited to withdrawal of public lands (unsettled, unreserved) abutting on the then existing center lines in the widths according to the classification denoted for each, no reference being made to the 1947 Act. It is therefore, not apparently intended to establish a right-of-way width for the entire length of each such highway, but merely for the public lands which abut such highway. It is then, my opinion that insofar as those lands entered prior to this Order are concerned, the entryman or homesteader has every right to compensation when damage results to his improvements or crops placed within the areas described in Public Land Order 601.

4. Public Land Order 757, October 16, 1951, was an amendment to Order 601, to the extent that it revised the list of routes along which 600 foot strips were withdrawn by adding other routes. Therefore, it did not change anything in Order 601.

5. Departmental Order No. 2665, dated October 16, 1951, was promulgated in contemplation of the two previous Public Land Orders (601 and 757); and 48 U.S.C. 321a.

The purpose of this order is stated as follows:

"(Sec. 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\* of 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)."

The purpose stated under (a) (1) in the foregoing Sec. 1, above, is somewhat confusing. It expressly refers to public highways established or maintained under the jurisdiction of the Secretary of the Interior, in Alaska. However, does it mean that the uniform system will thereafter be maintained at the stated widths: or does it mean that the Secretary is utilizing the rights-of-way widths in the orders where subject to the 1947 Act?

In the face of the question of constitutionality I cannot justify the theory that this order would effect prior rights, even where those rights are subject to the 1947 Act. Therefore, my opinion is that it merely is a statement of policy and uniformity. Since (a) (2) under this Section also refers to "public lands", I feel that the intention is definitely to establish future rights-of-way across such lands. ←

\* Emphasis supplied

This is further evident in the language used in Section 3 of this Order:

(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, 1940, as amended by Public Land Order No. 757 of October 16, 1951. That order operated 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.\*

Both (a) and (b), above, make particular note and use the expression "public lands." Those words, therefore, indicate that the intent was to restrict the withdrawal of rights-of-way lands to public or vacant lands. No one would be in a better position than the Secretary to know which lands could validly be effected by withdrawal orders (601 and 747). The law is well settled that there can be no withdrawal made on lands segregated from the public domain.

Amendment No. 1 to Order 2665 (July 17, 1952) and Amendment No. 2 thereto, (September 15, 1956), stated no new policy but merely reclassified all or parts of specific highways.

6. Public Land Order No. 1613 was issued on April 7, 1958. This Order (Sec. 1) was a revocation of No.'s 601 and 757 insofar as the through roads named in the two prior orders were concerned. The lands were reclassified from withdrawals (reservations) to easements, and easements for those roads were established at 300 feet widths. Sec. 5 of 1613 also uses the term "public lands".

Those lands embraced in Orders 601 and 747 which were on such through roads were to be offered for sale by the Secretary. To this writer's knowledge, this was never done.

7. Finally, Public Law 86-70 (Omnibus Act), of June 25, 1959, by Section 21(d)(7), repealed the Act of 1932 and the Act of 1947 (48 U.S.C. 321a-d), effective July 1, 1959. Therefore, as of July 1, 1959, it would appear that newly settled lands not abutting existing roads, could not be effected by any of the Orders. Where lands have been restored by Order 1613 new settlers on the existing highways effected by that Order, would acquire title to the lands over which the established easements traverse, but could not interfere with the right-of-way of those highways.


#### CONCLUSIONS

(A) For all lands settled prior to July 24, 1947, the entire portion to be acquired for the right-of-way in the case of new or relocated roads, must be acquired by purchase. Where these lands are located on existing roads and the right-of-way is to be widened or adjusted slightly so as to partially or entirely include such existing road, all acquisitions outside the 66 foot right-of-way must be purchased.

\* Emphasis supplied


Accordingly, then, the right-of-way width for all roads existing prior to the 1947 Act as to lands abutting thereon and settled prior to the Act, is 66 feet unless the contrary can be shown.

As to all lands settled prior to the 1947 Act, the above Public Land Orders have no effect.

(B) For all lands subject to the 1947 Act, but settled prior to August 10, 1949, (P.L.O. 601), the right-of-way may be obtained by Notice of Utilization for those portions outside the 66 foot width, but crops and improvements thereon must be purchased. 

Since no withdrawals were made prior to the Public Land Orders, the entryman whose rights predated the Order would be subject to a 66 foot right-of-way when abutting a road. All others are subject to the withdrawal Order, so that right-of-way widths will be 600 feet, 300 feet, 200 feet and 100 feet depending upon the road or centerline which existed or was surveyed prior to August 10, 1949.

Public Land Order 747, October 16, 1951, merely changed some right-of-way widths and instituted no new changes.

(C) Since departmental Order 2665, October 16, 1951, did not effect prior existing rights, it too, left the right-of-way widths at 66 feet where settled prior to Public Land Order 601. For all lands settled subsequent to 2665, the rights-of-way are those stated in that Order. 

Amendment No. 2 to Order 2665, September 15, 1956, increased the right-of-way of several roads or portions of roads by redesignating them as "through roads". It also deleted certain roads from that list.

(D) Public Land Order 1613 revoked the withdrawals on through roads as established by No.'s 601 and 757. It established a 300 foot easement on those roads for highway purposes. There is, therefore, a 300 foot easement on all through roads in Alaska where such through roads have been designated by the various orders.

(E) The repeal of the Act of 1947 by the Omnibus Act (Sec. 21(d)(7)) on July 1, 1959, has once again restored the public lands to the status enjoyed in the other states. The withdrawals and easements for rights-of-way, however, remain in effect but do not have any effect where entirely new roads are concerned.

## Status History - Alaskan Roads

A brief history of "feeder roads" in Alaska, particularly the Taylor Highway, is as follows:

Public Land Order No. 601, dated August 10, 1949, withdrew certain lands for highway purposes. Among these were the Tok-Eagle Road which was designated as a "feeder road" with a width of 200 feet.

Public Land Order No. 757, dated October 16, 1951, revoked the highway withdrawals on all "feeder" and "local" roads established by PLO 601, while retaining the highway withdrawals for the "through roads."

Simultaneously, Secretarial Order No. 2665, dated October 16, 1951, entitled "Rights-of-way For Highways in Alaska" was issued pursuant to the authority contained in section 2 of the act of June 30, 1932 (47 Stat. 446; 48 U.S.C. 321a). This order established easements for certain through, feeder and local roads. Additionally, this also established a "floating easement" concept for new construction if staked on the ground, notices posted at appropriate points along the route, and road maps filed in the proper land office. However, it should be noted that the purpose of the order was:

. . . to 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. (Emphasis added.)

Section 119 of Public Law 85-767 (72 Stat. 898), dated August 27, 1958, entitled "Administration of Federal Aid for Highways in Alaska," transferred jurisdiction for the administration of all roads in Alaska from the Secretary of the Interior to the Secretary of Commerce and provided that the Secretary of Commerce by order or regulation distribute the functions, duties and authority required to administer these roads. This means that the Secretary of Commerce promulgated his own orders and regulations and that orders issued by the Secretary of the Interior would not be binding upon him. Thus, S.O. 2665 was canceled as to the easement procedures:

Finally, Public Law 86-70 (73 Stat. 141), dated June 25, 1959 (the Omnibus Act), repealed section 119 of P.L. 85-767 by section 21(d)(3) and the act of June 30, 1932 (47 Stat. 446; 48 U.S.C. 321a) the authority under which S.O. 2665 was issued by section 21(d)(7). Thus, not only were the procedures for a floating easement canceled by the transfer of

jurisdiction, but the statutory authority for issuing those procedures and the transfer of jurisdiction was repealed by the Omnibus Act. Accordingly, the Secretary of Commerce transferred to the State of Alaska under section 21 only that interest which existed on the ground and did not convey a floating easement.

A history of PLO 1613 lands is essentially similar.

Executive Order 9145, dated April 23, 1942, 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 wide from the terminal point of the highway in the NE $\frac{1}{4}$  of section 36, T. 20 N., R. 5 E., Seward Meridian, to its point of connection with the Richardson Highway in the SE $\frac{1}{4}$  of section 19, T. 4 N., R. 1 W., Copper River Meridian. The area described is generally that area between Chickaloon and Glennallen.

Public Land Order 12, dated July 20, 1942, 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.

Public Land Order No. 84, dated January 26, 1943, 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.

Public Land Order No. 270, dated April 15, 1945, modified PLO 12 by reducing the areas withdrawn by that order to a 10-mile wide strip of land along the then constructed highways. The highways affected by this order were:

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

Public Land Order No. 386, dated July 31, 1947, 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.

Public Land Order No. 601, dated August 10, 1949, revoked E.O. 9145 as to a 200-foot wide 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.

It withdrew lands for highway purposes along the highways given below. The width of each withdrawal is shown to the right of the name of the highway.

Alaska Highway: 600 feet wide  
 Richardson Highway: 300 feet wide  
 Glenn Highway (Anchorage to Glennallen): 300 feet wide  
 Haines Highway: 300 feet wide  
 Tok Cut-off (Tok Junction to Gulkana): 300 feet wide

The above roads were designated as "through roads" by this order. The following roads were designated as feeder roads and a strip of land 200 feet wide was withdrawn for each of them.

Steese Highway	Elliott Highway
✓ McKinley Park Road	Ruby-Long-Poorman Road
✓ Anchorage-Potter-Indian Road	Nome-Solomon Road
Tok-Eagle Road	Kenai Lake-Homer Road
Fairbanks-College Road	Circle Hot Springs Road
Anchorage-Lake Spenard Road	

All other roads were classified as local roads and a strip of land 100 feet wide was withdrawn for each of them.

Public Land Order No. 757, dated October 16, 1951, 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 were those listed below. Also shown is the total width of the withdrawal.

- Alaska Highway - 600 feet
- Richardson Highway - 300 feet
- Glenn Highway - 300 feet
- Haines Highway - 300 feet
- ✓ Seward-Anchorage Highway - 300 feet  
(exclusive of that portion in the Chugach National Forest)
- Anchorage-Lake Spenard Highway - 300 feet
- Fairbanks-College Highway - 300 feet

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

Secretarial Order No. 2665, dated October 16, 1951, issued on the same date as PLO 757, fixed the width of all public highways in Alaska which were established or maintained under the jurisdiction of the Secretary of the Interior. It restated that the lands embraced in "through roads" were withdrawn as shown under PLO 757 above. It also listed all roads then classified as feeder roads and set the right-of-way or easement (as distinguished from a withdrawal) for them at 200 feet. The right-of-way or easement for local roads remained at 100 feet. Additionally, the "floating easement" concept for new construction was provided.

Amendments 1 and 2 to SO 2665 added and deleted various highways to the list of "through roads."

Public Law 892, dated August 1, 1956, provided 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.

Public Land Order 1613, dated April 7, 1958, 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 the withdrawals.

Section 119 of the act of August 27, 1958 (Public Law 85-767), transferred jurisdiction over roads in Alaska from the Secretary of the Interior to the Secretary of Commerce and canceled the "floating easement" concept.

Section 21(d) (3) and 21(d) (7) of the act of June 25, 1959 (the Omnibus Act), repealed section 119 of the act of August 27, 1958 and the act of June 30, 1932 (47 Stat. 446; 48 U.S.C. 321a), and transferred all existing through roads to the State of Alaska.

The act of June 11, 1960 (Public Law 86-512), 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 centerline 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.

State highway rights of way have come into existence by a wide variety of means, the following of which is a brief description:

1) Public Land Order (PLO) 601, 1613, 757 and 2665 being the most common. They provide for right of way of 100 feet for local roads, 200 feet for feeder roads, 300 feet for through roads, and 600 feet for the Alaska Highway over unappropriated, unrestricted Federal land at the time of the order.

2) 47 Act (48 USC 321d) provided that right of way could be taken one time by filing a notice and paying for growing crops and improvements. Not valid in governmental small tracts, Cosby case O'Malley Road; State law of April 14, 1966 eliminated our use.

3) 44 LD 513 is very similar to an ILMA at the federal level. It is between federal agencies and is shown on the status plat. The rights may be assigned to the State and is like a management right.

4) RS 2477. Right of way along trails, section lines, mining roads, etc. Real problem with Native claims, preservation lands, etc. Repealed 1976 many legal problems. Many varied opinions on use and validity.

5) 317 Grants. BLM grants for right of way, has a conflict with State law regarding permits (utility, airspace, etc.) without approval of BLM.

6) ILMT. Predecessors to ILMA.

ILMA. A management agreement issued to State agencies by DNR. Practically useless. A potential legal fight given DNR attitude; we need better interest.

(a) In 1923, Chapter 19 SLA provided a tract four rods wide between each section of land for public highways.

(b) Section 1, Chapter 123 SLA 1951 and amended by Section 1, Chapter 35 SLA 1953. One hundred feet of right of way between sections owned by the territory. Now under AS 19.10.010. (Reference Attorney General Opinion No. 7, December 18, 1969.)

7) Omnibus Act (1959). A quitclaim deed from U.S. Department of Commerce to the State covering highways, pits, airfields, and maintenance camps.

8) Memorandum of Understanding on procedures relating to highways over National Forest lands.

9) Other type of rights of way: townsite plat, subdivision dedications, forest easements, small tract dedications, USS.

LD	Land Decision
RS	Revised Statutes
USC	United States Code
ILMT	Inter-agency Land Management Transfer
ILMA	Inter-agency Land Management Assignment
CFR	Code of Federal Regulations
BLM	Bureau of Land Management
FLPMA	Federal Land Policy Management Act
USDI	United States Department of Interior
DNR	Department of Natural Resources
USS	United States Survey
SLA	Session Laws of Alaska

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RIGHT OF WAY  
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PLO EASEMENT

"An Outline of the History and Implications  
of the PLO Road Systems in Alaska."

By: .

Dennis Hopewell  
Deputy Regional Solicitor

October 1984

I. 1932 Act (48 USC 321-327 (1958))

- A. Congress transferred jurisdiction over Alaskan roads and trails from the Secretary of War to the Secretary of the Interior (from old Board of Road Commissioners to Alaska Road Commission).
- B. 48 USC 321a - provided that the Secretary of the Interior shall ". . . execute . . . all laws pertaining to the construction and maintenance of roads and trails and other works in Alaska. . ."
- C. 48 USC 322 - provided broad authority for designating and maintaining roads and trails throughout Alaska.
- D. DOI had this responsibility for approximately 26 years.
- E. Principle methods of DOI administration were written land orders.
  - 1. S.O.s - Secretarial Orders, principally setting out general procedures.
  - 2. P.L.O.s - Public Land Orders, taking specific action on particular tracts of land.

II. 26 Years of PLOs

- A. Earliest PLOs
  - 1. PLO 12 (7/20/42) - withdrew 40 mile strip of land from Big Delta to Canadian border for construction of part of the Alaska Highway.
  - 2. PLO 270 (4/5/45) - modified PLO 12 to only a 10 mile wide strip along the then completed highway (Alaska Highway from Canada to Big Delta, Glenn Highway from Tok Junction to Gulkana).
  - 3. PLO 386 (7/31/47) - revoked certain PLOs, including 12 and 270, and withdrew 600 feet of land along Alaska and Glenn Highways.
  - 4. All of these earlier PLOs, including ones listed above, plus PLO 84 and E.O. 9145, were revoked and are inoperative.
- B. PLO 601 (Aug. 18, 1949) - The First Major Land Order
  - 1. PLO 601 had the effect of revoking what was still effective in earlier PLOs and provided a clean and new start for PLO easements in Alaska.
  - 2. PLO 601 established 3 categories of road widths for all roads maintained or constructed by DOI in Alaska.

3. Specific widths:
  - a. Through roads - 150 feet each side of the centerline.
    1. Except the Alaska Highway which was 300 feet each side of the centerline.
  - b. Feeder roads - 100 feet each side of the centerline.
  - c. Local roads - 50 feet each side of the centerline.
4. Through and Feeder roads specifically identified.
5. 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.
6. Through roads identified in 601:
  - a. Alaska Highway (with wider width).
  - b. Richardson Highway.
  - c. Glenn Highway.
  - d. Haines Highway.
  - e. Tok Cut-Off.
7. PLO 601 was subsequently modified and revoked but it established the framework for how DOI would administer roads in Alaska by setting up 3 categories of road widths.
8. Some problems caused by PLO 601 which had to be addressed later and which still trouble us to some extent are:
  - a. How was a new highway established.
  - b. What rights did an adjoining landowner have in the underlying fee and to acquire a further interest if the width of the road narrowed.

C. PLO 757 (10/16/51) - The Second Major PLO

1. Revoked the feeder and local roads established by PLO 601.
2. Continued 300 feet each side of the centerline withdrawal for Alaska Highway and 150 feet each side of centerline of the other specified highways adding 3 additional highways.
  - a. Added highways:
    1. Seward to Anchorage Highway (excluding part within forest).
    2. Anchorage-Lake Spenard Highway.

3. Fairbanks-College Highway.

- b. Highway identified as "Tok Cut-Off disappeared from list.

D. S.O. 2665 (10/16/51) - The Third Major Land Order (sometimes identified as D.O. 2665)

1. Issued simultaneous with PLO 757.
2. Purpose:
  - a. To fix width of all public highways established or maintained under jurisdiction of DOI.
  - b. To prescribe a uniform method of establishing Rights-of-Way or easements for public highways.
3. On widths, followed PLO 601 by maintaining the 3 categories of road widths and by specifically identifying through roads and feeder roads.
4. Established rights-of-way or easements, instead of withdrawal, for feeder and local roads.
5. Applied established widths to new roads when survey stakes set and proper notice posted along route.
6. Two amendments to S.O. 2665.
  - a. #1 reduced width of Lake Otis Road to 30 feet each side of centerline.
  - b. #1 changed some feeders to through roads.

E. PLO 1613 (April 7, 1958) - The Fourth and Final Major Land Order

1. In the Act of August 1, 1956, 43 USC 971a-d (70 Stat. 898) Congress provided:
  - a. Authority for the Secretary of the Interior to replace existing highway withdrawals with easements.
  - b. Authority to dispose of the land in the revoked highway withdrawals subject to a highway easement.
  - c. A preference right to adjoining landowners and entrymen to acquire the land in the revoked highway withdrawals.
  - d. Implemented by PLO 1613 - the longest and most complex of the PLOs.
2. PLO 1613 revoked PLO 601 as modified by PLO 757 and removed the withdrawal and reservation status of the through roads listed in PLO 757.



3. PLO 1613 established an easement 150 feet each side of the centerline for the through roads identified in PLO 757.
  - a. This reduced width of Alaska Highway from 600 feet to 300 feet.
  - b. Left unchanged the widths of the other through roads.
4. Only roads affected by PLO 1613 were through roads listed in PLO 601 as modified by PLO 757, in specific:
  - a. Alaska Highway.
  - b. Richardson Highway.
  - c. Glenn (Old) Highway.
  - d. Haines Highway.
  - e. Seward-Anchorage Highway (excluding portions within Chugach National Forest which was not under DOI jurisdiction).
  - f. Anchorage-Lake Spenard Highway.
  - g. Fairbanks-Collegè Highway.
5. The through roads identified only by S.O. 2665 and all feeder and local roads were already only easements, not withdrawals or reservations, and did not come within scope of the Act of August 1, 1956, 43 USC 971a-d or PLO 1613 (in other words, no revoked withdrawals to dispose of).
6. PLO 1613 gave adjoining landowners a preference right to purchase land, generally just to the centerline of highway, subject to a 150 foot highway easement.
7. PLO 1613 gave holders of pending entries the right to amend their entry to include the revoked withdrawal, subject to the highway easement.
8. Future entries and disposals were to include the highway easement.
9. Public sale of unsold lands, those adjoining private lands or entries, was authorized as long as preference right holder given reasonable notice.
  - a. Not aware that this was ever done.

3. A recent opinion from our office also concluded that use of a highway easement for private access went beyond the general highway purposes and was a trespass to the underlying Native allotment:
  - a. This was in context of an FAS grant and not a PLO road.
  - b. No prec. on this point.
4. Disagreement whether Federal or State law determines this issue.
  - a. Our present thinking is that it is determined by Federal law since the road was established under Federal law. See, U.S. v Gates of the Mt. Lakeshore Homes, 732 F.2d 1411 (9th AK 1984).

E. Native Allotments

1. Subject to conveyed omnibus roads.
2. If allottees use and occupancy predates road it is possible to sue to set aside that part of the QCD to the State.
  - a. 6 year stat. of limitations does not bar suit to recover Indian lands.

F. PLO 1613 - see supra for discussion of problems.

- a. No specific legal description or set width was given for any of the roads.
- C. Best description of PLO roads - State of Alaska v. Alaska Land Title Association. 667 P.2d 714 (AK 1983).

#### IV. Existing Legal Problems

##### A. Widths of road

1. Federal view is that this is determined by the old PLOs - which are basically PLO 1613 and S.O. 2665 but can be PLOs 601 or 757 depending on time of entry or patent.
2. Feds agree with State Supreme Court that PLO widths don't attach valid existing rights in existence at time PLOs issued.

##### B. Fee verse Right-of-Way - disagreement whether Omnibus Act QCD conveyed a fee interest or less than fee interest.

1. Consistent position of DOI has been that a less than fee easement was conveyed.
2. The intent of PLO 1613 in 1958 was to finally make all roads in Alaska easements; S.O. 2665 had already done this in 1951 for everything other than specifically listed through roads.
3. Applicable rule of construction is to construe a patent from the U.S.; where no compensation is paid, as narrowly as possible so that nothing passes unless it is explicitly conveyed.

##### C. Unbuild segments of roads

1. It is our position that a road had to either have been in existence or properly marked and posted as required by S.O. 2665 on June 30, 1959 or it was not included in QCD to State.
2. The practical problem affecting a few roads is proving exactly when a road was built or marked.
3. State Supreme Court decisions seem to agree with this analysis.

##### D. Use of Highway Easements

1. Must be for highway purposes.
2. Not pipelines, electric or telephone lines as those uses were not part of the DOI easements transferred to DOC and finally to the State; such uses were accommodated by separate PLOs.

10. Problems with PLO 1613:

- a. Biggest problem arises from an administrative delay of 15 or more years in acting on applications to purchase revoked highway reservations.
  1. By a formal legal opinion BLM was advised that an applicant who had paid the appraised purchase price had vested a right to a patent from the BLM and that the patent must be issued to the applicant even if the applicant was no longer the adjoining owner.
  2. Approximately 80 such potential cases identified.
  3. BLM adjudication of the old applications has resulted in about 15 appeals.
  4. Whether the land within the revoked highway reservation passed to the purchaser of the adjoining land depends entirely on the transaction between the private parties.
- b. This problem only has practical ramifications where the State also vacates all or part of the highway easement transferred to it as it did with the Old Glenn Highway where the easement was reduced from 150 to 100 feet each side of the centerline (hence opening the door to development of a 50 foot wide piece of land).
- c. PLO 1613 purchase rights are still outstanding and to solve the problem this office has recommended revocation of PLO 1613 with a one year deadline for filing all PLO 1613 purchase applications.

III. End of DOI Jurisdiction

A. Transfer to Department of Commerce

1. By an Act of August 27, 1958 Congress transferred authority of Secretary of the Interior over Alaska Roads to Secretary of Commerce (23 USC 119 (1958)) (this was same comprehensive act that established FAS).

B. Transfer to State of Alaska

1. Section 21a of Alaska Omnibus Act of June 25, 1959 (73 Stat. 145) required transfer of the road system from the Secretary of Commerce to the State of Alaska.
2. On June 30, 1959, the Department of Commerce issued a QCD for all of its lands or interests in lands in 176 pages of highways described by FAS numbers and a brief description of where the roads started and ended.

PUBLIC LAW 86-767

August 27, 1958

Section 119 transferred the administrative functions pertaining to the construction, repair and maintenance of the Alaskan highways from the Secretary of Interior to the Secretary of Commerce.

ALASKA OMNIBUS ACT

Repealed Section 119 above and the Act of June 30, 1932.

IN SUMMARY

RESERVED AS EASEMENTS OR RIGHTS-OF-WAY FOR THROUGH ROADS

UNDER S.O. 2665

150' each side of center line

(fee title to be conveyed up to center line of road)

Fairbanks-International Airport Rd.  
 Anchorage-Fourth Avenue-Post Rd.  
 Anchorage International Airport Rd.  
 Copper River Hwy.  
 Fairbanks-Nenana Hwy.  
 Denali Hwy.  
 Sterling Hwy.  
 Kenai Spur from Mile 9 - Mile 14  
 Palmer-Wasilla-Willow Rd.  
 Steese Hwy.

RIGHTS-OF-WAY OR EASEMENTS ESTABLISHED UNDER S.O. 2665

FEEDER ROADS

100' each side of center line

(fee title to be conveyed up to center line of road)

Abbert Rd. (Kodiak)  
 Edgerton Cutoff  
 Elliot Hwy.  
 Seward Peninsula Tram Rd.  
 Taylor Highway  
 Northway Junction to Airport Road  
 Palmer-Matanuska-Wasilla Rd.  
 Glenn Hwy. Junction-Fishhook-Wasilla-Knik Rd.  
 Slana-Nabesna Rd.

Central-Circle Hot Springs-Portage Creek Rd.  
 Manley Hot Springs-Eureka Rd.  
 North Park Boundary-Kantishna Rd.  
 Sterling Landing-Ophir Rd.  
 Iditarod-Flat Rd.  
 Dillingham-Wood River Rd.  
 Ruby-Long-Pooman Rd.  
 Nome-Council Rd.  
 Nome-Bessie Rd.  
 Kenai Spur from Mile 14 - Mile 31  
 Nome-Kougarok Rd.  
 Nome-Teller Rd.

LOCAL ROADS

50' each side of center line  
 (fee title to be conveyed up to center line  
 of road)

All roads not classified as "through" or "feeder".

NOTE: S.O. 2665 was revoked June 3, 1966 - strictly a housekeeping function.

Easements were established - does the date of revocation also revoke  
 all the easements? We don't think - see PLO 757.

EASEMENTS OR RIGHTS-OF-WAY UNDER PLO 1613

(fee title of lands to be conveyed  
 to centerline of road)

THROUGH ROADS

150' each side of the centerline

Alaska Hwy  
 Richardson Hwy  
 Glenn Hwy  
 Haines Hwy  
 Seward-Anchorage Hwy  
 Anchorage-Spenard Hwy