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January 18, 2012

State of Alaska  
Department of Transportation & Public Facilities  
6860 Glacier Highway  
P.O. Box 112506  
Juneau, Alaska 99811-2506

Attn: Rob Murphy, PLS  
Chief ROW Agent

Re: Glacier Highway, Fritz Cove to Auke Bay School Roadway and Pedestrian  
Improvements, AK Project No. NHS-000S (150)/68471  
Right of Way Historical Research Report, Glacier Highway, Auke Lake area

Dear Rob:

In support of the above referenced Glacier Highway improvements project, I have researched and compiled documents relating to the basis of right of way for the Glacier Highway. The purpose of this report is to provide a summary of documentation for your use in determining the Right of Way (ROW) status and width to be represented on the final ROW base map for the project.

This report is based on documents and maps collected from a number of sources. I examined files and documents from the National Archives and Records Administration (NARA), Pacific Alaska Region (Anchorage) and NARA, Washington, D.C., Bureau of Land Management (Anchorage and Fairbanks), Alaska State Library (Juneau), and online sources for archival government documents. Attached exhibits referenced in the report are noted in brackets [#].

### **Statement of the Problem**

Our initial discussions regarding the Glacier Highway ROW focused on the options for basis of right of way, and we identified two issues of concern. One is the fact that the Glacier Highway is not specifically named in any of the Department of the Interior (DOI) Public Land Orders (PLO) or Secretarial Orders (SO) that established rights of way on public roads in Alaska. This seems like an oversight, as other routes of similar character were recognized as "through" roads or "feeder" roads with a corresponding increase in right of way width. A second option is ROW by permit from Bureau of Land Management (BLM) for the Glacier Highway in this area.

Both of these options require that the land be released from the Tongass National Forest and returned to the jurisdiction of the Department of the Interior before a right of way by PLO or permit can apply. This is the typical management regime of most of the public land in Alaska.

The Glacier Highway, however, originated under the authority of the Department of Agriculture. The Chugach and Tongass National Forests, established in 1907 by Presidential Proclamation, have been continuously managed by the U.S. Forest Service for over 100 years, during which time major highways such as the Seward Highway, the Sterling Highway and the Glacier Highway have been constructed by the Bureau of Public Roads over forest lands. Alaska PLO/SO orders could not apply to the withdrawn lands of the National Forests, but it is inconceivable that the right of way of such major roads would not be thoroughly protected.

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The Glacier Highway was listed as Federal-Aid Primary Route 95 in the Omnibus Quitclaim Deed from the Secretary of Commerce to the State of Alaska, dated June 30, 1959, yet the question remains - what was the source and extent of right of way conveyed?

During the course of my research, I found evidence to support a basis of the right of way as shown on the undated plan set of Glacier Highway, Airport Road-Tee Harbor, Route No. F-095-4, Control Section 009544, your Proj. No. F-095-4 (J-10). The alignment and most ROW details of that project appear to be nearly identical to a portion of a Bureau of Public Roads (BPR) design/construction plan set, dated 1945-1946, for Route No. 2, D4, F6, found at NARA, Pacific Region, Anchorage. After reviewing the maps and documents I have gathered, I conclude that the ROW was appropriated under the authority of the Secretary of Agriculture and the Commissioner of Public Roads when the BPR plans were approved, the funds were appropriated by Congress and construction was commenced in 1951 while the lands were still in the Tongass National Forest.

Although my research did find some relevant BLM ROW permits, the applications were submitted after the land was released from the Tongass National Forest, and they appear to honor *as existing*, the ROW configuration shown in the application documents, presumably the ROW in place at the time the land returned to the jurisdiction of the DOI.

Following is a summary of the evidence gathered and evaluated to support the claim of ROW for the Glacier Highway in the Auke Lake area.

### **Land Status**

The particular parcels of land identified in the Research Exhibit provided by your office were unsurveyed national forest lands until they were released from the Tongass National Forest by PLO 842, dated June 19, 1952. [A] Although the land was returned to the jurisdiction of the DOI, it was retained in reserved status pending classification. In other words, it was not open to settlement, entry or appropriation. The parcels are now legally described as: U.S. Survey No. 3406 (surveyed 1955), Lot 2, U.S. Survey No. 3819 (surveyed 1960) and Lots 1, 2 and 4, U.S. Survey No. 3832 (surveyed 1961). They were conveyed to the State of Alaska by Patent No. 1233779. [B]

Lots 3 and 5, USS 3832 belong to the U.S.A. Lot 5 was patented to Territorial Sportsmen Inc. in 1963 and conveyed back to the USA in 1997. Lot 3 is federal land segregated since 1960 for use as a research laboratory for the National Marine Fisheries Service. [C]

The Glacier Highway crosses all three U.S. Surveys. Within USS 3406 and USS 3832, the highway right of way was not segregated. Lot 2 of USS 3819 is an irregularly shaped remnant of forest land excluded from older U.S. Surveys for the Glacier Highway.

### **General ROW guidelines within National Forests in Alaska**

Internal memorandums of the U.S. Forest Service from the period 1930 through 1946 indicate that the standard right of way width for forest roads had been set at 66 feet as a matter of policy. It was universally acknowledged that this was an inadequate width, and proposals to increase it up to 400 feet had been suggested.

An internal memorandum from Charles Wyller, Highway Engineer with the Public Roads Administration, Division Eight, Alaska District, to the Division Engineer in Portland, Oregon,

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dated August 27, 1946, states, "We are informed by the Forest Service that the Regional Forester has the authority to approve any width of right-of-way within the forests and they have suggested that we request, through a formal letter, whatever standard width of right-of-way we believe will be necessary."

Mr. Wyller goes on to say, "If this meets with your approval, we propose to request from the Forest Service that 100 ft. right-of-way be reserved on any new projects within the forests...We also propose to request that the R.O.W. on present constructed roads be revised within both the Forest and Public Lands whenever the adjacent land has not been claimed by private interests. Where additional right-of-way is required for reconstruction projects from either surveyed or patented lands, we will request whatever right-of-way is required for the contemplated improvement."

Division Engineer W.H. Lynch replies on October 18, 1946, agreeing generally to the proposal. Mr. Lynch further comments that "Greater widths will probably be frequently required to properly accommodate long cut and fill slopes. These extra widths should be anticipated and shown on the plans."

On November 25, 1946, Regional Forester B. Frank Heintzleman issued a memorandum to Alaska field offices directing the implementation of a 100 foot standard right of way width on forest highways or on forest development roads which may later become forest highways. [D]

### **The Federal-Aid Highway Act and funding for Forest Highways**

A major milestone in the development of Alaskan roads and highways occurred in 1956, when the Territory of Alaska was first allowed to participate in the Federal Aid Highway program. The program was created by the Federal Highway Act of 1916 and further expanded by the Federal Aid Highway Act of 1921 and amendments thereto. Citizens of Alaska had paid federal road tax since the program's inception, but had not received a distribution of funds for forty years. Under the legislation signed by President Dwight Eisenhower on June 29, 1956, Alaska would finally receive a guaranteed level of funding that would allow for long-range program planning for road system improvements.

The road system in the Chugach and Tongass National Forests, however, was included in the federal-aid program from the very beginning. Nationwide appropriations for forest roads and trails are specified in each iteration of the Act, and in some cases, the level of funding for Alaska's forest roads is stated.

The Federal Aid Highway program was initially managed by the Office of Public Roads (later the BPR) under the Department of Agriculture. A federal reorganization plan renamed the BPR to the Public Roads Administration and transferred it to the newly organized Federal Works Agency in 1939. A decade later, the organization was transferred to the Department of Commerce and returned to the Bureau of Public Roads title, where it remained until it became the Federal Highway Administration (FHWA) in 1967. Without regard to the name and department within it was located, the BPR was historically the agency responsible for roadbuilding on federal lands.

Records from NARA files show that the Glacier Highway was reconstructed and improved through the use of federal-aid highway funds, and that a cooperative agreement for the work (as specified in the Act) was executed between the Territorial Board of Road Commissioners and

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the Secretary of Agriculture as early as December of 1921. In the intervening years, many more construction projects were approved and executed in the forest. [E]

**Appropriation of right of way under the Federal Aid Highway Act of 1921**

The Federal Aid Highway Act of 1921 gave the Secretary of Agriculture the right to appropriate public lands, under a process described as follows:

*Sec. 17. That if the Secretary of Agriculture determines that any part of the public lands or reservations of the United States is reasonably necessary for the right of way of any highway or forest road or as a source of materials for the construction or maintenance of any such highway or forest road adjacent to such lands or reservations, the Secretary of Agriculture shall file with the Secretary of the department supervising the administration of such land or reservation a map showing the portion of such lands or reservations which it is desired to appropriate.*

*If within a period of four months after such filing the said Secretary shall not have certified to the Secretary of Agriculture that the proposed appropriation of such land or material is contrary to the public interest or inconsistent with the purposes for which such land or materials have been reserved, or shall have agreed to the appropriation and transfer under conditions which he deems necessary for the adequate protection and utilization of the reserve, then such land and materials may be appropriated and transferred to the State highway department for such purposes and subject to the conditions so specified.*

*If at any time the need for any such lands or materials for such purposes shall no longer exist, notice of the fact shall be given by the State highway department to the Secretary of Agriculture, and such lands or materials shall immediately revert to the control of the Secretary of the department from which they had been appropriated. [F]*

The Secretary of Agriculture delegated this authority to the Commissioner of Public Roads during the time the BPR was in that Department. Over time, this power of appropriation appears to have migrated with the Bureau of Public Roads as it was transferred to other departments. The Federal Aid Highway Act of 1950, which specifically funded Tongass National Forest highway and road projects, notes that the appropriations would be fulfilled according to regulations approved jointly by the Department of Commerce and the Department of Agriculture. The same Act specifies that funding for projects affecting national parks, national monuments and Indian lands would be approved under regulations approved jointly by the Department of Commerce and the Department of the Interior. [G]

The Federal Highway Administration presently has the same power of appropriation, with nearly identical language to the original 1921 legislation, according to the Act of Congress of August 27, 1958, as amended (23 U.S.C. Section 317). [H]

The Secretary of Agriculture approved rules and regulations for carrying out the provisions of the Federal Aid Highway Act and for administering forest roads and trails in 1922, and they were published as Miscellaneous Circular No. 60 in 1925. The regulations for administering forest roads and trails distinguishes between forest highways and forest development roads; forest

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highways being vital access routes to and through the forests and important to nearby communities. The Act specifically defined the term “highway” to include “...rights of way, bridges, drainage structures, signs, guard rails and protective structures in connection with highways...” According to the annual report of the Bureau of Public Roads, Fiscal Year 1952, “Forest highways are those highways within or adjacent to the National forest that are of primary importance to the State, counties, or nearby communities, and have been selected for inclusion in the designated forest highway system. The system is largely coincident with the Federal-aid and State highway systems...” [I]

According to a letter dated July 14, 1959 from Regional Forester G.E. Mitchell to Warner T. May of the BLM, “...rights of way for forest highways on national forest lands are authorized by the Secretary of Agriculture’s Regulation U-14. This states in paragraph (b) that “Approval by the Secretary of Agriculture of a forest highway construction program shall constitute authorization for the occupancy of national forest lands for the highways included in such construction program.” The Glacier Highway is an approved forest highway”. [J]

The Glacier Highway was designated Forest Highway Route No. 2 and its construction history and funding is well-documented.

#### **Glacier Highway Project 2-D4, F6, Duck Creek to Auke Bay (BPR)**

A substantial reconstruction and realignment project from Duck Creek to Auke Bay was planned as early as 1945, with construction beginning in 1951. At that time, the surrounding area was entirely within the Tongass National Forest, under the jurisdiction of the Secretary of Agriculture, with the exception of homesite parcels released from the forest individually by the General Land Office (GLO) so they could proceed to patent. Correspondence and maps circulated between the U.S. Forest Service and the Bureau of Public Roads during the planning stages, discussing various aspects of the project, particularly the realignment near Auke Creek (within land that would later be surveyed as USS 3832). [K]

Sec. 3 (3) of the Federal Aid Highway Act of 1950 particularly appropriated “...for forest highways within, adjoining, or adjacent to the Tongass National Forest, the additional sum of \$3,500,000 for the fiscal year ending June 30, 1951, and a like sum for the fiscal year ending June 30, 1952, to provide for the improvement and extension of the highway facilities to serve the present and potential traffic incident to the further development of the timber and other resources of southeastern Alaska...” [G]

As mentioned previously, mylar plan copies of portions of the design/construction plan set for Project 2-D4, F6, Duck Creek to Auke Bay, a grading and reconstruction project, were found in the records of NARA, Pacific Region, and copies are included herewith. Unfortunately, the cover sheet was not found with the plan sheets; it seems the mylars in Record Group 30 (BPR) at NARA are in some disarray. The mylar cover sheet for a subsequent project for surfacing of this section of the Glacier Highway, Project 2-D5, F7 was approved October 10, 1951.

The plans of Project 2-D4, F6 show an existing ROW line and a shaded area that indicates new ROW required. These parcels appear to have been acquired by a series of quitclaim deeds from adjoining private owners dated 1950 and most were recorded in Book 43, Juneau Recording District. It appears the ROW was generally acquired by the BPR in the name of the Territory of Alaska. On most unsurveyed forest lands on this plan set, the ROW is shown as a “100’ setback line”. Eventually this is shown as the ROW line on later tracings and plans. [L]

It is logical to assume that the Duck Creek to Auke Bay project was approved and funded as part of the forest highways plan for the Tongass National Forest. Such approval constitutes an appropriation of the forest lands needed for ROW.

**BLM ROW Grants and notations under 44 LD 513**

As mentioned previously, some BLM ROW grant files were found, primarily at BLM's Campbell Tract facility. The files date from the time period 1953-1963, after most of the affected land had been released from the forest by PLO 842 and returned to the jurisdiction of the Department of the Interior. The file numbers are summarized as follows:

File No.	Applicant	Date	Description
A-024146 (formerly J 010177)	Bureau of Public Roads	May 15, 1953	Glacier Hwy, Pt Lena to Tee Harbor
A-024623 (formerly J 010919)	Bureau of Public Roads	July 17, 1953	Glacier Hwy, Auke Bay to Pt. Lena
A-029414 (formerly J 011121)	Bureau of Public Roads	March 11, 1955	Glacier Hwy "Loop Section" (Mendenhall Loop Road)
A-060908 (formerly J 011145)	Bureau of Public Roads	April 30, 1958	Glacier Hwy "Loop Section" (Mendenhall Loop Road)
A-057024	State of Alaska Dept. of Highways	April 18, 1962	Mendenhall Loop Road
A-057017	State of Alaska Dept. of Highways	April 19, 1962	Mendenhall Loop Road
A-059112	State of Alaska Dept. of Highways	April 26, 1963	Fritz Cove Road *

\*see also DNR ROW permit issued for this project under ADL 21888

The files or permits are included for your review. [M] In some cases, the maps that were submitted to BLM are no longer in the case file. Note that no GLO/BLM ROW permit applications were found for projects that had been executed prior to the time the land was excluded from the Tongass National Forest. According to Title 43 C.F.R. 244.52 (1938), ROW applications for federal lands appropriated under Sec. 17 of the Federal Aid Highway Act would be processed by DOI with this exception: "No application will be received by the register under said Section 17 for right-of-way for highways or material sites affecting lands entirely within a national forest or an Indian reservation." [O]

Documentation shows that the BLM was fully aware of the existence and location of the roads that became the responsibility of the Alaska Road Commission (ARC), under the jurisdiction of the DOI, by operation of PLO 842. [N] The Glacier Highway was not listed as one of the roads transferred to ARC; it apparently remained the responsibility of the BPR.

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### **Conclusions**

The existing ROW of the Glacier Highway in the specific research areas is based on several factors. As a Federal Aid forest highway, each construction project that occurred over forest lands required funding and project approval from the Secretary of Agriculture or his designee. According to Regulation U-14, project approval constituted appropriation of the forest lands affected, presumably in the form of an easement interest.

When the subject lands were released from the Tongass National Forest by PLO 842 in June, 1952, construction on the Duck Creek to Auke Bay project was far advanced. The easement over forest lands was a valid existing right authorized by Congress that was not extinguished when the land returned to the jurisdiction of the Department of the Interior. DOI Orders establishing rights of way in Alaska would also apply to those public lands traversed by the Glacier Highway, under the category of an unnamed local road.

Attached herewith is a brief timeline of important actions relating to the establishment of the Glacier Highway ROW. If you have any questions, or require any additional information, please feel free to contact me.

Karen F. Tilton, PLS, SR/WA

Attachments

**Historical Timeline**  
**Glacier Construction and Establishment of ROW**  
**USS 3406, USS 3819, USS 3832**

1916	Federal Highway Act passed
1920-1922	Glacier Highway initial construction, Cooperative agreement with Territory
1921	Federal Aid Highway Act passed
1925	Regulations of Secretary of Agriculture published as Circular No. 60
1938	Code of Federal Regulations (CFR) Title 43, Part 244.51 to 244.53, <u><i>Rights of Way over Public Lands and Reservations for Highways and Road Building Material Sites</i></u> first published.
1945-1946	Plans prepared for Glacier Highway, Duck Creek to Auke Bay, Project FH2, D4, F6.
1950	Congress provides 3.5 million dollars for fiscal year 1951 and 1952 for construction projects in the Tongass National Forest.
1951	Construction begins – project Right-of-Way (ROW) applies across national forest lands.
June, 1952	PLO 842 excludes 25,000 acres of land from the Tongass National Forest, including 8000 acres of land in the Juneau area, restoring jurisdiction of the land to the Department of the Interior and reserving most of them for classification. DOI orders establishing road rights of way, (PLO 601 and SO 2665) can apply to these lands.
1953	BPR applies for ROW permits for 2 projects: Auke Bay to Pt. Lena and Pt. Lena to Tee Harbor.
1953	Roads serving lands released from Tongass NF by PLO 842 appear on ARC Order 40, "SE Alaska Roads, 17.1 miles". [P]
1955	BPR applies for ROW permit for Glacier Highway (Loop Section), aka Mendenhall Loop Road, Route 2 D6, E3, H3.
1955	USS 3406 surveyed.
1956	Alaska is included in Federal Aid Highway Act, Alaska Road Commission personnel and activities are transferred to Bureau of Public Roads.
1957	Glacier Highway listed as a through road on ARC Order 40 (now under BPR Heading), Route 050, 17.3 miles, other roads within PLO 842 are listed by name [Q].



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**Historical Timeline**  
**Glacier Construction and Establishment of ROW**  
**USS 3406, USS 3819, USS 3832 (continued)**

1959	Omnibus QC Deed from Secretary of Commerce to State of Alaska conveys federal interest (easement) in Route 95, Glacier Highway.
1960	USS 3819 surveyed.
1962	USS 3832 surveyed.
1963	Patent 1233779 issued to State of Alaska for Lot 2, USS 3819, Lots 1, 2 and 4, USS 3832 and USS 3406, Patent 1232238 issued to Territorial Sportsmen, Inc. for Lot 5, USS 3832. BLM ROW Grant issued for Parcel 3, Fritz Cove Road across Lot 5 USS 3832.