

Office Memorandum • UNITED STATES GOVERNMENTTO : Files

DATE: August 25, 1958

FROM : *H. H. Krevor*
H. H. Krevor

SUBJECT: Federal Condemnation--Civil Action 9920, Glenn Highway, Alaska

Mr. Raugust called from Juneau in response to my wire of August 19 and telephone call of August 20 regarding the proposed settlement for this tract in amounts ranging from \$6000 to \$7500, inclusive of interest.

The revised appraisal to which I refer in my letter to Mr. Morton dated August 22, 1958, shows a value of \$1600 for the land, \$900 severance damages to remaining land, and \$2500 as severance damage to a building rendered useless because of the road's cutting off the flight strip from the lodge.

Mr. Swick and Mr. Raugust both recommend settlement in an amount not in excess of \$6200 and will confirm this in writing next week.

5

Alaska Land 3-16
Files
Alaska Land 2

AL-21

August 27, 1958

Ferry W. Horton
Assistant Attorney General
U. S. Department of Justice
Washington 25, D. C.

Dear Mr. Horton:

Reference is made to the preliminary opinion of the title of the Attorney General dated March 26, 1957, concerning 49.19 acres of land acquired from Mrs. Mae Harrington as a source of gravel for highway purposes in Homer Recording District, Alaska. Your file reference is 33-3-161.

The curative action requested in the preliminary opinion has been accomplished and evidence thereof, together with the other data required by the opinion, are contained in the enclosed file. It has been determined that objections 4 and 5, as set out in the opinion, will not interfere with the contemplated use of the land.

It is requested that a final opinion of title to this land be rendered by the Attorney General, and the file returned to us.

Sincerely yours,

C. W. ENFIELD
General Counsel

By: Henry H. Krewer
Acting Assistant General Counsel

Enclosure

HHK:revor:ram
cc: Mr. C. W. Enfield
Files (2) ✓
Lands
Chron

RG 30, Bur. of Public Roads
E. 6 D, Gen Corr + Related Recs, 1955-59
Box 1131

30-03

BUREAU OF PUBLIC ROADS

(Alaska) Land 3

Mr. A. F. Ghiglione, Acting Division
Engineer, Juneau, Alaska

November 27, 1956

H. E. Cunningham

H. E. Cunningham, Acting Solicitor
Washington, D. C.

KFQD Road, Anchorage, Alaska

Reference is made to Mr. Flint's memorandum of October 30, 1956, concerning the KFQD Road across lands owned by Mr. Raymond E. Plummer of Anchorage, Alaska.

A review of the file indicates that the Alaska Road Commission has acquired a prescriptive right over Mr. Plummer's lands for maintenance of the road in question, however, the width of such prescriptive right is not delineated. It is noted that the Field Solicitor for the Department of Interior, Juneau Region, has discussed this matter with Mr. Plummer, and Mr. Plummer is willing to give an easement over his lands to the edge of the shoulder of the existing road if the Government will agree to compensate him for any additional extension of the road which will affect his lands.

A response might be made to Mr. Plummer's letter of April 3, 1956, which does not appear to have been answered, along the line that the Bureau of Public Roads would be willing to accept the grant of an easement from Mr. Plummer for a one hundred-foot right-of-way, 50 feet on each side of the centerline, to clarify the width of the right-of-way. An easement to the edge of the shoulder of the existing road certainly would not be adequate.

Please keep us advised of any further developments in this matter.

EXPhillips/dws
cc: Central Files (2) ✓
Mr. Ghiglione —
R/W Branch —
Legal —

11/28/56

11-2-56

BUREAU OF PUBLIC ROADS

Office Memorandum • UNITED STATES GOVERNMENT

Alaska Fund 3
610.411.1-3 KFQD. Road

TO : Mr. S. K. Booth, Acting Solicitor
Washington, D. C. 10

FROM : M. M. Flint, Division Engineer
Juneau, Alaska *MMF*

SUBJECT: File on KFQD Road, Anchorage

DATE: October 30, 1956

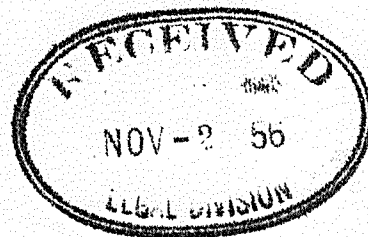
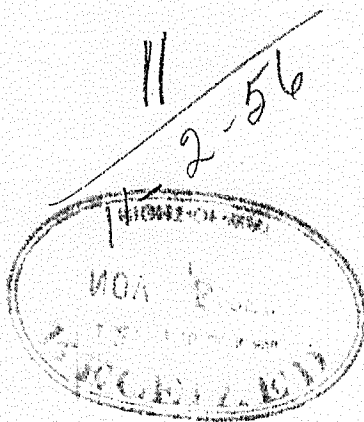
Mr. Cunningham has requested that our file concerning the KFQD Road, Anchorage, be referred to you for review and comments.

Mr. Plummer, an attorney residing in Anchorage, who is the contract owner of some real property contiguous to the KFQD Road, alleges that said road was constructed, without legal authority, by the Alaska Road Commission, over property being purchased by Mr. Plummer. Print attached (2 copies) shows location of Plummer property in relation to KFQD Road to the south and Spenard Road to the east of Lot 4, Block #3 of Hansen's Subdivision.

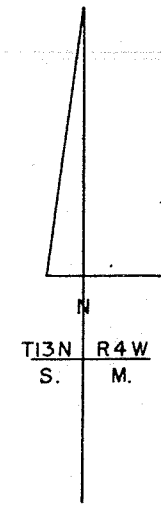
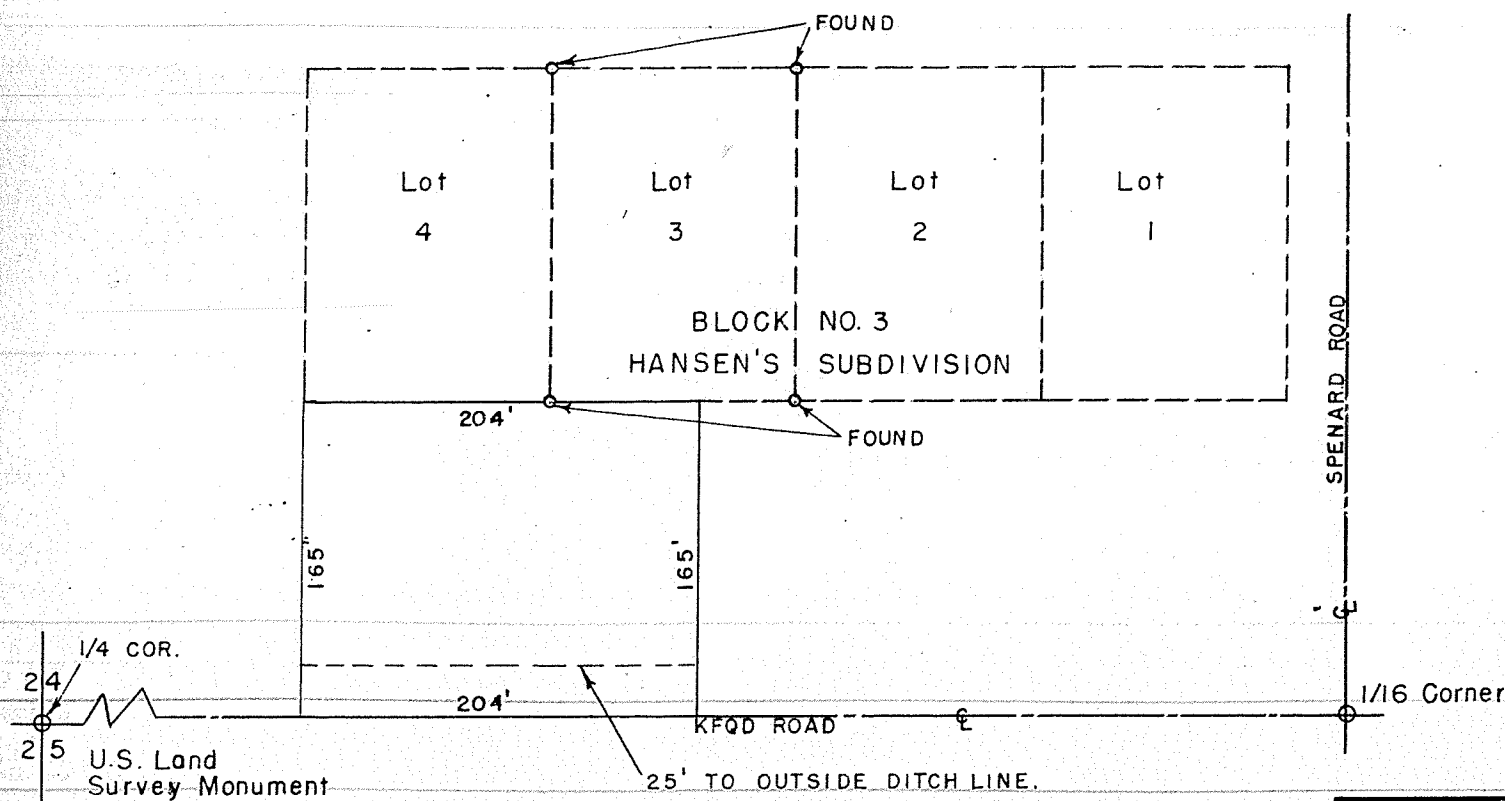
On April 6, 1956, the file on this case was referred to the Attorney-Adviser, Department of the Interior, Juneau, and thereafter by him to the Field Solicitor, Department of the Interior, Anchorage, for comments and opinion.

Attached hereto is photocopy file containing correspondence directly relating to the KFQD Road. The master file is retained in Division Ten files, Juneau.

Attachments



RG 30, Bur. of Public Roads
E. 6 D, Gen Corr + Related Recs, 1955-59
Box 1131



UNITED STATES
 DEPARTMENT OF COMMERCE
 BUREAU OF PUBLIC ROADS
 DIVISION TEN
 ANCHORAGE, ALASKA

RAY PLUMMER PROPERTY

APPROVED: R. A. Hatchell
 HIGHWAY ENGINEER

SCALE: 1" = 100' DATE: 10-25-56

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 Box 1131

Alaska Land 3

FORM CD-14 (10-27-53)	DEPARTMENT OF COMMERCE	DATE
TRANSMITTAL SLIP		<i>2/06</i>
TO:	<i>Judge Phillips</i>	REF. NO. (If any)
FROM:	<i>Booth</i>	REF. NO. (If any)
ACTION		
<input type="checkbox"/> NOTE AND FILE	<input type="checkbox"/> PREPARE REPLY FOR MY SIGNATURE	
<input type="checkbox"/> NOTE AND RETURN TO ME	<input checked="" type="checkbox"/> TAKE APPROPRIATE ACTION	
<input type="checkbox"/> RETURN WITH MORE DETAILS	<input type="checkbox"/> PER YOUR REQUEST	
<input type="checkbox"/> NOTE AND SEE ME ABOUT THIS	<input type="checkbox"/> SIGNATURE	
<input type="checkbox"/> PLEASE ANSWER	<input type="checkbox"/> FOR YOUR INFORMATION	
<input type="checkbox"/> FOR YOUR APPROVAL	<input type="checkbox"/> INVESTIGATE AND REPORT	
<input type="checkbox"/> PER OUR CONVERSATION		
COMMENTS: <i>Mr. Crenshaw suggests that we should probably stand pat and let the land owner take action. I have not read the file.</i> <i>Booth</i>		

COMM-DC-3822

FORM CD-14 (10-27-53)	DEPARTMENT OF COMMERCE	DATE
TRANSMITTAL SLIP		<i>11/21/56</i>
TO:	<i>H. E. Cunningham</i>	REF. NO. (If any)
FROM:	<i>C. W. Phillips</i>	REF. NO. (If any)
ACTION		
<input type="checkbox"/> NOTE AND FILE	<input type="checkbox"/> PREPARE REPLY FOR MY SIGNATURE	
<input type="checkbox"/> NOTE AND RETURN TO ME	<input type="checkbox"/> TAKE APPROPRIATE ACTION	
<input type="checkbox"/> RETURN WITH MORE DETAILS	<input type="checkbox"/> PER YOUR REQUEST	
<input type="checkbox"/> NOTE AND SEE ME ABOUT THIS	<input type="checkbox"/> SIGNATURE	
<input type="checkbox"/> PLEASE ANSWER	<input type="checkbox"/> FOR YOUR INFORMATION	
<input type="checkbox"/> FOR YOUR APPROVAL	<input type="checkbox"/> INVESTIGATE AND REPORT	
<input type="checkbox"/> PER OUR CONVERSATION		
COMMENTS: <i>Do you agree? if so will you initial?</i>		

COMM-DC-3822

RG 30, Bur. of Public Roads
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Box 1131

IN THE U. S. DISTRICT COURT FOR THE DISTRICT OF ALASKA

DIVISION NUMBER THREE AT ANCHORAGE

ANCHORAGE SAND AND GRAVEL COMPANY,)
INC., an Alaskan Corporation,)
)
Plaintiff,)

vs.)

No. A-8385)

VERNON C. SCHUBERT, DOROTHY SCHUBERT,)
CLARENCE D. SMITH, JR., LILLIAN E. SMITH,)
EUGENE E. SAXTON, AND GRACE D. SAXTON,)
ELLSWORTH E. SAXTON, AND GRACE D. SAXTON,)
co-partners doing business as)
NORTHERN CONSTRUCTION ASSOCIATION:)
SUPERIOR SAND AND GRAVEL MINING CO.,)
INC., and the TERRITORY OF ALASKA,)
)
Defendants.)

SUPERIOR SAND AND GRAVEL MINING)
CO. INC., a corporation,)
)
Plaintiff,)

vs.)

No. A-8422)

VERNON C. SCHUBERT, DOROTHY SCHUBERT,)
CLARENCE D. SMITH, JR., LILLIAN E. SMITH,)
EUGENE E. SAXTON, DOROTHY M. SAXTON,)
ELLSWORTH E. SAXTON, AND GRACE D. SAXTON,)
associated as the NORTHERN CONSTRUCTION)
ASSOCIATION, and ELLSWORTH E. SAXTON, as)
agent for such association, ANCHORAGE SAND)
AND GRAVEL COMPANY, INC., a corporation,)
and the TERRITORY OF ALASKA,)
)
Defendants.)

SUPERIOR SAND AND GRAVEL MINING)
CO. INC., a corporation,)
)
Plaintiff,)

vs.)

No. A-8423)

O P I N I O N)

VERNON C. SCHUBERT, DOROTHY SCHUBERT,)
CLARENCE D. SMITH, JR., LILLIAN E. SMITH,)
EUGENE E. SAXTON, DOROTHY M. SAXTON,)
ELLSWORTH E. SAXTON AND GRACE D. SAXTON,)
associated as the NORTHERN CONSTRUCTION)
ASSOCIATION, and ELLSWORTH E. SAXTON, as)
agent for said association, ANCHORAGE SAND)
AND GRAVEL COMPANY, INC., a corporation,)
and the TERRITORY OF ALASKA,)
)
Defendants.)

Filed September 8, 1953

J. L. McCARREY, Attorney for Plaintiff Anchorage Sand and Gravel Company, Inc.

JOHN E. MANDERS, Attorney for Superior Sand and Gravel Mining Co. Inc.

E. L. ARNELL, Attorney for Defendant Northern Construction Association.

THOMAS B. STEWART, Assistant Attorney General of Alaska, for the Territory of Alaska.

RG 30, Bur. of Public Roads
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Box 1131

The foregoing actions were brought under the provisions of 30 USCA 30, to determine the right of possession under the mining laws of the United States to a part of the public lands reserved to the Territory of Alaska for school purposes by the Act of March 4, 1915, 38 Stat. 1214, 48 USCA 353. Since the consolidation of these actions, the defendant, Territory of Alaska, has moved to dismiss on the following grounds that:

(1) The discovery of sand and gravel is not, and was not at the time of making the alleged mineral discoveries, a legal basis sufficient to support the location of mineral claims on the lands involved herein under the laws of the United States.

(2) Ordinary sand and gravel are not "minerals" within the meaning of that term as used in the general mining laws of the United States.

(3) The land embraced within the placer mining claims alleged in the complaint was not at the time of their location available to such location because of prior appropriation and use of the land by the United States of America and the Territory of Alaska for purposes of support of the common schools of Alaska and for other purposes.

(4) Public lands of United States, reserved by Act of Congress from sale or settlement for the support of the common schools of Alaska, are not subject to placer mining locations ~~xxx~~ for sand and gravel.

The land involved is adjacent to the City of Anchorage and like that upon which the City is built, consists almost exclusively of gravel, which is valuable not only because of its proximity to the City but also because of construction activities.

To permit of the disposal of timber and the extraction of minerals from school lands under the mining and mineral leasing laws of the United States, the Act of March 7, 1939, 53 Stat. 1343 was passed. This legislation was implemented by Chapter 101 SLA 1933, Sections 47-2-78, et seq., ACLA 1949, empowering the Governor to lease these lands.

By October, 1950, the land here involved had been leased, and gravel was being removed from a portion of it, by the Anchorage Sand & Gravel Co. Inc., under a contract entered into with the Department of the Interior, pursuant to the authority conferred upon that Department by the Act of July 31, 1947, 61 Stat. 681, 43 USCA 1185, 1187 commonly referred to as the "Materials Act". Manifestly, the removal of gravel would gut the land and render it worthless.

In November and December, 1950, the Anchorage Sand & Gravel Co. Inc., the Superior Sand & Gravel Mining Co. Inc. and the Northern

Construction Association, parties to the actions now consolidated, also made locations of placer claims on the land under claims of discovery of sand and gravel. When the Northern Construction Association applied for a patent, the other claimants and the Territory of Alaska filed adverse proceedings in the land office and, in support thereof, the instant actions were instituted in this Court in which the Territory of Alaska was named as defendant.

Two questions are presented:

- (1) Whether gravel is a "valuable mineral deposit" under the mining laws of the United States and, if so,
- (2) Whether school lands in Alaska are open to location under the mining laws.

So far as the first question is concerned, the problem appears to be primarily one of ascertaining Congressional intent rather than of etymology. Section 22 of Title 30 USCA provides that:

"Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States."

The state of the precedents is such that the question may be regarded as an open one, to be resolved upon a consideration of factors bearing on intent in the light of history and such authorities as are available.

It is undisputed that the entire area involved, as well as contiguous areas, consists of sand and gravel possessing no particular property or characteristic which would enhance their value above that which is attributable to proximity of the land to Anchorage and the scene of construction activities.

Within a year after the enactment of the mining law of 1872, the view of the Land Department as to the meaning of the word "mineral" was set forth in a circular of instructions as follows:

1 Lindley on Mines, 163, 3rd ed.:

In the sense in which the term "mineral" was used by Congress, it seems difficult to find a definition that will embrace what mineralogists agree should be included. . . From a careful examination of the matter, the conclusion I reach as to what constitutes a valuable mineral deposit is this: That whatever is recognized as a mineral by the standard authorities on the subject, where the same is found in quantities and quality to render

the land sought to be patented more valuable on this account than for the purpose of agriculture, should be treated by the office as coming within the purview of the Mining Act of May 10, 1872.

This view was followed in Zimmerman v Brunson (1910), 39 L.D. 310.

A like conclusion was reached in a well reasoned opinion in United States v Aitken (1913), 25 Phil. 7. However, Loney v Scott (1910), 112 Pac. 172, to the contrary, appears to extend the meaning of "mineral" to anything of value extracted from the land. Aside from the fact that this would seem to be a rather dubious test, it may perhaps be accounted for by the fact that that Court at page 175 mistook a statement of the theory of one of the parties in Northern Pacific Ry. v Soderberg at 188 U.S. 534, for the opinion of the Supreme Court. Perhaps influenced by Loney v Scott, the Land Department in Layman v Ellis (1929) 52 L.D. 714, overruled the Zimmerman case and adhered to that decision in 54 L.D. 294 and United States v Barngrover (1942) 57 L.D. 533.

It is difficult for me to avoid the conclusion that in these cases undue weight was given to the value of gravel, as reported by the United States Geological Survey, and that the rule there enunciated may be attributed to a shift of emphasis from composition of the substance alleged to be mineral to value. I am inclined, therefore, to reject this criterion and to concur in the view that sand and gravel are not minerals, particularly where the location is made on land consisting almost exclusively of gravel, not only for the reasons stated by the authorities cited, but also because effect must be given to the implications of the word "discovery" in 30 USCA 23 and the clause "and the lands in which they (mineral deposits) are found" in Section 22 of that title. Congress must have had in mind minerals which exist separately and differ from the surrounding matter in which they are found and from which they may be taken only by extraction and mining, United States v Iron Silver Mining Co., 128 U.S. 673, 679; Hendler v Lehigh Valley R. Co., 209 Pa. 256, 58 Atl. 486, 487. Undoubtedly in requiring a discovery of mineral as a prerequisite to the appropriation of the land in which it is found, Congress intended to limit such appropriation and yet stimulate prospecting by rewarding the prospector who found a valuable mineral. In the traditional sense, it is difficult to conceive of a discovery not attendant with great hardship, effort and expense. 2 Lindley on Mines, Section 437, 3rd ed. To say that a

discovery of gravel may be made in a large area of gravel open to view is to say that there can be a discovery of water in Cook Inlet or snow on Mt. McKinley. Such a perversion of the term would not only obliterate the safeguard referred to and result in the appropriation of large areas of the public domain to the detriment of the public, but it would also ignore the clause "and the lands in which they are found" in Section 23, of Title 30. It is inconceivable that this was within the contemplation of Congress. Further support for this view may be found in the fact that by the Act of July 31, 1947, 61 Stat. 681, 43 USCA 1185, et seq., Congress authorized the disposition of sand, gravel, stone and clay from the public land. Since this act bears a close analogy to the mineral lands leasing act, it would appear to follow that sand and gravel, like the minerals specified in the latter act, were not intended to be disposed of under the mining laws, Cf. Matter of Van Dolah A-26443, decided Oct. 14, 1952, by the Interior Department, Dunbar Lime Co. v Utah-Idaho Sugar Co., 17 Fed.(2) 351, 355-6, Holman v State, 41 L.D. 314.

The questions argued on behalf of Northern Construction Association and the Superior Sand and Gravel Mining Co., Inc., in opposition to the motion to dismiss, are either not presented by the record or are not involved and, hence, do not merit extended discussion.

I am of the opinion, therefore, that the motion should be granted.

/s/ George W. Folta
District Judge

UNITED STATES DEPARTMENT OF THE INTERIOR
ALASKA ROAD COMMISSION

ROUTING SLIP

TO—	NAME	ADDRESS
1.	<i>W.B. [initials]</i>	
2.	<i>R.D.</i>	
3.		
4.		

FOR—

- | | |
|---|---|
| <input type="checkbox"/> Approval | <input type="checkbox"/> Necessary action |
| <input type="checkbox"/> As requested | <input type="checkbox"/> Note and return |
| <input type="checkbox"/> Correction | <input type="checkbox"/> Recommendation |
| <input type="checkbox"/> Filing | <input type="checkbox"/> See me |
| <input type="checkbox"/> Handle directly | <input type="checkbox"/> Signature |
| <input type="checkbox"/> Immediate action | <input type="checkbox"/> Your comment |
| <input type="checkbox"/> Initials | <input type="checkbox"/> Your information |

FROM <i>W.B.</i>	DATE <i>Oct 3</i>
------------------	-------------------

Remarks: *Hold for Cunningham to review. I recommend Bureau take no action (as suggested by Adams) - If Plummer sees - well & good!*

[Signature]

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Box 1131

UNITED STATES
DEPARTMENT OF THE INTERIOR
ALASKA ROAD COMMISSION

ROUTING SLIP

TO—	NAME	ADDRESS
1.	<i>[Signature]</i>	
2.	<i>AFG</i>	
3.		
4.		
5.		

FOR—

- | | |
|--|---|
| <input type="checkbox"/> Approval | <input type="checkbox"/> Necessary action |
| <input type="checkbox"/> As requested | <input type="checkbox"/> Note and return |
| <input type="checkbox"/> Correction | <input type="checkbox"/> Recommendation |
| <input type="checkbox"/> Filing | <input type="checkbox"/> See me |
| <input type="checkbox"/> Handle directly | <input type="checkbox"/> Signature |
| <input type="checkbox"/> Immediate action | <input type="checkbox"/> Your comment |
| <input type="checkbox"/> Initials | <input type="checkbox"/> Your information |
| <input type="checkbox"/> Prepare reply for signature of: _____ | |

Answer or acknowledge before _____

FROM *[Signature]* | DATE *9/30/56*

Remarks:

1. I believe a court test would sustain a prescriptive easement of a width commensurate with the classification.

ARC Form 158 (Existing stock may be used)
Nov. 1953

16-00638-1 GPO

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of the road according to
the standards

2. This would mean
a R/W of 100' or 50'
on each side of a
cadastrally determined
center line.

3. I would recommend
that, because the
prescription right has
already been legally
established we do
nothing more and
therefore force Plummer
to sue the USA which
we will not do in
any form.



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
Juneau Region
Anchorage Field Office
P.O. Box 480
Anchorage, Alaska

September 12, 1956

Comm R.	
Chf. Engr.	W/97
Admrv.	W/97
Opns.	
B. & C.	
B. & F. Off.	
Road Br.	
Bridg. Br.	
Contract	
Program Off.	
Finance	
Pers.	
Supply	
W/E OH	
Safety	
M. & R.	

Memorandum

To: Director, Alaska Road Commission
From: Office of the Regional Solicitor
Subject: Right-of-way for the KFQD Road, Anchorage, Alaska

Mr. Raymond E. Plummer, an attorney residing in Anchorage, Alaska, by letter dated September 15, 1952, notified your office that the KFQD Road was constructed by the Alaska Road Commission over property being purchased by Mr. Plummer without legal authority, and requested your advice concerning the Road Commission's position in this matter. The pertinent portion of Mr. Plummer's letter reads as follows:

"Please be advised that I am purchasing a tract of land under a real estate contract from Lief J. Anderson and Charlotte E. Anderson. This tract is located in the Anchorage Recording Precinct, Third Judicial Division, Territory of Alaska, and is described as follows:

"Using the southwest corner of Lot Four (4), Block Three (3), of the Hansen Subdivision, Section Twenty-four (24), Township Thirteen North (T 13 N), Range Four West (R 4W), Seward Meridian as a known point and point of beginning, thence South 165 feet to a point; thence East 204 feet to a point; thence North 165 feet to a point; thence West 204 feet to the point of beginning;

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

"Prior to the time that I entered into a contract to purchase this tract of land, the Alaska Road Commission, without Mr. Anderson's permission caused a road, commonly known as KFQD Road, to be built across a portion of this land. During the past summer this roadway was widened without my permission or the permission of Mr. Anderson so that KFQD Road now

14 pages 07.8 7/27

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occupies a strip of my land that is approximately twenty-one feet (21') in width and two hundred four feet (204') in length. Be advised that the southern boundary line of my property extends approximately to the center line of KFQD Road or, in other words, a distance of one hundred sixty-five feet (165') south of the north boundary line thereof. I am unaware of any statute, rule, or regulation under which the Alaska Road Commission would have authority to appropriate my land for road purposes, without my permission or without condemnation proceedings."

The entire case file concerning this subject has been submitted to this office with a request for an opinion as to the validity of Mr. Plummer's assertions.

The material in the case file and my discussions with Mr. Larry H. Hatchett, Assistant District Engineer, Anchorage District, reveal that the KFQD Road was constructed by the Road Commission in 1945; that such road originates at the Spenard Road and follows the section line common to Sections 24-25, and 23-26, T. 13 N., R. 4 W., S.M. Alaska, and that when the road was constructed in 1945 it was 28' wide from shoulder to shoulder, and one and six tenths miles in length. The file also reveals that no rights-of-way or easements were obtained over the lands on which the road was constructed. Correspondence from the District Engineer, Anchorage District, indicates that it was the District Engineer's contention that the road construction over the lands in question, without obtaining rights-of-way or easements, was authorized by reason of the grant of public lands for highway purposes set forth in the act of July 26, 1866 (14 Stat. 253, 43 U.S.C. 932).

The records in the Anchorage Land Office and the U. S. Commissioners Office, Anchorage, Alaska, reveal that the lands referred to in Mr. Plummer's letter supra, were originally a part of a homestead described as the S¹/₄SE¹/₄, Section 24, T. 13 N., R. 4 W., S.M. Alaska, which was patented to a Mr. Henry Easterly in the year 1926. A review of the patent issued to Mr. Easterly reveals that the patent contained no reservations for highway or road purposes. The Land Office records also establish the fact that Mr. Easterly made application to enter the above mentioned homestead on November 17, 1922, and that the entry was allowed by the Manager of the Anchorage Land Office on November 18, 1922.

From the foregoing facts it can be seen that the lands now claimed by Mr. Plummer were patented without a reservation for road or highway purposes many years before the road in question was constructed over such lands by the Alaska Road Commission. It is therefore necessary to determine what right, if any, the Alaska Road Commission had in 1945 to go upon the lands claimed by Mr. Plummer and construct the KFQD Road.

The Alaska Road Commission was created by the act of Congress of January 27, 1905 (33 Stat. 616), as amended by the acts of May 14, 1906 (34 Stat. 192), and June 30, 1932 (47 Stat. 446; 48 U.S.C. 322). The Powers and duties of the Commission as set forth in the act as amended, are as follows:

"* * * The said board shall have the power and it shall be their duty, upon their own motion or upon petition, to locate, lay out, construct, and maintain wagon roads and pack trails from any point on the navigable waters of said district to any town, mining or other industrial camp or settlement, or between any such towns, camps, or settlements therein, if in their judgment such roads or trails are needed and will be of permanent value for the development of the district; but no such road or trail shall be constructed to any town, camp, or settlement which is wholly transitory or of no substantial value or importance for mining, trade, agricultural, or manufacturing purposes. The said board shall prepare maps, plans, and specifications of every road or trail they may locate and layout.* * *"

321d) 1/ Prior to the act of July 24, 1947 (61 Stat. 448; 48 U.S.C. the easements and rights-of-way for roads to be constructed by the Alaska Road Commission pursuant to the act of January 25, 1905 as amended, were obtained by virtue of the act of July 26, 1866 (14 Stat. 253, 43 U.S.C. 932), and this is the only law that could possibly be relied upon as authority for the construction of the KFQD Road. Clark v. Taylor, 9 Ala. 298. An examination of the 1866 law and the court decisions construing such law is therefore necessary to determine whether or not there was authority to construct the KFQD Road.

The act of July 26, 1866, reads as follows:

"The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted."

Although this act by its terms may appear to have created an existing right-of-way for highway purposes over all public lands in existence at the time the act was passed, the court have held that this act is merely an offer by the United States to dedicate any unreserved

1/ This act reads in part 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 any State created out of the Territory of Alaska."

public lands for the construction of highways, which offer must be accepted to become effective. Lovelace v. Hightower (1946) 168 P.(2d) 664, 50 N.M. 50. The courts have held that an acceptance of the offer of dedication becomes effective upon construction of a highway or establishment thereof by public user (Bishop v. Hawley (1925) 238 P. 284, 33 Wyo. 271) or by some positive act of the proper authorities manifesting an intent to accept the offer (Costain v. Turner County S.D. (1949) 36 N.W.(2d) 382). The courts have also held that the period in which the offer of the United States to dedicate public land for highway purposes in accordance with this act ended when a patent covering the land in question was issued (Hall v. Stephens (1945) 158 P.(2d) 207; 68 Cal. App. 2d 843), and that the effective period for acceptance of the dedication also ended when the lands were entered for homestead purposes. Leach v. Manhart (1938) 77 P.(2d) 652, 102 Colo. 129; Korf v. Itten (1917) 169 P. 148, 64 Colo. 3; Flint and P.M. Ry. Co. v. Gordon (1879) 2 N.W. 648, 41 Mich. 420; Atchison E. Co. v. Richter (1915) 148 P. 478, 30 N.M. 278.

The foregoing facts have revealed that the lands in question were entered for homestead purposes on November 18, 1922, and patented in 1926, and that the KFQD Road was not constructed until 1945. Therefore, if the foregoing law is applied to these facts it can readily be seen that a valid right-of-way or easement could not have been established over the lands in question by such road construction or by public user prior to 1945 because the offer made by the United States to dedicate public lands for highway purposes by virtue of the act of 1866 was not accepted by either of the foregoing methods prior to the revocation of such offer, which revocation became effective when the lands were entered for homestead purposes. Leach v. Manhart, supra. In order to validate the road construction under the 1866 act the acceptance of the offer prior to revocation must therefore have been accomplished by the other generally accepted method; namely, by some positive act of the proper authorities manifesting an intent to accept the offer. The only manifestation of such intent that I could find is set forth in Chapter 19, Session Laws of Alaska (1923). This section reads as follows:

"Strip between sections reserved.

A tract of four rods wide between each section of land in the Territory is hereby dedicated for use as public highways, the section line being the center of such highway. If such highway shall be vacated by any competent authority the title to the respective strip shall inure to the owner of the tract of which it formed a part by the original survey."

In the case of Costain v. Turner County, supra, the Supreme Court of South Dakota in construing a very similar territorial statute held

that such a statute was an acceptance of the offer of the United States to dedicate public lands for highway purposes in accordance with the 1866 act and that the dedication became effective as of the date the territorial statute was passed. The pertinent portion of the opinion reads as follows:

"(1) In the year 1866 Congress declared that: 'The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.' § 8, Ch. 262, 14 Stat. 253, 43 U.S.C.A. § 932. The legislature of Dakota Territory enacted Ch. 33 S.L. 1870-1871 stating: 'That hereafter all section lines in this Territory shall be and are hereby declared public highways as far as practicable: * * *.' The law in effect at the time provided that public highways along section lines 'shall be sixty-six feet wide and shall be taken equally from each side of the section line' unless changed as provided by law. § 27, Ch. 13, S.L. 1867-1868 as amended by Ch. 14, S.L. 1874-1875; S.D.C. 28.0105. The federal statute made the dedication, the territorial statute accepted it, and at the same time designated the location of highways."

For other cases where similar territorial statutes have been construed in the same manner see: Huffman v. Board of Suprs. of West Bay TP Benson County (1921), 182 N.W. 459, 47 N.D. 27; Walbridge v. Russell County 74 Kan. 341, 86 Pac. 473; Hillboro Nat. Bank v. Ackerman (189 N.W. 657, 48 N.D. 1179); Schwardtla v. Placer County 41 Pac. 448, 108 Cal. 589; Faxon v. Lollie Civil TP. 163 N.W. 531, 36 N.D. 634; Writ of error dismissed 39 S.Ct. 491, 250 U.S. 634, 63 L.Ed. 1182.

It therefore appears that the territorial statute passed in 1923 was an effective acceptance of the offer for highway rights-of-way along section lines in accordance with the 1866 act; however, it is to be noted that the homestead entry on the lands in question was made in 1922, and that the offer to dedicate rights-of-way along section lines was not accepted until 1923. As indicated above, the offer to dedicate must be accepted before the lands have been entered for homestead purposes in order to create a valid existing right-of-way or easement. Korf v. Ittem and Leach v. Manhart, supra. In the Korf case supra, the Board of County Commissioners of Weld County, Colorado, by virtue of authority vested in them by state statute, ordered and declared that a designated width along all section lines of a certain area were reserved for highway purposes. After this order was passed, officials of the County by virtue of this order attempted to build a road across certain fenced lands claimed by Korf. It was the County's contention that inasmuch as the lands had not been patented prior to the issuance of the order by the Board of County Commissioners they were public lands, and a right-of-way for highway purposes was created in accordance with the act of 1866. Korf brought this action to enjoin the County from building the road. It was Korf's contention that at the time the County Commissioner passed the order he had already established a valid homestead entry on the lands

in question and that the lands were therefore no longer public lands subject to the act of 1866. In upholding Korf's contentions, the Supreme Court of Colorado held in part as follows:

* * * "The question for determination concerning these eight quarters is: Were they at the time of the board's order a part of the public domain within the meaning of section 2477, Revised Statutes of the United States (U.S. Comp. St. 1916, § 4919)? It reads:

"The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted."

"Section 5834 of our Revised Statutes 1908 provides that the board of county commissioners may, at any regular meeting, etc., declare any section or township line on the public domain a public highway.

"In *Stofferan v. Okanogan County*, 76 Wash. 265, 136 Pac. 484, it was held that section 2477, Revised Statutes of the United States (U.S. Comp. St. 1916, § 4919), did not operate as a grant in praesenti, that the grant thereunder did not take effect until the highway was established under some public law. In holding that a homestead entryman's right was superior to that of the county for road purposes attempted to be established subsequent to the entry but prior to the patent, the court said:

"But a homesteader, after entry, occupies an entirely different position. He has in fact purchased. His entry, which is made by making and filing an affidavit and paying the sum required by law, is a contract of purchase which gives him an inchoate title to the land, which is property. This is a substantial and vested right which can only be defeated by his failure to perform the conditions annexed."

"By analogy, this phase of this question has been determined by this court in *D. & R. G.R.R. Co. v. Wilson*, 28 Colo. 6, 62 Pac. 843, in which it was held that the act of Congress of March 3, 1875, c. 152, 18 Stat. 482 (U.S. Comp. St. 1916, §§ 4921-4926), was not in the nature of an absolute grant in praesenti, but was an offer to all railroad companies to have a right of way over the public lands of the United States; that is, that they might accept it if they wished. This act granting a right of way to railroads is quite similar to the one concerning public highways. In holding that it did not give to the railroads a right of way over lands held by a pre-emptor not located prior to his pre-emption filing, the court said:

"It necessarily follows from this ruling that under this act a right of way is not in the nature of a grant in praesenti. Indeed, it was expressly decided that a settler, who had only an inchoate right, in actual occupancy (as plaintiff here unquestionably was) must be compensated if the line of road is built across his claim. The Supreme Courts of several of the states have come to the same conclusion."

"In *Yakima County v. Tullar*, 3 Wash. T. 398, 17 Pac. 885, in passing upon a quite similar question, the court said:

"The right of way over 'public lands' that is granted to the public for roads, etc., doubtless contemplates strictly public lands, such as are open to entry and settlement, and not those in which the rights of the public have passed, and which have become subject to some individual right of settler, or the like, as in this case. Under the laws of the United States, appellee was in possession, and such possession was good as against the world so long as he complied with the laws. From all that appears, he had possession in this way, and to say that valuable features of the land, as springs, and the land itself, can thus be taken without compensation to the honest settler, for the use of the public, is to say a self-evident wrong. * * * The public have chosen to exercise their right of locating this road. They have the benefit. Let them pay the damage."

"The same reasoning in these cases leads to the conclusion that the act of Congress under consideration did not make of these section lines public highways. The act does not refer to section or township lines, but to the right of way for the construction of highways over public lands not reserved for public uses. It was a privilege which might be exercised or not. This fact was recognized by our Legislature in the adoption of section 5834, supra, giving to the boards of county commissioners the right to declare section and township lines on the public domain public highways; but, until they did so, no highways existed, and when they attempt to do so their rights must be tested by conditions existing at that time, which, according to the decisions quoted from, are subject to the rights of the entryman."

For a similar case decided in Alaska, see Clark v. Taylor 9 Alaska 298.

In view of the foregoing, it is my opinion that the Road Commission had no right in 1945 to go upon the lands claimed by Mr. Plummer and construct a road thereon.

Although the Road Commission had no authority to establish the KFQD Road in 1945, it appears that a prescriptive right over such lands for road or highway purposes has been acquired by reason of adverse use for a period of 10 years. A.C.L.A. 55-2-2, 58-7-6; Roberts v. Jaeger 5 Alaska 190; Clark v. Taylor, 9 Alaska 298. However, even though a prescriptive right has been obtained over the lands in question, the width and extent of the servitude imposed on the land has not been defined because the extent of the servitude must be measured by the character and extent of the user, for the easement cannot be greater than the use. Clark v. Taylor, supra. In view of the fact that I do not have the necessary information concerning the extent of the use made of the KFQD Road, I am in no position at this time to ascertain the extent of the easement that may have been acquired by prescription over land claimed by Mr. Plummer.

I have discussed this matter with Mr. Plummer and he has advised me that he is willing to give an easement over his lands to the edge of the shoulder of the existing road, if the Road Commission will agree to compensate him for any additional extension of the road which will affect his land. In my opinion, this or some other similar agreement should be arranged with Mr. Plummer in order to settle this matter.

This memorandum along with the complete case file, is forwarded herewith for your consideration.

For the Regional Solicitor


Eugene F. Wiles, Field Solicitor
Juneau Region

Attachment

RG 30, Bur. of Public Roads
E. 6 D, Gen. Corr + Related Recs, 1955-59
Box 1131

Log TE

Office Memorandum • UNITED STATES GOVERNMENT

Alaska Road Commission - Juneau, Alaska

TO : Eben H. Lewis, Attorney-Adviser

DATE: April 6, 1956

FROM : Chief, Real Estate Branch

SUBJECT: Notice of Intent to Institute Proceedings by claimant

We transmit herewith our complete file pertaining to the K.F.Q.D. Road, to which is attached letter from Plummer & Biss, attorneys in Anchorage, which is in reference to our alleged encroachment upon the land of Mr. Plummer without his consent. He threatens to institute proceedings to determine his rights, if any, in the matter.

Such specific information as you may require, which may be contained in the files of this Branch, will be gladly supplied upon your request.

28591

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

Enclosure

*225 Central Bldg.
Juneau 1956*

RECEIVED
FIELD SOLICITOR
DEPARTMENT OF THE INTERIOR
MAY 8 1956
ANCHORAGE, ALASKA

PLUMMER & BISS

ATTORNEYS-AT-LAW

220 CENTRAL BUILDING - TELEPHONE 28891
ANCHORAGE, ALASKA

April 3, 1956

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Wm. J. Niemi, Chief Engineer
Alaska Road Commission
U. S. Department of Interior
Juneau, Alaska

Subject: Right-of-way, K.F.Q.D. Road
Anchorage, Alaska

Dear Sir:

I enclose a copy of your letter dated September 19, 1952, which is the only response I have received to date to my letters dated September 9, 1952, and September 15, 1952. I assume that by now you have had ample time to have received a detailed report based upon a thorough investigation conducted by the District Engineer for the Anchorage District.

Will you please again refer to my letter dated September 15, 1952, and thereafter advise me the position which the Alaska Road Commission takes in connection with the subject matter of my letter.

Unless some definite agreement can be reached within the next 30 days we will have no alternative other than to institute proceedings as may be necessary for a determination of my rights. I am reluctant to do this inasmuch as if legal proceedings are instituted I assume that all other property owners along K.F.Q.D. Road whose property was taken for road purposes without permission would not have the same determination made.

In your consideration of this matter I invite your particular attention to an opinion by Attorney General Ralph J. Rivers dated September 12, 1947, addressed to Fred J. Weiler, District Land Office, Fairbanks, and to an opinion by Attorney General Rivers dated May 17, 1948, addressed to May C. Carter, U. S. Commissioner, Wasilla, Alaska. Both opinions are contained in a booklet entitled "Report and Selected Opinions of the Attorney General, Territory of Alaska, Ralph J. Rivers, Attorney General of Alaska, 1947 - 1949."

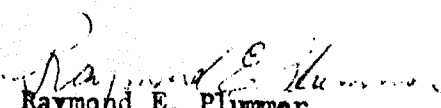
Let me assure you that I am not pressing this matter merely to harrass or annoy you and all that I am interested in is a determination of my rights in regard to this matter. I will be pleased to discuss this matter with any representative of the Alaska Road Commission if they will afford me the opportunity of an audience and if this is done I am quite certain that some agreement satisfactory to all concerned can be reached. However, time is

3	Comm. R.	
	Chf. Eng.	
	Admin.	
	Opns.	
2	B. & F.	
	Road Br.	
	Bridge P.	
	Con.	
	Prog. C.	
	Finance	
	Pers.	
	Supply	
1	Safety	
	M. & R.	

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Box 1131

getting short and it is my intention to establish by one manner or another my rights in this matter, prior to the expiration of the statutory period of user.

Very truly yours,


Raymond E. Plummer

REP:rmj



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

September 19, 1952

Attachment

Mr. Raymond E. Plummer
c/o Plummer & Arnell
220 Central Building
Anchorage, Alaska

Subject: Right-of-way, K.F.Q.D. Road
Anchorage, Alaska

Dear Sir:

Receipt is acknowledged of your communications dated September 9, 1952, and September 15, 1952, in reference to the above subject.

We have requested our District Engineer for the Anchorage District, to conduct a thorough investigation concerning all of the facts pertaining to the matter and file a detailed report.

Very truly yours,

Wm. J. Niemi
Chief Engineer

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610.411.13

DEPARTMENT OF THE INTERIOR
ALASKA ROAD COMMISSION
JUNEAU, ALASKA

ANCHORAGE DISTRICT

1955 WORK ORDER NO. 1264

Route 411.13

✓
KFQD Road

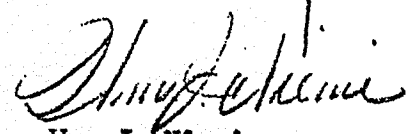
For contract paving of this route, construction engineering and Government furnished materials.

PROGRAMMED AMOUNT \$ 30,800

DISTRICT DIRECT LABOR None

- Budgetary Activity - 3d - Reconstruction
- Appropriation Function - C
- General Ledger Account - 161
- Asset Account - 156
- Cost Schedule - A

AUTHORIZED: August 1, 1955



Wm. J. Niemi
Chief Engineer

W.O. No. 1264

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DEPARTMENT OF THE INTERIOR
ALASKA ROAD COMMISSION
JUNEAU, ALASKA

HEADQUARTERS DISTRICT

1955 WORK ORDER NO. 912

Route 411.13

✓
KFQD Road

For design of this route

PROGRAMMED AMOUNT \$1,000

DISTRICT DIRECT LABOR \$ None

Budgetary Activity - 3d Reconstruction

Appropriation Activity - F

General Ledger Account - 161

Asset Account - 156

Cost Schedule - A

AUTHORIZED: April 25, 1955



Wm. J. Niemi
Chief Engineer

W.O. No. 912

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Box 1131

611. 411.1

Headquarters, Alaska Road Commission, Juneau

May 20, 1955

Alaska Road Commission, Anchorage

✓
KFQD-KFNI Road Surfacing Contract

This is to notify you that all right-of-way problems on the proposed subject contract are completed.

We have received easements from Mr. R. W. Marshall and the Anchorage Independent School District giving us right-of-way for the KFNI-KFOD high school road.

Mr. Marshall's easement was not notarized, therefore we are returning it to him for this purpose, and the Anchorage Independent School District easement will be recorded at the Commissioner's office.

Upon completion of this necessary paper work we will forward a copy of each easement to Headquarters.

L. A. Hatchett
Assistant District Engineer

RECEIVED
MAY 23 1955

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Box 1131

P. O. Box 1961

January 17, 1955

Mr. M. R. Marston
Box 325
Spenard, Alaska

Dear Mr. Marston:

Reference is made to your letter of January 10, 1955, which requested extension of paving along the KFQD Road, in order to provide a fully paved connection with the paving being installed under the Alaska Public Works program in the Turnagain-by-the-Sea development.

The Alaska Road Commission has included the requested paving in the proposed program for construction in the 1955 summer season and unless serious cuts are made in our Federal appropriations the work should be completed before fall.

Sincerely yours,

A. F. Ghiglione
Commissioner of Roads
for Alaska

AFGhiglione:ak

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Box 1131

Comm. of	<i>[initials]</i>
Ch. Engr.	<i>[initials]</i>
Admin.	<i>[initials]</i>
Op'ns.	<i>[initials]</i>
Engrg.	<i>[initials]</i>
Acc't.	
Pers.	
Supply	

Box 325
 Spenard, Alaska
 January 10, 1955

Mr. A. F. Ghiglione, Commissioner
 Alaska Road Commission
 Juneau, Alaska

Dear Mr. Ghiglione:

Turnagain-by-the-Sea now has 201 homes immediately in its subdivision. This coming summer the roads within the area will be paved with hot-mix asphalt. This work is being done by the Alaska Public Works and has already been let to bid.

Northern Lights Boulevard (KFQD Road) is now paved to within 200 to 300 feet of the western entrance to Turnagain-by-the-Sea and to within 1500 feet to the entrance of another development called Susitna View Park which houses 100 families.

In addition to the two above developments, there are at least 100 other families that use the Northern Lights Boulevard in this area.

Since this road is under the jurisdiction of your agency, we sincerely request that you pave Northern Lights Boulevard to at least join our paving system; and if possible, to serve the Susitna View Park development. I would appreciate an early reply on this matter.

Very truly yours,

[Signature of M. R. Marston]
 M. R. Marston

cc: Turnagain Homes, Inc., Anchorage
 Turnagain Homes, Inc., Seattle
 Alaska Road Commission, Anchorage

[Handwritten notes: "Continued 512" and "copy of that"]

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E. J. White, District Engineer, Anchorage

October 7, 1952

Chief Engineer, Headquarters

Bituminous Surface Treatment of KPQD Road

Operations Orders for the 1952 season under "Reconstruction" provided for bituminous surface treatment of the KPQD Road as an experimental section. The purpose was to attempt to develop a low-cost surface treatment for local roads in suburban areas where heavy traffic exists and where gravel surface roads are no longer economical. The plan also had in mind the elimination of the dust hazard. It was felt that the Anchorage area contained such a situation on the KPQD Road. In accordance with District recommendations, funds were allotted for this work.

In early September I had an opportunity to inspect this experimental section with Mr. Littlefield and Mr. Klockentager and, needless to say, the results attained were very discouraging, due largely to heavy rainfall which caused suspension of work and continued for several days thereafter. I regret that you were absent from Anchorage District Headquarters on the date of the inspection, as many of the questions which arose at that time might have been answered. Since future work of this nature is dependent upon a complete and accurate report of steps which were taken in this experimental work, it is desired that such a report be prepared. At the time of the inspection I mentioned to Mr. Littlefield and Mr. Klockentager that I would be asking for this report and suggested that Mr. Littlefield cover the entire subject before his departure. Some of the questions which need answers and which may fall outside the technical aspects are as follows:

- (1) Who was in direct charge of this work?
- (2) Was a standard section used and carefully engineered?
- (3) What were the specifications for the crushed aggregate?
- (4) What was Mr. Littlefield's role in the experiment and what was his authority?
- (5) What caused the work to run into early fall, when weather conditions are unfavorable for curing?

It is realized that conclusive facts cannot be arrived at from one experiment, and it is planned to continue studies toward obtaining a low-cost bituminous surface for secondary roads. It is only through an

unbiased factual study of projects such as the KFQD Road that any progress can be expected toward elimination of factors which caused failure in that project. Therefore, it is requested that the report be made along these lines, letting the chips fall where they may. I indicated as much to Mr. Littlefield when we made the inspection and hope that he gave his impressions in that manner. When these are joined with the facts and findings of other District personnel who had a direct hand in the project, a valuable report should result.

Wm. J. Niemi
Chief Engineer

WJN:hc

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Box 1131

CONFIDENTIAL

E. J. White, District Engineer, Anchorage

October 2, 1952

Chief Engineer, Headquarters

Right-of-Way - KFQD

Reference is made to your memorandum of September 24 in reply to our letter of September 22, pertaining to the KFQD road right-of-way.

The purpose of the letter was an attempt to obtain certain information relating to the claims made by an attorney in Anchorage regarding property along the route. What is disturbing to me is the fact that the District appears to question the validity or importance of the letter as inferred by the opening paragraph of your reply of September 24. The signature of the Commissioner of Roads or the Chief Engineer indicates that they are in agreement with the statements contained in any letter which they sign, and the Districts should assume the same attitude.

During one of my recent visits to Anchorage, my attention was called by Mr. Hatchett to the Federal Code made applicable to Alaska by the Act of May 17, 1884, which purportedly settled right-of-way at 66 feet. At that time I suggested that this be referred to Headquarters for review, since it seemed peculiar to me that neither the Bureau of Land Management nor our Real Estate Branch had mentioned it in all the extensive studies which have been conducted on land laws as they affect rights-of-way for roads in Alaska. Apparently this was not done and the District persists in quoting it as an applicable law covering rights-of-way on Alaska roads. As near as we can tell, you are quoting the Organic Law of Alaska of May 17, 1884, found in U. S. Statutes at Large, Chapter 53, Volume 23, 48th Congress, 1883-1885. The Organic Act has been explored previously and we can find nothing pertaining to rights-of-way for roads.

Referring to the last paragraph of your letter, we appreciate the fact that the District may have embarked on an extensive study of right-of-way statutes and land orders, which is commendable, but such information should be coordinated with Headquarters so that clear cut instructions may be established for all Districts. Despite extensive study and research extending over several years, Headquarters is still unable to clearly outline the right-of-way problem for the Districts. It may take a court case or two to clear up these problems on old roads which came into being prior to Public Law 229, Public Land Orders 601 and 727 and Secretarial Order 2665.

In the case of our request for information on the KFQD right-of-way, it is my feeling that the District did not take advantage of knowledge available to them through local research, and the questioning of old-timers

RG 30, Bur. of Public Roads
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Box 1131

such as Mr. Edmonds, to furnish us with the information requested. Instead, the tone of your letter indicates to me that the District wants to establish itself as an authority on land matters. This will not work and is not considered to be in the best interests of the Road Commission. It can only lead to confusion and possibly place us in an embarrassing position, should conflicting statements appear in the record, especially if some attorney can play the District against Headquarters in the interpretation of land laws as they affect road rights-of-way in Alaska.

The subject will have a prominent place in the District Engineers' Conference.

Wm. J. Niemi
Chief Engineer

Page Two

Confidential

WJN:hc

(Further corresp. in Confidential File)

Office Memorandum • UNITED STATES GOVERNMENT

TO : Wm. J. Niemi, Chief Engineer

FROM : Chief, Real Estate Branch

SUBJECT: Right-of-Way, K.F.Q.D.

DATE: September 29, 1952

Mr. White's memorandum of September 24, 1952, discusses a 66 ft. right-of-way along all section lines by reference to the Federal Code, which code, he says, was made applicable to Alaska by the Act of May 17, 1884.

Such a citation is difficult to understand because code reference can mean everything or anything, depending upon the statute (law) which sustains it.

In the instant case, Mr. White is undoubtedly referring to the Organic Law of Alaska of May 17, 1884, found in U. S. Statutes at Large, Chapter 53, Volume 23, 48th Congress (1883-85) and this Act does not mention, refer to or cite language having to do with rights-of-way or section lines.

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

3/48-17

Office Memorandum • UNITED STATES GOVERNMENT

TO : Headquarters, Alaska Road Commission, Juneau

DATE: September 24, 1952

FROM : E. J. White, District Engineer, Anchorage *EJW*

SUBJECT: Right-Of-Way - K.F.Q.D.

Oct 24 1952
Chf. Engr. <i>[initials]</i>
Admin. _____
Op'ns. _____
Engrg. _____
Acc't. _____
Pers. _____
Supply _____

This letter is to express our views on the letter written over the signature of Mr. A. F. Chigliano under the date of September 22, 1952 regarding right-of-way statutes as set up in our letter to you of September 16, 1952.

We cannot understand the statement that our legal position is "far from clearly defined," when the road in question is located on a section line, and Federal Code clearly defines a 66-foot right-of-way along all section lines. This Code was made applicable to Alaska by the Act of May 17, 1884. This should directly apply to the right-of-way question of Mr. Raymond E. Plummer.

In most cases, files on road construction are very inadequate and incomplete prior to 1949. The available source of dates on road construction are from the "old timers" who worked on the roads. In nearly all cases no survey was made or right-of-way information obtained.

The question is asked: "Are the allegations set forth in the case of Mr. Plummer true and correct?" The incomplete files on this road show nothing, as the road was constructed in 1946. Our letter of September 16, 1952 defines why Mr. Plummer, or the people from whom he is purchasing this property, were required to furnish 33 feet of their property along the section line for roadway construction.

In regard to paragraph "f" of your letter, District personnel involved in the construction of this road claim that this road was built by the Alaska Road Commission over entirely virgin ground from Spward Road, and that no Army construction was involved.

During the past 18 months, this District has made an extensive investigation into right-of-way statutes and land orders, and will gladly forward a copy of our findings locally. It would be appreciated if any land orders or statutes not appearing in this folder could be forwarded to the Anchorage District.

*See Confidential File
for reply. oct 22
see ltr 7*

13/48-19

RG 30, Bur. of Public Roads
E. 6 D, Gen Corr + Related Recs, 1455-59
Box 1131

September 22, 1952

Mr. E. J. White
District Engineer
Alaska Road Commission
Anchorage, Alaska

Subject: R/W, K.F.C.D. Road
Plummer Matter

Dear Mr. White:

In reply to your letter of September 16, 1952, reference as above, a comprehensive and continuing study is being made by Headquarters as to the statutes and land orders under which rights-of-way for roads and highways may be established over lands in Alaska by the Alaska Road Commission, and for your information and guidance, our legal position is far from clearly defined.

To avoid misunderstandings, therefore, I suggest that as a matter of policy all matters pertaining to rights-of-way be referred to Headquarters for necessary action. Each case will have to be judged on its merits and we will depend on the Districts to obtain all the facts. As in the subject case, the object of our memorandum of September 12 was to determine the following:

- (a) When was the road built?
- (b) Was a survey made of the route?
- (c) What arrangements, if any, were made for a right-of-way?
- (d) What is the situation as to the adjacent lands; are they subdivided; was plat of the subdivision cleared with the Road Commission before recording?
- (e) Are the allegations set forth in the letter from Mr. Plummer true and correct?
- (f) A search of our incomplete files here indicates that this road was originally built by the Army and was improved and extended at the request of Mr. Wagner, the owner of K.F.C.D.; also that at least five families lived in the area and needed a road.

Sincerely yours,

cc: Adams (or Bond)
GFB:ve:hc

A. F. Ghiglione
Commissioner of Roads
for Alaska

RG 30, Bur. of Public Roads
E. 6 D, Gen Corr + Related Recs, 1955-59
Box 1131

September 19, 1952

Mr. Raymond E. Plummer
c/o Plummer & Arnell
220 Central Building
Anchorage, Alaska

Subject: Right-of-way, K.F.Q.D. Road
Anchorage, Alaska

Dear Sir:

Receipt is acknowledged of your communications dated September 9, 1952, and September 15, 1952, in reference to the above subject.

We have requested our District Engineer for the Anchorage District, to conduct a thorough investigation concerning all of the facts pertaining to the matter and file a detailed report.

Very truly yours,

Wm. J. Riemi
Chief Engineer

GFB:vo

GFB
448

WJN

RG 30, Bur. of Public Roads
E. 6 D, Gen Corr + Related Recs, 1955-59
Box 1131



UNITED STATES
DEPARTMENT OF THE INTERIOR
ALASKA ROAD COMMISSION
~~UNDEVELOPED~~
ANCHORAGE, ALASKA

September 16, 1952

③	A-79
①	Chf. Engr.
	Admin.
	Op'ns.
	Engrg.
	Acc't.
	Pers.
	Supply
②	Adams

Mr. A. F. Ghiglione
Commissioner of Roads for Alaska
Alaska Road Commission
Juneau, Alaska

Subject: Right-of-Way for K.F.Q.D.
Road, Anchorage District

Dear Mr. Ghiglione:

Reference is made to your memorandum of September 12, 1952 requesting information on the subject road.

K.F.Q.D. Road originates at Spenard Road and follows the section line common to Sections 24-25, 23-26, T. 13 N., R. 4 W., S.M. The road is 28' wide from shoulder to shoulder and is 1.6 miles in length. The year of construction was 1946.

It is the District's opinion that Mr. Raymond E. Plummer, Anchorage Attorney, and the sellers of this parcel are subject to Federal Code which makes mandatory the granting of public easement for highway purposes. The United States Code Annotated Section 43, Sub-Section 932, Paragraph I states as follows:

"Grant of Right of Ways - Under this section, granting right of way for construction of highways over public lands, and the Dakota Territory Laws 1870-1871 declaring all section lines public highways, and providing that such highways shall be 66 feet wide and taken equally from each side of the section line, an area two rods wide on each side of section line running through lands subsequently acquired by individuals under patent from the United States was burdened with public easement for highway purposes. Costain V. Turner County, South Dakota 1949 36 NW 2d 382."

Public Land Laws were then made applicable to Alaska by the following legislature:

"The act of May 17, 1884 (23 Stat. 24), providing for a civil government for Alaska, in section 8, extended to Alaska "the laws of the United States relating to mining claims, and the rights

RG 30, Bur. of Public Roads
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Box 1131

incident thereto," but provided that "nothing contained in this act shall be construed to put in force in said district the general land laws of the United States." Similar provision is contained in sections 26 and 27 of the act of June 6, 1900 (31 Stat. 321), which also made provision for a civil government for Alaska.

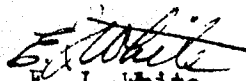
However, in section 3 of the act of August 24, 1912 (37 Stat. 512), it was provided that "the Constitution of the United States, and all the laws thereof which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States."

In an opinion dated June 29, 1915 (30 Op. Atty. Gen. 387), the Attorney General had occasion to consider the effect of the act of August 24, 1912, in respect to extending certain public-land statutes to Alaska, and, in this connection, he stated: "The express exception of the public land laws, found in the earlier organic acts, is here omitted; all the laws of the United States are to operate in Alaska save only such as may be locally inapplicable."

It follows, therefore, that whether or not any particular public land statute is applicable in the Territory depends on whether or not it may operate therein consistently with special legislation and with local conditions."

It is hoped that the above discussion will help to clarify our position to Mr. Plummer.

Very truly yours,


E. J. White
District Engineer

D. E. PLUMMER

EDWARD L. ARNELL

PLUMMER & ARNELL
ATTORNEYS-AT-LAW
220 CENTRAL BUILDING - TELEPHONE 46101
ANCHORAGE, ALASKA
September 15, 1952

Chf. Engr.	<i>WGN</i>
Admin.
Op'ns.
Engrg.
Acc't.
Pers.
Supply
<i>Adams</i>	

Alaska Road Commission
Juneau, Alaska

Gentlemen:

This letter is being written in correction of my letter to you dated September 9, 1952.

Please be advised that I am purchasing a tract of land under a real estate contract from Lief J. Anderson and Charlotte E. Anderson. This tract is located in the Anchorage Recording Precinct, Third Judicial Division, Territory of Alaska, and is described as follows:

Using the southwest corner of Lot Four (4), Block Three (3), of the Hansen Subdivision, Section Twenty-four (24), Township Thirteen North (T 13 N), Range Four West (R 4 W), Seward Meridian as a known point and point of beginning, thence South 165 feet to a point; thence East 204 feet to a point; thence North 165 feet to a point; thence West 204 feet to the point of beginning;

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

Prior to the time that I entered into a contract to purchase this tract of land, the Alaska Road Commission, without Mr. Anderson's permission caused a road, commonly known as KFQD Road, to be built across a portion of this land. During the past summer this roadway was widened without my permission or the permission of Mr. Anderson so that KFQD Road now occupies a strip of my land that is approximately twenty-one feet (21') in width and two hundred four feet (204') in length. Be advised that the southern boundary line of my property extends approximately to the center line of KFQD Road or, in other words, a distance of one hundred sixty-five feet (165') south of the north boundary line thereof. I am unaware of any statute, rule or regulation under which the Alaska Road Commission would have authority to appropriate my land for road purposes, without my permission or without condemnation proceedings.

Permission is hereby granted to use the strip of land above described for a road by the Alaska Road Commission and general public, in common with me, until such time as I put this land to my own use, with the express understanding that such use by the Alaska Road Commission is merely permissive.

RG 30, Bur. of Public Roads
E. 6 D, Gen. Corr. + Related Recs, 1955-59
Box 1131

September 15, 1952

This permission is given upon the further condition that this land will be used in such a manner that it will not interfere with the access, use or enjoyment of the remainder of my property by me. In this connection, I call your attention to the fact that the portion of my land being used as a roadway has been elevated approximately three feet above the level of the remainder of my land. Inasmuch as it is foreseeable that during periods of heavy rainfall and during thaw periods that large quantities of water will be diverted onto my land, and the natural drainage of my land will be obstructed, you are therefore requested to take whatever steps may be necessary to avoid the flooding of my land and any damage that may be thereby occasioned to the buildings located thereon. In the event of your failure to take such precautions, I shall hold you responsible for any and all damages resulting therefrom.

Very truly yours,

Raymond E. Plummer
Raymond E. Plummer

REP:mmm

Enc - 1 cc

cc - Alaska Road Commission, Anchorage

VIA REGISTERED MAIL

RETURN RECEIPT REQUESTED

E. J. White, District Engineer, Anchorage

September 12, 1952

A. F. Ghigliano, Commissioner of Roads for Alaska

Right-of-way for K.P.Q.D. Road, Anchorage District

Request your comments as to the allegations set forth in the attached letter, also a complete report including plat showing location and width of subject road, date of original construction, and any other information that will enable us to fully understand the situation.

298
GB

AEH
RE

A. F. Ghigliano
Commissioner of Roads
for Alaska

Attachment

cc: Adams
Bond

GB:ve

RG 30, Bur. of Public Roads
E. 6 D, Gen Corr + Related Recs, 1955-59
Box 1131

PLUMMER & ARNELL
ATTORNEYS-AT-LAW

230 CENTRAL BUILDING - TELEPHONE 46101
ANCHORAGE, ALASKA

September 9, 1952

① *A. F. [Signature]*

Chf. Engr.
Admin.
Op'ns.
Engrg.
Acc't.
Pers.
Supply

② *Advised*

Alaska Road Commission
Juneau, Alaska

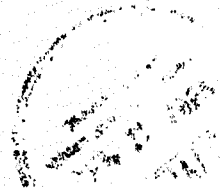
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Using the southwest corner of Lot Four (4); Block Three (3), of the Hansen Subdivision, Section Twenty-four (24), Township Thirteen North (T 13 N), Range Four West (R 4 W), Seward Meridian, as a known point and point of beginning, thence South 165 feet to a point; thence East 204 feet to a point; thence North 165 feet to a point; thence West 204 feet to the point of beginning;

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

Prior to the time that I entered into a contract to purchase this tract of land, the Alaska Road Commission, without Mr. Anderson's permission, caused a road, commonly known as KFQD Road, to be built across a portion of this land. During the past summer this roadway was widened without my permission or the permission of Mr. Anderson so that KFQD Road now occupies a strip of my land that is approximately twenty-one feet (21') in width and two hundred four feet (204') in length. Be advised that the southern boundary line of my property extends approximately to the center line of KFQD Road or, in other words, a distance of one hundred sixty-five feet (165') south of the north boundary line thereof. I am unaware of any statute, rule or regulation under which the Alaska Road Commission would have authority to appropriate my land for road purposes, without my permission or without condemnation proceedings, to use the strip of land above described for a road by the Alaska Road Commission and general public, in common with me, until such time as I put this land to my own use, with the express understanding that such use by the Alaska Road Commission is merely permissive.



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Box 1131

Alaska Road Commission

- 2 -

September 9, 1952

This permission is given upon the further condition that this land will be used in such a manner that it will not interfere with the access, use or enjoyment of the remainder of my property by me. In this connection, I call your attention to the fact that the portion of my land being used as a roadway has been elevated approximately three feet above the level of the remainder of my land. Inasmuch as it is foreseeable that during periods of heavy rainfall and during thaw periods that large quantities of water will be diverted onto my land, and the natural drainage of my land will be obstructed, you are therefore requested to take whatever steps may be necessary to avoid the flooding of my land and any damage that may be thereby occasioned to the buildings located thereon. In the event of your failure to take such precautions, I shall hold you responsible for any and all damages resulting therefrom.

Very truly yours,

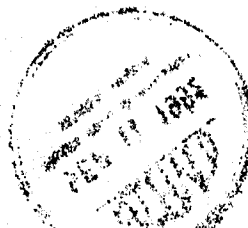
Raymond E. Plummer
Raymond E. Plummer

REP:mas

cc - Alaska Road Commission, Anchorage

Via Registered Mail

Return Receipt Requested

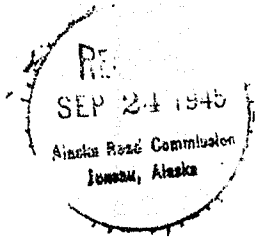


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Box 1131

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

Sept. 21, 1945

Mr. Ike P. Taylor
Chief Engineer, A. R. C.
Juneau, Alaska



Dear Sir:

The allotment for the new road leading to the site for Radio Station KPOD shows the route number of the old Anchorage Radio Road, 75-M.

This work comes under Route 75-A, so please change your records accordingly.

The approval of the site was confirmed and the work is now under way.

Yours very truly,

M. C. Edwards,
Superintendent.

MCE:p

13/48-19

RG 30, Bur. of Public Roads
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Box 1131

From Edmunds Anchorage Alaska September 18 1945

To Skinner Juneau

Please issue field allotment for Anchorage Radio Road five thousand
dollars

Original filed 21/152

18/08-18

RG 30, Bur. of Public Roads
E. G. D., Gen. Cont. + Related Recs, 1955-59
Box 1131

From Skinner Juneau Alaska September 1945

To Edmunds Anchorage

Allotment twenty nine Anchorage Radio Road issued

Orig. Filed 22/ 152

15/48

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

August 28, 1945

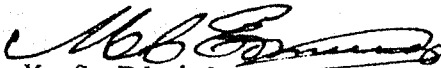
Mr. Hawley Sterling
Asst. Chief Engineer
Alaska Road Commission
Juneau, Alaska



Dear Sir:

I contacted Mr. Wm. Wagoner of KFQD with reference to building a road to the proposed new site of the radio station. Mr. Wagoner informed me that while he had received permission from the Federal Communications Commission to put up a new station this permission was granted some years ago. Since that time the Alaska Communications System has built a new station in the vicinity of the site selected by him and he was going to check up with the Federal Communications Commission to find out if the proposed site approved of some years ago is still satisfactory. In view of there being some doubt regarding the suitability of present site, no work will be done until I hear further from Mr. Wagoner apart from making the survey.

Yours very truly,


M. C. Edmunds,
Superintendent.

MCE:p

Handwritten initials and scribbles

15/68-19

RG 30, Bur. of Public Roads
E. G. D., Gen. Corr + Related Recs, 1955-59
Box 1131

From Skinner Juneau Alaska August 17 1945

To Edmunds Anchorage

BLUE

Territory has authorized eight thousand dollars for Wagner road yearlet
March nineteen forty four pd Smith requests that work be undertaken
as early as labor equipment and material available Inform Taylor

GHS:YK
CC: W.L. Smith

13/48-19

RG 30, Bur. of Public Roads
E. 6 D, Gen Cont + Related Recs, 1955-59
Box 1131

HIGHWAY ENGINEER

August 14, 1945

Alaska Road Commission,
Juneau, Alaska.

Gentlemen:

After reading Mr. Edmunds report on the Wagner K.F.Q.D. road and figuring that K.F.Q.D. is quite essential to Anchorage and vicinity also to the four or five families living along the route I feel that this department can make an allotment for this road up to eight thousand dollars (\$8,000) The time of course, being when convenient to Mr. Edmunds having labor, equipment & material.

Mr. Wagner explained to me recently that his directive to move out of the city and get started on the new site seemed rather unreasonable to him as he was unable to get the necessary equipment. However, Mr. Edmunds will probably know about this.

I did not know of the 1944 estimate of the work until I returned to Juneau or that it had been talked of before.

Yours truly,

W. Leonard Smith
Highway Engineer.

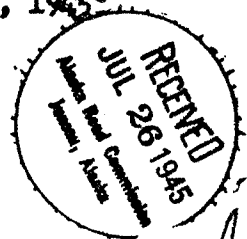
COPY

ORIGINAL FILED

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Box 1131

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

July 24, 1945



Mr. Ike P. Taylor
Chief Engineer
Alaska Road Commission
Juneau, Alaska

Dear Sir:

With reference to your letter of February 28, 1944 and my reply thereto concerning the building of a proposed road to the new radio site for KPQD near Anchorage and a recent request from Mr. Smith, Territorial Highway Engineer, concerning the cost of constructing this road.

My letter answering yours covers the cost of connecting the radio site with the main road and the estimate is believed to be fairly close.

However, if funds are not available to do this work, a narrow road could be constructed to connect the site with the present dirt road which would permit materials to be hauled during the summer months but would not provide a road which could be used all the year around.

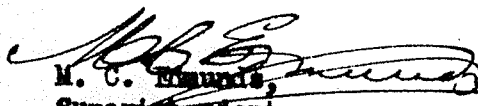
A culvert should be installed across Little Campbell Creek and a fill made to eliminate the steep grades on the present road. This would remove a condition which is dangerous in the wintertime and permit the road to be used much longer, particularly if our equipment could be used for snow removal.

Some soft places would have to be surfaced to provide reasonable service.

It is estimated that this work could be done at a cost of \$3,000.00 for the new road and \$1,000.00 for the culvert and fill, or a total cost of \$4,000.00.

No 48" culvert is available and one would have to be ordered if the work is approved.

Yours very truly,

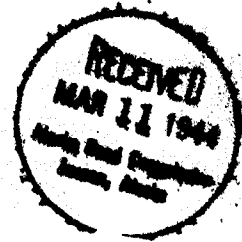

M. C. Saunders,
Superintendent.

MCE:p

*Copy sent
Mr. Smith*

13/48-19

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



Mr. Ike P. Taylor
Chief Engineer, A. R. C.
Juneau, Alaska

Dear Sir:

With reference to your letter of February 28th concerning the proposed road to the new radio site for KFQD in the N. W. corner of Section 26, Township 13, North Range 4 West of the Seward Meridian, the army has opened up a narrow road to within approximately one half mile of the site for the radio station which is usable during the summer months. It ruts up badly during the spring and fall and it is abandoned during the winter months on account of snow conditions and extremely steep grades.

Several families are located in this vicinity who go through the woods in the winter and connect up with the McRae Road in the center of the east half of Section 26. If a road were constructed to the radio station it would be used by all the families in the vicinity and the school bus would undoubtedly use it also as there are at least five families living in this vicinity.

At certain times all of the roads in this vicinity get extremely slippery, particularly during the spring and fall, and a narrow road at these times is much more dangerous than a wider one. Where roads have to be used all year around particularly where buses carrying small children have to go every day, the construction of a narrow road would not be satisfactory.

A road leading to a radio station is subject to lots of traffic and this road also would be used more or less continuously by personnel.

A large culvert would be required where the road crosses Little Campbell Creek and a large fill made. The cost of this installation alone would be at least \$1,000 and this is something that would have to be done to avoid steep grades and snow conditions.

Two miles of road would have to be graveled with the average haul three and one quarter miles.

A lower standard road could be constructed at less expense but it is not believed it would be satisfactory for all year use and it is believed that maintenance costs would be much higher.

With the large amount of traffic on the roads continuously during the winter months and the necessity of providing safe passage for school buses, our maintenance costs have risen considerably during the past years. We are compelled to put cinders and sand on curves and grades during mild weather to keep traffic on the roads even where they are fairly wide and it is believed that all roads which have to be all weather roads should be of standard width, well graveled and drained, with low places raised up

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Box 1131


Mr. Ike P. Taylor
Page #2
March 6, 1944

so that we have no pot holes where water collects and cannot be drained.

If this road is to be constructed a 48" metal culvert should be ordered. It should be about one hundred feet long, but if required I will check up and give the exact length.

The cost of labor and operations have increased considerably during the past couple of years and it is believed that the estimate of the amount of money requested is approximately correct.

Yours very truly,


M. C. Edwards,
Superintendent.

MCE:p

February 28, 1944

Mr. H. G. Edwards,
Superintendent, A. R. C.,
Anchorage, Alaska.

Dear Sir:

Please refer to my radio regarding the proposed road to the new site for KFQD and your reply:

Mr. Wagner's letter to Mr. Hesse stated that there was in existence a temporary road used by the Army to within about three-eighths of a mile of the proposed new station site. Inasmuch as the road to the station will not be subject to very heavy travel, Mr. Hesse felt that a narrow road with only sufficient surfacing to cover the worst sections would suffice. He feels that your estimate of \$8,000 is more money than would be justified for this particular type of road.

It is requested that you look over the route with this in mind and advise what in your opinion would be the minimum amount required to provide a passable road.

Very truly yours,

Ike P. Taylor.

CC Mr. Hesse
IPT:JJ

RG 30, Bur. of Public Roads
E. 6 D, Gen Corr + Related Recs, 1955-59
Box 1131

ALASKA COMMUNICATION SYSTEM ALASKA COMMUNICATION SYSTEM
SIGNAL CORPS U. S. ARMY SIGNAL CORPS U. S. ARMY
SYSTEM ALASKA COMMUNICATION SYSTEM
SIGNAL CORPS U. S. ARMY

KXA V KXH 31

FM EDMUNDS ANCHORAGE 270145Z

TO TAYLOR JUNEAU

GR 14 INT BT

REURTEL WAGNER ROAD ABOUT ONE AND THREE QUARTER MILES ESTIMATED
COST EIGHT THOUSAND DOLLARS BT 270145Z

0225Z

RG 30, Bur. of Public Roads
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Box 1131

Black

Juneau Alaska Feb 26 1944

Edmunds
Anchorage

Wagner of KFQD requesting road to proposed station site in letter of twentyfourth
to Hesse pd Advise estimated cost of road required

Taylor

IPT:IV
CC Mr. Hesse

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Box 1131