

To: JAM
From: JFB
RE: Acquisition of existing ROW

3/5/91

Before Denis left on vacation, he asked me to refer to you the problem he feels exists with the method of noting the area that is acquired with each parcel. This is not a new problem and appears to have been a source of confusion for many years. The question arises in three phases of the ROW acquisition process:

1. Notation of acquisition are in the ownership blocks on the ROW plans.
2. The treatment of existing ROW or easements by appraisals.
3. How the area of acquisition is stated on the conveyance document.

A. ROW Ownership blocks: A review of ROW plans for the past many years indicates that the typical ownership block would state the area of "take" and the area of "remain". There was typically no clear statement as to whether the area of "take" included areas of existing ROW or not. For the past few years, a general note was added to ROW plans to make clear that "The take areas as indicated in the ownership block are exclusive of any areas shown as existing right of way." Therefore the take as shown in the ownership block was the "net" area. Existing ROW was typically shown on the plans by cross hatching. Also on more recent plans (Badger Road) areas of existing ROW within individual parcels were labeled on the plan sheet. Our newest plans, (Parks/Chena Ridge) will be using an updated ownership block borrowed from Anchorage in order to provide more detail including the area of the larger parcel, the area of the acquisition including existing easements, the net area, and the remain. This will allow the appraiser/negotiator to identify net and gross areas more easily.

B. One of the questions under recent discussion has been the valuation of existing ROW by appraisals. As typically in the past these easements were given no value for the acquisition, it is understandable that the only area of concern was the "net" area. If we follow Central's lead in assessing a nominal value to existing easements, we will have to make clear to all of our staff exactly how these areas are being addressed so we are all playing by the same rules.

C. I reviewed several conveyance documents from our most recent to some 30 years old and found primarily 3 methods of identifying the area acquired. The first stated the area to be acquired and:

"TOGETHER WITH, all singular, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining."

This suggests that if there were existing easements within the area of acquisition, the underlying fee would be included in the conveyance.

The second method stated the gross area, easement area, and the net area:

"Containing 5.503 acres, more or less, of which 3.261 acres, more or less, are contained in FAP Route 62 and adjacent properties. Net area equals 2.242 acres, more or less."

The third method, and the method now used, states:

"said parcel containing 935 square feet, more or less, in addition to existing right of way, is hereby conveyed to the State of Alaska, DOT&PF"

This statement suggests that if there is any existing ROW within the acquisition area, that the underlying fee is also conveyed.

Denis is concerned that by not clearly distinguishing the gross, existing easment, and net areas, that they might not be addressed correctly by appraisals and possibly not acquired.

While I agree that whatever we do should be as clear as possible in everybody's mind, there are three reasons why I do not believe this is a critical problem.

1. Our existing ROW is a patchwork of interests. If our goal was to obtain a consistent fee interest in all of our highways, then we would upgrade all of our ROW for a project rather than only those areas needing widening. Therefore, if our attempts to upgrade existing easments to fee by using an appropriate statement in the conveyance document failed, so what.
2. Generally, common law dictates that unless specifically stated to the contrary, the underlying fee of a right of way adjoining the conveyed parcel whose property line extended into the right of way would be conveyed.
3. Our new ownership block will clarify the relationship of the existing easements to the gross and net areas.

If Denis feels it is necessary to modify our acquisition documents to make the areas equally clear, it should be on a statewide basis.