

MEMORANDUM

State of Alaska

Department of Transportation & Public Facilities
Office of the Commissioner

TO: Regional Directors

DATE: November 22, 1993

TELEPHONE NO: 465-3901
TEXT TELEPHONE: 465-3652
FAX NUMBER: 586-8365

FROM: B. A. Campbell
Commissioner

SUBJECT: ROW Document

RECEIVED R/W

NOV 30 1993

Northern Region DOT & PF

There is attached a copy of data put together by Robert Barnes of the State Right-Of-Way Section in about 1961±.

This is an interesting document for reference, there are some errors in it--hence, be careful.

Attachment

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Bo *Bo*

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EXECUTIVE ORDER 9145

**Reserving Public Lands for the Use of the Alaska Road
Commission in Connection with the Construction, Operation
and Maintenance of the Palmer-Richardson Highway.**

Alaska

By virtue of the authority vested in me as President of the United States, it is ordered as follows:

SECTION 1. Executive Orders No. 2319 of February 16, 1916, No. 5582 of March 18, 1931, No. 9035 of January 21, 1942, No. 9085 of March 4, 1942, withdrawing certain lands for townsite purpose, examination and classification, supply base and repair shop site, administrative and fire patrol station site, and other purposes, are hereby modified to the extent necessary to permit the reservation described in Section 2 of this order.

SECTION 2. Subject to all valid existing rights, there is hereby reserved for the use of the Alaska Road Commission, in connection with the construction, operation and maintenance of the Palmer-Richardson Highway, a right-of-way 200 feet wide, 100 feet on each side of the center line, beginning from terminal point Station 1369-42.8, in the NE $\frac{1}{4}$ Section 36, T. 20 N., R. 5 E., Seward Meridian, and extending easterly and northeasterly over surveyed and unsurveyed lands to its point of connection with the Richardson Highway in the SE $\frac{1}{4}$ Section 19, T. 4 N., R. 1 W., Copper River Meridian, Alaska, a distance of approximately 145 miles, as shown on the map, dated March 14, 1942, No. 1877260, on file in the General Land Office.

FRANKLIN D. ROOSEVELT

**THE WHITE HOUSE,
April 23, 1942.**

(F. R. Doc. 42-3667; Filed April 24, 1942; 2:59 p.m.)

ACT OF 1947

In all patents for lands hereafter taken up, entered, or located in the Territory of Alaska, and in all deeds by the United States hereafter conveying any lands to which it may have reacquired title in said Territory not included within the limits of any organized municipality, there shall be expressed that there is reserved, from the lands described in said patent or deed, a right-of-way thereon for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures constructed or to be constructed by or under the authority of the United States or of any State created out of the Territory of Alaska. When a right-of-way reserved under the provisions of sections 321a-321d of this title is utilized by the United States or under its authority, the head of the agency in charge of such utilization is authorized to determine and make payment for the value of the crops thereon if not harvested by the owner, and for the value of any improvements, or for the cost of removing them to another site, if less than their value. June 30, 1932, c. 320, Section 5, as added July 24, 1947, c. 313, 61 Stat. 418.

ALASKA OMNIBUS ACT

Section 5

In all patents for lands hereafter taken up, entered, or located in the Territory of Alaska, and in all deeds by the United States hereafter conveying any lands to which it may have reacquired title in said Territory not included within the limits of any organized municipality, there shall be expressed that there is reserved, from the lands described in said patent or deed, a right-of-way thereon for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures constructed or to be constructed by or under the authority of the United States or of any State created out of the Territory of Alaska. When a right-of-way reserved under the provisions of this Act is utilized by the United States or under its authority, the head of the agency in charge of such utilization is authorized to determine and make payment for the value of the crops thereon if not harvested by the owner, and for the value of any improvements, or for the cost of removing them to another site, if less than their value.

(PUBLIC LAND ORDER 601, AUG. 10, 1949)

ALASKA

RESERVING PUBLIC LANDS FOR HIGHWAY

PURPOSES

By virtue of the authority vested in the President and pursuant to Executive Order No. 9337 of April 24, 1943, 3 CFR 1943 Cum. Supp., it is ordered as follows:

Executive Order No. 9145 of April 23, 1942, 3 CFR 1943 Cum. Supp., reserving public lands for the use of the Alaska Road Commission in connection with the construction, operation, and maintenance of the Palmer-Richardson Highway (now known as the Glenn Highway), is hereby revoked.

Public Land Order No. 386 of July 31, 1947, is hereby revoked so far as it relates to the withdrawal, for highway purposes, of the following-described lands:

(a) A strip of land 600 feet wide, 300 feet on each side of the center line of the Alaska Highway (formerly the Canadian Alaskan Military Highway) as constructed from the Alaska-Yukon Territory boundary to its junction with the Richardson Highway near Big Delta, Alaska.

(b) A strip of land 600 feet wide, 300 feet on each side of the center line of the Gulkana-Slana-Tok Road as constructed from Tok Junction at about Mile 1319 on the Alaska Highway to the Junction with the Richardson Highway near Gulkana, Alaska.

Subject to valid existing rights and to existing surveys and withdrawals for other than highway purposes, the public lands in Alaska lying within 300 feet on each side of the center line of the Alaska Highway, 150 feet on each side of the center line of all other through roads, 100 feet on each side of the center line of all feeder roads, and 50 feet on each side of the center line of all local roads, in accordance with the following classifications, are hereby withdrawn from all forms of appropriation under the public-land laws, including the mining and mineral-leasing laws, and reserved for highway purposes:

THROUGH ROADS

Alaska Highway, Richardson Highway, Glenn Highway, Haines Highway, Tok Cutoff.

Checked by	
Approved	DB
Date	
Initials	
Time	
Place	
Remarks	
Checked by	
Approved	
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Initials	
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Place	
Remarks	

FEEDER ROADS

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

LOCAL ROADS

All roads not classified above as Through Roads or Feeder Roads, established or maintained under the jurisdiction of the Secretary of the Interior.

With respect to the lands released by the revocations made by this order and not rewithdrawn by it, this order shall become effective at 10:00 a.m. on the 35th day after the date hereof. *Sept 17, 1949*
At that time, such released lands, all of which are unsurveyed, shall, subject to valid existing rights, be opened to settlement under the homestead laws and the homesite act of May 26, 1934, 48 Stat. 809 (48 U.S.C. 461), only, and to that form of appropriation only by qualified veterans of World War II and other qualified persons entitled to preference under the act of September 27, 1944, 58 Stat. 747, as amended (43 U.S.C. 279-284). Commencing at 10:00 a.m. on the 126th day after the date of this order, any of such lands not settled upon by veterans shall become subject to settlement and other forms of appropriation by the public generally in accordance with the appropriate laws and regulations.

(14 F.R. 5048, Aug. 16, 1949) ~~OSCAR L. CHAPMAN~~

OSCAR L. CHAPMAN

Under Secretary of the Interior

TITLE 43 -- PUBLIC LANDS: INTERIOR

Chapter 1--Bureau of Land Management, Department of the Interior

Appendix--Public Land Orders

(Public Land Order 601)

ALASKA

RESERVING PUBLIC LANDS FOR HIGHWAY PURPOSES

By virtue of the authority vested in the President and pursuant to Executive Order No. 9337 of April 24, 1943, it is ordered as follows:

Executive Order No. 9145 of April 23, 1942, reserving public lands for the use of the Alaska Road Commission in connection with the construction, operation, and maintenance of the Palmer-Richardson Highway (now known as the Glenn Highway), is hereby revoked.

Public Land Order No. 386 of July 31, 1947, is hereby revoked so far as it relates to the withdrawal, for highway purposes, of the following-described lands:

(a) A strip of land 600 feet wide, 300 feet on each side of the center line of the Alaska Highway (formerly the Canadian Alaskan Military Highway) as constructed from the Alaska-Yukon Territory boundary to its junction with the Richardson Highway near Big Delta, Alaska.

(b) A strip of land 600 feet wide, 300 feet on each side of the center line of the Gulkana-Slana-Tok Road as constructed from Tok Junction at about Mile 1319 on the Alaska Highway to the junction with the Richardson Highway near Gulkana, Alaska.

Subject to valid existing rights and to existing surveys and withdrawals for other than highway purposes, the public lands in Alaska lying within 300 feet on each side of the center line of the Alaska Highway, 150 feet on each side of the center line of all other through roads, 100 feet on each side of the center line of all feeder roads, and 50 feet on each side of the center line of all local roads, in accordance with the following classifications, are hereby withdrawn from all forms of appropriation under the public-land laws, including the mining and mineral-leasing laws, and reserved for highway purposes:

13/191-12

THROUGH ROADS

Alaska Highway, Richardson Highway, Glenn Highway, Haines Highway, Tok Cut-Off.

FEEDER ROADS

Steese Highway, Elliott Highway, McKinley Park Roads, Anchorage-Potter-Indian Road, Edgerton Cut-Off, Tok-Eagle Road, Ruby-Long-Poorman Road, Nome-Solomon Road, Kenai Lake-Homer Road, Fairbanks-College Road, Anchorage-Lake Spenard Road, Circle Hot Springs Road.

LOCAL ROADS

All roads not classified above as Through Roads or Feeder Roads, established or maintained under the jurisdiction of the Secretary of the Interior.

With respect to the lands released by the revocations made by this order and not rewithdrawn by it, this order shall become effective at 10:00 a.m. on the 35th day after the date hereof. At that time, such released lands, all of which are unsurveyed, shall, subject to valid existing rights, be opened to settlement under the homestead laws and the homestead act of May 26, 1934, 48 Stat. 809 (48 U.S.C. 461), only, and to that form of appropriation only by qualified veterans of World War II and other qualified persons entitled to preference under the act of September 27, 1944, 58 Stat. 747, as amended (43 U.S.C. 279-284). Commencing at 10:00 a.m. on the 126th day after the date of this order, any of such lands not settled upon by veterans shall become subject to settlement and other forms of appropriation by the public generally in accordance with the appropriate laws and regulations.

OSCAR L. CHAPMAN

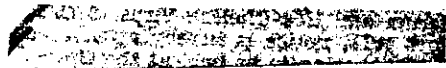
Under Secretary of the Interior.

August 10, 1949.

F.R. Doc. 49-6642; Filed, Aug. 15, 1949; 8:46 a.m.)

(PUBLISHED IN THE FEDERAL REGISTER
OF AUGUST 16, 1949 -- Page 5048)

ORIGINAL FILED 24/286



DEPARTMENT OF THE INTERIOR

Office of the Secretary

[Order 2565]

ALASKA ROAD COMMISSION

DELEGATION OF AUTHORITY

JUNE 5, 1950

The Commissioner of Roads for Alaska and the Chief Engineer of the Alaska Road Commission, severally, are authorized to acquire for the Alaska Road Commission rights-of-way by purchase or donation under any Interior Department appropriation act authorizing such acquisitions.

OSCAR L. CHAPMAN,
Secretary of the Interior

U.S. DEPARTMENT OF THE INTERIOR, FILED, JUNE 15, 1950
WASHINGTON, D. C.

214/226

From the Federal Register of 6/14/50

11-2-51

TITLE 43 PUBLIC LANDS: INTERIOR

CHAPTER I - Bureau of Land Management, Department of the Interior
Appendix - - Public Land Orders

PUBLIC LAND ORDER 757

ALASKA

AMENDMENT OF PUBLIC LAND ORDER No. 601 OF AUGUST 10, 1949, RESERVING
PUBLIC LANDS FOR HIGHWAY PURPOSES.

By virtue of the authority vested in the President and pursuant to Executive Order 9337 of April 24, 1943, it is ordered as follows:

The sixth paragraph of Public Land Order No. 601 of August 10, 1949 reserving public lands for highway purposes, commencing with the words "Subject to valid existing rights" is hereby amended to read as follows:

Subject to valid existing rights and to existing surveys and withdrawals for other than highway purposes, the public lands in Alaska lying within 300 feet on each side of the center line of the Alaska Highway and within 150 feet on each side of the center line of the Richardson Highway, Glenn Highway, Haines Highway, the Seward-Anchorage Highway (exclusive of that part thereof within the boundaries of the Chugach National Forest) The Anchorage-Lake Spenard Highway and the Fairbanks-College Highway are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral-leasing laws, and reserved for highway purposes.

Easements having been established on the lands released by this order, such lands are not open to appropriation under the public-land laws except as a part of a legal subdivision, if surveyed, or an adjacent area, if unsurveyed, and subject to the pertinent easement.

Oscar L. Chapman
Secretary of the Interior

October 16, 1951

(F.R. Doc. 51-12674: Filed Oct. 10, 1951, 9:02 a.m.)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Washington 25, D. C.

ORDER NO. 2665 (October 16, 1951), Amendment No. 2

SUBJECT: Rights-of-way for Highways in Alaska

1. Section 2 (a) (1) is amended by adding to the list of public highways designated as through roads, the Fairbanks-International Airport Road, the Anchorage-Fourth Avenue-Post Road, the Anchorage International Airport Road, the Copper River Highway, the Fairbanks-Nenana Highway, the Denali Highway, the Sterling Highway, the Kenai Spur from Mile 0 to Mile 14, the Palmer-Wasilla-Willow Road, and the Steese Highway from Mile 0 to Fox Junction; by re-designating the Anchorage-Lake Spenard Highway as the Anchorage-Spenard Highway, and by deleting the Fairbanks-College Highway.

2. Section 2(a) (2) is amended by deleting from the list of feeder roads the Sterling Highway, the University to Ester Road, the Kenai Junction to Kenai Road, the Palmer to Finger Lake to Wasilla Road, the Paxson to McKinley Park Road, and the Steese Highway, from Mile 0 to Fox Junction, and by adding the Kenai Spur from Mile 14 to Mile 31, the Nome-Kougarok Road, and the Nome-Teller Road.

/s/ Fred A. Seaton
Secretary of the Interior

September 15, 1956

UNITED STATES
DEPARTMENT OF THE INTERIOR
Washington 25, D. C.

ORDER NO. 2665 (October 16, 1951) Amendment No. 1
SUBJECT: Rights-of-way for Highways in Alaska

The right-of-way or easement for highway purposes covering the lands embraced in local roads established over the public lands in Alaska by section 2 (a) (3) and section (b) of Order No. 2665 of October 16, 1951 (16 F.R. 10752), is hereby reduced, so far as it affects the Otis Lake Road, to 30 feet on each side of the center line thereof over the following-described lands only:

Seward Meridian

T. 13N., R. 3 W.,
Sec. 21, N $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$

/s/ Oscar L. Chapman
Secretary of the Interior

July 17, 1952

UNITED STATES
DEPARTMENT OF THE INTERIOR
Washington, D.C.

ORDER NO. 2665

October 16, 1951

SUBJECT: RIGHTS-OF-WAY FOR HIGHWAYS IN ALASKA

(Sec. 1. Purpose. (a) The purpose of this order is to (1) fix the width of all public highways in Alaska established or maintained under the jurisdiction of the Secretary of the Interior and (2) prescribe a uniform procedure for the establishment of rights-of-way or easements over or across the public lands of such highways. Authority for these actions is contained in Section 2 of the Act of June 30, 1932 (47 Stat. 446, 48 U.S.C. 321a).

Sec. 2. Width of Public Highways. (a) The width of the public highways in Alaska shall be as follows:

(1) For through roads:

The Alaska Highway shall extend 300 feet on each side of the center line thereof.

The Richardson Highway, Glenn Highway, Haines Highway, Seward-Anchorage Highway, Anchorage-Lake Spenard Highway and Fairbanks-College Highway shall extend 150 feet on each side of the center line thereof.

(2) For feeder roads.

Abbott Road (Kodiak Island), Edgerton Cutoff, Elliott Highway, Seward Peninsula Tram road, Steese Highway, Sterling Highway, Taylor Highway, Northway Junction to Airport Road, Palmer to Matanuska to Wasilla Junction Road, Palmer to Finger Lake to Wasilla Road, Glenn Highway Junction to Fishhook Junction to Wasilla to Knik Road, Slana to Nabesna Road, Kenai Junction to Kenai Road, University to Ester Road, Central to Circle Hot Springs to Portage Creek Road, Manley Hot Springs to Eureka Road, North Park Boundary to Kantishna Road, Paxson to McKinley Park Road, Sterling Landing to Ophir Road, Iditarod to Flat Road, Dillingham to Wood River Road, Ruby to Long to Poorman

(over)

Road, Nome to Council Road and Nome to Bessie Road shall each extend 100 feet on each side of the center line thereof.

(3) For local roads:

All public roads not classified as through roads or feeder roads shall extend 50 feet on each side of the center line thereof.

Sec. 3. Establishment of rights-of-way or easements.

(a) A reservation for highway purposes covering the lands embraced in the through roads mentioned in section 2 of this order was made by Public Land Order 601 of August 10, 1940, as amended by Public Land Order No. 757 of October 16, 1951. That order operated as a complete segregation of the land from all forms of appropriation under the public-land laws, including the mining and mineral leasing laws.

(b) A right-of-way or easement for highway purposes covering the lands embraced in the feeder roads and the local roads equal in extent to the width of such roads as established in section 2 of this order, is hereby established for such roads over and across the public lands.

(c) The reservation mentioned in paragraph (a) and the rights-of-way or easements mentioned in paragraph (b) will attach as to all new construction involving public roads in Alaska when the survey stakes have been set on the ground and notices have been posted at appropriate points along the route of the new construction specifying the type and width of the roads.

Sec. 4. Road maps to be filed in proper Land Office. Maps of all public roads in Alaska heretofore or hereafter constructed showing the location of the roads, together with appropriate plans and specifications, will be filed by the Alaska Road Commission in the proper Land Office at the earliest possible date for the information of the public.

/s/ Oscar L. Chapman
Secretary of the Interior



Sulmer

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

PUBLIC LAND ORDER 842

June 19, 1952

Excluding certain lands from
Tongass National Forest and
Reserving portions of exclud-
ed lands for various public
purposes or for classification

Warner T. May
Box 877
Ketchikan, Alaska

laws, including mining and mineral-leasing laws, and reserved for the use of the Department of the Army for military purposes:

MOUNT DIABLO MERIDIAN

T. 19 S., R. 62 E.,
 Sec. 36, E $\frac{1}{2}$;
 T. 20 S., R. 62 E.,
 Sec. 1, NE $\frac{1}{4}$;
 T. 19 S., R. 63 E.,
 Sec. 28, S $\frac{1}{2}$;
 Sec. 29, S $\frac{1}{2}$;
 Sec. 30, SE $\frac{1}{4}$;
 Secs. 31, 32, 33;
 Sec. 34, W $\frac{1}{2}$ and SE $\frac{1}{4}$;
 T. 20 S., R. 63 E.,
 Sec. 3, W $\frac{1}{2}$ and NE $\frac{1}{4}$;
 Secs. 4, 5, 6;
 Sec. 8, NE $\frac{1}{4}$;
 Sec. 9, N $\frac{1}{2}$.

The area described aggregates approximately 6,312.94 acres.

This order shall take precedence over but not otherwise affect the order of November 3, 1936, of the Secretary of the Interior establishing Nevada Grazing District No. 5, so far as such order affects any of the above-described lands.

It is intended that the lands described above shall be returned to the administration of the Department of the Interior when they are no longer needed for the purpose for which they are reserved.

June 19, 1952.

[17 P. R. 5732, June 26, 1952]

Public Land Order 842

ALASKA

EXCLUDING CERTAIN LANDS FROM TONGASS NATIONAL FOREST, AND RESERVING PORTIONS OF EXCLUDED LANDS FOR VARIOUS PUBLIC PURPOSES OR FOR CLASSIFICATION; PARTIALLY REVOKING EXECUTIVE ORDER NO. 9114 OF MARCH 28, 1942

By virtue of the authority vested in the President by section 1 of the act of June 4, 1897 (30 Stat. 34, 36; 16 U. S. C. 475), and otherwise, and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1 So much of the following-described areas in Alaska as has not heretofore been eliminated from the Tongass National Forest is hereby excluded from the said forest, and the boundaries of the said forest are modified accordingly:

NORTH TONGASS HIGHWAY

Beginning at corner No. 10, U. S. Survey No. 1761, Ketchikan elimination from Tongass National Forest, thence,
 N. 61° W., 81.00 chains to corner No. 1 of Forest Exchange Survey 237;
 N. 0° 20' W., 19.76 chains to corner No. 2, F. E. S. 237;
 West, 40.00 chains to corner No. 6, F. E. S. 237;
 N. 0° 38' E., 8.39 chains to corner No. 5, F. E. S. 237;
 N. 0° 15' E., 20.00 chains to corner No. 2, U. S. S. 813;
 West, 30.00 chains to corner No. 4, U. S. S. 815;
 North, 20.00 chains to corner No. 3, U. S. S. 815;
 N. 44° 00' W., 75.00 chains approximately, to a point from which corner No. 4, U. S. S. 2603, bears S. 57° 51' W., 10.00 chains;
 N. 4° 00' E., 135.00 chains approximately, to a point from which corner No. 4, U. S. S. 2807, bears N. 51° 59' W., 30.00 chains;
 N. 35° 00' E., 104.00 chains approximately, to a point from which corner No. 4, U. S. S. 2805, bears N. 54° 32' W., 10.00 chains;
 N. 54° 32' W., 22.00 chains to a point on mean high tide line of Clover Passage;
 Southwesterly, southerly, and southeasterly, 825.00 chains, approximately, along mean high waterline of Clover Passage, Tongass Narrows, Totem Blight, and Mud Bay to corner No. 12, U. S. S. 1761;
 N. 23° 38' E., 18.85 chains to corner No. 11, U. S. S. 1761;
 N. 73° 39' E., 51.45 chains to point of beginning.
 The tract as described contains approximately 8,310 acres.

SOUTH TONGASS HIGHWAY

Beginning at corner No. 2 of U. S. Survey No. 1627, approximately 8 miles southeast of Ketchikan, thence,
 N. 39° 00' E., 37.50 chains, approximately, to a point from which corner No. 11, U. S. S. 2402, bears S. 80° 34' E., 6.00 chains;
 N. 23° 00' E., 82.50 chains, approximately;
 N. 29° 00' W., 51.00 chains, to corner No. 4, U. S. S. 2801;
 N. 0° 01' E., 7.385 chains, to corner No. 5, U. S. S. 2801;
 North, 17.30 chains;
 East, 44.40 chains, approximately, to corner No. 16, U. S. S. 2403;
 S. 55° 13' E., 5.62 chains to corner No. 1, lot 90, U. S. S. 2403;
 S. 50° 00' E., 1.00 chain to corner No. 2, lot 92, U. S. S. 2403;
 S. 64° 49' E., 3.66 chains to corner No. 20, M. C., U. S. S. 2403;
 Southerly, 258.00 chains, approximately, along mean high tide line of Herring Bay and George Inlet to S. E. M. C., U. S. S. 1627;
 N. 45° 00' W., 30.48 chains to point of beginning.
 The tract as described contains approximately 543 acres.

Beginning at corner No. 7 M. C., U. S. Survey No. 2611, approximately $\frac{1}{2}$ mile southeast of Craig, thence,

Northerly, along line of mean high tide of Shelter Cove and Klawok Inlet;

Southeasterly, along line of mean high tide of Crab Bay to a point from which corner No. 3, U. S. S. 2612, bears S. $76^{\circ} 30'$ W., 3.50 chains;

S. $30^{\circ} 00'$ E., 5.40 chains to shore of Port Bagial;

Southerly and westerly, 56.00 chains, approximately, along line of mean high tide of Port Bagial to a point S. 45° E. from corner No. 7, U. S. S. 2611;

N. $45^{\circ} 00'$ W., 2.50 chains to point of beginning.

The tract as described contains approximately 133 acres.

WRANGELL

Tract A. Beginning at corner No. 4, U. S. Survey No. 1760, thence,

East, 120.00 chains to a point on the line of mean high tide of Eastern Passage;

Northerly, 140.00 chains, approximately, along line of mean high tide of Eastern Passage to corner No. 5, U. S. S. 1760; South, 91.49 chains to point of beginning.

The tract as described contains approximately 402 acres.

Tract B. Beginning at corner No. 1, M. C., U. S. Survey No. 1760, thence,

S. $54^{\circ} 30'$ E., 7.54 chains to corner No. 2, U. S. S. 1760;

N. $88^{\circ} 00'$ E., 20.00 chains on line 2-3, U. S. S. 1760;

S. $24^{\circ} 30'$ E., 206.00 chains to a point from which corner No. 46, U. S. S. 2321, bears S. 66° W., 15.50 chains;

East, 56.50 chains;

South, 92.00 chains;

S. $11^{\circ} 00'$ W., 72.00 chains to a point from which corner No. 2, U. S. S. 2589, bears N. 72° W., 15.00 chains;

S. $42^{\circ} 00'$ W., 108.00 chains to a point from which U. S. C. & G. S. Station "Oar 2" bears West, 20 chains;

S. $30^{\circ} 00'$ E., 170.00 chains, approximately;

S. $28^{\circ} 00'$ E., 51.00 chains, approximately, to a point from which the mouth of Pat Creek bears N. 26° W., 7.00 chains;

West, 9.00 chains to a point on the line of mean high tide on eastern shore of Zimovia Strait;

Northerly, 700.00 chains, approximately, along line of mean high tide of Zimovia Strait to point of beginning.

The tract as described contains approximately 2,565 acres.

Tract C. All of an unnamed island and connecting high tide lands, situated in Zimovia Strait, at approximate latitude $55^{\circ} 21'$ N., longitude $132^{\circ} 28'$ W., and on which U. S. C. & G. S. Station "Boat 2" is located.

The tract as described contains approximately 5 acres.

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Whole Sr. - 1

Beginning at a point on line 2-3, U. S. Survey No. 1763, Sitka Elimination from Tongass National Forest, from which corner No. 2, U. S. S. 1763 bears S. $64^{\circ} 55'$ $50''$ W., 40 chains, thence,

N. $30^{\circ} 00'$ W., 208.00 chains, approximately, to a point from which corner No. 3, U. S. S. 2420, bears S. 60° W., 25.00 chains;

N. $28^{\circ} 00'$ E., 170.00 chains to a point on the left bank and mouth of an unnamed stream which enters Starrigavin Bay, from which U. S. C. & G. S. Station "Harbor" bears approximately S. 73° W., 70 chains;

Southerly, 240.00 chains, approximately, along line of mean high tide of Starrigavin Bay, Harbor Point, and Sitka Sound to corner No. 1, U. S. S. 1763;

Southeasterly, 208.22 chains with meanders of U. S. S. 1763 to corner No. 2 thereof;

N. $64^{\circ} 55'$ $50''$ E., 40.00 chains to point of beginning.

The tract as described contains approximately 1,504 acres.

DOUGLAS ISLAND

Beginning at corner No. 6, M. C., U. S. Survey 1762, thence,

South, 40.00 chains to $\frac{1}{2}$ mile post between corners 5 and 6 of U. S. S. 1762;

N. $81^{\circ} 00'$ W., 260.00 chains, approximately, to corner 2, U. S. S. 1082;

South, 47.87 chains;

West, 34.00 chains;

N. $49^{\circ} 00'$ W., 9.00 chains, approximately, from which corner No. 3, H. E. S. 119, bears

N. $39^{\circ} 36'$ E., 14.29 chains;

N. $49^{\circ} 00'$ W., 1.00 chain;

Northerly and easterly along line of mean high tide of Fritz Cove and Gastineau Channel to point of beginning.

The tract as described contains approximately 1,645 acres.

GLACIER HIGHWAY

Tract A. Beginning at corner No. 8, U. S. Survey 1762, thence,

N. 81° W., 53.00 chains, approximately, to corner No. 15, H. E. S. 174;

West, 84.00 chains to corner No. 8, U. S. S. 1536;

S. $66^{\circ} 26'$ E., 34.61 chains to corner No. 9, U. S. S. 1536;

S. $4^{\circ} 54'$ E., 9.67 chains to corner No. 10, U. S. S. 1536;

Easterly, along line of mean high tide of Gastineau Channel to corner No. 7, M. C., U. S. S. 1762;

North, 15.65 chains to point of beginning.

The tract as described contains approximately 254 acres.

Tract B. Beginning at corner No. 14, U. S. Survey 1536, thence,

N. $87^{\circ} 22'$ W., 53.27 chains to corner No. 1, U. S. S. 1536;

N. $13^{\circ} 01'$ E., 240.00 chains to 3-mile post between corners Nos. 1 and 2, U. S. S. 1536;

S. $66^{\circ} 00'$ W., 154.00 chains, approximately, to corner No. 3, U. S. S. 537;

Corner
SE

West, 28.34 chains to corner No. 2, U. S. S. 627;

S. 60° 00' W., 138.00 chains to a point from which corner No. 6 of the Auke Village Camp Ground, a Forest Service Recreation Site, as shown on map of section 8, Glacier Highway Development Plan, Tongass National Forest, as surveyed by Leonard Barrett in 1925, on file with the Forest Service, Juneau, Alaska, bears South 30 chains;

South, 30.00 chains to corner No. 6 of the above-described Auke Village Camp Ground;

S. 60° 00' W., 2.00 chains to corner No. 1, M. C., of the above-described Auke Village Camp Ground;

Easterly, along the line of mean high tide around Indian Point, along Auke Bay, and around Mendenhall Peninsula to point of beginning.

A small unnamed island in Auke Bay approximately 5 chains offshore from H. E. S. No. 81;

A small unnamed island in Favorite Channel approximately 20 chains south of Lot H, U. S. S. 2389.

The tracts as described aggregate approximately 3,066 acres.

Tract C. Beginning at corner No. 3 of the Auke Village Camp Ground, Forest Service Recreation Site, as shown on map of Section 8, Glacier Highway Development Plan, Tongass National Forest, surveyed by Leonard Barrett in 1925, and filed with the Forest Service, Juneau, Alaska, thence,

North, 24.00 chains to corner No. 4 of the above-described Auke Village Camp Ground;

N. 25° 00' W., 166.00 chains, approximately, to a point from which corner No. 8, U. S. S. 802, bears approximately North 105 chains;

North, 105.00 chains, approximately, to corner No. 8, U. S. S. 802;

North, 37.50 chains to corner No. 7, U. S. S. 802;

N. 12° 00' W., 280.00 chains to corner No. 4, H. E. S. 167;

N. 4° 54' E., 11.41 chains to corner No. 3 and M. C., H. E. S. 167;

N. 4° 54' E., 1.83 chains across Peterson Creek to corner No. 4 and M. C., H. E. S. 103;

N. 88° 08' E., 11.04 chains to corner No. 3, H. E. S. 103;

N. 0° 12' E., 58.41 chains to corner No. 2, H. E. S. 103, identical with corner No. 7, H. E. S. 145;

S. 89° 46' E., 3.44 chains to corner No. 6, H. E. S. 145;

N. 32° 22' E., 24.52 chains to corner No. 5, H. E. S. 145;

N. 2° 00' E., 46.28 chains to corner No. 4, H. E. S. 145;

N. 61° 13' W., 16.46 chains to corner No. 3, H. E. S. 145;

S. 45° 31' W., 4.73 chains to corner No. 2, H. E. S. 145, identical with corner No. 3, H. E. S. 90;

N. 45° 21' W., 21.81 chains to corner No. 4, H. E. S. 90;

N. 52° 18' W., 48.53 chains to corner No. 3, H. E. S. 90;

H. E. S. 90;

N. 27° 05' E., 3.30 chains to corner No. 5, H. E. S. 92;

N. 12° 02' W., 50.00 chains, approximately, to a point on the left bank of Herbert River; Westerly, along the left bank of Herbert River to its confluence with Eagle River, and along the left bank of Eagle River to Favorite Channel;

Westerly and southerly along the east shore of Favorite Channel to corner No. 2, M. C., of the above-described Auke Village Camp Ground;

N. 8° 15' E., 4.00 chains to the point of beginning.

Five small unnamed islands in Favorite Channel between Eagle Harbor and Amalga Harbor in approximate latitude 58°29'20" N., longitude 134°47'30" W.

The tracts as described aggregate approximately 4,707 acres.

PETERSBURG

COPPER RIVER MERIDIAN

T. 58 S., R. 79 E., partly unsurveyed,

Sec. 18, lots 1, 2, 3, 4, 5, 6, NE $\frac{1}{4}$ SW $\frac{1}{4}$, and N $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 19, lots 1, 2, 3, 4, 5, 6, 7, SE $\frac{1}{4}$ NW $\frac{1}{4}$, and SE $\frac{1}{4}$;

Sec. 20;

Sec. 29, lots 2, 3, 6, 7, and W $\frac{1}{2}$ W $\frac{1}{2}$;

Sec. 32;

Sec. 33, lot 6;

Sec. 34, lots 1, 2, 3, 4, and S $\frac{1}{2}$;

Sec. 35, lots 1, 2, 3, W $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, and S $\frac{1}{2}$;

Sec. 36.

T. 59 S., R. 79 E., partly unsurveyed,

Sec. 3, lots 1, 2, 3, 4, 5, E $\frac{1}{2}$, and NE $\frac{1}{4}$ NW $\frac{1}{4}$;

Sec. 4, lots 3, 4, 7, and 8;

Sec. 5, lots 1, 2, 3, S $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 9, lots 2, 3, 4, and 5;

Sec. 10, lots 1 and 4, E $\frac{1}{2}$, and E $\frac{1}{2}$ SW $\frac{1}{4}$;

Sec. 14, S $\frac{1}{2}$;

Secs. 15 and 16;

Sec. 21, lots 1 and 2, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, and SE $\frac{1}{4}$;

Secs. 22, 23, and 26;

U. S. Survey No. 1722 in secs. 22 and 27;

Sec. 34, lots 3 and 4;

Sec. 35.

T. 60 S., R. 79 E.,

Secs. 2 and 11;

Sec. 13, lot 1, N $\frac{1}{2}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 14, lots 1, 2, 3, 4, 5, and NE $\frac{1}{4}$;

Sec. 23, lots 1, 2, 5, 6, and 9;

Sec. 24, lot 1, E $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$, and SW $\frac{1}{4}$;

Sec. 25, lots 1, 2, 3, 4, 5, 6, 8, 9, NE $\frac{1}{4}$, and NE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 26, lot 1.

The areas described aggregate 10,833.28 acres.

2. Subject to valid existing rights, including rights of Alaska natives, and to the provisions of existing withdrawals, the following-described tracts of public land, which are portions of the lands described in paragraph 1 hereof, are

hereby withdrawn from all forms of appropriation under the public-land laws, including the mining laws but not the mineral-leasing laws, and reserved under the jurisdiction of the Secretary of the Interior as follows:

(a) For the preservation and protection of scenic values: *Provided*, That the timber resources on such lands shall be subject to disposal pursuant to applicable laws:

NORTH TONGASS HIGHWAY

A tract of land lying between the north-west right-of-way line of North Tongass Highway and line of mean high tide of Clover Passage; and between the north boundary of U. S. Survey No. 2553 and the extension northwesterly of the north boundary of U. S. Survey No. 2805.

The tract as described contains approximately 6 acres.

A tract of land lying between the south-westerly right-of-way line of North Tongass Highway and line of mean high tide of Tongass Narrows; and between the west boundary of U. S. Survey No. 1102 and the extension southwesterly of the northwest boundary of Lot B, U. S. Survey No. 2343.

The tract as described contains approximately 2 acres.

A tract of land lying between the south-westerly right-of-way line of North Tongass Highway and line of mean high tide of Tongass Narrows; and between the south boundary of U. S. Survey No. 2878 and the extension southwesterly of the northwest boundary of Lot E, U. S. Survey No. 2343.

The tract as described contains approximately 3 acres.

SOUTH TONGASS HIGHWAY

A tract of land lying between the easterly right-of-way line of South Tongass Highway and the line of mean high tide of George Inlet; and between the northeasterly boundary of Lot 67, U. S. S. 2402 and the south boundary of U. S. S. 2405.

The tract as described contains approximately 35 acres.

A tract of land lying between the easterly right-of-way line of South Tongass Highway and the line of mean high tide of George Inlet; and between the north boundary of U. S. S. 2191 and the south boundary of U. S. S. 2404.

The tract as described contains approximately 7 acres.

WRANGELL

Tract B. A tract of land lying between the west right-of-way line of Wrangell Highway and line of mean high tide of Zimovia Strait; and between the west boundary of unapproved U. S. S. 3000 and the north boundary of U. S. S. 2921.

The tract as described contains approximately 18 acres.

A tract of land lying between the west right-of-way line of Wrangell Highway and line of mean high tide of Zimovia Strait; and between the north boundary of Lot 18, unapproved U. S. Survey 2969 and the south boundary of Lot 22, unapproved U. S. Survey 2922.

The tract as described contains approximately 20 acres.

GLACIER HIGHWAY

Tract A. A tract of land lying between the south right-of-way line of Glacier Highway and the line of mean high tide of Gastineau Channel; and between Mile 7.375 and Mile 6.625, Glacier Highway.

The tract as described contains 4 acres.

Tract C. A tract of land lying between the westerly right-of-way line of Glacier Highway and line of mean high tide of Lena Cove; and between the northwest boundary of unapproved U. S. S. 3056 and the south boundary of unapproved U. S. Survey 3059.

The tract as described contains approximately 7 acres.

A tract of land lying between the west right-of-way line of the Glacier Highway and line of mean high tide of Tee Harbor; and between the north boundary of unapproved U. S. Survey 3057 and the south boundary of U. S. Survey 802.

The tract as described contains approximately 7 acres.

A tract of land lying between the west right-of-way line of Glacier Highway and the east boundary of U. S. Survey 2745 and the line of mean high tide of Pearl Harbor; and between the south boundary of U. S. Survey 2517 and the extension of the south boundary of U. S. Survey 2745.

The tract as described contains approximately 13 acres.

(b) For use as rights-of-way for access roads:

GLACIER HIGHWAY

Tract A. Beginning at corner 2 M. C., H. E. S. 174, thence

North, 9.00 chains, approximately, to a point from which corner 2, U. S. S. 2182 bears S. 85° 30' E., approximately 2 chains.

S. 85° 30' E., 2.00 chains to corner 2, U. S. S. 2188.

S. 0° 40' E., 8.70 chains to line of mean high tide of Gastineau Channel.

Westerly, 2.20 chains along line of mean high tide to point of beginning.

The tract as described contains 1.80 acres.

Beginning at corner 5, H. E. S. 204, thence

Westerly, 1.00 chain along south right-of-way line of Glacier Highway to intersection of line 9-10, U. S. S. 1536.

S. 4° 54' E., 7.38 chains to corner 10, M. C., U. S. S. 1536.

East, 1.00 chain to corner 6, M. C., H. E. S. 204.

N. 4° 54' W., 7.38 chains to point of beginning.

The tract as described contains 0.74 acres.

Revised by PLO 238.

3. Except to their exclusion from the Tongass National Forest by paragraph 1 hereof and their return to the administration of the Department of the Interior, the status of the public lands within the following-described areas shall not be changed until it is so provided by orders of classification to be issued by the Regional Administrator, Bureau of Land Management, Anchorage, Alaska, opening the lands to application under the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U. S. C. 682a), as amended, with a ninety-one-day preference-right filing period for filing such applications by veterans of World War II and others entitled to preference:

NORTH TONGASS HIGHWAY AND SOUTH TONGASS HIGHWAY

All lands in the North Tongass Highway and South Tongass Highway areas described in paragraph 1 hereof, exclusive of the tract reserved for use as the Whipple Creek Public Service Site by Public Land Order No. 734 of July 20, 1951, and the tracts in such areas reserved for the preservation and protection of scenic values by paragraph 2 (a) hereof.

CRAIG

All lands in the Craig area described in paragraph 1 hereof.

WRANGELL

Tract B. Beginning at a point on line 2-3, U. S. Survey No. 1760, from which corner No. 2, said survey, bears S. 68° W., 5.50 chains, thence

N. 68° 00' E., 14.50 chains;
 S. 24° 30' E., 208.00 chains to a point from which corner No. 46, U. S. S. 2321, bears S. 66° W., 15.50 chains;
 East, 56.50 chains;
 South, 92.00 chains;
 S. 11° 00' W., 72.00 chains to a point from which corner No. 2, U. S. S. 2589, bears N. 72° 00' W., 15.00 chains;
 S. 42° 00' W., 108.00 chains to a point from which U. S. C. & G. S. station "Oar 2" bears West 20.00 chains;
 S. 30° 00' E., 170.00 chains, crossing Pat Creek 6 chains above its confluence with Trout Lake, to a point approximately 10.00 chains from the center of Pat Creek;
 S. 29° 00' E., 51.00 chains;
 West, 9.00 chains to line of mean high tide of Zimovia Strait;
 Northerly, along line of mean high tide to a point from which corner No. 2, U. S. S. 2321, bears N. 57° 08' E., 10.40 chains;
 N. 57° 08' E., 10.40 chains to corner No. 2, U. S. S. 2321;
 N. 20° 40' W., 6.70 chains to point of beginning, excluding therefrom the tracts in the Wrangell area reserved for the preservation and protection of scenic values by paragraph 2 (a) hereof.

The tract described contains approximately 2,520 acres.

PETERSBURG

COPPER RIVER MERIDIAN

T. 58 S., R. 79 E.,
 Sec. 20, lots 4, 5, and 6;
 Sec. 22, lots 2, 3, 6, and 7;
 Sec. 32, lots 1 and 3;
 Sec. 33, lot 6;
 Sec. 34, lots 1, 2, 3, and 4;
 Sec. 35, lot 2 and E $\frac{1}{2}$ NW $\frac{1}{4}$.
 T. 59 S., R. 79 E.,
 Sec. 4, lots 3, 4, 7, and 8;
 Sec. 9, lots 2 and 3;
 Sec. 13, lots 1, 2, 3, and 4;
 Sec. 22, lots 1 and 2;
 Sec. 23, lots 1 and 2;
 Sec. 26, lots 1 and 2;
 Sec. 34, lots 3 and 4;
 Sec. 35, lots 2 and 3, and NW $\frac{1}{4}$ SW $\frac{1}{4}$.
 T. 60 S., R. 79 E.,
 Sec. 2, lots 4, 5, 6, and 7, and W $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 11, lots 1 and 2;
 Sec. 25, lots 3 and 6.
 U. S. Surveys No. 2461 to No. 2468, inclusive;
 U. S. Surveys No. 2470 to No. 2474, inclusive,
 and U. S. Survey No. 2809.
 The areas described aggregate 1,822.18 acres.

SITKA

Beginning at corner No. 1, U. S. Survey No. 1763, thence
 Northeasterly, 6.40 chains, approximately, along meanders of U. S. S. 2762, to corner No. 4, M. C., U. S. S. 2752;
 N. 45° E., 1.00 chain to corner No. 4, U. S. S. 2420;
 N. 60° E., 31.00 chains;
 S. 30° E., 208.00 chains to $\frac{1}{2}$ -Milepost on line 2-3, U. S. S. 1763;
 S. 84° 55' 50" W., 40.00 chains to corner No. 2, U. S. S. 1763;
 Northwesterly, 216.00 chains along line of mean high tide of Sitka Bay to point of beginning, excepting therefrom the following-described areas:
 (a) The tract reserved by the act of March 22, 1944 (58 Stat. 119), as a municipal water-supply reserve for the City of Sitka;
 (b) The tract reserved by Public Land Order No. 786 of January 5, 1952, for the use of the Alaska Communication System, Department of the Army, as a radio-communication site.
 The tract as described contains approximately 750 acres.

DOUGLAS ISLAND

All lands in the Douglas Island area described in paragraph 1 hereof.

GLACIER HIGHWAY

Tract A. Beginning at corner No. 8, U. S. Survey 1762, thence,
 N. 81° 00' W., 53.00 chains to corner No. 15, H. E. S. 174;

South, 12.00 chains approximately, to a point from which corner No. 2, U. S. S. 2188, bears S. 85° 30' E., 2 chains;
 S. 85° 30' E., 4.60 chains to corner No. 3, U. S. S. 2154;
 S. 88° 38' E., 4.49 chains to corner No. 2, U. S. S. 2409;
 S. 83° 08' E., 7.03 chains to corner No. 2, U. S. S. 2476;
 East, 7.00 chains to corner No. 3, U. S. S. 2476;
 South, 6.86 chains to corner No. 4, U. S. S. 2476;
 Easterly, 27.50 chains along the north right-of-way line of Glacier Highway to intersection of line 7-8, U. S. S. 1762;
 North, 12.50 chains to corner No. 8, U. S. S. 1762, the point of beginning.

The tract as described contains approximately 68.8 acres.
 U. S. Survey No. 2475, containing 18.60 acres.

Tract B. Beginning at corner No. 1, U. S. Survey 1586, Mendenhall Elimination from the Tongass National Forest, thence,

N. 30° 01' E., 72.50 chains to a point on the north right-of-way line of Glacier Highway;
 Northwesterly, approximately 65 chains along said right-of-way line to intersection with the northeasterly right-of-way line of the Auke Lake Spur Road;

Northerly, approximately 41.60 chains along said right-of-way line to intersection with the south right-of-way line of the Mendenhall Loop Road;

Northeasterly, approximately 108.50 chains along said south right-of-way line to west boundary of U. S. Survey 1536;

N. 13° 01' E., approximately 40.00 chains along said West boundary;

S. 66° W., 154.00 chains;

West, 28.34 chains;

S. 60° W., 138.00 chains;

South, 30.00 chains to line of mean high tide, Auke Bay;

Easterly, along line of mean high tide of Auke Bay, around Mendenhall Peninsula;

Northerly, on Gastineau Channel to point of beginning, and including two small islands in Auke Bay.

The tract as described contains approximately 2,200 acres.

Tract C. Beginning at corner No. 8, U. S. Survey 802, thence,

South, 105.00 chains;

S. 23° E., 165.00 chains;

South, 24.00 chains to line of mean high tide of Favorite Channel;

Northwesterly, along line of mean high tide of Favorite Channel, around Point Lena, Lena Cove, Point Stephens, and Tee Harbor, to corner No. 1, M. C., U. S. S. 802;

East, 13.75 chains to point of beginning, including unapproved U. S. Surveys 3051, 3052, 3053, 3054, 3055, 3056, 3057, 3058, and 3059, and excepting therefrom the tract withdrawn by Public Land Order No. 175 of September 29, 1943, which was transferred to the Department of the Army by Public Land

Order No. 723 of November 1951; and the tracts in the Glacier Highway area (Tract C), reserved for the preservation and protection of scenic values by paragraph 2 (a) hereof.

The tract as described contains approximately 900 acres.

Beginning at corner No. 6, M. C., U. S. Survey 802, thence,

East, 26.98 chains to corner No. 7, U. S. S. 802;

N. 12° W., 68.00 chains;

West, 44.00 chains to line of mean high tide of Favorite Channel;

Southerly, along said line of mean high tide to northwest corner Executive Order 51 of November 2, 1904;

East, 2.14 chains to west boundary of U. S. S. 377;

North, 27.20 chains to corner No. 2, U. S. S. 377;

East, 4.75 chains to corner No. 3, U. S. S. 377;

Northerly and Southerly along line of mean high tide of Tee Harbor to point of beginning, including unapproved U. S. S. 3060.

The tract as described contains approximately 100 acres.

Beginning at corner No. 1, H. E. S. 167; thence,

S. 89° 41' W., 7.00 chains to corner No. 8, H. E. S. 112;

N. 13° 01' W., 18.70 chains to corner No. 3, U. S. S. 2195;

S. 75° 11' W., 9.73 chains to corner No. 4, U. S. S. 2195;

N. 33° 28' W., 2.00 chains to corner No. 5, M. C., U. S. S. 2195;

Westerly, 2.00 chains along line of mean high tide of Eagle River Harbor, to corner No. 1, M. C., Tract B, U. S. S. 2387;

S. 14° 59' E., 2.43 chains to corner No. 2, U. S. S. 2387;

S. 75° 04' W., 4.98 chains to corner No. 3, M. C., U. S. S. 2387;

Southerly, 70.00 chains, approximately, along line of mean high tide of Favorite Channel to corner No. 1, M. C., U. S. S. 2516;

North, 6.77 chains to corner No. 2, U. S. S. 2516;

East, 3.36 chains to corner No. 3, U. S. S. 2516;

N. 26° 27' E., 33.28 chains to point of beginning.

The tract as described contains approximately 105 acres.

Beginning at corner No. 8, H. E. S., 143; thence,

N. 41° W., 53.00 chains to corner No. 4, H. E. S. 105;

N. 88° 41' W., 3.06 chains to corner No. 5, H. E. S. 105;

S. 0° 17' E., 30.16 chains to corner No. 6, H. E. S. 105;

N. 29° 50' W., 87.97 chains to corner No. 1, H. E. S. 105;

N. 24° 24' W., 7.82 chains to corner No. 1, H. E. S. 89;

West, approximately 37.50 chains to line of mean high tide of Favorite Channel;

Southeasterly. said line of mean high tide, 30.00 chains to corner No. 4, M. C., Eagle River Mining Co. Mill and Dock Site; N. 30° W., 8.50 chains to corner No. 3 thereof;

N. 60° E., 9.40 chains to corner No. 2 thereof;
S. 34° 11' E., 5.19 chains to corner No. 1, M. C., thereof;

Southeasterly along line of mean high tide of Favorite Channel, Salt Lake, and Peterson Creek to corner No. 1, M. C., H. E. S. 103;

S. 89° 45' E., 10.30 chains to point of beginning.

The tract as described contains approximately 168 acres.

All unnamed islands lying offshore of the Glacier Highway area, Tracts B and C, described in paragraph 1 hereof.

4. Effective at 10:00 a. m. on the 35th day from the date of this order, any public lands described in paragraph 1 hereof which are occupied by holders of permits from the Department of Agriculture who own valuable improvements thereon, are restored, subject to valid existing rights, for purchase as home sites under section 10 of the act of May 14, 1898, as amended by the act of May 26, 1934 (48 Stat. 809; 48 U. S. C. 461).

5. Subject to valid existing rights, including rights of Alaska natives, and to the provisions of existing withdrawals, the public lands described in paragraph 1 hereof, except as they are affected by paragraphs 2, 3, and 4 hereof, are hereby withdrawn from settlement, location, sale, and entry, and reserved for classification.

6. Executive Order No. 9114 of March 28, 1942, reserving certain public lands in Alaska for military purposes, is hereby revoked so far as it affects any part of the tract at Sitka, Alaska, described in paragraph 1 hereof.

June 19, 1952.

[17 F. R. 5732, June 26, 1952]

Public Land Order 843

ALASKA

WITHDRAWING PUBLIC LAND FOR USE OF DEPARTMENT OF THE AIR FORCE FOR MILITARY PURPOSES

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

Subject to valid existing rights, the following-described public land in Alaska is hereby withdrawn from all forms of

appropriation under public-land laws, including the mining and mineral-leasing laws, and reserved for the use of the Department of the Air Force for military purposes:

Beginning at Corner No. 1, identical with Witness Meander Corner No. 8 of U. S. Survey No. 2627 which is an iron post with brass cap marked "W. C. S2627-C8" and from which point a tower bears N. 66°24' W., 6,338.64 feet; thence by meters and bounds:

N. 23° 25' E., 1,440.6 feet along the 7-8 line of U. S. Survey No. 2627 to Corner No. 2;
S. 66° 30' E., 4,500.0 feet to Corner No. 3;
S. 31° 30' E., 4,000.0 feet to Corner No. 4;
N. 85° 30' E., 18,100.0 feet to Corner No. 5;
S. 4° 30' E., 11,700.0 feet to Corner No. 6;
S. 85° 30' W., 22,300.0 feet approximately to the mean high water line of the Yukon River, Corner No. 7;

Northerly, 18,000.0 feet meandering the said Yukon River to point from which Corner No. 1 bears N. 23° 25' E.;

N. 23° 25' E., 59.4 feet to Corner No. 1 and the point of beginning.

The area described contains 5,920 acres.

It is intended that the land described above shall be returned to the administration of the Department of the Interior when it is no longer needed for the purpose for which it is reserved.

June 24, 1952.

[17 F. R. 5830, June 28, 1952]

Public Land Order 844

ALASKA

WITHDRAWING PUBLIC LANDS FOR USE OF ALASKA RAILROAD AS SOURCES OF GRAVEL

By virtue of the authority vested in the President by the act of March 12, 1914, 38 Stat. 305, 307 (48 U. S. C. 304) and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

Subject to valid existing rights, the following-described public lands in Alaska are hereby withdrawn from all forms of appropriation under the public-land laws including the mining and mineral-leasing laws, and reserved for the use of the Alaska Railroad, Department of the Interior, as sources of gravel:

PITTMAN

SEWARD MERIDIAN

T. 17 N., R. 2 W.,
Sec. 5, SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, those parts south of the south right-of-way line of the Alaska Railroad;

United States
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Anchorage, Alaska

50 Copies Run
July 22, 1952

Memorandum

To: Members of Alaska Field Staff Subcommittee

From: Abe Barber, Member of Subcommittee

Subject: Brief on Statutes and Orders for the Establishment
of Road Rights-Of-Way in Alaska

Attached hereto is a copy of the brief which I promised at our last meeting. Sorry I am a little late in getting it to you boys. I am acting as regional Administrator in the absence of Mr. Puckett and have been very hard pressed for time.

I will be glad to receive your comments and suggestions for consideration at our next meeting.

/s/ Abe Barber
Abe Barber
Bureau of Land Management

cc: Frank Wiley
Alaska Public Works
Juneau, Alaska

J. J. Delaney
The Alaska Railroad
Anchorage, Alaska

Mr. B. Adams
Alaska Road Commission
Juneau, Alaska

BRIEF

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

AUTHORITIES

Rights-of-way for the construction of public roads and highways in Alaska may be established by the Alaska Road Commission under the authority of R.S. 2477 (43 U.S.C 932); Act of June 30, 1932 (47 Stat. 446; 48 U.S.C. 321a), as amended by the Act of July 24, 1947 (61 Stat. 412; 48 U.S.C. 321a); Public Land Order No. 601 of August 10, 1949, as amended by Public Land Order No. 757 of October 16, 1951; Departmental Order No. 2665 of October 16, 1951.

APPLICATION OF AUTHORITY

1. R.S. 2477, grants rights-of-way for the construction of highways over public lands not reserved for public uses. The grant becomes effective upon the establishment of the highway in accordance with State or other applicable laws. The statute does not specify any width for rights-of-way so established and unless maps of definite location showing the width of the right-of-way appropriated are filed and recorded in the proper recording district, the width would be limited, as against subsequent valid claims, to that recognized by the courts, which I understand is 66 feet or 33 feet on each side of the center line in the Territory of Alaska.
2. The Act of June 30, 1932, authorizes the construction of roads and highways over the vacant and unappropriated public lands under the jurisdiction of the Department of the Interior. This statute, like R.S. 2477, does not specify the width of the rights-of-way which may be established thereunder. Therefore, unless maps were filed in the proper land offices, as contemplated by the 1932 Act, showing the width of the right-of-way appropriated, the right-of-way would also be limited to 66 feet or 33 feet on each side of the center line of the road or highway, as against valid claims or entry subsequently initiated prior to Public Land Order No. 601 of August 10, 1949.
3. The Act of July 24, 1947, added section 5 to the Act of June 30, 1932, which provided that "In all patents for lands taken up, entered, or located in the Territory of Alaska, and in all deeds by the United States hereafter conveying lands to which it may have reacquired

title in said Territory . . . there shall be expressed that there is reserved from the land described in said patent or deed, a right-of-way thereon for roads, roadways, highways, . . . constructed or to be constructed by or under the authority of the United States or of any State created out of the Territory of Alaska". Again, this statute did not specify the width of the rights-of-way reserved, so that any valid claim or entry initiated after the Act and prior to Public Land Order No. 601 of August 10, 1949, as amended by Public Land Order No. 757 of October 16, 1951, would be subject to the reservation of 66 feet for road right-of-way purpose, or 33 feet on each side of the center line of the road only. If an additional width were required, in such cases, it would be necessary to obtain it by easements from the claimant or entryman or by condemnation proceedings.

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

300 feet on each side of the center line of the Alaska Highway

150 feet on each side of the center line of all other through roads

100 feet on each side of the center line of all feeder roads.

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

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

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

which were established as easements and released from the withdrawal.

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

From the foregoing it necessarily follows that:

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

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

(c) The width of rights-of-way to which the ARC is entitled to over patented lands based on claims or entries initiated after the 1947 Act and prior to P.L.O. 601, as amended by P.L.O. 757, October 16, 1951, would be limited to that recognized as the prevailing standard in the particular area (normally 60 feet). It should be noted that none of the land reserved under P.L.O. 601 was subject to disposal prior to the amendment Order No. 757 of October 16, 1951.

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

/s/ Abe Barber
Abe Barber
member of Alaska Field
Staff Sub-Committee

*Will be in the file -
1952 - 1st Way Section
H. P. S. Unit*

UNITED STATES
DEPARTMENT OF THE INTERIOR
Alaska Road Commission
Juneau, Alaska



MANUAL NO. 8

REAL ESTATE PROCEDURE AND PRACTICE

November, 1952

Prepared Under Direction of:

Wm. B. Adams

Real Estate Officer
(Chief, Real Estate Branch)

Operations Division

STATUTES AND ORDERS
UNDER WHICH RIGHTS-OF-WAY FOR ROADS AND HIGHWAYS
MAY BE ESTABLISHED OVER LANDS IN ALASKA
BY THE ALASKA ROAD COMMISSION

AUTHORITIES

Rights-of-way for the construction of public roads and highways in Alaska may be established by the Alaska Road Commission under the authority of R.S. 2477 (43 U.S.C. 932); Act of June 30, 1932 (47 Stat. 446; 48 U.S.C. 321a), as amended by the Act of July 24, 1947 (61 Stat. 418; 46 U.S.C. 321a); Public Land Order No. 601 of August 10, 1949, as amended by Public Land Order No. 757 of October 16, 1951; Departmental Order No. 2665 of October 16, 1951.

APPLICATION OF AUTHORITY

1. R.S. 2477, grants rights-of-way for the construction of highways over public lands not reserved for public uses. The grant becomes effective upon the establishment of the highway in accordance with State or other applicable laws. The statute does not specify any width for rights-of-way so established and unless maps of definite location showing the width of the right-of-way appropriated are filed and recorded in the proper recording district, the width would be limited, as against subsequent valid claims, to that recognized by the courts.
2. The Act of June 30, 1932, authorizes the construction of roads and highways over the vacant and unappropriated public lands under the jurisdiction of the Department of the Interior. This statute, like R.S. 2477 does not specify the width of the rights-of-way which may be established thereunder. Therefore, unless maps were filed in the proper land offices, as contemplated by the 1932 Act, showing the width of the right-of-way appropriated, the right-of-way would also be limited to 66 feet or 33 feet on each side of the center line of the road or highway, as against valid claims or entry subsequently initiated prior to Public Land Order No. 601 of August 10, 1949.
3. The Act of July 24, 1947, added section 5 to the Act of June 30, 1932, which provided that "In all patents for lands taken up, entered, or located in the Territory of Alaska, and in all deeds by the United States hereafter conveying lands to which it may have reacquired title in said Territory . . . there shall be expressed that there is reserved from the land described in said patent or deed, a right-of-way thereon for roads, roadways, highways, . . . constructed or to be constructed by or under the authority of the United States or

of any State created out of the Territory of Alaska". Again, this statute did not specify the width of the rights-of-way reserved, so that any valid claim or entry initiated after the Act and prior to Public Land Order No. 601 of August 10, 1949, as amended by Public Land Order No. 757 of October 16, 1951, would be subject to the reservation of 66 feet for road right-of-way purpose, or 33 feet on each side of the center line of the road only. If an additional width were required, in such cases, it would be necessary to obtain it by easements from the claimant or entryman or by condemnation proceedings.

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

300 feet on each side of the center line of the Alaska Highway,

150 feet on each side of the center line of all other through roads,

100 feet on each side of the center line of all feeder roads,

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

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

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

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

From the foregoing it necessarily follows that:

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

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

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

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

*P.L.O. 2665 was Revised to 150' on each side of E by P.L.O. 1613
(Alaska Highway & Ill. Through Roads)*

BUREAU OF PUBLIC ROADS

OFFICE MEMORANDUM

UNITED STATES GOVERNMENT

April 1, 1958

TO: Mr. E. H. Swick, Regional Engineer, Juneau, Alaska

FROM: C. W. Enfield, General Counsel
Washington, D. C.

SUBJECT: Legal Problems Relating to Right-of-Way Acquisition in Alaska

The purpose of this memorandum is to furnish my general views of the Bureau's rights in connection with highway right-of-way in Alaska, to answer, to the extent possible from the sketchy facts which are available, the specific questions which you have raised in previous correspondence, and to indicate the circumstances under which condemnation procedure may be utilized to insure availability of right-of-way to meet construction requirements. The observations made herein have been discussed informally with legal personnel of the Departments of the Interior and Justice, but should not be considered as representing the official views of those departments.

It is considered that, under the authority of the Act of Congress approved July 24, 1947 (61 Stat. 418; 48 U.S.C. 321d), all entries made on public lands subsequent to said date and all patents based thereon have been and are subject to a reservation in the United States of any and all rights-of-way, without limitation as to number or widths, for public highways already constructed or to be constructed on said land.

As was stated by the House Committee on Public Lands in Report No. 673, dated June 24, 1947, "The Committee on Public Lands unanimously agreed that passage of this legislation will help to eliminate unnecessary negotiations and litigation in obtaining proper rights-of-way through Alaska." This legislation was introduced at the request of the Department of the Interior as expressed in a letter dated January 13, 1947, to the Speaker of the House, which was set forth and made a part of the Committee Report. The letter states in part, ". . . However, for the proper location of roads and in the interest of public service, it is necessary in some instances to cross lands to which title has passed from the United States. These instances are becoming more numerous as the population of the Territory increases and obtaining rights-of-way over such lands has, in a number of cases, presented difficulties requiring court action and the expenditure of Federal funds. The proposed legislation is similar to the provisions of the Act of August 30, 1890, (43 U.S.C. 945) which reserves rights-of-way for ditches and canals constructed by the authority of the United States west of the 100th meridian. The proposed bill would be applicable to both public domain and acquired lands of the United States."

The 1890 Act was construed by the Supreme Court of the United States in the case of *Ida v. United States* (263 U.S. 497). The court pointed out that, at the time of enactment of the legislation, the United States had no canals or ditches either constructed or in the process of construction, but that investigations were being conducted toward the formulation of plans for reclamation projects. "At an early stage of the investigations, Congress became solicitous lest disposal of lands in that region under the land laws might render it difficult and costly to obtain the necessary rights-of-way for canals and ditches when the work was undertaken. To avoid such embarrassment Congress at first withdrew great bodies of the lands from disposal under the land laws That action proved unsatisfactory and,

by Act of August 30, 1890, Congress repealed the withdrawal, restored the lands to disposal under the land laws, and gave the direction that in all patents there should be a reservation of rights-of-way. . . ." The court held further that the statutory reservation was known to all and "all entrymen thereafter acted in the light of that knowledge so charged to them." As said by the lower court in Green v. Willhite (93 P. 973), the "Congress was taking this precautionary measure for the protection of a right-of-way to the Government in the event it should later adopt a reclamation policy and enter upon such works. It intended thereby to save the Government from the expense of purchasing and condemning rights-of-way when the Government became ready to construct any canal or ditch."

I believe, therefore, that the reservation under the 1947 Act constitutes an inseparable incident and burden of ownership of such lands and that when the Bureau utilizes the right-of-way, it is doing that which it has a right to do and is not liable to pay compensation therefor. The Bureau is, however, obligated, under the Act, to make payment for the full value of crops and improvements located on rights-of-way, traversing land under valid entry or under patent, when said rights-of-way are utilized. This obligation does not extend to payment of severance damages to land, crops, or improvements outside the rights-of-way. Before making any efforts to reach agreement with entrymen for crops and improvements, you should be assured that the Bureau of Land Management considers the entry to be valid and in good standing since, if not, the entrymen's sole rights would be those of removal. Any agreements reached for crops and improvements should contain also a provision releasing the United States from all claims to compensation arising from its utilization of the rights-of-way.

Parties holding patents dated subsequent to July 24, 1947 who made valid homestead entry prior to said date are entitled to "just compensation" for the taking of any of their lands unless a particular patent includes a general right-of-way reservation in which event, the patentee would be entitled to payment only for crops and improvements.

Parties holding patents dated prior to July 24, 1947 are, of course, entitled to "just compensation" for any taking of their lands.

Patentees of lands not subject to the 1947 Act are entitled to be paid "just compensation" for the taking of any right-of-way in addition to that already included within the limits of established roads. If the right-of-way limits are not defined on the ground or by plats, then the right-of-way would ordinarily be considered as encompassing the roadway itself plus such additional widths as were, at the time of establishment, considered to be reasonably necessary for the protection of the roadway. In reaching a decision as to the limits of a particular existing right-of-way, you should consider all available information bearing on the intent of the Government at the time of establishing the road including terrain features and accepted practices in the area. Generally, it would appear from the facts heretofore submitted that you will be able to support a claim to a 66-foot right-of-way.

In general, I believe that the views expressed above cover most of the questions raised in the specific cases set out in your memorandum of August 21. However, specific comments as to each case are set forth below:

- Case 1. It is considered extremely doubtful that 2477 was intended to apply to rights-of-way required by the United States. This statute constitutes a continuing offer by the United States to others to make public lands available for highway construction. Rather, we feel that the authority for acquisition of right-of-way for public highways in Alaska stems from the Act of January 27, 1905 (33 Stat. 616), as amended by the Act of June 30, 1932 (47 Stat. 446), the Act of July 24, 1947 (61 Stat. 418), and Section 107 of the Federal-Aid Highway Act of 1956. See my comments above on the matter of determining the legal limits of an established right-of-way.
- Case 2. On the basis of the facts submitted, it seems reasonable to assume that the United States has a right-of-way by prescription to the roads as established. The width of the right-of-way is a question of fact as is discussed earlier in this memorandum. Under these circumstances, there would not be any authority to compensate the patentee.
- Case 3. Where the 1947 Act is not applicable, it is considered that a right-of-way established by prescription does not shift and that the patentee would be entitled to compensation for any improvement involving right-of-way beyond the limits of that previously considered as having been established.
- Case 4. An entryman in good standing has an inchoate's property right, even as against the United States, which permits him to use and occupy the land and its resources in developing the property in a manner which will enable him to obtain a patent. While he may not alienate the land or any interest therein, as for example, by selling gravel to third persons, he would not be precluded from transferring any interest which he might have in the gravel to the United States. Nevertheless, inasmuch as legal title to the gravel is still in the United States, there is considerable doubt as to the proper basis of assigning value, if any, to the entryman's interest. Under the circumstances, if project requirements make it necessary to obtain gravel from entrymen who demand payment of compensation, it would appear to be advisable to institute condemnation proceedings and to file Declarations of Taking with a deposit of \$1.00 for each ownership. An alternate procedure, if acceptable to a particular entryman, might be to obtain a right of entry and reserve to the entryman the right to bring suit to determine his interest. We are giving consideration to the advisability of presenting this and other questions to the Comptroller General. However, the procedures suggested herein should take care of your immediate requirements.
- Case 5. The 1947 Act reserves rights-of-way in any number needed.
- Case 6. If the 1947 Act is applicable we have unlimited rights. If the 1947 Act is not applicable we must pay for any rights-of-way beyond the limits of those previously established.
- Case 7. Under the facts stated, the 1947 Act would be applicable. The Act reserves rights-of-way in any widths needed.

Case 8. If the entry was subsequent to the 1947 Act, the Bureau may utilize such rights-of-way as it desires. If a valid entry was made, under the applicable law, prior to the 1947 Act, the right-of-way is limited to that previously established.

Case 9. This was answered in our memorandum of March 3, 1953, Subject: Authority of Territory to grant permittee leases covering school section lands.

Where negotiations with parties from whom the Bureau is taking right-of-way are not successful, it will, of course, be necessary to proceed to condemnation. As to entrymen and patentees whose land is subject to the 1947 Act, I believe that there is legal authority for the Bureau merely to give notice that it proposes to utilize its right-of-way and to take possession of the land. However, it is realized that this course of action involves practical problems in that legal obstacles could conceivably be presented, based either on a contest of the Bureau's interpretation of the 1947 Act or on a disagreement with our appraised value of crops and improvements, which might result in a delay in construction this season. Therefore, if agreements cannot be reached as to the value of crops and improvements or if you believe that an entryman, or patentee, whose land is subject to the 1947 Act, may contest the Bureau's taking of possession of the right-of-way, it will be satisfactory to proceed to condemnation, to file Declaration of Taking, to deposit \$1.00 into court for each ownership as to which the value of crops and improvements is not in issue, to deposit the appraised value of the crops and improvements located within the right-of-way with respect to each ownership as to which an agreement as to value cannot be reached, and to request court orders of possession of the land. Entrymen and patentees should be advised prior to the institution of any proceeding of the action to be taken by the Bureau and the reasons therefor.

In your preparation of requests for condemnation, please refer to PFM-21-4.2 and to my memorandum of March 4 to Mr. Williams, copies of which were furnished to you. Also, please include report of pertinent facts as to each tract recommended for condemnation. Should you desire any additional information, please advise and we will furnish you with immediate replies.

I realize that there are many legal problems affecting right-of-way acquisition in Alaska and that it will undoubtedly be worth while for Mr. Kresver to meet with you and your staff and probably with representatives of the Department of Justice and the Bureau of Land Management to discuss matters of common interest. However, inasmuch as we are furnishing our views in this memorandum on the questions with which you are apparently immediately concerned and in light of our present staffing situation and the press of business here, it would be preferable if this visit could be deferred for about 90 days.

On the other hand, if you feel that an immediate visit is necessary and will be of value in connection with the two projects which you propose to construct this season, please let me know and I will make necessary arrangements.

TITLE 43 - PUBLIC LANDS
INTERIOR

Chapter I - Bureau of Land Management, Department of the Interior

Appendix - Public Land Orders
(Public Land Order (1613)

(22506)

ALASKA

REVOKING PUBLIC LAND ORDER NO. 601 ON AUGUST 10, 1949, WHICH
RESERVED PUBLIC LANDS FOR HIGHWAY PURPOSES, AND PARTIALLY
REVOKING PUBLIC LAND ORDER NO. 386 OF JULY 31, 1947.

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1958, and the act of August 1, 1956 (70 Stat. 898) it is ordered as follows:

1. Public Land Order No. 601 of August 10, 1949, as modified by Public Land Order No. 757 of October 16, 1951, reserving for highway purposes the public lands in Alaska lying within 300 feet on each side of the center line of the Alaska Highway and within 150 feet on each side of the center line of the Richardson Highway, Glenn Highway, Haines Highway, the Seward-Anchorage Highway (exclusive of that part thereof, within the boundaries of the Chugach National Forest), the Anchorage-Lake Spenard Highway, and the Fairbanks-College Highway, is hereby revoked.

2. Public Land Order No. 386 of July 31, 1947, so far as it withdrew the following-described lands, identified as items (a) and (b) in said order, under the jurisdiction of the Secretary of War for right-of-way purposes for a telephone line and an oil pipeline with appurtenances, is hereby revoked:

(a) A strip of land 50 feet wide, 25 feet on each side of a telephone line as located and constructed generally parallel to the Alaska Highway from the Alaska-Yukon Territory boundary to the junction of the Alaska Highway with the Richardson Highway near Big Delta, Alaska.

(b) A strip of land 20 feet wide, 10 feet on each side of a pipeline as located and constructed generally parallel to the Alaska Highway from the Alaska-Yukon Territory boundary to the junction of the Alaska Highway with the Richardson Highway near Big Delta, Alaska

3. An easement for highway purposes, including appurtenant protective, scenic, and service areas, over and across the lands described in paragraph 1 of this order, extending 150 feet on each side of the center line of the highways therein, is hereby established.

4. An easement for telephone line purposes in, over, and across the lands described in paragraph 2 (a) of this order, extending 25 feet on each side of the telephone line referred to in that paragraph, and an easement for pipeline purposes, in, under, over, and across the lands described in paragraph 2 (b) of this order, extending 10 feet on each side of the pipeline referred to in that paragraph, are hereby established together with the right of ingress and egress to all sections of the

above easements on and across the lands hereby released from withdrawal.

5. The easements established under paragraphs 3 and 4 of this order shall extend across both surveyed and unsurveyed public lands described in paragraphs 1 and 2 of this order for the specified distance on each side of the center line of the highways, telephone line and pipeline, as those center lines are definitely located as of the date of this order.

6. The lands within the easements established by paragraphs ~~3~~ and 4 of this order shall not be occupied or used for other than the highways, telegraph line and pipeline referred to in paragraphs 1 and 2 of this order except with the permission of the Secretary of the Interior or his delegate as provided by section 3 of the act of August 1, 1956 (70 Stat. 898), provided: that is the lands crossed by such easements are under the jurisdiction of a Federal department or agency, other than the Department of the Interior, or of a Territory, State, or other Government subdivision or agency, such permission may be granted only with the consent of such department, agency, or other governmental unit.

7. The lands released from withdrawal by paragraphs 1 and 2 of this order, which, at the date of this order, adjoin lands in private ownership, shall be offered for sale at not less than their appraised value, as determined by the authorized officer of the Bureau of Land Management, and pursuant to section 2 of the act of August 1, 1956, supra. Owners of such private lands shall have a preference right to purchase at the appraised value so much of the released lands adjoining their private property as the authorized officer of the Bureau of Land Management deems equitable, provided, that ordinarily, owners of private lands adjoining the lands described in paragraph 1 of this order will have a preference right to purchase released lands adjoining their property, only up to the center line of the highways located therein. Preference right claimants may make application for purchase of released lands at any time after the date of this order by giving notice to the appropriate land office of the Bureau of Land Management. Lands described in this paragraph not claimed by and sold to preference claimants may be sold at public auction at not less than their appraised value by an authorized officer of the Bureau of Land Management, provided that preference claimants are first given notice of their privilege to exercise their preference rights by a notice addressed to their last address of record in the office in the Territory in which their title to their private lands is recorded. Such notice shall give the preference claimant at least 60 days in which to make application to exercise his preference right; and if the application is not filed within the time specified the preference right will be lost. Preference rights claimants will also lose their preference rights if they fail to pay for the lands within the time period specified by the authorized officer of the Bureau of Land Management, which time period shall not be less than 60 days.

8. The lands released from withdrawal by paragraphs 1 and 2 of this order, which at the date of this order, adjoin lands in valid unperfected entries, locations, or settlement claims, shall be subject to inclusion in such entries, locations and claims, notwithstanding any statutory limitations upon the area which may be included therein. For the purposes of this paragraph entries, locations, and claims include, but are not limited to, certificates of purchase under the Alaska Public Sale

Act (63 Stat. 679; 48 U.S.C. 364a-e) and leases with option to purchase under the Small Tract Act (52 Stat. 609; 43 U.S.C. 682a) as amended. Holders of such entries, locations, and claims to the lands, if they have not gone to patent, shall have a preference right to amend them to include so much of the released lands adjoining their property as the authorized officer deems equitable, provided, that ordinarily such holders of property adjoining the lands described in paragraph 1 of this order will have the right to include released lands adjoining such property only up to the center line of the highways located therein. Allowances of such amendments will be conditional upon the payment of such fees and commissions as may be provided for in the regulations governing such entries, locations, and claims together with the payment of any purchase price and cost of survey of the land which may be established by the law or regulations governing such entries, locations and claims, or which may be consistent with the terms of the sale under which the adjoining land is held. Preference right claimants may make application to amend their entries, locations, and claims at any time after the date of this order by giving notice to the appropriate land office of the Bureau of Land Management. Lands described in this paragraph, not claimed by and awarded to preference claimants, may be sold at public auction at not less than their appraised value by the authorized officer of the Bureau of Land Management, provided that preference claimants are first given notice of their privilege to exercise their preference rights by a notice addressed to their last address of record in the appropriate land office, or if the land is patented, in the Territory in which title to their private land is recorded. Such notice shall give the claimant at least 60 days in which to make application to exercise his preference right, and if the application is not filed within the time specified the preference right will be lost. Preference right claimants will also lose their preference rights if they fail to make any required payments within the time period specified by the authorized officer of the Bureau of Land Management, which time period shall not be less than 60 days.

9. (a) Any tract released by Paragraph 1 or 2 of this order from the withdrawals made by Public Land Orders Nos. 601, as modified, and 386, which remains unsold after being offered for sale under Paragraph 7 or 8 of this order, shall remain open to offers to purchase under Section 2 of the act of August 1, 1956, supra, at the appraised value, but it shall be within the discretion of the Secretary of the Interior or his delegate as to whether such an offer shall be accepted.

(b) Any tract released by Paragraph 1 or 2 of this order from the withdrawals made by Public Land Orders Nos. 601, as modified, and 386, which on the date hereof does not adjoin privately-owned land or land covered by an unpatented claim or entry, is hereby opened, subject to the provisions of Paragraph 6 hereof, of the tract is not otherwise withdrawn, to settlement claim, application, selection or location under any applicable public land law. Such a tract shall not be disposed of as a tract or unit separate and distinct from adjoining public lands outside of the area released by this order, but for disposal purposes, and without losing its identity, if it is already surveyed, it shall be treated as having merged into the mass of adjoining public lands, subject, however, to the easement so far as it applies to such lands.

(c) Because the act of August 1, 1956 (70 Stat. 896; 48 U.S.C. 420-420c) is an act of special application, which authorizes the Secretary of the Interior to make disposals of lands included in revocations such as made by this order, under such laws as may be specified by him, the preference-right provisions of the Veterans Preference Act of 1944 (58 Stat. 747; 43 U.S.C. 279-284) as amended, and of the Alaska Mental Health Enabling Act of July 28, 1956 (70 Stat. 709; U.S.C. 46-3b) will not apply to this order.

10. All disposals of lands included in the revocation made by this order which are under the jurisdiction of a Federal department or agency other than the Department of the Interior may be made only with the consent of such department or agency. All lands disposed of under the provisions of this order shall be subject to the easements established by this order.

11. The boundaries of all withdrawals and restorations which on the date of this order adjoin the highway easements created by this order are hereby extended to the center line of the highway easements which they adjoin. The withdrawal made by this paragraph shall include, but not be limited to the withdrawals made for Air Navigation site no. 7 of July 13, 1954, and by Public Land Orders No. 386 of July 31, 1947, No. 622 of December 15, 1949, No. 808 of February 27, 1952, No. 975 of June 18, 1954, No. 1037 of December 16, 1954, No. 1059 of January 21, 1955, No. 1129 of April 25, 1955, No. 1179 of June 29, 1955, and No. 1181 of June 29, 1955.

Roger Ernst

Assistant Secy. of the Interior

April 7, 1958

(F. R. Doc. 58-2659: Filed April 10, 1958: 8:45 a.m.)

places to placer claims to the Territory of Alaska, and is now set out as section 496 of Title 30.

et June 6, 1900, c. 1 recording notices and is now set out as notices of location of mining claims, and legalized certain records, and is now set out as section 49d of Title 30.

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Mar. 2, 1907, c. rided the fees for

487-260, § 1, Sept. 21, 1961, 75 Stat. 641

265, 36 Stat. 459, ed for in sections iled at any time blication or within verse suits provid- to be instituted at the filing of said

on 2 of Pub.L. Act [repealing this

3. — Forfeiture for nonperformance

Under this section, which was in effect until 1938, failure to do assessment work resulted in absolute forfeiture of lode mining claims. George v. Lyons, D.C.Alaska 1953, 110 F.Supp. 711.

3a. — Permanent monuments

In action to recover possession of Alaskan lode mining claims, located in 1934 and 1935 respectively, over which defendants had subsequently made locations, plaintiffs were entitled to submit proof of discovery and performance of assessment work by their grantors while automatic forfeiture provision of this section was in effect and that stakes or posts mentioned in original certificates of location were permanent monuments. George v. Lyons, D.C.Alaska 1953, 110 F.Supp. 711.

filing proofs of work and improvements and is now set out as section 49f of Title 30.

section] shall not be applicable to adverse claims on applications for patents filed prior to the effective date of this Act [Sept. 21, 1961], but the eight-month period heretofore provided for such claims and the sixty-day period heretofore provided for adverse suits shall continue in effect with respect thereto.

Section 396, Act June 25, 1910, c. 422, § 2, 36 Stat. 848, required the filing of the claim of the lien, and prescribed the form of the claim.

Section 397, Act June 25, 1910, c. 422, § 3 Stat. 849, directed the recorder to record claims of lien.

Section 398, Act June 25, 1910, c. 422, § 4, 36 Stat. 849, specified the duration of the lien.

Section 399, Act June 25, 1910, c. 422, § 5, 36 Stat. 849, prescribed the procedure for foreclosure of the liens.

Section 400, Act June 25, 1910, c. 422, § 6, 36 Stat. 849, authorized defects in lien notice or in proceedings to foreclose to be cured by amendment.

Section 402, Act June 25, 1910, c. 422, § 8, 36 Stat. 850, provided for joinder of plaintiffs, consolidation of actions, and waiver of lien.

Section 403, Act June 25, 1910, c. 422, § 9, 36 Stat. 850, required Judgment for claimants, and provided for its enforcement.

Section 404, Act June 25, 1910, c. 422, § 10, 36 Stat. 851, permitted appeals from final judgments of justices of the peace in actions under sections 395 to 403 of this title.

Section 405, Act June 25, 1910, c. 422, § 11, 36 Stat. 851, prescribed the criminal liability for buying, removing, etc., minerals with notice of lien.

RIGHTS OF WAY OVER PUBLIC LANDS

§§ 411 to 420d. Transferred

Codification. Section 411, Act May 14, 1898, c. 299, § 2, 30 Stat. 409, granted railroads rights of way, reserved mineral interests therein, and directed posting of schedules of rates, and is now set out as section 942-1 of Title 43.

Section 412, Act May 14, 1898, c. 299, § 3, 30 Stat. 410, provided for rights of several roads through canyons, and is now set out as section 942-2 of Title 43.

Section 413, Acts June 2, 1864, c. 216, § 3, 13 Stat. 357; May 14, 1898, c. 299, § 4, 30 Stat. 410, granted the right of condemnation to railroads, and is now set out as section 942-3 of Title 43.

Section 414, Act May 14, 1898, c. 299, § 4, 30 Stat. 410, related to the effect of filing of the preliminary survey, and is now set out as section 942-4 of Title 43.

Section 415, Act May 14, 1898, c. 299, § 5, 30 Stat. 410, required railroads to file maps of the location of their roads, and is now set out as section 942-5 of Title 43.

Section 416, Act May 14, 1898, c. 299, § 6, 30 Stat. 411, provided for right of way for wagon roads, wire rope, aerial, or other tramways, reserved mineral interests, and limited tolls, and is now set out as section 942-6 to Title 43.

Section 417, Act May 14, 1898, c. 299, § 7, 30 Stat. 412, made sections 411 to 419, 421, 423, and 461 to 465 of this title inapplicable to military parks, Indian and other reservations, and is now set out as section 942-7 of Title 43.

Section 418, Act May 14, 1898, c. 299, § 8, 30 Stat. 412, reserved the right of repeal or amendment, and is now set out as section 942-8 of Title 43.

Section 419, Act May 14, 1898, c. 299, § 9, 30 Stat. 413, related to the map of location of roads, and is now set out as section 942-9 of Title 43.

Sections 420 to 420c, Act Aug. 1, 1956, c. 848, §§ 1 to 4, 70 Stat. 898, related to public lands within highway, telephone, and pipeline withdrawals, authorized amendment of land description of claim or entry on adjoining lands; permitted the Secretary to sell restored lands, granted preference rights, and provided for the utilization of occupancy of easements; and is now set out as sections 942e to 942f of Title 43.

Section 420d, Act Aug. 1, 1956, c. 848, § 5, as added June 11, 1960, Pub.L. 86-512, 74 Stat. 207, defined "restored lands" for purposes of sections 420 to 420c of this title, and is now set out as section 942g of Title 43.

48 USC 420-420c

43 § 959 PUBLIC LANDS
Note 9

however, that entitlement is qualified by provisions of this section authorizing Secretary of the Interior to condition grant of rights-of-way over federal lands upon compliance with reasonable regulations and terms designed to protect the public interest, and thus Secretary had statutory authority to impose reasonable conditions, nec-

essary to protect the public interest, on irrigation rights-of-way granted over federal lands to applicant under sections 946 to 949 of this title. *Grindstone Butte Project v. Kleppe*, C.A.Idaho 1981, 638 F.2d 100, certiorari denied 102 S.Ct. 505, 454 U.S. 965, 70 L.Ed.2d 380, rehearing denied 102 S.Ct. 1042.

§ 961.¹ Rights-of-way through public lands, Indian, and other reservations for power and communications facilities

¹ There is no section 960 in this title.

Repeal

Section repealed by Pub.L. 94-579, Title VII, § 706(a), Oct. 21, 1976, 90 Stat. 2793, effective on and after Oct. 21, 1976, insofar as applicable to the issuance of rights-of-way over, upon, under, and through the public lands and lands in the National Forest System.

Savings Provisions. Repeal by Pub.L. 94-579 insofar as applicable to the issuance of rights-of-way not to be construed as terminating any valid lease, permit, patent, etc., existing on Oct. 21, 1976, see note under section 1701 of this title.

paying an equitable share of the cost of the facilities did not constitute a taking of property without due process. *Utah Power & Light Co. v. Morton*, C.A.Idaho 1974, 504 F.2d 728.

5. Electric power transmission lines

"Wheeling" regulation, under which government is given the right to use surplus capacity of electric transmission lines which cross federal land, is not vague and ambiguous even though it merely serves to articulate certain fundamental legal relations between the government and the utilities and does not purport to be a substitute for complex contractual relations which must exist before the government attempts to make use of its "wheeling" right. *Utah Power & Light Co. v. Morton*, C.A.Idaho 1974, 504 F.2d 728.

Notes of Decisions

Electric power transmission lines 5
Taking of property 4

4. Taking of property

"Wheeling" regulation, under which utility, which sought right-of-way for electric transmission lines across government land was required to give government the right to use surplus capacity of the lines in return for government's

§§ 962 to 970

Repeals

Sections repealed by Pub.L. 94-579, Title VII, § 706(a), Oct. 21, 1976, 90 Stat. 2793, effective on and after Oct. 21, 1976, insofar as applicable to the issuance of rights-of-way over, upon, under, and through the public lands and lands in the National Forest System.

Savings Provisions. Repeal by Pub.L. 94-579 insofar as applicable to the issuance of rights-of-way not to be construed as terminating

any valid lease, permit, patent, etc., existing on Oct. 21, 1976, see note under section 1701 of this title.

§ 971a. Alaskan lands within highway, telephone, and pipeline withdrawals; disposal; amendment of land description of claim or entry on adjoining lands

Upon revocation of a withdrawal for highways, telephone lines, or pipelines, in Alaska, the lands involved shall be subject to disposal only under laws specified by the Secretary of the Interior, subject to easements as established by the Secretary. Notwithstanding any statutory limitation on the area which may be included in an unpatented claim or entry, the Secretary may permit the amendment of the land description of a claim or entry on adjoining lands to include the restored lands. (Aug. 1, 1956, c. 848, § 1, 70 Stat. 898.)

§ 971b. Sale of restored Alaskan lands preference rights; consent of Federal agency

The Secretary may sell such restored lands for not less than their appraised value, giving an appropriate preference right to the holders of adjoining claims or entries

and to owners of adjoining private lands. If a Federal department or agency other than the one thereof shall be made only with the consent of the Secretary. (Aug. 1, 1956, c. 848, § 2, 70 Stat. 898.)

§ 971c. Utilization or occupancy of Alaska

Lands in Alaska within an easement established by the Secretary of the Interior may be used only with the permission of the Secretary, or an officer or employee of the Department of the Interior, or of a State, Territory, or other governmental unit, or with the permission of the Secretary of the Interior, or of a State, Territory, or other governmental unit. (Aug. 1, 1956, c. 848, § 3, 70 Stat. 898.)

§ 971d. Effect on valid existing Alaskan

Nothing in sections 971a to 971e of this title shall affect the validity of any rights existing on the date of the enactment of this Act. (Aug. 1, 1956, c. 848, § 4, 70 Stat. 898.)

§ 971e. Definition of restored Alaskan lands

For the purposes of sections 971a to 971e of this title, the term "restored lands" includes, without limiting the meaning thereof, lands which were withdrawn by public land laws, or which were included within United States surveys 2727, 2724, 2725 and 2726.

(Aug. 1, 1956, c. 848, § 5, as added June 11, 1960.)

§ 975. Alaskan railroads; location, construction, and operation of officers

The President of the United States is empowered to use a name by which to designate the location, owned, acquired, or operated under this title; to employ such officers, agents, necessary to enable him to carry out the purposes of this title; to require such officers, agents, or agencies to report to him by the terms of said sections; to direct the Engineer Corps in the Army or Navy to fix the compensation of all officers, agents, and him; and, notwithstanding any other provisions of law, to provide for the travel and transportation expenses for the officers and agents of the railroad or routes for a line or lines of railroad in the aggregate one thousand miles, to be so located on the Pacific Ocean harbors on the southern coast of the interior of Alaska, and with a view to the development of the agricultural and mine lands and the settlement of the public lands therein, and the Army and Navy, transportation of troops for other governmental and public uses and purposes; to construct and build a railroad or route; to designate and locate, with the switches, and spurs; to purchase or otherwise acquire all necessary land in the domain in acquiring property for such use; to condemn in the courts of Alaska in accordance with the laws of Alaska in force there; to acquire rights-of-way, to purchase or otherwise acquire all necessary operation of such railroad or railroads; to construct terminal facilities, and all structures needed

and to owners of adjoining private lands. If such lands are under the jurisdiction of a Federal department or agency other than the Department of the Interior, any sale thereof shall be made only with the consent of such department or agency.

(Aug. 1, 1956, c. 848, § 2, 70 Stat. 898.)

§ 971c. Utilization or occupancy of Alaskan easements; consent of agency

Lands in Alaska within an easement established under sections 971a to 971e of this title by the Secretary of the Interior may not be utilized or occupied without the permission of the Secretary, or an officer or agency designated by him. If the lands crossed by an easement established under sections 971a to 971e of this title are under the jurisdiction of a Federal department or agency other than the Department of the Interior, or of a State, Territory, or other government subdivision or agency, such permission may be granted only with the consent of such department, agency, or other governmental unit.

(Aug. 1, 1956, c. 848, § 3, 70 Stat. 898.)

§ 971d. Effect on valid existing Alaskan rights

Nothing in sections 971a to 971e of this title shall affect adversely any valid existing rights.

(Aug. 1, 1956, c. 848, § 4, 70 Stat. 898.)

§ 971e. Definition of restored Alaskan lands

For the purposes of sections 971a to 971e of this title, the words "restored lands" include, without limiting the meaning thereof, those lands at Big Delta and Tok Junctions that are withdrawn by public land orders numbered 808 and 975 and that lie between the centerline of the Richardson and Glenn Highways and the land included within United States surveys 2727, 2723, 2770, 2771, 2772, 2773, 2774, 2723, 2724, 2725 and 2726.

(Aug. 1, 1956, c. 848, § 5, as added June 11, 1960, Pub.L. 86-512, 74 Stat. 207.)

§ 975. Alaskan railroads; location, construction, and operation; passes; security officers

The President of the United States is empowered, authorized, and directed to adopt and use a name by which to designate the railroad or railroads and properties to be located, owned, acquired, or operated under the authority of sections 975 to 975g of this title; to employ such officers, agents, or agencies, in his discretion, as may be necessary to enable him to carry out the purposes of said sections; to authorize and require such officers, agents, or agencies to perform any or all of the duties imposed upon him by the terms of said sections; to detail and require any officer or officers in the Engineer Corps in the Army or Navy to perform service under said sections; to fix the compensation of all officers, agents, or employees appointed or designated by him; and, notwithstanding any other provision of law or regulation, to fix relocation, travel and transportation expenses for the General Manager of the railroad designated under sections 975 to 975g of this title to designate and cause to be located a route or routes for a line or lines of railroad in the Territory of Alaska not to exceed in the aggregate one thousand miles, to be so located as to connect one or more of the open Pacific Ocean harbors on the southern coast of Alaska with the navigable waters in the interior of Alaska, and with a coal field or fields so as best to aid in the development of the agricultural and mineral or other resources of Alaska, and the settlement of the public lands therein, and so as to provide transportation of coal for the Army and Navy, transportation of troops, arms, munitions of war, the mails, and for other governmental and public uses and for the transportation of passengers and property; to construct and build a railroad or railroads along such route or routes as he may so designate and locate, with the necessary branch lines, feeders, sidings, switches, and spurs; to purchase or otherwise acquire all real and personal property necessary to carry out the purposes of said sections; to exercise the power of eminent domain in acquiring property for such use which use is declared to be a public use, by condemnation in the courts of Alaska in accordance with the laws now or hereafter in force there; to acquire rights-of-way, terminal grounds, and all other rights; to purchase or otherwise acquire all necessary equipment for the construction, and operation of such railroad or railroads; to build or otherwise acquire docks, wharves, terminal facilities, and all structures needed for the equipment and operation of such

1958

TITLE 43 - PUBLIC LANDS
INTERIOR

Chapter I - Bureau of Land Management, Department of the Interior

Appendix - Public Land Orders
(Public Land Order (1613)

(22506)

ALASKA

REVOKING PUBLIC LAND ORDER NO. 601 ON AUGUST 10, 1949, WHICH
RESERVED PUBLIC LANDS FOR HIGHWAY PURPOSES, AND PARTIALLY
REVOKING PUBLIC LAND ORDER NO. 386 OF JULY 31, 1947.

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1958, and the act of August 1, 1956 (70 Stat. 898) it is ordered as follows:

1. Public Land Order No. 601 of August 10, 1949, as modified by Public Land Order No. 757 of October 16, 1951, reserving for highway purposes the public lands in Alaska lying within 300 feet on each side of the center line of the Alaska Highway and within 150 feet on each side of the center line of the Richardson Highway, Glenn Highway, Haines Highway, the Seward-Anchorage Highway (exclusive of that part thereof, within the boundaries of the Chugach National Forest), the Anchorage-Lake Spenard Highway, and the Fairbanks-College Highway, is hereby revoked.

2. Public Land Order No. 386 of July 31, 1947, so far as it withdrew the following-described lands, identified as items (a) and (b) in said order, under the jurisdiction of the Secretary of War for right-of-way purposes for a telephone line and an oil pipeline with appurtenances, is hereby revoked:

(a) A strip of land 50 feet wide, 25 feet on each side of a telephone line as located and constructed generally parallel to the Alaska Highway from the Alaska-Yukon Territory boundary to the junction of the Alaska Highway with the Richardson Highway near Big Delta, Alaska.

(b) A strip of land 20 feet wide, 10 feet on each side of a pipeline as located and constructed generally parallel to the Alaska Highway from the Alaska-Yukon Territory boundary to the junction of the Alaska Highway with the Richardson Highway near Big Delta, Alaska

3. An easement for highway purposes, including appurtenant protective scenic, and service areas, over and across the lands described in paragraph 1 of this order, extending 150 feet on each side of the center line of the highways therein, is hereby established.

4. An easement for telephone line purposes in, over, and across the lands described in paragraph 2 (a) of this order, extending 25 feet on each side of the telephone line referred to in that paragraph, and an easement for pipeline purposes, in, under, over, and across the lands described in paragraph 2 (b) of this order, extending 10 feet on each side of the pipeline referred to in that paragraph, are hereby established, together with the right of ingress and egress to all sections of the

P.L.O. 101

above easements on and across the lands hereby released from withdrawal.

5. The easements established under paragraphs 3 and 4 of this order shall extend across both surveyed and unsurveyed public lands described in paragraphs 1 and 2 of this order for the specified distance on each side of the center line of the highways, telephone line and pipeline, as those center lines are definitely located as of the date of this order.

6. The lands within the easements established by paragraphs 3 and 4 of this order shall not be occupied or used for other than the highways, telegraph line and pipeline referred to in paragraphs 1 and 2 of this order except with the permission of the Secretary of the Interior or his delegate as provided by section 3 of the act of August 1, 1956 (70 Stat. 898), provided: that is the lands crossed by such easements are under the jurisdiction of a Federal department or agency, other than the Department of the Interior, or of a Territory, State, or other Government subdivision or agency, such permission may be granted only with the consent of such department, agency, or other governmental unit.

7. The lands released from withdrawal by paragraphs 1 and 2 of this order, which, at the date of this order, adjoin lands in private ownership, shall be offered for sale at not less than their appraised value, as determined by the authorized officer of the Bureau of Land Management, and pursuant to section 2 of the act of August 1, 1956, supra. Owners of such private lands shall have a preference right to purchase at the appraised value so much of the released lands adjoining their private property as the authorized officer of the Bureau of Land Management deems equitable, provided, that ordinarily, owners of private lands adjoining the lands described in paragraph 1 of this order will have a preference right to purchase released lands adjoining their property, only up to the center line of the highways located therein. Preference right claimants may make application for purchase of released lands at any time after the date of this order by giving notice to the appropriate land office of the Bureau of Land Management. Lands described in this paragraph not claimed by and sold to preference claimants may be sold at public auction at not less than their appraised value by an authorized officer of the Bureau of Land Management, provided that preference claimants are first given notice of their privilege to exercise their preference rights by a notice addressed to their last address of record in the office in the Territory in which their title to their private lands is recorded. Such notice shall give the preference claimant at least 60 days in which to make application to exercise his preference right; and if the application is not filed within the time specified the preference right will be lost. Preference rights claimants will also lose their preference rights if they fail to pay for the lands within the time period specified by the authorized officer of the Bureau of Land Management, which time period shall not be less than 60 days.

8. The lands released from withdrawal by paragraphs 1 and 2 of this order, which at the date of this order, adjoin lands in valid unperfected entries, locations, or settlement claims, shall be subject to inclusion in such entries, locations and claims, notwithstanding any statutory limitations upon the area which may be included therein. For the purposes of this paragraph entries, locations, and claims include, but are not limited to, certificates of purchase under the Alaska Public Sale

Act (63 Stat. 679; 48 U.S.C. 364a-e) and leases with option to purchase under the Small Tract Act (52 Stat. 609; 43 U.S.C. 682a) as amended. Holders of such entries, locations, and claims to the lands, if they have not gone to patent, shall have a preference right to amend them to include so much of the released lands adjoining their property as the authorized officer deems equitable, provided, that ordinarily such holders of property adjoining the lands described in paragraph 1 of this order will have the right to include released lands adjoining such property only up to the center line of the highways located therein. Allowances of such amendments will be conditional upon the payment of such fees and commissions as may be provided for in the regulations governing such entries, locations, and claims together with the payment of any purchase price and cost of survey of the land which may be established by the law or regulations governing such entries, locations and claims, or which may be consistent with the terms of the sale under which the adjoining land is held. Preference right claimants may make application to amend their entries, locations, claims at any time after the date of this order by giving notice to the appropriate land office of the Bureau of Land Management. Lands described in this paragraph, not claimed by and awarded to preference claimants, may be sold at public auction at not less than their appraised value by the authorized officer of the Bureau of Land Management, provided that preference claimants are first given notice of their privilege to exercise their preference rights by a notice addressed to their last address of record in the appropriate land office, or if the land is patented, in the Territory in which title to their private land is recorded. Such notice shall give the claimant at least 60 days in which to make application to exercise his preference right, and if the application is not filed within the time specified the preference right will be lost. Preference right claimants will also lose their preference rights if they fail to make any required payments within the time period specified by the authorized officer of the Bureau of Land Management, which time period shall not be less than 60 days.

9. (a) Any tract released by Paragraph 1 or 2 of this order from the withdrawals made by Public Land Orders Nos. 601, as modified, and 386, which remains unsold after being offered for sale under Paragraph 7 or 8 of this order, shall remain open to offers to purchase under Section 2 of the act of August 1, 1956, supra, at the appraised value, but it shall be within the discretion of the Secretary of the Interior or his delegate as to whether such an offer shall be accepted.

(b) Any tract released by Paragraph 1 or 2 of this order from the withdrawals made by Public Land Orders Nos. 601, as modified, and 386, which on the date hereof does not adjoin privately-owned land or land covered by an unpatented claim or entry, is hereby opened, subject to the provisions of Paragraph 6 hereof, of the tract is not otherwise withdrawn, to settlement claim, application, selection or location under any applicable public land law. Such a tract shall not be disposed of as a tract or unit separate and distinct from adjoining public lands outside of the area released by this order, but for disposal purposes, and without losing its identity, if it is already surveyed, it shall be treated as having merged into the mass of adjoining public lands, subject, however, to the easement so far as it applies to such lands.

(c) Because the act of August 1, 1956 (70 Stat. 896; 43 U.S.C. 420-420c) is an act of special application, which authorizes the Secretary of the Interior to make disposals of lands included in revocations such as made by this order, under such laws as may be specified by him, the preference-right provisions of the Veterans Preference Act of 1944 (58 Stat. 747; 43 U.S.C. 279-284) as amended, and of the Alaska Mental Health Enabling Act of July 28, 1956 (70 Stat. 709; U.S.C. 46-3b) will not apply to this order.

10. All disposals of lands included in the revocation made by this order which are under the jurisdiction of a Federal department or agency other than the Department of the Interior may be made only with the consent of such department or agency. All lands disposed of under the provisions of this order shall be subject to the easements established by this order.

11. The boundaries of all withdrawals and restorations which on the date of this order adjoin the highway easements created by this order are hereby extended to the center line of the highway easements which they adjoin. The withdrawal made by this paragraph shall include, but not be limited to the withdrawals made for Air Navigation site No. 7 of July 13, 1954, and by Public Land Orders No. 386 of July 31, 1947, No. 622 of December 15, 1949, No. 808 of February 27, 1952, No. 975 of June 18, 1954, No. 1037 of December 16, 1954, No. 1059 of January 21, 1955, No. 1129 of April 25, 1955, No. 1179 of June 29, 1955, and No. 1181 of June 29, 1955.

Roger Ernst

Assistant Secy. of the Interior

April 7, 1958

(F. R. Doc. 58-2659: Filed April 10, 1958: 8:45 a.m.)

MEMORANDUM

To: Right of Way Section
From: Robert M. Redding, Right of Way Agent
Subject: Right of Way Easements in Alaska Lands
Date: September 30, 1958

Opinion
9/22/58

On July 26, 1866 the Congress of the United States passed an Act pertaining to the rights of way for highways. This Act, now known as Revised Statute Sec. 2477 (43 U.S.C. 932) states:

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

This grant by the Federal Government constituted a dedication to the several States and Territories and did not become effective until it was accepted and implemented by them.

Several principles should be considered in order to have a comprehensive understanding of the effect of dedication statutes:

(1) No patent will be issued (43 USC 1151), nor can an entry be made on land which has not been surveyed, although such land may be lawfully occupied (43 USC 161, n. 34). Such a settler, neither patentee nor entryman, acquires no vested rights in the land until survey and subsequent entry;

(2) As against everyone but the United States, the date on which a homesteaders rights become fixed, or vested, is the date of entry not the date of patent, the title given in the patent relating back to the date of entry (43 USC 161, n. 30);

(3) A dedication by Act of Congress cannot be accepted until the land dedicated is surveyed and section lines established;

(4) A dedication which has once been accepted by an act of a State or Territorial Legislature is not lost on lands so dedicated.

On January 19, 1923, the Territorial Legislature of Alaska enacted Ch. 19, SLA 1923 (subsequently codified as Sec. 1721, CIA 1933), wherein the dedication made by Congress in R.S. Sec. 2477 was accepted and an easement in a strip of land 66 feet wide on the section line in all public lands lying within the Territory was created. All surveyed public lands lying within the territorial limits of Alaska which were acquired (patented or entered) prior to this enactment are held free and unencumbered by any Federal or Territorial right of way easement.

To: Right of Way Section
September 30, 1958
Page 2

Persons who acquired land from either the United States or the Territory on or after January 19, 1923, took the land subject to the easement so created.

On January 18, 1949, a special session of the Legislature enacted Ch. 1, ESLA 1949, which purported to adopt the Alaska Compiled Laws Annotated 1949. The 1923 law was not included in the compilation and so was repealed by implication. In 1950 a decision was handed down by the District Court for the District of Alaska in the case of Ashley v. City of Anchorage, 13 A 168, 95 F Supp 189, which cast some doubt on whether or not ACLA 1949 was in effect. A reading of this case indicates that ACLA 1949 was adopted in 1949, but should there be any discrepancy between it and the session law it embodies, the session law will control. The repeal of any prior session law would be effective as of January 18, 1949. The effect of ACLA 1949 was to allow all lands surveyed after its adoption and acquired prior to March 21, 1953, to be held unencumbered by any Territorial right of way easement.

The status of lands acquired from the Federal Government on or after July 24, 1947, was further determined by 61 Stat. 418 (48 U.S.C. Sec. 321d) which made all lands acquired from the Federal Government subject to a right of way easement in the United States and the yet to be formed State of Alaska. The widths of these rights of way were established by Public Land Order 601 of August 10, 1949, as amended by Public Land Order 757 of October 16, 1951, and by Secretary of the Interior Order 2665 of October 16, 1951, at 600 feet for the Alaska Highway, 300 feet for through roads, 200 feet for feeder roads and 100 feet for local roads.

On March 26, 1951, the Territorial Legislature in Ch. 123, SLA 1951, dedicated an easement for a right of way 100 feet wide along section lines in all property owned by the Territory or acquired from the Territory. This law had the effect of giving the Territory an easement in all lands acquired from it after March 26, 1951, but did not provide for a right of way easement on lands acquired from the United States, the Act of 1947 (61 Stat. 418) being inapplicable to the Territory of Alaska.

On March 21, 1953, Ch. 123, SLA 1951, was amended by Ch. 35, SLA 1953, to include an additional 66 foot right of way easement in lands acquired from the Federal Government. This act constituted a re-acceptance of the dedication provided for by R.S. 2477 and which had lapsed with the adoption of ACLA 1949. Lands acquired after this date were subject to a Territorial easement of 100 feet along the section line if acquired from the Territory and to a Territorial easement of 66 feet along the section line if acquired from the Federal Government.

Lands which were surveyed between January 18, 1949, and March 20, 1953, and had not been acquired would be treated similarly with lands surveyed after March 20, 1953.

SUMMARY

(1) Land (meaning surveyed land) lying within the Territorial limits of Alaska acquired (patented or entered) either from the Federal Government or the Territory of Alaska prior to January 19, 1923, is unencumbered by any right of way easement of either the United States or the Territory.

(2) Land acquired either from the Federal Government or the Territory between January 19, 1923, and July 23, 1947, is subject to a Territorial 66 foot right of way easement along the section line.

(3) Land acquired from the Federal Government between July 24, 1947, and January 17, 1949, is subject to a Territorial 66 foot right of way easement along the section line and also a 100 to 600 foot right of way easement reserved to the United States and the State of Alaska.

Land acquired from the Territory during this period is subject to a 66 foot right of way easement along the section line.

(4) Land acquired from the Federal Government between January 18, 1949, and March 25, 1951, is subject to a 100 to 600 foot right of way easement of the United States and the State of Alaska. Such land is not burdened by any Territorial easement if the survey also took place between these dates.

Land acquired from the Territory during this period is subject to no right of way easement if surveyed between these dates.

(5) Land acquired from the Federal Government between March 26, 1951, and March 20, 1953, is subject to a 100 to 600 foot right of way easement of the United States and the State of Alaska. There is no Territorial easement on the land if it was surveyed during this period.

Land acquired from the Territory between these dates is subject to a 100 foot Territorial right of way easement along the section line.

(6) Land acquired from the Federal Government between March 21, 1953, and the day preceding that on which the Territory of Alaska is proclaimed a State is subject to a 100 to 600 foot right of way easement

To: Right of Way Section
September 30, 1958
Page 4

of the United States and the State of Alaska as well as a 66 foot Territorial right of way easement along the section line.

Land acquired from the Territory during this period is subject to a 100 foot Territorial right of way easement along the section line.

(7) Land acquired after the Territory becomes a State will be in the same status as that in paragraph 6.

Remember:

- (1) Land must be surveyed.
- (2) Date of entry controls.

These rules should be used in determining whether or not the Territory has any presently existing rights in property which may be under consideration for acquisition for highway right of way purposes.

To: Right of Way Section
 September 30, 1958
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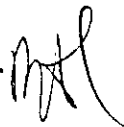
<u>Dates (Inclusive)</u>	<u>Land Acquired from U.S.</u>	<u>Land Acquired from Alaska</u>
Prior to	Fed: No easement	Fed: No easement
Jan. 19, 1923	Terr: None	Terr: None
Jan. 19, 1923 to July 23, 1947	Fed: None Terr: 66 foot section line	Fed: None Terr: 66 foot section line
July 24, 1947 to Jan. 17, 1949	Fed: & State: 100-600 foot Terr: 66 foot section line	Fed: None Terr: 66 foot section line
Jan. 18, 1949 to Mar. 25, 1951	Fed. & State: 100-600 foot Terr: None - if surveyed	Fed: None Terr: None
Mar. 26, 1951 to Mar. 20, 1953	Fed. & State: 100-600 foot Terr: None - if surveyed	Fed: None Terr: 100 foot section line
Mar. 21, 1953 until Statehood	Fed. & State: 100-600 foot Terr: 66 foot section line	Fed: None Terr: 100 foot section line
After	Fed: 100-600 foot	Fed: None
Statehood	State: 100-600 foot	State: 100 foot section line

STATE OF ALASKA
DEPARTMENT OF HIGHWAYS
P. O. Box 1841
Juneau, Alaska

PRE-CONSTRUCTION MEMO NO. 62-11

SUBJECT: Right of Way by Determination

TO: Commissioner
Deputy Commissioner
Division Heads
District Highway Engineers
Section Heads, Pre-Construction Division

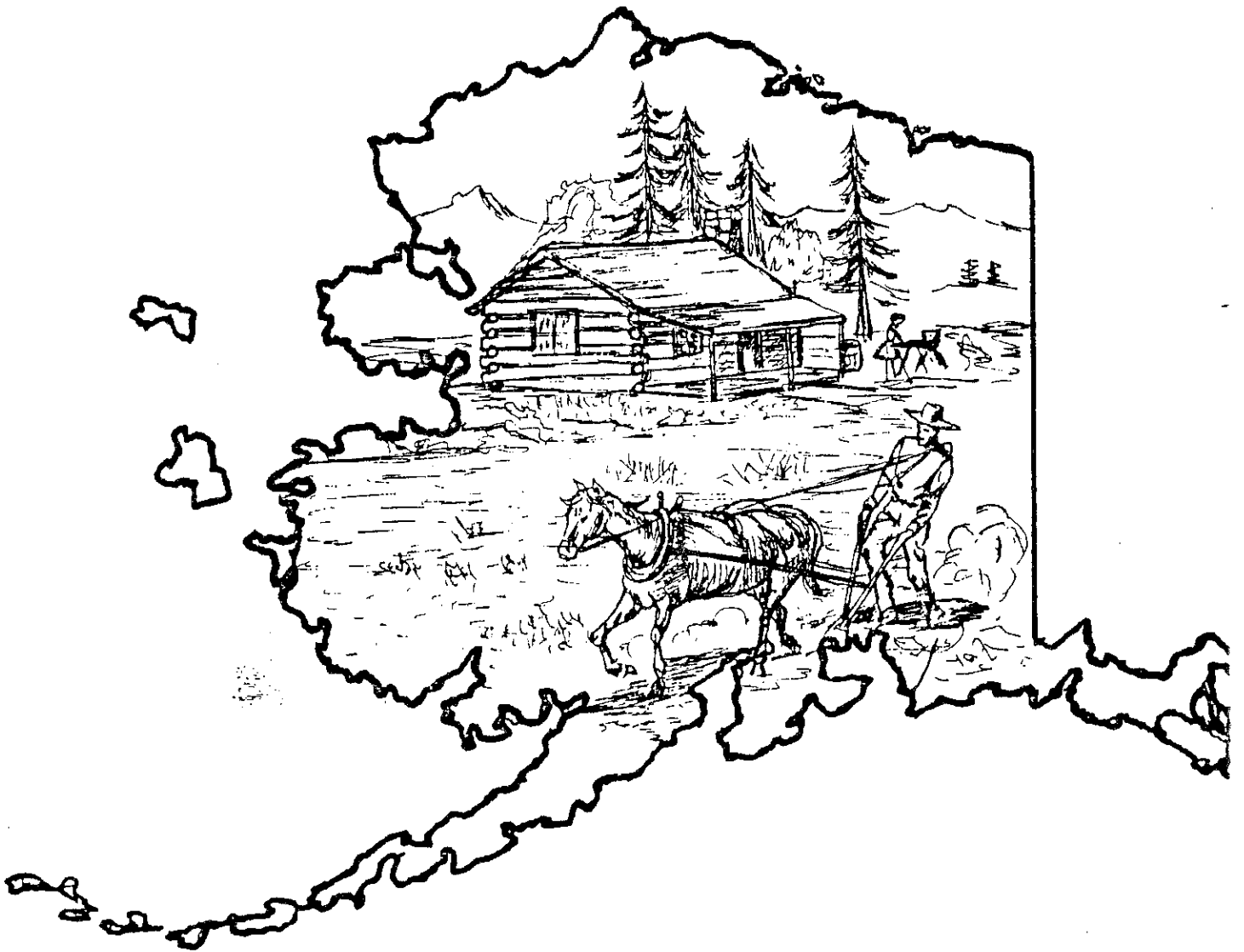
FROM: B. A. Campbell
Pre-Construction Engineer 

In a recent State Superior Court decision (State v. Stroecker) Fairbanks Judge Rabinowitz held that the State of Alaska is not entitled to a 66 foot right of way solely by the fact that a highway was established over the public domain; in such a case the State is only entitled to claim the amount of land actually used for highway purposes.

The following policy is adopted by the Department of Highways for guidance on all future projects where determination of existing right of way by usage is necessary. The Right of Way Section in each district will determine when right by usage applies. The Design Section in each district shall then, by the aid of cross-sections and field inspection, determine a reasonable line denoting the limit of usage across the front of each property involved. On small property frontages it will usually be sufficient to have one course denoting this limit. On larger property frontages it may be necessary to have two or three courses or perhaps even more to denote the approximate limit. This limit will generally be the limit of grading and/or channel control or other drainage control adjacent to the highway. It will not necessarily be the limit of clearing. After this determination has been made by the Design Section, the alignment map shall be corrected showing this limit. These maps shall then be transmitted to the Right of Way Section in the district and will become the basis for writing descriptions and computations of the areas of takes and remainders.

DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

HOMESTEADING IN ALASKA



ALO-Inf-52
Feb 63

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

FLO No. 78
Feb 63

Anchorage Land Office
555 Cordova Street
Anchorage, Alaska

Fairbanks Land Office
P.O. Box 1150
Fairbanks, Alaska

ABOUT HOMESTEADING IN ALASKA - - -

The homestead law is designed as an agricultural settlement law for purposes of farming. Anyone seeking land who does not desire a farm should inquire about the many other laws by which land may be obtained.

All unappropriated public lands in Alaska adaptable to agricultural use are subject to homestead settlement or entry if they are not mineral or saline in character, are not occupied for the purpose of trade or business and have not been embraced within the limits of any withdrawal, reservation or incorporated town or city.

Persons desiring to make homestead settlements or entries should first fully inform themselves as to the character and quality of the lands they desire to enter and should in no case apply to enter until they have fully examined the land. Satisfactory information as to the character and unrecorded prior use of the public lands cannot be obtained in any other manner.

Information of record as to whether a particular tract of land is subject to homestead settlement or entry may be obtained from the Land Office of the land district in which the tract is located. The public land records are available to the public between the hours of 10:00 a.m. and 3:00 p.m., Monday through Friday, except holidays, at the address shown above.

Topographic maps may be purchased over the counter from the U.S. Geological Survey, Cordova Building, 5th floor, 6th and Cordova, Anchorage, Alaska, or U.S. Geological Survey, 520 Illinois Street, Fairbanks, Alaska.

QUALIFICATIONS OF A HOMESTEADER

1. Applicant must be 21 years of age or the head of a family. A veteran, under 21 years of age, who is entitled to veterans' benefits, is also qualified to make a homestead entry.
2. Must be a citizen of the United States or have legally declared his intention to become a citizen. In the case of the latter, patent will be withheld until the entryman receives his citizenship. In fact, final proof can be made only by citizens of the United States.

3. Must not have perfected homestead entries for a total of more than 160 acres in Alaska. A homestead entry in the states is no bar against homesteading 160 acres in Alaska.
4. A married woman is not qualified to make a homestead entry if she is residing with her husband and he is the head of the family and the main support.
5. Military service records are necessary in order to substitute creditable service for residence. It is the applicant's responsibility to furnish same. This may be a certified copy of certificate of discharge, or where same is not available, applicant's statement, corroborated as far as possible, giving all data available regarding his military service, as other acceptable evidence.

HOW TO FILE

1. SURVEYED LAND:

- A. The Homestead Entry application must be filed on Form 4-007. It is suggested for legibility that the application be typed or written in ink (if possible). All questions should be answered. The instructions to applicant on the reverse side of the application should be read carefully before attempting to fill out the application.
- B. An application to enter must be accompanied by a nonrefundable service charge of \$25.00, without regard to the amount of acreage.
 - (1) When the application is filed, it is assigned a serial number. This number should be referred to when calling at the office or writing about your application. A check of the records is made to determine whether the land is available for homesteading, and a Geological Survey report requested as to the mineral character of the land.
 - (2) If the land is available and not found valuable for metalliferous metals, the entry may be allowed. (Metalliferous minerals are gold, silver, lead, etc.) If it is determined by the U.S. Geological Survey that the land applied for is valuable or prospectively valuable for coal, oil or gas, the patent, when issued, will be impressed with a reservation of such minerals to the United States.

2. UNSURVEYED LAND:

- A. Notice of location of settlement or occupancy claim in Alaska (Form 4-1154) is filed in duplicate in the land office after you have initiated a homestead settlement claim by actual settlement or occupancy of the land as described below. A \$10.00 filing fee must accompany the location notice.
- B. Settlement is initiated through the personal acts of the settler placing improvements upon the land and/or establishing residence thereon. A person making settlement on unsurveyed land is required by law, in order to fully protect his rights, to do two things within 90 days after date of settlement. They are: (1) file a notice of the settlement in the land office, and (2) post a copy on the land. Unless a notice of the claim is filed within 90 days after date of settlement, no credit can be given for residence and cultivation prior to the filing of notice. When filing the notice of location it is extremely important to give the date on which settlement or occupancy was made. The mere filing of a location notice without actual appropriation of the land is not sufficient to hold the land against valid appropriation of another settler and such notices are not acceptable. Settlement or occupancy requires the staking of the land and placing improvements on and using the land, followed within a reasonable time by further acts of settlement and improvement. The term "settlement" has been further defined as "comprehensive acts done on the land by way of establishing or preparing to establish an actual personal residence, going thereon, and with reasonable diligence, arranging to occupy it as a home to the exclusion of one elsewhere." The law makes it plain that a homesteader must proceed faithfully and honestly to comply with all the requirements.
- C. The controlling date on a homestead location notice is the date of filing in the land office. However, prior to the filing of the location notice there must have been some appropriation or settlement of the land.
- D. Metes and Bounds Description: Unsurveyed land must be described by metes and bounds. Such description consists of a definite starting point known as Corner No. 1, continuing a definite distance in a definite direction to Corner No. 2, thence to Corner No. 3, thence to Corner No. 4, and back to the point of beginning. The directions must be cardinal directions (north, south, east and west) whenever possible. The all-important point of beginning must be described accurately in relation to a survey monument where possible,

or to natural features such as a mouth of a creek or stream, river junctions, mountain peaks, or other prominent points or natural objects appearing on the map of Alaska. Mileposts, towns, bridges or road junctions are generally not good in that they often change, but they may be utilized as a supplement to the description. Narrow strips of land along streams, water courses or other natural objects will not be permitted. (A claim will normally not be acceptable if it is more than four times as long as it is wide). The approximate description of the land, by section, township, and range as it will appear when surveyed must be furnished; or, if this cannot be done, a statement must be filed setting forth a valid reason why such a description cannot be given. Where it is not possible to tie the point of beginning to a survey monument, the latitude and longitude must be given with as great accuracy as possible. A free hand sketch showing the point of beginning and the outline of the tract claimed is helpful, and often it is advisable to obtain a U.S. Geological Survey topographic map of the area and draw in the claim and submit this with the location notice. If required ask the land office for further information regarding marking and describing unsurveyed lands.

HOW TO PROVE UP (REQUIREMENTS)

1. RESIDENCE: The homestead law contemplates that the homestead will be the person's home. Therefore, residence is defined as "a home to the exclusion of a home elsewhere".
 - A. Establishment of Residence: Residence must be established on the land within 6 months from date of the Notice of Allowance, or filing of the location notice as the case may be. However, an extension of 6 months may be approved when the filing of an application containing a witnessed statement that residence could not be established within the first 6 months because of climatic reasons, sickness or other unavoidable cause, and a \$5.00 service fee, is submitted to the land office. The entry year will still be based on the date of the notice of allowance, or the date the location notice was filed, regardless of whether or not a request for an extension of time to establish residence is made.
 - B. Maintenance of Residence: The entryman is required to maintain his residence on the homestead each year during the first, second, and third "residence years." The first residence year begins on the date actual residence is established on the land and normally does not coincide with the

entry years or calendar years. During each residence year, a homesteader is entitled by law to absent himself from the land for not more than two periods, aggregating as much as five months. However, two absences in different residence years must be separated by a substantial period of residence on the land, if they together total more than five months. An application is not required for such absences, but the entryman must file notice in the land office of the time of his leaving and the time of his returning to the land.

C. Residence Requirements for Veterans: Certain veterans may apply their service toward the residence requirement.

(1) Veterans of World War II and the Korean Conflict may apply their service credit as follows (43 CFR, Part 181):

Number of months of service credit	Number of months of residence required during the first 3 years after entry		
	1 year	A second year	A third year
19 or more	7	0	0
18	7	1	0
17	7	2	0
16	7	3	0
15	7	4	0
14	7	5	0
13	7	6	0
7 to 12	7	7	0
6	7	7	1
5	7	7	2
4	7	7	3
3	7	7	4
*less than 90 days	7	7	7

*Veterans with less than 90 days service will receive no credit in lieu of residence except that credit is allowed for 2 years military or naval service (1) if such person was discharged on account of wounds received or disability incurred in line of duty, or (2) if such person was regularly discharged and subsequently furnished hospitalization or awarded compensation by the Government on account of such wounds or disability. The above military credit is accorded to both men and women providing the woman is eligible to homestead.

(2) Veterans of World War I are also entitled to the same credit, but if they complete the 7 months' residence during the first entry year and file final proof within the first entry year, they may avoid the cultivation

requirements as explained under "Cultivation" C.(1).
World War II and Korean veterans must cultivate the
land in accordance with the law.

- D. Reduction in Residence Requirement: The Manager is authorized to grant a reduction in yearly residence requirements to homesteaders who make proper showing in their application that the climatic conditions made residence on the homestead for 7 months in each year a hardship. In such cases, a reduction in the terms of residence to 6 months in each year over a period of 4 years, or to 5 months in each year over a period of 5 years can be allowed. If you wish to avail yourself of this provision, you must file in the land office an application corroborated by 2 witnesses setting forth the climatic conditions which render it a hardship for you to reside on the land for 7 months a year and stating whether you wish the requirements to be fixed at 6 months' residence for 4 years, or 5 months' residence for 5 years. The statement of claimant and the witnesses must be submitted during the first year, accompanied by a \$5.00 service charge.
- E. Leave of Absence: After establishment of residence, and under certain conditions, a leave of absence may be granted for a year or less. This type of leave is used where failure or destruction of crops, sickness or other unavoidable casualty has prevented the homesteader from supporting himself by cultivation of the land. A \$5.00 service charge is required. The period during which a homesteader is absent pursuant to duly granted leave cannot be counted in his favor.

2. CULTIVATION:

- A. Since the homestead law is designed for agricultural settlement it requires cultivation of the land before patent. Section 2291, Revised Statute, as amended, and 43 CFR 166.23 defines cultivation as, "consisting of actual breaking of the soil, followed by planting, sowing of seed and tillage for a crop other than native grasses."

Webster's New World Dictionary defines the following:

Tillage - To prepare land for the raising of crops, as by plowing, fertilizing, discing, etc.

Cultivate - To prepare and use land for growing crops; tillage. To break up the surface soil in order to destroy weeds, prevent crusting and preserve moisture (prepare seed bed). To grow from seeds, bulbs, shoots, etc.

In the case of the United States vs. Niemeyer, 94 Fed. 147, 150 (D.C. Arkansas 1899) cutting of trees was not sufficient as to the law contemplated by cultivation of the land, "plowing it and preparing it for crops, or the raising of something that grows from the ground besides grass." In the case of Schooley vs. Heirs of Varnum, 33 L.D. 45 (1904) a mere pretense of cultivation does not satisfy the requirements of the homestead law and the proof which fails to show bonafide compliance with the law in the matter of cultivation must be rejected. Ingelev J. Glomset, 36 L.D. 225 (1902); Claude E. Crumb, 62 I.D. 99 (1955).

It has been held by the Department that "a proof showing clearing, discing and seeding frozen land during mid-winter is to be rejected as failing to show on its face bonafide cultivation, as discing and seeding can be done satisfactorily only during the proper season." (The cultivatable season in most parts of Alaska is generally considered to run from mid-May to mid-September).

Some further important items:

- (1) Roots and stumps of cut trees must be removed in order for the area to be considered cleared and ready for cultivation.
 - (2) Burn piles and windrows cannot be counted as cleared and cultivated acreage.
 - (3) After clearing the seedbed must be prepared by breaking the ground with a plow, heavy disk or some other appropriate machine. "Walking" heavy tracked equipment across the land while churning the tracks will generally not break the ground sufficiently to prepare a seedbed.
- B. The normal requirement for all homesteaders sets the following minimum amount: first entry year no cultivation required; second entry year, 1/16th of the total area required; third entry year, 1/8th of the total area required, and fourth and fifth years, if Final Proof is not submitted before this time, the 1/8th minimum must be kept in cultivation. The "entry year" is fixed from the date the notice of allowance is issued, or the date the notice of location is filed in the land office, as the case may be.
- C. There are 3 exceptions to the regular cultivation requirement.
- (1) If a World War I veteran (with 19 months or more of creditable military service) completes his 7 months' residence during the first entry year, and promptly

files final proof, cultivation is not required.

- (2) Commutation Proof: Persons filing commutation final proof are required to show substantially continuous residence upon the land for at least 14 months following the date of establishment of residence. If a commutation proof is filed before the end of the second "entry" year, cultivation of only 1/16 of the area must be shown. However, if commutation proof is delayed until the third entry year, cultivation of 1/8 of the area during the third entry year must be shown. (For necessary fees refer to B. under Final Proof)
- (3) The requirement as to cultivation may be reduced if the land entered is so hilly or rough, the soil so alkaline, compact, sandy, or swampy, or the precipitation or moisture so light as not to make cultivation practicable. However, this condition must not have been apparent at the time the land was first taken up. No reduction in area of cultivation will be permitted on account of expense in removing the standing timber from the land. Application for reduction in cultivation must be accompanied by a \$5.00 filing fee.

A reduction may also be allowed if the entryman, after making entry and establishing residence, has met with misfortune which renders him reasonably unable to cultivate the prescribed area. In this case an application for reduction is not filed, but notice of the misfortune and of its nature must be submitted to the Manager of the Land Office, within 60 days after its occurrence; upon satisfactory proof regarding the misfortune at the time of submitting final proof a reduction during the period of disability following the misfortune may be permitted.

3. HABITABLE HOUSE:

Habitable house means a dwelling suitable for year-round occupancy. The homestead law requires that a habitable house be on the land at the time of filing final proof. There are no requirements as to size or materials.

FINAL PROOF:

1. Upon completion of requirements as to residence, cultivation, and habitable house, the applicant is ready to file Final Proof, which consists of the testimony of claimant and testimony of each of two witnesses.

- A. Final Proof must be filed before expiration of the 5 year statutory life on both surveyed and unsurveyed land. (Using Form 4-369 and 369a) All Final Proofs filed on or after September 24, 1962 must be accompanied by a nonrefundable service charge of \$25.00, without regard to the amount of acreage. (See Circular 2085) If allowance was issued prior to September 24, 1962, Testimony fees of \$1.80 plus commissions in the amount of \$1.50 for 0-40 acres, \$3.00 for 41-80 acres, \$4.50 for 81-120 acres, and \$6.00 for 121-160 acres, must accompany the Final Proof.
- B. Commutation Proof is also filed on Forms 4-369 and 369a. If filed on or after September 24, 1962, it must be accompanied by a nonrefundable service charge of \$25.00 plus the purchase price of \$1.25 per acre. If filing a commuted proof for an entry allowed prior to September 24, 1962, it need only be accompanied by the purchase price of \$1.25 per acre plus the testimony fee of \$1.80.
- C. All Final Proofs must be made under oath.
- D. Final Proof papers for unsurveyed lands must be accompanied by a Homestead Entry Application, Form 4-007 and a nonrefundable service charge of \$25.00.

PUBLICATION: POSTING AND SURVEY

- 1. Notice for publication is issued upon acceptance of the claimant's Final Proof if the land has been surveyed. The necessary papers for publication are mailed to the entryman who takes or sends them to the designated newspaper. The publication period for rectangularly surveyed land is 5 weeks and on special surveys it is 9 weeks. In the case of special surveys only a copy of the notice and plat must be posted on the land during period of publication. Upon completion of the publication the entryman is responsible for filing the publisher's affidavit of publication with the land office. If all is in order and if no protests are received within 30 days from date of publication, final certificate is forwarded to the Washington Office for patent. Patents cannot be issued until the land is surveyed and the plat filed in the land office. Upon receipt of the patent, the land office then mails the patent to the homesteader advising the patentee to have it recorded at the local District Recorders Office. This is for the protection of the patentee and is required by State Law.
 - A. There is no further dealing with the land office with regard to registration, taxes, etc., after receipt of patent.

ADDITIONAL ENTRIES

1. CONTIGUOUS LAND:

Section 2 of the Act of April 28, 1904 (33 Stat. 527; 43 U.S.C. 213), as amended, authorizes any person who has previously entered less than 160 acres of land under the homestead law, who has not perfected the entry, or, if proof has been made, who still owns and occupies the land, to enter other and additional land lying contiguous to the original entry which, with the land first entered, will not in the aggregate exceed 160 acres. Applicants for an additional entry under this act must file their application on Form 4-018, accompanied by a \$25.00 nonrefundable service charge.

Before final proof may be submitted, the entryman must cultivate an amount equal to one-eighth of the area of the additional entry for at least one year after the additional entry is made and must maintain this cultivation until the submission of proof. This cultivation may be performed on the original entry, on the additional entry, or both, but must be in addition to that required and relied upon in making proof on the original entry. Residence must be made on the original entry and not, repeat not, on the additional entry.

Final proof for an additional entry under this act may be submitted only at the time of final proof for the original entry, or subsequent thereto, but must be submitted within the five (5) year statutory life. Commutation proof cannot be filed for entries under this act.

2. CONTIGUOUS OR NONCONTIGUOUS LAND:

Section 6 of the act of March 2, 1889 (25 Stat. 854; 43 U.S.C. 214), authorizes any qualified person who has previously filed final proof for a homestead entry of less than 160 acres to enter so much additional land, either contiguous or noncontiguous, to the land originally entered, as when combined with the acreage of the original entry will not exceed 160 acres. Applicants under this act are not required to show that they still own or occupy the original entry. The entryman is required to comply with the residence and cultivation requirements of the ordinary homestead law and must have a habitable house on the land before submission of final proof.

APPLICATION TO AMEND

1. An application to amend should generally be based upon the fact that an error was made in the original description of the land. An amendment may also be granted where, through no fault or neglect

of the homesteader, the land is found to be so unfit or unsuitable for occupancy or cultivation as to make it practically useless. This last amendment may not be granted except where at least one legal subdivision of the original entry is retained in the amended entry. An application for amendment should be filed on Form 4-005, and must be accompanied by a \$10 service charge.

CONTESTS

1. Any homestead entry or settlement claim may be contested if the homesteader is failing to live up to the requirements of the homestead law. A contest may be initiated by either the government or a private party.
 - A. A private contest may be initiated by any person who claims title to or an interest in such lands or who seeks to acquire a preference right. He may initiate proceedings to have the claim or title or interest adverse to his claim invalidated for any reason not shown by the records of the Bureau of Land Management.
 - B. A person desiring to initiate a private contest must file a complaint in the Land Office. Each complaint must be accompanied by a \$10.00 filing fee and an advance deposit of \$20.00, which is applied toward reporter's fees in case of a hearing. The contestant must serve a copy of the complaint on the homesteader not later than ~~30~~ days after filing the complaint in the Land Office and must file proof of such service, which can be made either by personal service or by certified or registered mail, within ~~30~~ days after service. The signed return receipt card is proof of service by mail.
 - C. If the contestee fails to answer the charges within 30 days of service denying the truthfulness of the charges, the entry will be canceled and the contestant awarded a preference right upon payment of a nonrefundable cancellation service charge of \$10.00. If an answer to the contest is filed, it is mandatory that a copy of that answer be served either personally or by registered or certified mail on the contestant. The contestee must furnish proof of service of his answer and file that proof of service in the Land Office within the 30-day period.
 - D. If the charges brought would warrant the cancellation of the entry, if proven to be true, and the answer by the entryman denies the charges, the contest will be referred to a Hearings Examiner and a hearing will be held. This hearing is somewhat like a court trial and is conducted for the purpose of obtaining the facts in the case.

SECOND ENTRY

1. Where a person has made a homestead entry or entries but failed to perfect them, his right to make another homestead entry is governed by the Act of September 5, 1914, which provides that the applicant must file an application for second entry and show, to the satisfaction of the Secretary of the Interior, that the prior entry or entries were made in good faith, were lost, forfeited or abandoned because of matters beyond his control, and that he has not speculated in his right, nor committed a fraud or attempted fraud in connection with such prior entry or entries. The determination whether or not the second entry is allowed is left to the discretion of the Bureau of Land Management. Title 18 U.S.C. Section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.
 - A. Character of Land: As each applicant is required to state that he is well acquainted with the character of the land described in his application, and as all entries are made subject to the rights of prior settlers, the applicant can not make the statement that he is acquainted with the character of the land, or be sure that the land is not already appropriated by a settler, until after he has actually inspected it. The character and occupancy of public lands cannot be determined in any other way.

Information as to whether a particular tract of land is subject to entry may be obtained from the Land Office of the land district in which the tract is located.

We hope that we have answered your questions pertaining to homesteading in the State of Alaska, and will be happy to help you with any specific problems pertaining to your entry.* (See below.) Please remember that for the sake of brevity, homestead requirements herein are general; therefore, any unintentional conflict or omission in this pamphlet must be subordinated to the land laws and regulations. The full regulations are found in 43 CFR 65, 166 and 181.

*There are special provisions to protect the homesteader and his family in the case many unforeseen circumstances, such as death, insanity or restraint of the homesteader, the desertion of his wife by the homesteader or the induction of the homesteader into military service. Should some such circumstance arise, the Land Office should be promptly advised and a request made for information on the subject.



LAWS OF ALASKA

1966

Source:

HB 415 am

Chapter No.:

92

AN ACT

Relating to the disposition of certain legal interests in land by the State of Alaska; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. PURPOSE. This Act is intended to alleviate the economic hardship and physical and mental distress occasioned by the taking of land, by the State of Alaska, for which no compensation is paid to the persons holding title to the land. This practice has resulted in financial difficulties and the deprivation of peace of mind regarding the security of one's possessions to many citizens of the State of Alaska, and which, if not curtailed by law, will continue to adversely affect citizens of this state. Those persons who hold title to land under a deed or patent which contains a reservation to the state by virtue of the Act of June 30, 1932, ch. 320, sec. 5, as added July 24, 1947, ch. 313, 61 Stat. 418, are subject to the hazard of having the State of Alaska take their property without compensation because all patents or deeds containing the reservation required by that federal Act reserve to the United States, or the state created out of the Territory of Alaska, a right-of-way for

roads, roadways, tramways, trails, bridges, and appurtenant structures either constructed or to be constructed. Except for this reservation the State of Alaska, under the Alaska constitution and the constitution of the United States, would be required to pay just compensation for any land taken for a right-of-way. It is declared to be the purpose of this Act to place persons with land so encumbered on a basis of equality with all other property holders in the State of Alaska, thereby preventing the taking of property without payment of just compensation as provided by law, and in the manner provided by law.

* Sec. 2. TAKING OF PROPERTY UNDER RESERVATION VOID. After the effective date of this Act, no agency of the state may take privately-owned property by the election or exercise of a reservation to the state acquired under the Act of June 30, 1932, ch. 320, sec. 5, as added July 24, 1947, ch. 313, 61 Stat. 418, and taking of property after the effective date of this Act by the election or exercise of a reservation to the state under that federal Act is void.

* Sec. 3. PROSPECTIVE APPLICATION. This Act shall not be construed to divest the state of, or to require compensation by the state for, any right-of-way or other interest in real property which was taken by the state, before the effective date of this Act, by the election or exercise of its right to take property through a reservation acquired under the Act of June 30, 1932, ch. 320, sec. 5, as added July 24, 1947, ch. 313, 61 Stat. 418.

* Sec. 4. SHORT TITLE. This Act may be cited as the Right-of-Way Act of 1966.

* Sec. 5. EFFECTIVE DATE. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.

-3-

Approved by Governor April 13, 1966
Actual effective date: April 14, 1966

ACQUISITION OF RIGHTS-OF-WAY WIDTHS

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

R.S. 2477 (43 U.S.C. 932)
43 Stat. 446 (48 U.S.C. 321a) June 30, 1932
61 Stat. 418 (48 U.S.C. 321d) July 24, 1947
Public Land Order 601 August 10, 1949
Public Land Order 757 October 16, 1951
2665 Amendment 1 July 17, 1952
2665 Amendment 2 September 15, 1956
Public Land Order 1613 April 7, 1953
Public Law 86-70 (Omnibus Act) June 25, 1959

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

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

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

The Act of July 24, 1947 (61 Stat. 418, 48 U.S.C. 321d), amended the Act of June 30, 1932, by adding the reservation for rights-of-way over "lands taken up, entered or located" after July 24, 1947. Since this Act did not specify widths, it remained, in that respect, similar to R. S. 2477. However, a right-of-way of any width could be acquired over such lands by merely setting it by some sort of notice, either constructive or actual insofar as new roads are concerned, and since it did not limit the reservation to new roads only, there could be no doubt that it effects subsequent settlements on existing roads. Until the promulgation of the first Public Land Order setting right-of-way widths for the existing roads, compensation was required for all crops and improvements located within new takings.

* Pertinent to this Memorandum Brief

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

- 300 feet on each side of the center line of the Alaska Highway;
- 150 feet on each side of the center line of all other through roads (named therein);
- 100 feet on each side of the center line of all feeder roads (named therein);
- 50 feet on each side of the center line of all local roads

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

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

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

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

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

Now we are left with one more important phase of this general situation: What effect would the orders have on the rights of a party who constructs

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

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

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

The purpose of this order is stated as follows:

"(Sec. 1. Purpose. (a) The purpose of this order is to (1) fix the width of all public highways in Alaska established or maintained under the jurisdiction of the Secretary of the Interior* and (2) prescribe a uniform procedure for the establishment of rights-of-way or easements over or across the public lands* of such highways. Authority for these actions is contained in Section 2 of the Act of June 30, 1932 (47 Stat. 446, 48 U.S.C. 321a)."

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

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

* Emphasis supplied

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

(a) A reservation for highway purposes covering the lands embraced in the through roads mentioned in Section 2 of this Order was made by Public Land Order No. 601 of August 10, 1940, as amended by Public Land Order No. 757 of October 16, 1951. That order operated as a complete segregation of the land from all forms of appropriation under the public-land laws, including the mining and the mineral leasing laws.*

(b) A right-of-way or easement for highway purposes covering the lands embraced in the feeder roads and the local roads equal in extent to the width of such roads as established in section 2 of this order, is hereby established for such roads over and across the public lands.*

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

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

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

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

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

CONCLUSIONS

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

* Emphasis supplied

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

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

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

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

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

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

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

(D) Public Land Order 1613 revoked the withdrawals on through roads as established by Nos. 601 and 757. It established a 300 foot easement on those roads for highway purposes. There is, therefore, a 300 foot easement on all through roads in Alaska where such through roads have been designated by the various orders.

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

Status History - Alaskan Roads

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

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

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

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

. . . to fix the width of all public highways in Alaska established or maintained under the jurisdiction of the Secretary of the Interior and (2) prescribe a uniform procedure for the establishment of rights-of-way or easements over or across the public lands for such highways. (Emphasis added.)

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

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

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

A history of PLO 1613 lands is essentially similar.

Executive Order 9145, dated April 23, 1942, reserved for the Alaska Road Commission in connection with construction, operation and maintenance of the Palmer-Richardson Highway (now Glenn Highway), a right-of-way 200 feet wide from the terminal point of the highway in the NE $\frac{1}{4}$ of section 36, T. 20 N., R. 5 E., Seward Meridian, to its point of connection with the Richardson Highway in the SE $\frac{1}{4}$ of section 19, T. 4 N., R. 1 W., Copper River Meridian. The area described is generally that area between Chickaloon and Glennallen.

Public Land Order 12, dated July 20, 1942, withdrew a strip of land 40 miles wide generally along the Tanana River from Big Delta to the Canadian Border. It also withdrew a 40-mile wide strip along the proposed route of the Glenn Highway from its junction with the Richardson Highway, east to the Tanana River.

Public Land Order No. 84, dated January 26, 1943, withdrew all lands within 20 miles of Big Delta which fell between the Delta and Tanana Rivers. The purpose of the withdrawal was for the protection of the Richardson Highway.

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

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

Public Land Order No. 386, dated July 31, 1947, revoked PLO 84 and PLO 12, as amended by PLO 270. The order withdrew the following land under the jurisdiction of the Secretary of the Interior for highway purposes:

1. A strip of land 600 feet wide along the Alaska Highway as constructed from the Canadian boundary to the junction with the Richardson Highway at Delta Junction.
2. A strip of land 600 feet wide along the Gulkana-Slana-Tok Road (Glenn Highway) as constructed from

Tok Junction to its junction with the Richardson Highway near Gulkana. This order also withdrew strips of land 50 feet wide and 20 feet wide along the Alaska Highway for purposes of a pipeline and telephone line, respectively. Pumping stations for the pipeline were also withdrawn by this order, as well as 22 sites which were reserved pending classification and survey.

Public Land Order No. 601, dated August 10, 1949, revoked E.O. 9145 as to a 200-foot wide withdrawal along the Glenn Highway from Chickaloon to Glennallen.

It also revoked PLO 386 as to the 600-foot wide withdrawal along the Alaska Highway from the Canadian boundary to Big Delta and along the Glenn Highway from Tok Junction to Gulkana.

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

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

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

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

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

Public Land Order No. 757, dated October 16, 1951, accomplished two things:

1. It revoked the highway withdrawal on all "feeder" and "local" roads established by PLO 601.
2. It retained the highway withdrawal on all the "through roads" mentioned in PLO 601 and added three highways to the list.

After issuance of this order, the only highways still withdrawn were those listed below. Also shown is the total width of the withdrawal.

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

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

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

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

Public Law 892, dated August 1, 1956, provided for the disposal of public lands within highway, telephone and pipeline withdrawals in Alaska, subject to appropriate easements. This act paved the way for the issuance of a revocation order (PLO 1613) which would allow claimants and owners of land adjacent to the highway withdrawal a preference right to acquire the adjacent land.

Public Land Order 1613, dated April 7, 1958, accomplished the intent of the act of August 1, 1956. Briefly, it did the following:

1. Revoked PLO 601, as modified by PLO 757, and provided a means whereby adjacent claimants and owners of land could acquire the restored lands, subject to certain specified highway easements. The various methods for disposal of the restored lands are outlined in the order.

2. Revoked PLO 386 as to the lands withdrawn for pipeline and telephone line purposes along the Alaska Highway. It provided easements in place of the withdrawals.

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

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

The act of June 11, 1960 (Public Law 86-512), amended the act of August 1, 1956. This was a special act to allow the owners and claimants of land at Delta Junction and Tok Junction a preference right to purchase the land between their property and the centerline of the highway. The act was necessary since the land in both towns was still reserved for townsite purposes, even after the highway, telephone line and pipeline withdrawals were revoked.

BUREAU OF PUBLIC ROADS

OFFICE MEMORANDUM

UNITED STATES GOVERNMENT

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April 1, 1958

TO: Mr. E. H. Swick, Regional Engineer, Juneau, Alaska

FROM: C. W. Enfield, General Counsel
Washington, D. C.

SUBJECT: Legal Problems Relating to Right-of-Way Acquisition in Alaska

The purpose of this memorandum is to furnish my general views of the Bureau's rights in connection with highway right-of-way in Alaska, to answer, to the extent possible from the sketchy facts which are available, the specific questions which you have raised in previous correspondence, and to indicate the circumstances under which condemnation procedure may be utilized to insure availability of right-of-way to meet construction requirements. The observations made herein have been discussed informally with legal personnel of the Departments of the Interior and Justice, but should not be considered as representing the official views of those departments.

It is considered that, under the authority of the Act of Congress approved July 24, 1947 (61 Stat. 418; 48 U.S.C. 321d), all entries made on public lands subsequent to said date and all patents based thereon have been and are subject to a reservation in the United States of any and all rights-of-way, without limitation as to number or widths, for public highways already constructed or to be constructed on said land.

As was stated by the House Committee on Public Lands in Report No. 673, dated June 24, 1947, "The Committee on Public Lands unanimously agreed that passage of this legislation will help to eliminate unnecessary negotiations and litigation in obtaining proper rights-of-way through Alaska." This legislation was introduced at the request of the Department of the Interior as expressed in a letter dated January 13, 1947, to the Speaker of the House, which was set forth and made a part of the Committee Report. The letter states in part, ". . . However, for the proper location of roads and in the interest of public service, it is necessary in some instances to cross lands to which title has passed from the United States. These instances are becoming more numerous as the population of the Territory increases and obtaining rights-of-way over such lands has, in a number of cases, presented difficulties requiring court action and the expenditure of Federal funds. The proposed legislation is similar to the provisions of the Act of August 30, 1890, (43 U.S.C. 945) which reserves rights-of-way for ditches and canals constructed by the authority of the United States west of the 100th meridian. The proposed bill would be applicable to both public domain and acquired lands of the United States."

The 1890 Act was construed by the Supreme Court of the United States in the case of *Ida v. United States* (263 U.S. 497). The court pointed out that, at the time of enactment of the legislation, the United States had no canals or ditches either constructed or in the process of construction, but that investigations were being conducted toward the formulation of plans for reclamation projects. "At an early stage of the investigations, Congress became solicitous lest disposal of lands in that region under the land laws might render it difficult and costly to obtain the necessary rights-of-way for canals and ditches when the work was undertaken. To avoid such embarrassment Congress at first withdrew great bodies of the lands from disposal under the land laws That action proved unsatisfactory and,

by Act of August 30, 1890, Congress repealed the withdrawal, restored the lands to disposal under the land laws, and gave the direction that in all patents there should be a reservation of rights-of-way. . . ." The court held further that the statutory reservation was known to all and "all entrymen thereafter acted in the light of that knowledge so charged to them." As said by the lower court in Green v. Willhite (93 P. 973), the "Congress was taking this precautionary measure for the protection of a right-of-way to the Government in the event it should later adopt a reclamation policy and enter upon such works. It intended thereby to save the Government from the expense of purchasing and condemning rights-of-way when the Government became ready to construct any canal or ditch."

I believe, therefore, that the reservation under the 1947 Act constitutes an inseparable incident and burden of ownership of such lands and that when the Bureau utilizes the right-of-way, it is doing that which it has a right to do and is not liable to pay compensation therefor. The Bureau is, however, obligated, under the Act, to make payment for the full value of crops and improvements located on rights-of-way, traversing land under valid entry or under patent, when said rights-of-way are utilized. This obligation does not extend to payment of severance damages to land, crops, or improvements outside the rights-of-way. Before making any efforts to reach agreement with entrymen for crops and improvements, you should be assured that the Bureau of Land Management considers the entry to be valid and in good standing since, if not, the entrymen's sole rights would be those of removal. Any agreements reached for crops and improvements should contain also a provision releasing the United States from all claims to compensation arising from its utilization of the rights-of-way.

Parties holding patents dated subsequent to July 24, 1947 who made valid homestead entry prior to said date are entitled to "just compensation" for the taking of any of their lands unless a particular patent includes a general right-of-way reservation in which event, the patentee would be entitled to payment only for crops and improvements.

Parties holding patents dated prior to July 24, 1947 are, of course, entitled to "just compensation" for any taking of their lands.

Patentees of lands not subject to the 1947 Act are entitled to be paid "just compensation" for the taking of any right-of-way in addition to that already included within the limits of established roads. If the right-of-way limits are not defined on the ground or by plats, then the right-of-way would ordinarily be considered as encompassing the roadway itself plus such additional widths as were, at the time of establishment, considered to be reasonably necessary for the protection of the roadway. In reaching a decision as to the limits of a particular existing right-of-way, you should consider all available information bearing on the intent of the Government at the time of establishing the road including terrain features and accepted practices in the area. Generally, it would appear from the facts heretofore submitted that you will be able to support a claim to a 66-foot right-of-way.

In general, I believe that the views expressed above cover most of the questions raised in the specific cases set out in your memorandum of August 21. However, specific comments as to each case are set forth below:

- Case 1. It is considered extremely doubtful that 2477 was intended to apply to rights-of-way required by the United States. This statute constitutes a continuing offer by the United States to others to make public lands available for highway construction. Rather, we feel that the authority for acquisition of right-of-way for public highways in Alaska stems from the Act of January 27, 1905 (33 Stat. 616), as amended by the Act of June 30, 1932 (47 Stat. 446), the Act of July 24, 1947 (61 Stat. 418), and Section 107 of the Federal-Aid Highway Act of 1956. See my comments above on the matter of determining the legal limits of an established right-of-way.
- Case 2. On the basis of the facts submitted, it seems reasonable to assume that the United States has a right-of-way by prescription to the roads as established. The width of the right-of-way is a question of fact as is discussed earlier in this memorandum. Under these circumstances, there would not be any authority to compensate the patentee.
- Case 3. Where the 1947 Act is not applicable, it is considered that a right-of-way established by prescription does not shift and that the patentee would be entitled to compensation for any improvement involving right-of-way beyond the limits of that previously considered as having been established.
- Case 4. An entryman in good standing has an inchoate's property right, even as against the United States, which permits him to use and occupy the land and its resources in developing the property in a manner which will enable him to obtain a patent. While he may not alienate the land or any interest therein, as for example, by selling gravel to third persons, he would not be precluded from transferring any interest which he might have in the gravel to the United States. Nevertheless, inasmuch as legal title to the gravel is still in the United States, there is considerable doubt as to the proper basis of assigning value, if any, to the entryman's interest. Under the circumstances, if project requirements make it necessary to obtain gravel from entrymen who demand payment of compensation, it would appear to be advisable to institute condemnation proceedings and to file Declarations of Taking with a deposit of \$1.00 for each ownership. An alternate procedure, if acceptable to a particular entryman, might be to obtain a right of entry and reserve to the entryman the right to bring suit to determine his interest. We are giving consideration to the advisability of presenting this and other questions to the Comptroller General. However, the procedures suggested herein should take care of your immediate requirements.
- Case 5. The 1947 Act reserves rights-of-way in any number needed.
- Case 6. If the 1947 Act is applicable we have unlimited rights. If the 1947 Act is not applicable we must pay for any rights-of-way beyond the limits of those previously established.
- Case 7. Under the facts stated, the 1947 Act would be applicable. The Act reserves rights-of-way in any widths needed.

Case 8. If the entry was subsequent to the 1947 Act, the Bureau may utilize such rights-of-way as it desires. If a valid entry was made, under the applicable law, prior to the 1947 Act, the right-of-way is limited to that previously established.

Case 9. This was answered in our memorandum of March 3, 1958, Subject: Authority of Territory to grant permittee leases covering school section lands.

Where negotiations with parties from whom the Bureau is taking right-of-way are not successful, it will, of course, be necessary to proceed to condemnation. As to entrymen and patentees whose land is subject to the 1947 Act, I believe that there is legal authority for the Bureau merely to give notice that it proposes to utilize its right-of-way and to take possession of the land. However, it is realized that this course of action involves practical problems in that legal obstacles could conceivably be presented, based either on a contest of the Bureau's interpretation of the 1947 Act or on a disagreement with our appraised value of crops and improvements, which might result in a delay in construction this season. Therefore, if agreements cannot be reached as to the value of crops and improvements or if you believe that an entryman, or patentee, whose land is subject to the 1947 Act, may contest the Bureau's taking of possession of the right-of-way, it will be satisfactory to proceed to condemnation, to file Declaration of Taking, to deposit \$1.00 into court for each ownership as to which the value of crops and improvements is not in issue, to deposit the appraised value of the crops and improvements located within the right-of-way with respect to each ownership as to which an agreement as to value cannot be reached, and to request court orders of possession of the land. Entrymen and patentees should be advised prior to the institution of any proceeding of the action to be taken by the Bureau and the reasons therefor.

In your preparation of requests for condemnation, please refer to PFM-21-4.2 and to my memorandum of March 4 to Mr. Williams, copies of which were furnished to you. Also, please include a report of pertinent facts as to each tract recommended for condemnation. Should you desire any additional information, please advise and we will furnish you with immediate replies.

I realize that there are many legal problems affecting right-of-way acquisition in Alaska and that it will undoubtedly be worth while for Mr. Kresver to meet with you and your staff and probably with representatives of the Department of Justice and the Bureau of Land Management to discuss matters of common interest. However, inasmuch as we are furnishing our views in this memorandum on the questions with which you are apparently immediately concerned and in light of our present staffing situation and the press of business here, it would be preferable if this visit could be deferred for about 90 days.

On the other hand, if you feel that an immediate visit is necessary and will be of value in connection with the two projects which you propose to construct this season, please let me know and I will make necessary arrangements.

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CHRONOLOGICAL OUTLINE

- 1905 -- January 27. Congress created the Board of Road Commissioners for Alaska within the Corps of Engineers, Department of War.
- May 15. Initial ARC members, Major W. P. Richardson, First Lt. G. B. Pillsburg, and First Lt. S. C. Orchard, met in Skagway. Richardson became the first president.
- 1919 -- By Act of 1919 by the Territorial Legislature, the Territorial Board of Road Commissioners was established. Composed of the Terr. Governor, Terr. Treasurer, and an elected Terr. Highway Engineer.
- 1920 -- BPR forest highway funds became available for Alaska, with the National Forests. BPR under USDA.
- 1921 -- First BPR representative; in Alaska, with office in Ketchikan.
- 1923 -- BPR office moved to Juneau; established as sub-district office under the District office in Portland, Oregon.
- 1927 -- Alaska within the National Forests became BPR District 11.
- 1932 -- ARC transferred to Department of Commerce. *1932* *1932*
- 1945 -- National Forest areas of Alaska became a District under the old Division 8 headquartered in Portland.
- 1948 -- BPR transferred to Department of Commerce, but continued to handle forest highways.
- September. Division 10 created in Alaska in National Forest lands to handle the large cooperative construction program with the ARC.
- 1953 -- Territorial legislature changed the composition of the Territorial Board of Road Commissioners to one composed of one man from each judicial district. Still had elected highway engineer.
- 1954 -- Old BPR Division 10 abolished; Alaska again a district under Division 8 in Portland.
- 1956 -- Territory completed some projects with own resources and began engineering on others.
- Alaska included under Federal-Aid Highway Act.
- ARC absorbed by BPR.
- BPR Region 10 established including all of Alaska.
- 1957 -- Bill signed to begin setting up proper highway department as required in Federal-Aid Act. Office of Territorial Highway Engineer abolished
- Department of Highways and Public Works created.
- 1959 -- Alaska became a state.
- First state legislature reorganized the state gov't. and abolished old Dept. of Highways and Public Works; created present Department of Public Works, with a Division of Highways.
- 1960 -- July 1, State took over all highway functions.

Clippings collected by "Dutch" Derr and loaned to R/W Section by Pentecost.

General and Miscellaneous

Anchorage Times - 1953 (no more date)

Gas tax at 2c/gal. Congress cut road funds when territorial legislature failed to raise this; said territory not paying nearly its share. Opposition to increase from trucking lines (in competition with ARR), fishermen (bad year); Southeastern in general (no roads anyhow). Maybe need to study earmarking and exemptions such as boat fuel tax - harbors; aviation -- airports; cars -- roads.

Anchorage Times - Feb. 18, 1954

Territorial Board of Road Commissioners going to recommend a 2c tax boost in gas tax to next legislature.

Alaska Daily Empire - Feb. 6, 1954

Territorial Board of Road Commissioners voted to ask additional 2c tax on gasoline applying only to vehicles using the highways and not to boats or stationary engines. Voted to direct the highway engineer to purchase the Hubbard mining claim standing on the proposed R/W of the Sterling Highway. Decided to ask legislature to direct receipts from car license plate fees to the roads fund instead of the general fund. Secured agreement from ARC that the agency will abide by recommendations of the Terr. SRC on construction of farm and industrial roads and reconstruction of roads.

Anchorage Daily News - April 12, 1954

Using a greenish dye, originally developed to mark ocean areas for sea rescue purposes, are being successfully used on Alaska hwy. to designate the edges of the R/W. Dye turns blue, and even red, after being on the snow for some time; serves as a marker to grader crews who must clear roads after heavy snowfalls. When they get down to colored snow, they know they have dug deep enough and are on the R/W. Before, they could not tell where the road left off and the sky or embankment began.

Anchorage Daily News - June 3, 1954

Police tore down signs in violation of R/W probably to test new Outdoor Advertising Act, which prohibits billboards along the highways.

Cordova Times - March 17, 1955

House and Senate both passed bill to increase gas tax 3c for cars and trucks (thus up to 5c on these), 1c on aviation gas, and left unchanged the 1c tax on boat fuels.

Clippings were also received by Pentecost

Anc. Daily Times

June 29, 1957 -- more than \$40,000,000 will be available for Alaska road building in the next three years. Alaska adds only 10 percent matching funds, while the 48 must match 50-50. Overall formula for the fund: 45% for primary, 30% for secondary roads and 25% for urban. Farm-to-market roads fall under "secondary" classification.

In fiscal 1957, \$11,425,000 to Interior for Alaska road construction; Alaska share of highway act funds \$1,900,000; territory add 10% or \$190,000 -- total of \$13,515,000 for road building in fiscal 1957.

July 1956 -- ~~Anc. paper?~~ Anc. Daily Times

Bill signed to authorize payment of 25% of the revenues from national forest in Alaska for roads and schools. 10% go USDA for roads and trails in the forest. Indian claims to forest lands and etc. safeguarded by remaining 65%.

Anc. Daily Times -- Aug. 24, 1956. If Native claims should be found to amount to more than the total left in the (Tongass Nat. For.) fund, the territory would have to pay the difference, up to the amount received under the Jackson bill (35%).

Anc Daily Times -- Aug. 6, 1956. Big row as SE feels being left out in priority ~~Kustobg~~ listing for roads; SE projects below FBX to Nome e.g. route. Juneau to Taku 14th on list.

INTRODUCTION

Several agencies have been involved in road construction and maintenance in Alaska since it was acquired, and the history of roads in the state can be divided into two major phases. The agencies included were both federal and territorial-state and may be listed as follows:

Federal

Board of Road Commissioners for Alaska (Alaska Road Commission)
 under the War Department and then, under the U.S. Dept. of Interior
 Bureau of Public Roads
 under the U.S. Dept. of Interior, and, then, under U.S. Dept. of Commerce

Territorial-State

Territorial Board of Road Commissioners
 Territorial Highway Engineers
 Alaska Department of Highways and Public Works
 Alaska Department of Public Works, Division of Highways

The time phases may be considered "pre-1956" and "post-1956". 1956, of course, was the year in which Alaska for the first time became eligible for Federal-Aid highway monies. Prior to 1956, the ARC carried out almost all land acquisition, planning, construction and maintenance of roads in the entire territory outside of the national forest areas of Southeastern Alaska (Tongass Nat. For.) and the Seward-Prince William Sound area (Chugach Nat. For.) In the National Forest areas, the Bureau of Public Roads planned, constructed and maintained highways. These two agencies did work together under contract at times.

The Territorial Board of Road Commissions and the Territorial Highway Engineers administered the territorial funds available for highway work and authorized work on secondary, local and access roads. The bulk of actual work was done by the Federal agencies upon receipt of work orders from the Territorial Board although in the mid-1950s a small amount of work was privately contracted and paid for directly by the Territory. The Territorial Highway Engineer also acquired right-of-way for BPR construction in the National Forests.

In 1956, the ARC was absorbed by BPR, and the territory began to develop a true highway department. Following statehood, the state rather rapidly assumed control of its highway program, and at present, the situation (at least on the face) is much the same as in other states, with BPR acting in an advisory and regulatory capacity with respect to federal-aid projects.

HISTORY AND DEVELOPMENT OF THE AGENCIES

Federal - ARC

- 1905 -- Act of January, 27, 1905 (33 Stat. 616) - Board of Road Commissioners for Alaska created, within the War Department. *under jurisdiction of Corps of Engineers U.S. Army*
- 1932 - Act of June 30, 1932 (47 Stat. 446) - ARC transferred to Dept. of Interior, as is
- 1956 - ARC absorbed by BFR

The ARC was charged with the responsibility for locating, constructing and maintaining wagon roads and trails in Alaska, as well as other aspects related to transportation, such as building of shelter cabins, docks, etc. The initial members were Major W. P. Richardson, 1st Lt. G.B. Pillsburg, and 1st Lt. S.C. Orchard. These men met in Skagway on May 15, 1905 where Richardson was elected the first president of the Board (Anchorage Daily Times, Feb. 15, 1955).

No funds were appropriated for road construction by Congress in the Act of 1905 creating the ARC. The Act did provide that 70% or more of all monies collected for liquor, occupation and trade licenses outside of incorporated towns in the then "District of Alaska", and deposited to a special "Alaska Fund" should be devoted to the construction and maintenance of wagon roads, bridges and trails in Alaska. During the first fiscal year these equalled \$28,000.

Various other sources of funds were added as time went on, none particularly large until relatively recent times, considering the size of the area involved, and the difficulties of road-building encountered in it. Prior to 1956, in amounts varying with the years, the chief sources of funds for road-building by the ARC included: (1) Congressional appropriations; (2) the Alaska Fund mentioned above; (3) funds appropriated by the Territorial Legislature from territorial taxes; (4) contributions by individuals, companies, corporations, etc. (these included money for ARC equipment rental to individuals, and direct donations); and (5) National Park Service funds for use in the national parks and monuments. Various more or less temporary sources of money were appropriated in emergency acts, such as the Emergency Relief Act, the National Industrial Recovery Act, various National Defense Appropriation Act, etc.

By 1932, ^{at time of transition to Interior} less than \$21,000,000 had been made available for the development of roads and trails. Of this only \$12,000,000 had been appropriated by Congress, the balance having been contributed by the Territory and others.^{9f} Between 1931 and 1940 \$8,933,045.93 were expended, of which approximately three billion

dollars were NIRA and ERA funds.^{9b} Total expenditures at the end of fiscal 1944 were \$36,778,696.10 of which 77% were obtained from Federal appropriation acts.^{9b} During World War II, funds increased and a spurt of road building ensued, the Glenn Highway was constructed from Palmer to Glenallen and in 1942, the Alaska Highway was built. This was followed by a slump in road funds and activity as the military situation eased. In 1948, when Alaska became an important defense area, construction of major military installations was begun, and Congress made available an additional \$4,000,000 for road work, and authorized a six year road program to cost in excess of \$170,000,000. In fiscal 1949, \$24,000,000 was appropriated for its initiation.^{9f}

After years of relatively low average financing and slow progress in road building in Alaska, a big program for connecting, improving and paving the primary system was started with little advance notice. The ARC was a small organization geared to a modest program of comparatively low standard road construction. "Around the small core of experienced Alaska road builders was built a modern highway organization. Specialists in highway refinements, previously unnecessary and unknown in the Alaska road building picture, were added to the staff. Even so, it was necessary for the Commission to utilize the Bureau of Public Roads organization to meet survey, design and contract administrative deadlines." "Contractors' forces frequently followed the Commission's engineering crews by only a few hundred feet."^{9f}

With respect to secondary and local roads, the Territory, through the Territorial Engineer, ~~was~~ for a large part of the time was contributing two to three hundred thousand dollars each year toward work done by the ARC. Work orders for desired road work were presented to ARC by the Territory, and the ARC maintained and constructed the secondary and local road system with a combination of this territorial money and Congressional appropriations on approximately a 20:80 basis.

After 1948, most work for the ARC was done on a contract basis; prior to that time most construction, improvement and maintenance was performed by Government force account (day labor). "This system required a minimum of head-quarter and district organization, since detailed engineering plans and specifications were not required and the innumerable functions involved in contract administration were not necessary, including the final accurate measurement of

quantities of work performed."^{9c}

Roads built prior to 1956

When the ARC was created in 1905 less than a dozen miles of passable wagon roads were to be found in the territory. The chief road was the military trail road from Eagle to Valdez which has been constructed in 1901 under the direction of Capt. W. R. Abercrombie.

Some of the earliest projects of the ARC included a road from Haines up the Chilkat to the large Indian villages of the Chilkat Valley, a road from Fairbanks to the newly located gold camp on Pedro Creek and short roads at Nome to gold discoveries at and near the beaches on the Bering Sea. Until the late 1920s the major effort was directed toward the improvement of the Richardson Highway and construction of mining roads in the vicinity of Anchorage, Fairbanks, and Nome. (Anchorage Daily Times, Feb. 15, 1956). Wagon road, trail and flagged trail work continued. By 1932, the highway system consisted of some 2200 miles of low standard roads, 500 miles gravel surfaced, and 10,000 miles of trails and sled roads.^{9e} In 1935, the total mileage of all routes was as follows: road: 1978 miles; sled road: 1562½ miles; trail: 7199¼ miles; and flagged trail: 304 miles.^{9a} By 1936, the Richardson Highway was in such condition that a two-ton truck could ordinarily travel from Valdez to Fairbanks in eighteen hours; the Steese highway was suitable for traffic not exceeding two-ton trucks.^{9c} Total mileage of all routes in 1944 was: road and tram road: 2517 3/4 miles (80% suitable for automobiles in all summer weather); winter sled roads: 1250 3/4 miles; trail: 4115 3/4 miles; and flagged trail: 164 miles.^{9d} Less than 500 miles of trail, all in the Bering Strait area, were being maintained in 1954, and the highway network totaled 3482 miles.^{9d} In 1956, the system consisted of a 1000 mile network of all-weather paved routes connecting the ice-free ports of Valdez, Seward, and Haines with interior Alaska's principal cities and military installations, and with the continental United States, and a secondary system connecting farming, mining and industrial areas to the primary network. In addition to the connected network, the system included 570 miles of isolated roads connecting inhabited areas with air, rail or water transportation facilities.^{9f}

~~Personality of the ARC~~

It has been said that the ARC functioned as the Territorial Highway Department.⁶ ~~not only as secretary but also as head of the road commission~~ If so, it was somewhat unique in this function, since it was subject apparently to little local pressure or control. In earlier days, it seemingly was not answerable to anyone in particular, to any great degree. It worked under more or less planned ~~to year~~ programs, but was sufficiently flexible (or poorly managed, dependent upon viewpoint) to change these should it be thought necessary. ^{*Note: see Dept. also complaints} The War Department, and later, the Department of Interior seemed only to require that some one have a plausible reason for any questioned change.

The agency seems to have worked with a rather amazing directness to build and maintain as many roads for as many people and to as great a degree as was possible with the least accessory detail and within the limits set by funds which varied in a rather erratic fashion from year to year. Advance planning and design were rudimentary in nature, surveying was limited and served only to mark out a path through which construction crews could proceed. Recording was sketchy, mapping was poor and at time non-existent, and the roads themselves very low standard. But, roads passable sometime during the year at least were built. There seems, prior to the 1930s (an arbitrary break-off date) to have been a minimum of anything connected with road construction and maintenance except the actual construction and maintenance themselves. Monies were appropriated or obtained, and roads were constructed and maintained within the limits of these. Working conditions were poor, the climate and terrain made work difficult, funds were apt to be in short supply, personnel in even shorter supply--but roads were built.

reading

In / various sources of literature and correspondence, one gets the feeling that not only did the ARC function as a road commission, but that it projected somewhat of a "father image" in Alaska--not only to persons served by it, but to itself as well. Probably few other agencies were scattered so widely throughout the territory; in remote areas as well as the more settled areas. If a settler or miner in a remote area needed some equipment, and if the ARC had some in the area, it was authorized to rent it to him; if somebody got stuck and no neighbors were around, he waited until the ARC came along and pulled him out. It was not uncommon during bad weather for one ARC station to radio to the next one up the highway the license number of a passing car; if the car did not arrive within a reasonable time at the second station,

men started out from both stations and worked towards each other until they found the stranded motorist.¹ During winter snow removal, it was common for the equipment to swing in and plow out private roads. The aim of the ARC was to build roads and the policy under which they worked was that roads to be built should be suited to the needs (as they saw them at least) of Alaska, to open the country and help its development. This "benevolent despotism" extended to the Territorial Board of Road Commissioners and the Territorial Highway Engineers; although the Territory, through its agents, could advise and recommend and did over the years provide a fairly substantial amount of money to the ARC for road work, once the work orders were given out and the money turned over to the ARC, the latter agency had full control. One complaint voiced is that at times the ARC decided the money thus appropriated could be better spent elsewhere, so it spent it elsewhere.²

The ARC seemed also to have possessed a fixation—undoubtedly partially justified—that it, and it alone, was capable of building roads in Alaska. The Annual Report for 1954 points out the difficulties attendant to making roads in Alaska, these difficulties including permafrost, surface ice on roads, and in upper ground layers, and "tundra" (sic) swamp-covered permafrost insulated by a heavy growth of moss. "Experience gained by the Commission in half a century of pioneering roads into all parts of the Territory has resulted in the development of location and construction techniques which permit the economical construction of high standard roads under conditions and over terrain not normally encountered on highway construction in more temperate zones. These highly specialized techniques are applied to the selection of routes...."^{9d} This fixation of the special knowledge of the ARC may have lead to difficulties encountered by the agency in adjusting to modern times in highway building. (check Delaney case and Mantanuska file). One suspects that the ARC did a bang-up job of road building in the only way roads could have been built in a pioneer economy in the territory, that it became less effective as road building in Alaska moved into a more modern phase and began to be correlated with that in other parts of the United States, and that it was an anachronism by the time it was abolished in 1956.

BPR

- 1920 - Forest Highway funds made available for Alaska; for work by BPR (under U.S. Dept. of Agriculture)⁵
- 1921 - First BPR representative in Alaska, with hdq. in Ketchikan.⁵
- 1923 - BPR office moved to Juneau; established as a sub-district office under the District office in Portland, Oregon.⁵
- 1927 - Alaska, within the national forest boundaries (southeastern and Seward-Prince William Sound area), became BPR District 11.⁵
- 1945 - Alaska, within the national forest boundaries again became a district under old Division 8 headquartered in Portland.⁵
- 1948 - BPR transferred to Department of Commerce, but took along its forest highway building for the forest Service.
- September, Division 10 of BPR created in Alaska within the national forest boundaries to handle large cooperative construction program with ARC.⁵
- 1954 - Division 10 abolished; Alaska within the national forest boundaries, again a District under Division 8 in Portland.⁵
- 1956 - ARC absorbed by BPR as Alaska included in Federal-Aid Highway Act; Alaska entirely became Region 10 of BPR.⁵
- 1959 - Alaska became a state; BPR handling federal aid highways while state set up Highway Department.³
- 1960 - July 1--State took over highway functions; BPR assumed role as in other states.

Until 1956, the Bureau of Public Roads was operative in Alaska only in the Tongass and Chugach National Forest areas (Southeastern Alaska and the Seward-Prince William Sound areas. Between 1948 and 1954, it did work in cooperation, providing construction equipment and personnel, and administering / highway funds.⁵ Otherwise, the only funds available to BPR in Alaska were the Forest highway monies. In the National Forests, under both the Dept. of Agriculture, and, later, the Department of Commerce, BPR planned, designed, constructed and maintained the forest highways, with somewhat irregular / from the territory. if acquisition involved more than a nominal sum

The Bureau did not acquire right of way, but left this to the Territory, since because "it does actually mean the expenditure of territorial funds by a government employee not directly responsible to the Territory." it did not have the power to purchase right of way, nor did it have powers of condemnation. In a few instances, the Forest Service carried out condemnation proceedings, but after 1948, this Service ruled that due to the transfer of forest highway appropriations to the Dept. of Commerce, the Secretary of Agriculture no longer had the authority to condemn lands for Forest Highway purposes.⁴

After the 1930s, territorial cooperation became more difficult to obtain; territorial expenditures for construction decreased steadily, for maintenance

ceased, and became somewhat sporadic for R/W acquisition.† (see section on Territory-State for reasons from territorial point of view).

In 1956, when BPR took over federal aspects of road building in the entire state and Alaska became eligible for participation under the Federal-Aid Highway Act, among the special provisions for Alaska in this inclusion was that BPR could continued to initiate the highway program as the ARC had done. Alaska did not at that time have a highway department adquate to administer a fourteen million dollar annual program and could not assume the burden of 4½ millions for annual maintenance.³ Between 1956 and 1960, when the State took over the highway program, BPR administered federal-aid apportionment to the State, performed highway design, construction and maintenance for the State, and performed highway design and construction in the National Forests and National Parks.⁶

Territory-State

1919 - Cooperative Road Act (11 SIA 1919) established the Territorial Board of Road Commissioners.¹⁰ This was composed of the Territorial Governor, Treasurer and an elected highway Engineer. Needed to administer matching funds to obtain federal appropriations for roads.

1953 - Make-up of Board of road commissioners changed to one composed of one man from each judicial division and the elected highway engineer.¹⁰

1957 -- Bill signed to begin setting up proper highway departmnet as required in Federal-Aid Act. Office of Territorial Highway Engineer abolished and Deptment of Hghways and Public Works created.

1959 -- After Statehood, the first state legislature abolished the DHPW and created the present Dept. of Public Works, with a Division of Highways.

Territorial organizations constituted the third category of public highway agencies in Alaska. Forest funds could be spent inthe Territory only if matching funds were provided by the Territory, and so, in 1919, the Territorial Legislature passed the Cooperative Road Act and created the Territorial Board of Road Commissioners. The Board was composed of the Territorial Governor, the Territorial treasurer and the Territorial Highway Engineer. This was not a typical road board in that the Governor was a Federal appointee and the Highway Engineer was an elected official.³ By 1933, each of the four Judicial Districts had individual road boards consisting of two elected members without pay who received requests and petitions and made recommendations for needed road construction and maintenance in their respective districts. The Territorial Legislature changed the composition of the Board of

Road Commissioners in 1954 to one composed of one man from each judicial district, plus the elected highway engineer. When Alaska was included under terms of the Federal-Aid Highway Act of 1956, it became necessary for the Territory to set up a somewhat more orthodox highway department; the office of territorial highway engineer was abolished and a Department of Highways and Public Works was created. This was under the control of a five-man board to be appointed by the Governor; this board to appoint the commissioner, who, in turn and with Board approval, would appoint a director of highways and a superintendent of public works. The first board was composed of the, at that time, current board of road commissioners and the first commissioner was the current highway engineer. The first commissioner actually maintained a dual role as commissioner of the department and superintendent of public works. This situation was modified in 1959 when the first State legislature reorganized the State government, and abolished the Department of Highways and Public Works and created a Department of Public Works, within which is a Division of Highway. The Public Works commissioner is appointed by the Governor. The State began to assume various aspects of its highway program, and on July 1, 1960 took over all highway functions.

Until 1956, the ARC planned, constructed and maintained roads in Alaska outside of the National Forests, while the BPR carried on the same functions within the National Forest boundaries. The Territorial Highway Engineer and the Territorial Board of Road Commissioners administered the territorial funds available for highways. Petitions for needed roads were received and reviewed by these individuals and recommendations passed on ~~xxx~~ to the ARC and the BPR. Annual cooperative agreements were made between the Territorial Highway Engineer and the ARC for expenditures of territorial funds on construction, repair and maintenance of roads bridges, ferries, trails and related works throughout the territory. The territory's contributed funds were usually applied to local and feeder road construction and maintenance. The territorial organization had no road building equipment and work orders for roads not of the primary system were made over the ARC which then carried out the actual work.²⁵ Former Territorial Highway Engineer's office employees have remarked that this was the practice in theory that, in actuality, once the work orders were made over to the ARC, it was apt to spend the money as it saw fit, and that the Territory had no means for controlling this. In isolated cases, where there was no federal government equipment available, the Highway Engineer entered into agreements with local miners or contractors to construct

sections of road. ²⁵ The Territory also carried on small scale emergency work, such as clearing away snags and drift from streams, rebuilding the side-walks in the town of Hyder, etc.

One aspect of highway work which both the ARC and the BPR, particularly the latter, agreed was properly a Territorial function was the acquisition of R/W for roads that crossed private holdings whenever money had to be expended. The federal agencies took care of the matter themselves when easements could be obtained for nothing or a nominal sum, but turned the matter over to the Territory if landowners demanded money.⁴

ARC duties "The Territorial Road Commission allots a small part of its funds to cooperative projects within the national forests."
 "Under a cooperative agreement authorized by law the Alaska Road Commission expends Territorial funds on miscellaneous public works, such as road and trail projects, shelter cabins, telephone lines, aviation fields, and flood protection, thus obviating the necessity of a Territorial construction organization." quoted from the circ. of General Information Regarding the Territory of Alaska, edition of November, 1929. The statutory provisions regarding the construction of roads, trails and bridges by the board of road commissioners are incorporated in sections 321 to 337, inclusive, of Title 48, USC. Provision is made for a board of road commissioners, composed of an engineer officer of the U.S. army to be detailed and appointed by the Sec. of War, and two other officers of that part of the Army stationed in the Territory, also designated by the Secretary of War. The board is given the power and is charged with the 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 Alaska to any town, mining or other industrial camp or settlement, or between any such town, camps, or settlements therein, if in their judgment such roads or trails are needed and will be of permanent value for the development of Alaska." Board is directed to prepare maps, plans and specs. of every road or trail they may locate and lay out ;and as soon as the same has been constructed and completed, to examine it and make a full and detailed report to the Sec. of War as to whether it has been completed conformably to the maps, plans and specs. (Letter from J.H. Edwards, Asst. Sec. of Interior to Commissioner of General Land Office--July 8, 1930)²⁰

dependent on yearly appropriations

"4. In the development of a pioneer country like Alaska, it is impossible to foresee probable operations a year or two ahead. Conditions are changing and plans and organizations must be flexible. Congress has recognized this fact by giving us a lump sum appropriation and by providing that our Board shall have full authority to expend it as local conditions may require. It will be many years before conditions in Alaska will be so stabilized that a fixed program can be laid out or followed." (Letter from J.G. Steese, President ARC to The Adjutant General, October 22, 1925.)

*copy to
make copies
attach to 2*

Act of 1905 was amended by Acts of May 14, 1906 and March 3, 1913.
(included in paper compiled by S. Johnson, Nome)

Act of July 9, 1918.-- "...so long as the construction and maintenance of "Military and Post" Roads in Alaska, and of other roads, bridges and trails in that Territory shall remain under the direction of the Sec. of war, he be authorized to submit such estimates for the consideration of Congress as are in his judgement necessary for a proper prosecution of the work.

From the 1926 Annual Report

EXCERPTS from
ARC Annual Reports

"In view of the fact that nearly 12 years before the federal aid idea was adopted, the Alaska Road Commission had been created by Congress in 1905 to meet the special conditions in Alaska, had the work well in hand; and in view of the further fact that the theory, specifications, methods, etc., of the federal aid do not meet the conditions in the Territory, Congress has instead increased the powers and appropriations of the Alaska Road Commission."

Re the forest highways.

"While the provisions of the Federal Aid Roads Acts do not apply to the Territory, the provisions of the same acts relating to roads in the National Forests do apply to the Tongass and Chugach National Forests which constitute about 5% of the area of the Territory. As these forest funds require Territorial cooperation, the amounts accruing under the Acts of 1916 and 1919 stood idle until the passage of the Territorial Cooperative Road Act approved April 21, 1919 (chapt. 11, Session Laws of 1919). The funds then released and subsequent funds are expended under the direction of the Sec. of Agriculture, represented locally by the U.S. Forest Service. In addition to the cooperative funds, the Act of 1921 and subsequent acts released additional forest funds for the expenditure of which cooperation is not mandatory.

Until July 1, 1920, the President of the ARC acted as the representative of the (usda) and supervised the performance of work and the expenditure of these cooperative funds within the N.F. as all projects were former projects of this Commission. Until May 1, 1922, the forest funds were inadequate to take care of the projects in the National Forests already under construction under the Alaska Road Commission. The latter therefore, continued to allot part of its own funds to these projects under a tripartite agreement to which the Territory, the Forest Service, and the Alaska Road Commission subscribed.

Since July 1, 1920. the (USDA) has maintained a separate road building organization, a branch of the Bureau of Public Roads, in the Territory. Since May 1, 1922, it has assumed responsibility for all projects within or partly within the national forests. To these projects the Territory contributes part of its funds; under such cooperative agreements as may be required. The funds of the ARC, heretofore allotted to these projects, are thereby released for expenditure in the other 95% of the Territory.

....Most of the projects in the National Forests...consist of short recreational roads in the neighborhood of the principal towns, or from minor ports to agricultural or mining districts lying in the immediate hinterland. In general they do not tie into the main overland transportation system of the Territory).

~~(included compiled work by Samuel Johnson; ADPW, DH, Nome)~~

Territory gained by having its funds spent by ARC; didn't have to put overhead ~~money~~ ^{money} in.

Other duties imposed on members of the Commission

1. President -- detailed for consultation, or to superintend construction or repair of any aid to navigation. Also helped investigate conditions on the fur-seal rookeries of the North Pacific in 1922.
2. President appointed District Engineer; Alaska District not part of Northern Pacific division; District Engineer reports direct to the Chief of Engineers.
3. Effective 1921 -- President appointed Consulting Eng. for the Territory and assumed direct charge of all Territorial public works. Effective May 10, 1923, appointed Director of Public Works for the Territory.

~~Jointly paper #2~~

4. 1921. President of Commission designated as War Dept. representative ~~upon~~ on the Inter-Departmental Alaska Council.
5. 1922 -- informal arrangement; agreed to act for the NPS, Dept of Int. on certain matters related to improvement of Sitka Nat. Mon. and dev. of Mt. McK. N.P. ~~Feb.~~
6. 1923, ^{arrangement} detailed President to duty with Gov. railroad in Alaska. Appointed Chairman and Chief Engineer; took over management of the ARR and allied activities of the Alaska Engineering Commission as of March 24, 1923. (latter abolished ~~in~~ in 1923, and designation "The Alaska Railroad" substituted therefor).
On Oct. 1, 1923, joint management of the roads and railroad was terminated. Commission president remained Chairman of the ARR until March 17, 1924 to handle estimates, Cong. hearings, and other matters in D.C. No operating functions or responsibilities for rr in Alaska after Oct. 1, 1923.
7. Commission ^{surveyed} ~~surveyed~~ and reported on control of Lowell Creek, Seward
8. assumed charge of Sitka National Cemetery
9. submitted report on water supply of Chilkoot Barracks, assumed charge of construction of a million gallon concrete reservoir and repairs to the pipe line crossing Chilkat Inlet.

Practical result of all this have been the development of a practical working arrangement through which the facilities of all services are used interchangeably--careful account kept so each appropriation is eventually expended for the purpose intended by Congress.

"The result has been an immediate speeding up of development work upon a unified plan based ~~on~~ upon a careful survey of the situation, a thorough knowledge of the entire Territory and its problems, and a coordination of all the various conflicting interests after full hearings before all parties at issue. Instead of interminable references between different bureaus which formerly sometimes required papers to travel to Washington and back several times, matters are handled promptly upon the ground, or where approval of Washington is required, such an approval has usually been obtained by a single telegram covering the various angles or the views of the bureaus concerned."

Three phases of operations of the Road Commission to 1926,

1. 1905-1917 - Gen. W. P. Richardson, U.S. Army Ret.--president of the Commission; Period of pioneering. Covered nearly all stampedes; settlements and and traffic lines of communication very unsettled. By 1913, a comprehensive program of operations was drawn up calling for the expenditure of \$7,500,000 during the succeeding ten year
2. War Period, 1917 - 1920. General stand-still for work of the Road Commission, as well as industrial development within the Territory. Approp. small, expert personnel not available for supervision, prices high, and labor scarce. Much of mileage estab. in the previous period went into disrepair or almost entirely disappeared. During the last two years of this period, appropriations reduced to \$100,000 per year. Period closed with org. of present Commission in 1920.
3. 1920-1926 end of fiscal. Increased appropriations, broader legis., close coop., with Terr., procurement of mechanical equipment, reopening of old trails and roads, heavier construction to withstand motor traffic, and adjustment of lines of communication to the vast change brought in Alaska by the approaching completion of the ARR.

Present Commission, ~~on~~ after reorg. in 1920, prepared a new ten-year program calling for an expenditure of \$10,000,000 ~~during~~ the succeeding ten year. The program as now revised, in order to speed up the completion of the work...calls for...\$9,000,000 during the second five years of the ten year period.

"In Nome area: "Repairs were made to shelters, and dog barns at Topkok, Moses and Cheokuk shelters."

From Annual Report of Alaska Road Commission 1936.

ANNUAL REPORT for fiscal year ending June 30, 1936 A.R.C. Dept. of Interior, June

Money for road work came from six sources and the following amounts in fiscal 1936

1. \$536,000 - From Fed. Gov. to Dept of Interior in conformity with act of 1905 and amendments.
2. \$150,000 - From a portion of the Alaska Fund == covered into Fed. Treasury, but derived entirely from special taxes on various industries in Territory.
3. \$51,798 - funds appropriated by the Terr. Leg. and turned over to treasurer of U.S. for expenditure on construction, repair and maintenance, etc. of roads etc. Fund expended on projects designated by the Territorial Board of Road Commissioners.
4. \$150,700 - National Park Service; and used under its direction in nat. parks and monuments.
5. \$8,303 - contributions by individuals, companies, corporations, etc cetera.
6. \$671,500 - from Emergency Relief Act.

For fiscal 1937 followed allotted or estimated

1.	\$525,000
2.	\$130,000
3 & 5.	\$60,000
4.	\$124,700
6.	\$110,100.69 in fund yet.

1905-1930	\$10,433,824.29	from congressional appropriations
	\$ 3,566,870.84	from the Alaska fund; includes US treasury adjustment in 1912 of \$17,052.23.
	\$ 1,984,826.03	from "other funds (increase of compensation acts, quartermaster general, funds contributed, national Park Service.
	<u> </u>	
	\$15,985,521.16	

1931 - total	1,288,273.46
1932 -	1,039,030.78
1933 -	695,036.16
1934 -	599,055.70
NIRA 1934 -	833,875.78
1935 -	837,276.46
NIRA 1935	828,479.19
E RA 1935 -	1,454.28
1936 -	600,117.47
NIRA 1936 -	80,897.56
ERA 1936 -	559,945.03

total expenditure by Commission from all sources 1905 to 1937 \$23,548,895.03.

The Territorial Legislature biennially appropriates funds for the construction and maintenance of roads and trails. These funds are allocated to projects by the Territorial Road Board and are expended under the direction of the Alaska Road Commission. For working season 1936 (fiscal 1937) amts. allotted

Cooperative road projects --	\$44,575
Shelter cabins-----	5,150
Aviation fields-----	6,250

Work accomplished during fiscal 1936: 58 miles of new construction, of which 19 miles were surfaced, 15 1/2 miles of sled road, 15 1/2 miles of trail, 231 linear feet of timber bridges over 30-foot span, 2200 linear feet of steel bridges of 170-foot span or over, 2021 linear feet of timber trestle span bridges, and 4 air-plane landing fields. Improvement: 61 1/2 miles of road regarded and widened, 119 3/4 miles of road surfaced, 793 metal culverts installed principally as replacements for wooden culvert. Maintenance: 1745 miles of road, 80 1/2 miles of tramway 748 1/2 miles of sled road, 2577 1/2 miles of permanent trail and 314 miles of temporary flagged trail.

Total mileage of all route as of June 30, 1935. 1978 miles of road, 1562 1/2 of sled road, 7199 1/2 of trail, 304 of flagged trail, grand total 11,043 3/4 miles. Fiscal 1936 added 99 1/2 new mileage (10 miles of flagged trail).

*\$17,133,933.52 from Federal appropriation acts; balance \$6,414,961.51 (27%+) from Alaskan sources.

1936 annual rept. continued.

Costs: in interior, average cost for construction of a mi. of gravel-surfaced road capable of continuous traffic in any kind of summer weather, and of such width as to enable cars to pass at any point is \$9000. Annual maint. costs (inc. minor improvements): \$350/mi for roads, \$20/mi for sled roads, \$10/mi for trail and \$3 for flagged trails.

Very little engineering work is done on roads after the final survey is made. A resident engineering force is never maintained.

Richardson (410 miles of it) now in such condition that a 2-ton truck can ordinarily travel from Valdez to Fairbanks; 370 miles in 18 hours. First car went over this route in 1913, after route had been used as packtrail and wagon road for 8 years. Average cost per mile to June 30, 1936 including all costs for construction and maintenance over the entire period of use for the 410 miles is \$18,286.00.

Steese (FBX to Circle) 162 miles suitable for traffic not exceeding 2-ton trucks. Including maintenance, total cost per mile of this road to June 30, 1936 is \$11,670. Includes its life as a sled road from 1906 and partly constructed wagon road in 1908.

Cost summary follows:

e.g. Acct. No. 8 Nome-Council subproject	federal \$7295.06
	terr. 1681.00*

*includes \$6.00 contributed by Alaska Sunset Mines, \$15.00 by Carl Bale and \$60.00 by Grant Jackson.

---explanation from Kaye---while ARC could accept donations, most of these small private contributions were in payment for equipment rental. Some esp. mines were to help get access built.

1944 Annual Report Alaska Road Commission

Now 8 sources of funds -- old #6 deleted, new #6 now First Deficiency Appropriation Act, 1942., 7: access road construction; 8. First Supplemental Nat. Defense Appropriation Act, 1944.

Funds in fiscal 1944:	1	\$880,000
	2	152,500
	3	105,150
	4	10,000
	5	2,108
	6	132,545
	7	71,500
	8	800,000

/Total Expenditures 1931-1940 \$8,4933,045.93
 1934-1939 (NIRA) \$1,745,545.09
 1935-1939 (ERA) 1,119,447.60

During fiscal year: new construction: 25 miles of road of which 21 1/2 were surfaced 1 1/2 miles sled road, 2335 linear feet steel bridges of 80-foot span or over, and 315 linear feet of timber trestle bridges.

Improvement: 25 miles of road repaved and widened, 104 3/4 miles of road surfaced; 8100 linear feet of metal culverts installed.

Forty years in the Alaska road business: construction and maintenance of 2517 3/4 miles of road and tram road, 80 percent of which is suitable for automobiles in all summer weather, 1250 3/4 miles of winter sled road, 4115 3/4 miles of trail and 164 miles of flagged trail. Total costs to the end of the fiscal year are \$35,041,622.92 of which \$17,807,280.11 was for new work and \$17,234,342.81 was for maintenance and improvement. Total expenditures to date are \$36,778,696.10 of which \$28,205,586.55 was derived from Federal appropriation acts. Balance, \$8,573,109.55 or 23% of the total expenditures, was obtained from Alaskan sources.

In Interior average cost of construction of a mile of 20 foot width, gravel-surface road, capable of continuous traffic in any kind of summer weather is \$15,000. Increase 100% in past three years due to high wages paid and high cost of ~~xxxxxx~~ materials.

Annual mant. costs (improvements and snow removal included) are \$400 ca for roads suitable for continuous ^{yearly} traffic in any kind of summer weather, \$20 for sled roads, \$15 for trails. Maintenance on 800 miles of road in vicinity of ANC, FBX, and Valdez now carrying heavy military and similar traffic is est. at \$1000/mile.

Due to curtailment of gold mining, expenditures on sled roads and ~~roads~~ ^{trails} have been reduced to the minimum.

Richardson up to 3-ton trucks for ^{same} distance same time. ^(as in 1936) Average cost /mi to June 30, 1944, including all costs for cons. and maintenance over the 38-year period of use for the 410 miles is \$27,071.

for the fiscal year 1953.

At the end of the fiscal year the road system total^d 3466 miles. ARC also constructed and maintained 1149 miles of winter sled road, 4115 miles of trail, 106 miles of flat trail, 80 miles of narrow-gauge railroad tram, and over 100 small bush plane type landing fields.

ARC is charged with the execution of all laws pertaining to and the administration of all appropriations and funds made available for the construction and maintenance of roads, tramways, ferries, bridges, trails and related works in Alaska. ...further charged with location and preparation of plans and specs. for roads, bridges, trails, etc., and the promulgation of rules and regulations covering the use thereof.

Back down to 5 sources of funds; total appropriations in 1953

1. \$24,318,000 Congress to Interior Dept. for ARC
2. ~~100,000~~ Alaska Fund
3. 250,000 Territorial
4. 441,859 Nat. Park
5. 9,946 Contributions from individuals, companies, and groups for various services which were performed by ARC.

Prior to 1948, practically all road construction, improvement and maintenance was performed by Government force account (day labor). This system required a minimum of hdq and ~~sub~~ district organization since detailed engineering plans and specs. were not required and the innumerable functions involved in contract ^{admin.} ~~work~~ were not necessary, including the final accurate measurement of quantities of work performed. Upon inception of the greatly expanded program for improvement and hard surfacing of the major network of roads in Alaska in 1948, it was recognized that the time had arrived to install the contract system and to utilize the organization and know-how of road contractors to meet the critical deadlines.

Now almost all work done by contract; only in cases of unfavorable bids is Govt force account work resorted to.

Costs have been kept down fairly well, due to realistic approach by the ARC in the administration of highway contracts which eliminates many of the refinements inherent in highway construction in the States, and which policy seeks soundly engineered highway projects tailored to the needs of a pioneer country.

All maintenance work and ^{practically} all ~~the~~ pioneer road construction is accomplished by Government forces (day labor).

1954

In 1932, road system consisted of 9300 miles of trails and ^{sled} roads and 512 miles of improved roadway. Today, less than 500 miles of trails are maintained, all in the Bering Stratis, and the highway network totals 3482 miles.

Sources of funds: 1. congress to Interior; 2-Territorial; 3-Nat. Park appropriations; ~~4-~~ 4- reimbursements from funds appropriated to other Federal and Terr. agencies for services performed by ARC under formal agreements.

5-funds received as contributions. In fiscal 1954: 1-\$17,600,000.00; 2-\$211,500.00; 3-\$301,623.26; 4-\$409,460.71; 5-\$55,729.17.

1954 Annual Report Cont.

Two methods of road and bridge construction are employed: (a) contract, and (2) Government forces. Prior to 1948, almost all construction was by government forces....believed that at least a measure of the savings (contract construction costs going down over past few years) was due to the Commission's realistic construction standards, which eliminate many of the refinements of highway construction in the States, and result in soundly-engineered highways completely adequate for a pioneer country.

Points out the difficulties attendant to making roads in Alaska: permafrost, surface ice on roads and in upper ground layers, "tundra", swamp-covered permafrost insulated by a heavy growth of moss.

"Experience gained by the Commission in half a century of pioneering roads into all parts of the Territory has resulted in the development of high-standard roads under conditions and over terrain not normally encountered on highway construction in more temperate zones. These highly-specialized techniques are applied to the selections of routes,...."

Of the system's 3482 miles, 1860 are maintained open the year around.

Received petitions for farm roads--plan to make surveys in 1955.

ARC Annual Report for 1955 -- first Legislature of Alaska, in 1913, memorialized Congress to develop a highway network. Demand for roads continuous to the present.

The ARC has, since its inception, geared its program to the current needs of the Territory. In its early years, prior to the advent of the motor vehicle, when population chiefly miners and fishermen, only temporarily domiciled in Alaska, need was for access into gold fields and fishing grounds. ARC constructed and flagged trails--useable only during winter by dog sleds and horse sleighs. In excess of ten thousand miles of these trails and sled roads were developed before the first car created a demand for all-weather road construction.

By 1932, highway system consisted of some 2200 miles of low standard roads, 500 miles gravel surfaced and 10,000 miles of trails and sled roads. Program: construction of primary highway network to connect Alaska's principal cities with one another, with the Territories' all-weather, ice-free ports of Valdez, Seward and Haines and with the continental U.S. via Canada; (2) extension and improvement of a secondary road system to connect all principal inhabited localities with the primary system, or with water or rail transportation facilities; (3) provision of an adequate farm and industrial road system to serve all communities.

Has been added to by: small airfields in areas not yet connected to the road system; local access roads to connect these with neighboring communities; seaplane facilities, car ferries and 90 miles of narrow gauge tramway; pioneer roads in all inhabited areas.

Disjointed and low standard--contributed to early development, but fell far short of providing necessary transport facilities for substantial development of the Territory's tremendous mineral, etc. potential.

R/W and related land rights matters are under the jurisdiction of the Real Estate Branch, a unit of the Design and Construction Division.

Highway Research Boards recently concluded two years of exhaustive study of the behavior of flexible pavements under repeated application of ^{various} axle loads. ARC participated in this research program and the Commissioner of Roads for Alaska was named to the WASHO Road Test Advisory Committee.

Activities of the Real Estate Branch

"...revised and distributed a numerical list of buildings, camps and depots to identify real estate holdings of the Commission. The numbers also serve as identifying sub-accounts whenever such identification is required by the classification of cost accounts. The Branch initiated action to centralize all records and documents pertaining to real property into a single master file to be maintained by the Branch."

ARC 1955 cont.

ARC annual appropriated funds earmarked for...and for R/W surveys on existing highways. This highly important phases of the Commission's operation permits the orderly planning of economically feasible projects for future construction.

Fiscal 1956 program. \$90,000 included for R/W surveys on existing highway. Part of the ARC approp. for 1956.

ARC Annual Report 1956

Letter from A/F. ~~John~~ Ghiglione, Director, ARC to A.T. Lausi, Director, Office of Territories, August 31, 1956.

Sending along the Report for 1956. Also note that this is the last one due to the transfer to the Department of Commerce. "Although we are all saddened by the passing of a dedicated organization, the entire staff looks forward to the long-range highway development program and the consequent development of the Territory,...." sent along the report, prefaced with a brief history of the Commission and its half century of accomplishments.

... ~~concern~~ the moss. It has been the universal experience that wherever the moss is cut into, thawing immediately commences, and the trail which was passable becomes a filthy, slimy mass of mud, roots and broken stone, a difficult route for men on foot, a slow and tiresome road for loaded animals, and an impassable obstacle to any sort of vehicles."

The first annual Report chronicled the drowning of a horse "on the road".

By 1932, less than \$21,000,000 had been made available for the development of roads and trails to serve an area of continental size. Of this only \$12,000,000 approp. by Congress, the balance having been contributed by the Territory and others.

1932 Transferred to Dept. of Interior -- Act of Congress of June 30, 1932 (47 Statute 446).

The ~~last~~ Nov. 1942 ribbon cutting that put the Alaska Highway in service (8 months after started) marked turning point in battle for an integrated road system.

Crops of Engineers, assisted by BPR, host of private contractors; const. began south from Whitehorse in April 1942, north from Dawson Creek in May, and south from Big Delta in June 1942.

~~Alaskan~~ Slump as military situation eased. Not until 1948, ~~when~~ Alaska overnight became an important bastion of defense of the continental U.S. Construction of ~~major~~ military installations throughout the territory Congress made avail. an additional \$4,000,000 for road work during fiscal 1948. Funds approp. for ~~initiation~~ ^{initiation} cons. on a new highway eventually to cost \$28,000,000 to connect Anchorage and the adjacent installation with Seward, Alaska's principal port. In addition, Congress authorized a 6-year road program to cost in excess of \$170,000,000, and approp. \$24,000,000 for its initiation in fiscal 1949. The program, for connecting, improving and paving the primary system developed suddenly, with little advance notice.

The Commission was a small, efficient organization, geared to a modest program of comparatively low standard road construction. Around the ~~small~~ core of experienced Alaska road builders was built a modern highway organization. Specialists in highway refinements, previously unnecessary and unknown in the Alaska road building ~~area~~ picture, were added to the staff. Even so, it was necessary for the Commission to utilize the BPR organization to meet survey, design and contract adm. deadlines.

Contractors' forces frequently followed the Commission's engineering crews by only a few hundred feet. Today, 8 yrs. and \$170,000,000 later, the program nears completion. Present system consists of a 1000 mile network of all-weather paved routes connecting the ice-free ports of Valdez, Seward,

1956 continued

and Haines with interior Alaska's principal cities and military installations, and with the continental U.S.; and a secondary system connecting farming, mining, and industrial areas to the primary network. In addition to the connected network, the system includes 570 miles of isolated roads connecting inhabited areas with air, rail or water transportation facilities.

Signing of the Federal-Aid Highway Act of 1956 (P.L. 627-84th Congress-Chapter 462 - 2nd Session - H.R. 10660) into law on June 29, 1956 ushered in a new era of road building in Alaska. For first time, in 1957 fiscal, Alaska will participate in the Federal-Aid Highway Act to the extent of \$1,932,588 which amount is in addition to the \$11,425,000 ARC approp. 1958 allocation is \$13,200,000; 1959, \$13,500,000, all on 10% matching basis.

Under Organization, R/W branch mentioned for the first time as part of the Design and Construction Division.

Under "Real Estate Branch" (apparently used "R/W Branch" only in intro discussion) notes that during 1956 made consistent progress in preparation of block books, indexes, and related maps and plats covering rights-of-way on the Through and Feeder Road system. The planning of projects is completed and the continuing job at hand is to key all instruments, plats, Public Laws, Land Orders, easements, and related data to ARC Order No. 40, revised, titled Highway System Routes and Mileages.

Comparison:

	Cong. Approp.	Alaska Fund	Other Funds*	Total
1905	---	\$28,000.00	---	\$28,000
1920	132,426.73	124,992.96	101,184.56	358,604.25
1932	\$710,738.05	68,270.32	260,922.41	1,039,930.78
1940	410,540.94	140,251.32	272,040.44	822,832.70
1948	3,936,842.28	29,462.08	111,136.87	4,077,441.23
1951	29,389,476.14	287.11	500,619.51	29,890,382.76
1956	13,515,843.48	---	1,073,129.92	14,588,973.40

*Other fund" includes compensation acts, quartermaster General U.S. Army, contributed Funds, and National Park Service.

BPR

---1957 fiscal year report, BPR annual report; Federal Aid to Alaska.

"Public Roads has been active in Alaska since 1919, but ; until enactment of the Federal-Aid Act of 1956, its responsibilities were limited to administration of the forest highway program...and to assistance with special pograms of military import. From 1919 through 1956, some 3400 ;miles of forest highways were constructed at a cost of ca \$50 million." Notes ARC became part of BPR; all personnel, equipment, property and ;unexpended appropriations transferred to Department of Commerce on Sept. 16 1956. ARC combined with existing Public Roads Alaks Office for form BPR Region 10; The Territory of Alaska has not as yet established a working highway organization of its own, but ; instead has utilized the services, formerly of the Alaska Road Commission and ;now of the Bureau of Public Roads, to accomplish its ~~highway~~ highway program. In Alaska, consdquently, Public Roads, in addition to dischargings its ;usual administrative responsibilities, performs all of the functions of a State highway department including local surveys, design, contract administration, and highway maintenance, all utilizing Government forces and quipment."

REPORTS from Office of TERRITORIAL HIGHWAY ENGINEER

Biennial Report 1933-34. Office of the Territorial Highway Engineer, Juneau.

(included in paper compiled by S. Johnson, Nome)

TRB consists of Governor, Terri. treas., and Highway Engineer.

In each of the four Judicial Divisions there is an individual road board consisting of two elective members without pay whose duty it is to make recommendations for road work their respective districts.

"The construction of roads, trails, bridges, aviation fields and shelter cabins in the Territory is carried on under the Territorial Board of Road Commissioners and is supported by appropriations made by the Legislature. Road funds are also derived from receipts from the sale of timber in the national forests."

Terr. seemed to carry out much emergency work, e.g. cleared away snags and drift f etc.

---Terr. Road Commis. report -- 1935-36.

Had coop agreements with War Dept.; e.g. Territory gave Nome \$2500 to allow town to pay War Dept. its share for harbor work.

Repaired walks in Hyder during winter of 1935 and 36. Road Board allotted \$1000 to ward paying for labor of clearing away a slide on South Franklin (killed 15).

1939-40 Territorial Highway Report ²⁵ Biennial report office of the Territorial Highway Engineer 1939-40

Act of Congress of June 15, 1935 -- 25% of receipts derived from Admin. of the Migratory Bird Conservation Act is turned over to Terr., and is equally divided between roads and school.

Mining operations usually prepared to some extent to provide this equipment when seeking aid in road construction. Some times difficult to arrange since both outfits need equipment at same time.

No federal funds available for new construction, and while Territorial expenditures for such purposes have been consistently increasing the net result; is about the same as it was. On trying to get Alaska included in Federal Aid act "...it is...felt that some definite and coherent plan for road development in Alaska is appropriate, not because it had not been thought of before, but because the practice that has existed for the past thirty-five years has failed to produce satisfactory results." "It is not expected that Alaska can hope to escape its road building responsibilities nor has there been any tendency to do so, but it is believed that the first consideration is a sensible approach to the question of funds required, whether they be Federal or Territorial, is a definite plan."

Dropping request for shelter cabin funds since "...natives have been reported in numerous instances to have moved in and stayed until the fuel (provided at public expense) was gone and then moved on, rendering the cabins worse than useless to the traveler who expects to find fuel. In the earlier days when travel on the trail in the winter was the only method in use such a condition rarely arose. It constituted such a gross violation of the unwritten law of the trail that such infractions were infrequent or even unheard of, but today there is such a little overland travel that the policing of these cabins is unjustified if not impossible....if...necessity...more properly a function of the Indian Office."

Did some work in coop with WPA funds and Road Commission supervision.

---1941-42 Terr. Hwy. Reprt. - BIENNIAL REPORT-1941-42; Office of the Territorial Highway Engineer, Juneau 25

"The usual maintenance was carried on during the biennium upon all roads where the Territory was wholly or partly responsible, some improvement and new construction was carried on with respect to aviation field facilities." Request for funds cut to that for adm. of highway patrol. Principal reason for curtailment of road expenditures is that gold mining "...which accounts for the bulk of the road demands" had declined to point where requests for new work asked for are negligible.

"The city of Nome entered into an agreement with the War Department pledging itself to contribute \$2500 annually toward the maintenance of this improvement (harbor) but defaulted and the Territory has, during the past 18 years, contributed to this work from road funds." "While the contribution ~~is trifling~~ by the Territory as compared with the expenditure by the Federal Government, is trifling, yet it is a considerable sum to spend on a project that is so discouraging, since there is no hope of even finishing the project and no possibility of making a harbor."

Biennial Report: 1943-44. Office of the Territorial Highway Engineer, Juneau. 25

"Alaska is the only civilized country in the world that exacts no tax from the owners of motor vehicles for the use of the highway." Felt that annual vehicle tax of ten dollars amts. to nothing.

"...trappers, who in some instances have used up all the fuel supply and then proceeded to burn up the benches and tables before abandoning the cabins. The situation today is so different than it was in the early days when travelers used the winter trails regularly. At that time the traveling public automatically policed the cabins. No one at that time would think of remaining in a cabin beyond the requirements of his journey and the unwritten law of the trail would have crucified any person who would burn up the last combustible article in a cabin before vacating it."

BIENNIAL REPORT 1945-46. Office of the Territorial Highway Engineer, Juneau is -
 1945-46 Territorial Highway Report -

"This constitutes the first biennial report from the office of the Territorial Highway Engineer." (?) "The TBRC work in ~~xxxx~~ cooperation with the above mentioned (ARC, BPR) agencies or with any other Governmental, municipal or private group interested in a road project. Having no road building equipment of any kind the Territorial Road Board depends on other road building agencies for construction. In isolated cases where there is no Government equipment available, the Highway Engineer may enter into an agreement with a local miner or contractor to construct a section of road."

Superintendent of Public Works.

Biennial Report 1953-54. Office of the Alaska Territorial Highway Engineer and/ ARC more and more seeking and accepting opinions and recommendations from this office. FS and BPR beginning to follow the pattern set by ARC in this.

(Forest Service)

1919 == Territorial Road Law known as the "Cooperative Road Act" (Chapter 11, SLA 1919). Made nec. by fact that Federal appropriations for roads could be expended only if matching funds were appropriated by the Territory. Under this law and subsequent amendments annual coop. agreements have been made between the Territorial Highway Engineer and the ARC for authorized work of construction, repair and maintenance of roads, bridges, ferries, trails and related works throughout the Territory.

Forest Fund, prior to the limitation of revenue (25% of Forest revenue supposed to come to Territory--impounded most of it pending settlement of aboriginal claims) was large enough to pay for all R/W necessary for road construction. Commencing with any new road project the Forest funds for right-of-ways will be completely depleted, and, if this office is to continue to purchase R/W the Motor Fuel Oil Tax Fund will have to meet this expense. The Territory is not required by Federal law to provide R/W for the BPR, this office has tried in the past to assume this responsibility, partly because the Bureau claims it has not the authorization to purchase R/W and partly because, until now, the funds were coming from Federal revenue received from the Tongass and Chugach NF.

Until the 21st Legislature passed an act (chap 53, SLA, 1953) giving the TBRC on behalf of the Terr. the right to acquire by gift, purchase or condemnation, any property and property rights, including deposit of road materials and R/W thereto, necessary for the construction, reconstruction, alteration, maintenance or repair of public roads, highways, trails, bridges and ferries, in the Terr. of Alaska and for the safety and convenience of the public thereon, there was no way for the Terr. to acquire R/W. It may possibly be that the action of the previous administration in buying these R/W would not be upheld in a court of law. It may be that legislative action should be taken to clear this matter up.

Chapter 13-1-1 ACILA 1949 -- Terr. Hwy Eng. appointed to the Dept. of Public Works.

195-1-2 ACILA 1949 -- Supl. duty to design plans, specifications and estimates for all school houses and other public buildings and public works in the Territory.

Really too much and hwy eng. not trained for this.

Chapt. 13-1-1 ACILA 1949 -- stated that Board of Adm. should have care and custody of all property of the Terr. of Alaska. When Reed took office April 1, 1953, Hwy Eng. was appointed of the Alaska Territorial Buildings under the assumption that it was the duty of the Sup. of Public Works. After law appointed out to Board of Administration, I was appointed as a committee of one to supervise the adm. of the Terr. office bldgs.; policy decisions to be made by the Board.

Law setting up office of Supl. of Public Works (Chap. 91, SLA 1931) was passed when Alaska had a much smaller population than at present and at a time when the duties of the Hwy Eng. were not so pressing. As long for past twenty years, various Fed. agencies hire or contract architects to design buildings and Sup of PW may or may not be requested to formally approve of the plans. Reduces office of Sup of PW to a meaningless title, possibly causing the Highway Engineer to be responsible for building projects which may have been done without his knowledge or control.

The cooperative program between the Territory and the Alaska Road Commission was originally developed in 1919 under the Territorial Road Law known as the "Cooperative Road Act", passed in 1919 (Chapter 11, SLA 1919). This Cooperative Road Act was made necessary by the fact that Federal appropriations for roads could be expended only if matching funds were appropriated by the Territory. Under this law and subsequent amendments annual cooperative agreements have been made between the Territorial Highway Engineer and the Alaska Road Commission for authorized work of construction, repair and maintenance of roads, bridges, ferries, trails and related works throughout the Territory. This cooperation has been instrumental in obtaining favorable Congressional action on Federal appropriations.

Under the present policy of cooperation the Territory's contributed funds are applied to the local and feeder road construction and maintenance (including snow removal) projects. The Territory, for the past several years has contributed \$250,000 annually towards this Agreement. The Agreement covers the period from March 1 to Feb. 28 of the following year, comprising the ARC's construction year. From March 1, 1952 to December 31, 1952 only \$100,000 had been paid of the \$250,000 due by March 31, 1953. 10

for 1955-56 -- On July 1, 1957, Congress made avail ble the funds held for the Indian claims to the Territory.

Issued work orders to ARC under the Coop agreement (above) to construct extend, survey etc. roads th tTerr. Eng. wanted to see built.

Recommendations for legislative review

"The Territorial Highway Engineer of Alaska is possibly the only elective office of its kind in the world. Other states and Terr. of Hawaii as far as possible have taken the office out of politics and made it a career position. Since engineer changed every four years by population vote--Alaska may lose the continuous road program so badly needed. Recomm. that he be appointed by Board ~~from Gov.~~

Also recommended th t the number of board memberships and positions held by law b the Territorial Hwy. Eng. be reviewed and cut as far as possible. These are:

1. ~~THE~~ cont. and maintenance of roads, highways, trails, bridges, ferries, etc. and administrator of mandates of Territorial Board of Road Commissioners.
2. Terr. Hwy. Eng: construction and maintenance of water and harbor facilities.
3. Board of Road Commissioner. ex-officio chairman and sec.
4. Sup. of PW: school house and other public buildings and works --to supply plans for, specifications and estimates. Advise Terr. officers with respect to public building; to superintend construction of all public buildings and other public works; require contract compliance.
5. Alaska Bus Transportation Commission. Ex-officio chairman
6. Board of Liquor Control: member.
7. Terr. Police Commission. member
8. Oil and Gas Conservation Commission: member
9. Alaska Rural Dev. Board: member.
10. Alaska Resource Deve. Board: duties: member
11. Board of Boiler Rules and Inspection. member, as Sup. of PW
12. Small Boat Harbor Committee: member as sup of pw; elected chairman
13. Joint adm. with Commission of Lands of Chap 174, SLA 1955. Roadside Rest and Recreational Beaches.
14. Adm. of Outdoor Adv. Law.
15. Board of Administration: member
16. Alaska Safety Council. Member appointed by Governor.

Newspaper clippings
 collected by "Dutch" Derr; loaned to Pentecost; loaned by him to R/W
 *collected and loaned by Pentecost

Agencies - Federal

Anchorage Times - June 11, 1954

McKay announced that road construction and maintenance in Alaska will be performed by private contractors wherever possible rather than by the ARC.

Jessen's Weekly (Fairbanks) - November 4, 1954

In recommendations made to Interior for reorganization of the ARC, was "More aggressive dealing with R/W problems and use of condemnation proceedings in the courts where necessary to gain access to land."

Anchorage Daily Times - May 17, 1955

ARC work through 1954 had spent \$189,000,000 on roads; \$141,000,000 made available during the last seven years while only \$48,000,000 had been spent during the preceding 43 years. Almost nothing spent on roads 1867 to 1905; during WW II Army Engineers built many of the main highways, such as the Glenn from Palmer to Glenallen, and the Alaska Hwy. These funds not included in the above figures. Most of the money since 1948 was spent on hard-surfacing the gravel highway system. Trimming started at this time, budget for year down; Alaska left out of the new \$50 billion national road program.

Ketchikan Daily News - June 16, 1955

Noted that ARC created in 1905, and there were less than a dozen miles of passable wagon roads in the entire Territory. Principal road was the military trail from Eagle to Valdez located and built in 1901. Pack horses in summer and dog teams in winter. Urging bill to allow commission to build roads in incorporated cities and towns. Ghiglione permafrost expert.

Ketchikan Daily News - June 6, 1955? (the citation on this may not be correct)
 Looks as though one reason ARC lost some federal appropriation money in 1955, was because of large unobligated amounts being carried over each year, and lax accounting measures.

Jessen's Weekly (Fairbanks) - November 24, 1955

Gruening, Henry Roden (former Territorial treasurer), and Frank Metcalf (former highway engineer) got \$5000 in libel suit against the Daily Alaska Empire of Juneau. Paper questioned as mishandling the setting up of a special fund to run the ferry service between Juneau and Haines. Special bank account set up by the Alaska Board of Road Commissioners.

Anc Daily Times -- Feb. 15, 1958

ARC, now an agency of the Department of the Interior, was first established on Jan. 27, 1905, when Congress created a Board of Road Commissioners for Alaska, to work under the direction of the War Department. Board, appointed by the sec. of war, Wm. H. Taft, was charged with the responsibility for locating, constructing and maintaining wagon roads and trails in Alaska. The initial members were Maj. Wilds P. Richardson, 1st Lt. George B. Pillsburg and 1st Lt. Samuel C. Orchard, who held their first meeting in Skagway on May 15, 1905. Maj. Richardson, as senior officer, became the first president of what has since become known as the ARC. The first year's appropriation of \$28,000 was made available by Congress from the Alaska Fund which was derived from trade taxes collected outside of incorporated towns and from liquor licenses. Some of the earliest projects included the road from Haines up the Chilkat River to the large Indian villages of the Chilkat Valley, a road from FBX to the newly located gold camp on Pedro Creek and short roads at Nome to gold discoveries at and near the beaches on the Bering Sea. During the first year the overland route from Valdez to FBX was also scouted, using the first section of the Valdez to Eagle trail which had been constructed as a military trail in 1901 by Cap. W. R. Abercrombie. The major effort until the late 1920's was directed toward the improvement of the Richardson Highway and construction of mining roads in the vicinity of Anc. FBX and Nome. There followed in rapid succession the construction of the Steese Hwy From FBX to Circle, the Elliott Highway from FBX to Livengood, the Gulkana-Nabesna to Palmer

Agencies - Federal cont.

To serve the colonization project established in 1935 to farm the Matanuska Val. The Glenn Hwy designed to connect Anc. with the Richardson, was started in the spring of 1941 and punched through during WW II. It was the following year that construction was initiated on the Alaska Highway. In 1946, construction was begun on the Sterling Hwy on Kenai Peninsula and also on the Taylor Hwy, connecting the Alaska Hwy with Eagle on the Yukon River. In 1948, an extensive program for improving the main hwy. system was authorized by Congress at an estimated cost of ca \$110,000,000. The ARC continued under the jurisdiction of the War Dept. until June 1932, when the personnel in operation were transferred to the Dept. of Interior. ARC has grown from an handful of personnel to a large scale organization with well over 1000 employees during the summer time peak cons. period. It consists of three major districts: Anchorage, FBX and Valdez, and two smaller districts at Nome and Hines with hq. at Juneau. It is the commission's policy to hire Alaskan residents, whenever possible, as a means toward helping to stabilize the economy of Alaska by providing as much year-around employment as possible. Employment in the three major districts closely parallels one another. The summertime peak employment in Anc. district usually reaches 325, while the wintertime minimum drops to ca 110. An average monthly payroll is ca \$70,000.

Daily Alaska Empire July 27, 1956 JUNEAU

Ghiglione said that the Territory must come up with a road system, etc. and priority list before one penny of federal road money can be spent in Alaska. Ghiglione (director of ARC) said that he had been assured that present ARC functions and services provided Alaskans, particularly in the interior, will continue as in the past. On the matter of stateside BPR road standards, Ghiglione said it was his thought that the agency would "have to give a little." "We simply can't build roads in Alaska to the strict stateside standards of the BPR," he said. "It would be foolish to think, for example, that we'd be called on to build a super highway to a mining camp."

FBX News Miner -- Oct. 4, 1956.

Horton Flint appointed as Division Engineer for BPR

Anchorage Times - November 27, 1956

Flint died three weeks after being appointed to post as BPR District Engineer.

Anchorage Times - February 1, 1957

After Flint died, Bill Andrews of Fort Worth was to be appointed; however, he could not take flying because of a bad heart.

Anchorage Times - April 10, 1957

E. H. Swick, new regional engineer BPR.

Agencies - TerritorialJessen's Weekly - May 23, 1956

On letter to PTS Nordale District ; in letters to editor column; from Seeliger Member, Territorial Board of Road Commissioners. "...as a member of the Territorial Road Commissioner, I have no money to allocate for any project whatsoever. I must instead act as an advisor to the Highway Engineer who may either accept or reject recommendations of the Board Members. In addition, I have no supervisory or advisory position whatever in so far as the Alaska Road Commission is concerned."

Daily

Anchorage/Times - January 24, 1957*

Highway engineer now a political agency, with virtually no staff and with no facilities for building roads. Congress says must convert office into the status of a state highway department, governed by a board of highway commissioners with an appointed career engineer, as its director. Irving Reed defeated Demo. Frank Metcalf four years ago, was defeated in turn by Metcalf last year.

April 2, 1957 - Anc Daily Times *

Alaska no longer has a territorial highway engineer, and democrat Frank Metcalf--elected to the post last October--now is commissioner of the Highway and Public Works Dept. A bill abolishing the old highway engineer's office and creating the new department was signed into law late yesterday by acting gov. New law provides a sweeping organizational change in the adm. and planning for highways and public works. It is the first major step in giving the territory full responsibility for

its highway cons. planning and maint. In the past, road building largely was the duty of the ARC and BPR. Under provisions of this act, etc. duties gradually will be assumed by the new department. Within the department, there will be a division of highways and another of public works. The highway program will be headed by a "director" and the public works will be under a "superintendent." The overall supervision will be under a five-man board, including one member from each judicial division and one member at large. Appointed by gov. and confirmed by the Legislature. However, the first board will be composed of the present board of road commissioners, and including Metcalf. The so-called director of highways and sup. of public works are still to be appointed--post may not be filled for a year or more.

March 19, 1957 -- Anc Daily Times *

House passed a bill to create an Alaska Highway and Public Works Dept. Bill designates that the first commissioner of the agency will be Metcalf, for the duration of his new four-year term. Office of terr. highway engineer would be abolished. Bill would set up a department controlled by the present territorial board of road commissioners. The new board would appoint a commissioner--the first one to be Metcalf. Commission would then appoint, with board approval, a director of highways and a superintendent of public works. If approved by Senate and enacted into law, Metcalf would serve as commissioner for four years--and for the first two years also would serve as superintendent of public works. He would appoint a new director of highways.

April 23, 1957 -- Anc. Daily Times *

Three changes in personnel, including the appointment of an acting director of highways for Alaska, were announced today by Frank Metcalf, commissioner of highways and public works. Lee Hubbard, former chief engineer of the old office of territorial highway engineer was named acting director of highways. He will head one of the two major divisions of the new department as established by the 1957 Legislature. Metcalf will maintain a dual role as commissioner of the department and as superintendent of public works. Hubbard to Anc. to maintain the primary highway office there. Cort Howard, a former division engineer in the old department, was named chief engineer succeeding Hubbard. Bill Riddle added as auditor.

(Alaska Highway Division - October 1957) AH&PWD, Juneau
 Excerpts from a paper prepared by Pentecost; dittoed; loaned by Pentecost to R/W

On June 29, 1956, the Federal Highway Act covering fiscal years of 1957, and 1958 and 1959 was signed by the President. For the first time Alaska was included in this program. July, Congress related to the Territory for road building, about a half million dollars, from timber sales--previously held in escrow to settle aboriginal claims. Provision was also made for Alaska to receive share of these revenues in the future.

In September, complying with a requirement of the government, the ARC ceased to exist and BPR became the single federal highway agency in Alaska. Did not get in Alaska at that time much more money than was being received by the ARC from the Department of Interior.

Highway History and Procedures: Federal-Aid

Federal Aid Road Act of 1916 and the Federal Highway Act of 1921 were the basic concept expressions of the Federal-Aid programs. The use is at the option of the state; with exception of some commercial operations in interstate commerce, public highways of the country are under full control of the state government. Since its inception, Federal Aid program has required that states have highway department adequate to assume responsibilities of engineering, contraction and maintenance, if it is to be eligible for Aid. Funds can only be spent on designated Federal-Aid system--State retains initiative in choosing the system, roads to be built and type of improvement.

Procedure: percentages to be spent on primary, secondary and urban roads are fixed, currently (1957) 45%, 30%, and 25%. Amount in one of these categories which will be received by a particular state is calculated by a basic formula: primary: area, population and mileage of post roads in state compared to total area, population and mileage of all states participating, with each factor being given equal weight; secondary: formula same, but rural population is used rather than total population.; urban: divided in proportions of populations in municipalities of 5000 or more.

To use this money on a specific project, State must ordinarily pay 50% of the project cost from its own funds; in public land states, percentage of Federal participation is calculated by determining the percent of the area of the state which is public domain, dividing this by two and adding the result to the base figure of 50%.

Federal aid participates only in acquisition and construction; state must maintain. Most highway construction and maintenance must come from the states' own resources--federal aid construction is only relatively small part of entire highway system of a state.

When Alaska was included, it was entitled to the same shares and regular calculations as the other states, but also certain unusual exceptions were made: (1) use only 1/3 of the area to figure sums based on areas--hope to raise this--but could hardly expect that the regular formulas would remain equitable for the states if an area one fifth the size of the previous total were suddenly introduced into the computations (territory at time). (2) Alaska's percent of matching cost shall be at least 10%; and (3) combined amounts can be expended by BPR either directly or in cooperation with the Territorial Board of Road Commissioners, and these funds can be used for maintenance as well as construction.

BPR could continue to initiate the highway program in Alaska as the ARC had done. This is a departure from the usual Federal Aid policy. Alaska did not have a highway department adequate to administer a 14 million dollar annual program, and could not assume the burden of 4½ millions in annual maintenance--thus not eligible for highway Federal-Aid without special provisions. Desire of BPR that we proceed as rapidly as possible to take over the regular functions of a state under Federal Aid.

April 2, 1957, bill signed into law to set up proper program in Terr.; Title 1:

"The purpose of this Act is twofold: (1) To establish a Highway Division capable of carrying out a highway planning, construction and maintenance

program which will provide a common defense to the U.S. and Alaska, a network of highways linking together cities and communities throughout Alaska (thereby contributing to the developmnet of commerce and industry in Alaska, and aiding the extraction and utilization of its resources), and otherwise improve the economic and general welfare of the people of Alaska; and (2) to establish a Public Works Division capable of carrying out a public works planning and construction program which will provide public buildings necessary to efficient government, and boat harbors, jetties, dikes and breakwaters necessary to the economy of Alaska communities, all of which is to the advantage and benefit of the general welfare of the public."

The Act places Highway and Public Works activities of Alaska under control and supervision of a five man board, one from each Judicial Division and one at large, to be appointed by the Governor with the consent of the legislature. Members elect a Chairman, and they appoint a Commissioner of Highways and Public Works as head of the Department. The highway Engineer who had been elected in 1956 under the previous law was to act as Member at Large, as Chariman of the Board and as Commissioner until his term expired.

Under this Commissioner, an act created the Alaska Highway Division, headed by a Director, and the Alaska Public Works Divsion, headed by a Superintendent. Functions previously combined under the Territorial Highway Engineer*s , and are not yet entirely separated.

Then the law gave assent to Federal-Aid procedure. Required authority at hand for wider participation in highway work than ever before possible. Legislature failed to provide administrative funds necessary for this, but the department was being expanded.

Most existing well-gravelled routes have been included in the original network and thus are eligible for Federal-Aid. In the interim period, BPR preparing the construction programs for consideration of the Territorial Board. Four Judicial Divisions get money on basis of area, mileage of road, civilian population; gas tax, vehicle registration, preliminary need analysis. Thus first: 14%, second 8%, third 49%, fourth 29%.

1958 primary apportionment for Alaska \$7,300,000.00 (more than that for 30 of the 48 states); \$5,8000,000.00 for secondary (more than 25 states). This is the result of the tremendous area , but this, inturn, makes 13 million seem inadequate.

Niemi, William. Talk to be presented to the road conference of the all Alaska Chamber of Commerce, July 27 and 28 at Juneau. probably 1959 late. mimeo. (material loaned by Pentecost) excerpts only.

1. During time the ARC was under the War Dept., it constructed pioneer-type gravel-surfaced roads and also numerous trails and shelter cabins for dog teams transportation for the Territory. Another function was bush pilot air-fields for the Territory.
2. "This agency continued to function as the Territorial Highway department and received its appropriations from Congress and also from the Alaska fund into which were covered taxes collected in the Territory outside of incorporated municipalities."
3. With the Federal ARC functioning as the highway department and BPR and the Forest Service working in the National Forests, there was no need for the Territory to establish an operating highway department and the Territorial Board merely administered the highway funds.

"It was during the time that the ARC was the highway agency that the extensive improvement of the primary highway system in Alaska was undertaken in cooperation with the then Alaska Division of Public Roads." Primary highway system improved and surfaced with asphalt starting in 1948 and continuing to meet military requirements.

4. Omnibus Act also provided for certain transitional grants to finance state operations until the state was able to organize and to gear up to its new responsibilities/

Act also permitted state to enter into contract with certain federal agencies to perform state functions for a 5 year period, or until July 1, 1964. State entered into such contract with BPR and this is the present status of the highway organization in Alaska.

"New under the provisions of the Alaska Omnibus Act the full area of Alaska will be included in the apportionment formula which will make the apportionment in Alaska in the neighborhood of 36 million dollars to be matched about 13½ percent by the State, making a total of about 42 million for construction." Among the transitional grants were 12 million dollars for highways; also permission for the State to utilize the entire apportionment for fiscal 1960 for maintenance, together with any unobligated funds remaining in fiscal 1959 and prior years. All things considered the State has, in my estimate, about a three year breather to place itself in position for future matching, and to assume full cost of maintenance.

1

Goes on about BPR functions in general and then, specifically, in Alaska. In Alaska, it administers Federal-Aid apportionment to the State, performs highway design, construction and maintenance for the State, and performs highway design and construction in the National Forests and National Parks.

"We encourage the State to actively build toward the day when the highway department will be fully operative and carry the full load of highway planning, construction and maintenance in this great new State. It is our hope in the Bureau of Public Roads that the highway program will move forward in a practical and efficient manner."

R/W Widths -- History of *excerpts from letters*

Requested policy of reservation of a 60 foot R/W across all lands. This policy is applied. (Elliott, M. Prsdnt ARC to J.A Ramsey, Division Inspector, General Land Office, Anchorage; April 18, 1929)¹⁴

Day Letter -- Attorney General Has no objection to our claiming hundred feet right of way for road through unreserved public lands stop we will therefore claim hundred feet where possible stop Griffin given permission to construct polelines edge of such right of way. (Day letter, Atkins (?) to Edmunds (?), Juneau to Anc, Sept. 27, 1930)¹⁴

In a letter about dispute between Independence mine and homesteader over ownership of a cabin, asks whether the right of way takes in the ground actually occupied, whether are legally entitled to a certain width for R/W, and what constitutes the boundary. "On old roads, (where the crown is around twelve feet,) which we intend improving, we would be at a disadvantage if we were not allowed to take an additional

Width ---Easement form included R/W of 60 feet; reversion to owner if abandoned.

Width ---"We have always claimed thirty feet on each side of the center line of our roads as a right of way, and, as far as I am aware, no one has ever questioned this claim." (Edmunds, M.C. sup't., R.G. Montgomery, Asst Manager, Alaska Pacific Consolidated Mining Co. Wasilla- Nov. 17, 1938)¹⁴

Feb 1, 1939)¹⁴

Most road construction in the Terr. is over unpatented and unreserved public land. Subsequently, homestead or mineral land patents are applied for and obtained in area traversed by the roadway. Road generally at first constructed to a very narrow width, usually not more than 18 to 20 feet of area being used between the extreme side ditches. Need to know how much "necessary right of way"

Two cases causing trouble:..single track roadway which, in a certain section ~~was~~ extends across unpatented mining claims. The road was constructed about 1922. The present roadway, measured between drainage ditches, is only about 18 feet. In replacing a decayed wooden bridge...with one of steel it appeared desirable,... to slightly change the location.... Acting upon an assumption that our undefined rights gave us a limit of 60 feet...we began construction...and completed it with exception of the approaches. The owner of the unpatented mining claims...thereupon obtained an injunction...preventing our completing the structure. Since both the old and new structures are only 14 feet in width, the outer edge of the new structure is still well within the assumed 60 foot limit and the District Attorney sought to have the injunction denied upon the grounds that we had the privilege of using a maximum of 60 feet of right of way, under the provisions of Sec. 1731, Compiled laws of Alaska, 1933. ...plea was denied..injunction granted prohibiting the Commission's employees from having access to any areas beyond 9 feet from either side of the existing road. This has thus far even prevented us from dismantling and moving the steel structure to the location of the existing one...prevent raising elevation.. might interfere...with normal maintenance." Condemnation unsatisfactory, court appointed commissioners talking \$10,000 to \$20,000 per acre; probably not worth \$500. Has some questionable mineral value for placer gold mining; very remote.

Second case: "...roadway constructed many years ago...homsteader has recently settled (along). ...period of occupancy...not...permit him to apply for patent... upon final consideration and before issuance of patent, we may apply for and secure a reserve...60 feet in width. ...in the meantime...question of our rights is indefinite and we are being obstructed....presumed that this situation will continue during the years that patent is pending." Ask for legislation to create reserve of 30ft each side of center line of all existing roads or trails in Terr. following but not preceding location and construction. Mentioned ARC asking for pre-reserves, notes this is "obviously undesirable" since was sought in advance of actual location and construction (reason denied). Encloses laws from Territory; doubts that Legis. has jurisdiction. (I. P. Taylor, Chief Engineer, ARC, Jun, to Rth Hampton, Assist Director, Division of Territories & Island Possessions, Dept of Interior, Wash. D.C. Dec. 1, 1938)¹⁴

From Compiled Laws of Alaska, 1933 (copies with above letter)

Widths 2

From Compiled Laws of Alaska, 1933 (copies with above letter)

Sec. 1721. 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. (1-19-23).

Sec. 1731. Classification of roads; maximum load prescribed. The divisional commission shall classify all public territorial roads and trails in the division as wagon roads, sled roads or trails and shall by appropriate signs or notices posted on each public bridge and ferry in the division, prescribe the maximum load which may be hauled thereon. The lawful width of right-of-way of all roads or trails shall be sixty feet. The width of traveled ways, the grade and character of improvement of each road or trail, shall be determined by the Territorial Board of Road Commissioners in view of the requirements of the traffic on each road. (14-11-19.)

66 apparently accepted as path between '39 & '41 - not law-used & not contested
 "1. Some of the forms of easement we sent out several years ago show right of way width of 60 feet. Wherever this form is used it should be amended to show right of way width of 66 feet." (memo. from I.P. Taylor, Chief Engineer, ARC to ARC, Anc, Fbx, Nome, Valdez. May 5, 1941.)¹⁴

PLC 7145 - April 1942 - 200 set aside for Glenn.

Noted in letter that H.R. 1554 (to be Act of '47) not specify width of R/W. Would depend on standard of road to be constructed and would probably vary from a min. of 50 feet to a maximum of 100 feet. Suggest a "not in excess" clause be put in bill if desired. (H. Sterling, Acting Chief Engineer, ARC to J.T. Flakne, Chief, Alaska Branch, Division of Terr. and Island Poss., Washington D.C.; Feb. 25, 1947)¹⁵

"While no width right of way established by law we will assume one hundred feet on main roads." (Taylor Jno to Edmunds, Road Comms., Enc. Feb 5, 1948)¹⁵

National Park Service proposes to set minimum R/W along Alaska hwy's at 400 feet. A latter plan from them suggested shifting widths dependent on type of terrain. Extreme situations a width of 200 feet to 400 feet back to 200, to 600, etc. ARR opposed to 400 foot minimum. Frank Heintzleman also against. Alaska Dev. Board has indicated that it favors 200 feet maximum. We (BLM) feel 200 sufficient. (Lowell Puckett, BLM Regional Administrator Anc., to Ike Taylor).¹⁵

In a Memo for the files on "Reasons for Opposing Wide Rights-of-way ~~for~~ in Alaska."
 1. In general, these widths are not needed for the construction of the roads or for any structures connected therewith.

2. Excessive widths require special use permits and are therefore difficult to administer.

3. Excessive widths impede settlement by increasing costs (requiring construction of access roads) and diminishing ease of access (houses have to be set way back in the woods).

In addition to the above consideration, it is considered unnecessary to have a wide right-of-way to take over re-location because any re-location of a major nature will probably follow a new route anyway. (J.R. Noyes, Commissioner of Roads for Alaska, ARC, JNO, to files)¹⁵

Subcommittee on Roads, Alaska Field Committee recommended R/w of 300, 200, and 100 feet for through, feeder and local roads respectively.

Committee as a whole rejected this and endorsed a max. R/W of 200 feet for through and feeder roads and 100 feet for local roads. Feeders could become throughs easily. turned down 300 feet because special use permits unsound; discourages high quality ~~and permanent investment~~ and permanent investment; reg. requiring people to settle more than 100 feet from the center point of the road "create financial hardship upon the type of people who would be settling Alaskan highways."; conviction that 200 feet ~~is~~ for several generations, and if dev. exceeds this expectation, relocation ~~will~~ avoid pop. centers anyhow. Also, recommends that whenever R/W prescribed for Alaska, all ~~highways~~ highways have R/W adjusted to this--e.g. Slana-Tok cut from 600 to 200 or 300. (Kadown, Director, Alaska Field Staff Dept. of Int., office of the Sec. Jno; to J.P. Davis, Director, Div. of Terr. & Island Poss., Dept. of Interior, Washington 25, D.C. Oct. 13, 1948.)¹⁵

Widths 3

"If we are to promote the advancement of our Territory it is paramount that we meet every desire of the prospective settler and make it as easy and attractive for him as possible to take up land along our highways. If the conditions are so severe as to make him stay back an eighth of a mile from the center line, we are defeating the very ends for which the roads were originally built; the development of the Territory. No one will build so far back from the road and be expected to keep that strip of government land cleared." "...in no case would I recommend a right of way over 200 feet and where the value of the land justifies it, only 66 feet." (F.A. Metcalf, Territorial Highway Engineer, JNO, to Alaska Field Committee, Dept. of Interior, June Oct. 16, 1948)¹⁵

R/W withdrawals to be as follows:

600 feet for the Alaska Highway; 300 feet for other through roads; 200 feet for feeder roads; 100 feet for local roads. Reduce any existing roads that are wider. Director, BLM; to Coote, Acting Chief, Division of Land

no fixed right-of-way obtained. On the establishment we can actually hold only width is needed it can be obtained. Engineer to Niemi, District

10, 300, 200, 100) "The proposal is simply fantastic. If would-be settler back as if he were not wanted in Alaska. h him up a mountain, over a cliff, or into a stream or

..... it would present problems in driveway construction, maintenance, snow clearance and in the obtaining of driveway permits through your right-of-way in the first place (Don't try to tell any Alaskan who has had dealings with the department that there would not be red tape and delay in connection with that.) It would be an open invitation to trespass." "And for what? I confess I am unable to think of a single good reason for tying up all this territory right where we want people, accommodations for travelers, reasonable right-of way.. Alaska Highway, Other primary roads, and secondary roads, 200 feet; Feeder and branch roads 100 ft." (E.L. Bartlett to J. A. Krug, Sec. of Interior, Washington -- Feb. 22, 1949).¹⁵ Bartlett at that time Delegate to Wash., HR

~~XXXXXXXX~~ Letter to all to whom Bartlett had sent copies (all Inter. dept. heads who have anything to do with Alaska) stating that the 600, etc. still stands. (Warne, W.E., Assistant Secretary, Dept. of Interior, Washington DC -- March 11, 1949.)¹⁵

* In response to a letter suggesting retaining a 200 foot r/w along Glenn Highway near Glenn-Richardson junction. "I dislike to recommend an exception to a ruling so recently made. However...I cannot deny the logic of your conclusion and must ...concur." (J.R. Noyes, Commissioner of Roads for Alaska, to L.M. Puckett Regional Administrator, BLM, Dept. of Int., Anchorage, Alaska; Jan. 14, 1949)¹⁵

ARC has 100 foot right of way through section of Richardson Hwy (21, 1 S, 1E, FBX M.) (Niemi, W. J., Chief Engineer, ARC, to Selid Construction Co., Inc. Fairbanks Alaska)-Nov. 5, 1953.)¹⁶

PLO 601 (1949) set widths and thus could be applied to lands affected by 229 (Act of '47). Policy decisions made that July 24, 1947 was date in which PLO 601 became effective. It may however be that August 10, 1949 might be the date it became effective. Take no action on trespass except to notify. (Niemi to Adams (?)) May 14, 1951)¹⁷

Re easement for R/W for Farmers Loop Road. "...easements should not be accepted for less than the minimum width of R/W specified for the applicable class of road. See ARC Memo No. 2 dated Jan. 1, 1949. When it is not practicable to obtain easement for the full right-of-way width desired, authority for acceptance of lesser width must be obtained in advance from this office. In this particular instance, in view of the thickly settled area, we will accept the 60 ft. granted." (J. R. Noyes, Comm. of Roads for Alaska, Jno, to FBX - Sept. 29, 1949.)¹⁸

From ARC Manual for 1956 relative to statutes and orders for R/W for Alaska¹³
cont. next page

Widths 4

13

Statutes and Orders under which R/W for roads and highways may be established over lands in Alaska by ARC.

7.13 Application of Authority

- a. R.S. (revised statutes of the U.S.) 3477. grants R/W for the construction of highways over public land not reserved for public uses. Not specify width, so unless maps of definite location showing width are filed and recorded, the width would be limited, as against subsequent valid claims, to that recognized by the courts.
- b. Act of June 30, 1932--authorizes the construction of roads and highways over the vacant and unappropriated public lands under the jurisdiction of the Dept. of Interior. Does not specify width of R/W. Unless maps were filed showing width appropriated, the R/W would also be limited to 66 feet or 33 feet on each side of the center line, as against valid claims or entry subsequently initiated prior to public LO no. 601 (Aug. 10, 1949).

Note: PLO 601. revoked specific reservations along specific highways (Palmer-Richardson, Alaska Highway, Gulkana-Slana-Tok) and set up standard withdrawals for Alaskan highways: unappropriated public lands withdrawn in following widths along various roads: Alaska highway, all land lying within 300 feet of the center line; all other thru roads, 150 feet on each side of center line; all feeder roads, 100 feet each side; all local roads, 50 feet each side. Classification of Alaskan roads follows.

This was amended in title 43 Federal Register (Oct. 20, 1951) in PLO 757 to add to the thru roads, the Seward-Anchorage Hwy (no Chugach ~~MTF~~), the Anchorage-Lake Spenard Hwy, and the Fairbanks-College Hwy (these had been "local roads" in the original order). Tok Cutoff is not mentioned in the amendment, altho it was listed as a through road in PLO 601.

Order 2665 by the Sec. of the Dept. of Interior fixed width of all public roads as maintained under the jurisdiction of Interior and prescribed uniform procedure for R/W established or easements over or across the public lands of such highways. Notes road maps to be filed in proper Land Office.

[Pentecost notes that in June 1958, BPR was using 300 feet for primaries, 200 feet for secondary "A", 100 feet for secondary "B".]

- c. Act of July 24, 1947 (61 Stat. 418, 48 U.S.C. 321d) added section 5 to Act of June 30, 1932 and provided that all patents for lands taken up, entered or located in the Territory of Alaska, and in all deeds conveying lands by US shall have expressed in said patent or deed, a R/W thereon for roads, roadways, highways to be constructed or to be contracted by or under the authority of the US or any State created out of the Territory. (Freeman says this was asked for when people started wanting money for R/W).

Again no width of R/W reserved stated, so that any valid claim or entry initiated after Act of '47 and prior to PLO 601 (1949) as amended by PLO 757 subject to a reservation 66 feet for road R/W. If additional width needed, necessary to obtain it by easements or by condemnation.

- d. PLO 601 set R/W widths, "subject to valid existing rights...." Thus did not affect anything prior to date of order, or have effect of increasing width over such claims to that specified in the order for roads previously constructed or may hereafter be constructed. Valid claims initiated prior to the order and subsequent to 1947 Act are subject to the reservation provided by said Act only (commonly recognized as 66 feet).
- e. PLO 757 amended 601 as noted above. Through roads R/W remain under withdrawal; feeder and local roads R/W to be established as easements. Permitted claims to be initiated to or entry made for lands crossed by R/W or to straddle roads which were established as easements and released from the withdrawal.
- f. Departmental Order No. 2665 fixed widths and easement policy for feeder and local roads.

13 cont.

Thus. ARC no right to establish a road R/W over land initiated prior to Act of 1947, without consent of entryman.

ARC entitled to establish R/W over patented lands initiated after 1947 act.

Width of R/W overlands patented based on claims or entries initiated after 1947 Act and prior to PLO 601, 757, limited to that ~~recognized~~ recognized in the particular area (normally 66 ft.)

After PLO 757 width is that fixed by 2665 dependent on class of road.

Also under section 7. Real Estate Procedures and Practice

7.42. "In the matter of rights-of-way procurement it would be most desirable if all parcels or parts of parcels of land shall be appraised prior to opening negotiations."

7.48. "If, during the course of negotiations, there should be brought to light certain ~~facts~~ conditions or characteristics of the property or some factors....proper consideration and weight should be given these matters and, if necessary, a reappraisal of the property be made before negotiations are continued."

7.5 Appraisals

7.51. "The approved appraisal is not be regarded a a binding limitation on the authority of the negotiator. Facts and circumstances may develop during negotiations indicating that the approved appraisal is either too high or too low, in which cases settlements varying therefrom will be approved upon proper explanation."

7.7 Condemnation

7.71 Order No. 2509, Amendment No. 7 of the Dept of Interior, Office of the Secretary, section 28 related to acquisition of real estate by condemnation.

7.72. The Solicitor of the Dept. of Interior is authorized to exercise the power of the Secretary of the Interior to acquire real estate for the U.S. by condemnation under judicial process, whenever in the opinion of the Solicitor it is necessary or advantageous to the Government to do so, and the Solicitor is authorized to submit to the Attorney General of the US applications for the institution of proceedings for condemnation.

7.73 The ARC may acquire either in fee or in any less estate or interest, any real property which it considers necessary for road or highway purposes.

Random exhibits of deeds -- as to width

— Sept. 28, 1933. Homer. Certification by Glen Bower that a 60 foot R/W was deeded to the Territory.

August 25, 1936. Sádovia. Mrs. E.A. Reber deeded 60 R/W to US

February 8, 1950. Homer. E.S. Nordby deeded 60 foot R/W to USA

August 15, 1955. Kenai. F.R. Keeler deeded 100 fot R/W to USA

BPR 92
in R/W file
room

— Letter from W. F. Raugust, R/W Officer to E. H. Swick, Regional Engineer; BPR; April 22, 1958. General Counsel, Washington D.C.

Exerpts dealing with R/W questions.

Case I -- R.S 2477 as derived from Act, July 26, 1866, clearly provides for rights-of-way, by prescription, across public lands not reserved for public use. It is also established that subsequent settlers take subject to a public easement for roads established under this prescriptive right. The limits of this kind of right-of-way are not established but are presumed to be 66' in width or 33' on either side of the center line. Can we legally claim this width?

Case 2 - The Bureau has many sections of roads established prior to the 1947 Act across private lands filed on prior to construction of the road. No formal easement has ever been obtained for the right-of-way. Our right-of-way has never been contested. Can we now assume that an easement for the right-of-way is ours

Widths 6

by dedication? If so, are we entitled to 66' width or what width? Would we have any right to pay for this right-of-way?

Case 3 - In the process of improving a road with a right-of-way established by the foregoing methods (prescription or dedication) a relocation is made within the unit. Does the right-of-way shift with the road or do we have to negotiate for a new easement?

Does an entryman have the same rights in regard to highway rights-of-way that a patentee does?

Case 5 - A right-of-way is established for an existing road under authority granted by the Act of '47. Subsequent to a valid entry by a homesteader, it is desired to shift the road in the interest of better alignment. Must we negotiate for the new right-of-way or can we hold that the existing right-of-way can be shifted with the road or that the provision for rights-of-way under the Act of '47 allows rights-of-way in any number needed?

Case 6 - A right-of-way has been established for a primary highway through a unit. A need develops for a secondary road or another primary road through the same unit. Do we have the same rights under law for the second road that we had for the first road?

Case 7 - At the time of a valid entry by a homesteader, a road was designated as a local road by E.O. 2665. Amendment 2, dated Sept. 15, 1956, of this order named the subject road a through highway. Does the right-of-way through this particular unit automatically become that allowed by 2665, for a through road or is the entryman to be considered a prior claimant with our rights only those in effect at the date of entry?

~~Question arises in the execution of our functions as a road~~

Case 8 - A road ends within a unit. At the time of entry by the homesteader the road was designated as a local road. Since that time the road was reclassified as a through road by 2665. Now we wish to extend the road through the subject homestead. Are our rights for additional right-of-way only for that width set forth by 2665 for a local road or can we claim 300' right-of-way for the new construction?

(For response from general counsel check BPR file--letter April/1958.)
↓

— Answer to above -- Enfield to Swick--April 1, 1958¹⁹

Case 1 -- It is considered extremely doubtful that RS 2477 was intended to apply to R/W required by the U.S. This statute constitutes a continuing offer by the U.S. to others to make public lands available for highway construction. Rather, we feel that the authority for acquisition of R/W for public highways in Alaska stems from the Act of January 27, 1905 (33 Stat. 616), as amended by the Act of June 30, 1932 (47 Stat. 446), the Act of July 24, 1947 (61 Stat. 418), and Section 107 of the Federal-Aid Highway Act of 1956. ~~See comments above (to be deleted)~~

Case 2 -- On the basis of the facts submitted, it seems reasonable to assume that The U.S. has a R/W by prescription to the roads as established. The width of the R/W is a question of fact as discussed earlier in this. Under these circumstances, there would not be any authority to compensate the patentee.

Case 3 -- Where the 1947 Act is not applicable, it is considered that a R/W established by prescription does not shift and that the patentee would be entitled to compensation for any improvement involving R/w beyond the limits of that previously considered as having been established.

Case 5 -- The 1947 act reserves R/W in any number needed.

Case 6 -- If the 1947 Act is applicable we have unlimited rights. If the 1947 Act is not applicable we must pay for any R/W beyond the limits of those previously established.

Widths 6

Case 7 -- Under the facts stated, the 1947 Act would be applicable; the act reserves R/W in any widths needed.

Case 8 -- If the entry was subsequent to the 1947 Act, the Bureau may utilize such R/W as it desires. If a valid entry was made, under the applicable law, prior to the 1947 Act the R/W is limited to that previously established.

~~Case~~

News newspaper clippings

Collected by "Dutch" Derr; loaned to Pentecost; who loaned them to R/W
*collected and loaned by Pentecost.

Widths

Anchorage Times - Jan. 5, 1954

Program to widen all of the 1050 miles of primary highway in Alaska to a 28-foot "paving standard" will be placed under contract next year, ARC officials announced.

Jessen's Weekly (Fairbanks) - December 17, 1953

Irving Reed, Territorial Highway Engineer said he would request from military a minimum 60 foot R/W from the west boundary of Ladd AFB for the proposed Big Ben-Noble Street cut-off. Less funds this year than last; committee (roads committee of Fbx C of C) recommended police be financed from general funds rather than highway engineering funds, and that surpluses from the Territorial treasury be allocated for the development of roads.

Anchorage Times - August 24, 1955

ARC asking BLM to withdraw lots along Glenn for future use in widening road when funds become available. Until funds available, lots would be cleaned up and utilized as a park strip.

FBX News Miner Feb. 17, 1956

Tok Junc. and Big Delta townsites residents are alarmed over slow progress of a piece of legislation which would cut in half the present R/W withdrawals along Alaska's highways.

At this time, 300 feet from the center line is withdrawn on both roadsides. Need to know so can prove up with buildings sensible distance from roadway. Bill would give land in R/W at first choice to back owners. The original setback request was made by the Corps of Engineers when the

~~corps.~~ Alaska highway was cut through in record time to meet military needs. More than enough land was asked so that nothing could impede the progress of the Corps in its fight against time to complete the gigantic task. Actually, Alaskans were lucky in this matter. In Canada the Canadian government gave the U.S. a 20-mile corridor running from the State's northern border to the Alaska boundary line and much of this land is technically still in reserve.

FBX Daily News-Miner--on letter to editor of May 5, 1956 by John Doe to District Engineer of ARC (open) Property owners want 3rd street in Graehl and Hamilton Acres paved. "The legal and recorded highway r/w of for all streets in Graehl measure 40 feet. Whenever improvement is sought for this Third street road property owners are confronted with a claim that a 60 foot r/w must prevail before improvements can be made. Yet, this 60 foot rule was conveniently overlooked in the paving of Minnie Street in Slaterville. Competent engineers have advised us that a 40 r/w is ample to accommodate a 20 foot pavement with 10 feet on either side for shoulders and drainage ditches. Residents of third street in Graehl do not want a boulevard raceway. They simply and quite reasonably desire the common sense improvements which should go with a road that is accommodating as many as 48 heavy school buses.... If the lack of a 60 foot r/w actually is a legitimate reason for the failure of the Terr. and ARC to improve third street, we are impressed by the fact that no official effort has been made to obtain said 60 foot r/w. Not once in the several years we have owned property on Third street have we been approached by anyone in authority with a legal and official proposition concerning the obtaining of a 60-foot r/w...."

R/W ACQUISITION -- ~~methods, etc.~~ --
Misc. pertinent information from various sources
On Public Land --

Prescriptive: R.S. 2477, Act of Congress July 26, 1866; provides for rights-of-way across public lands not reserved for public use. Subsequent settlers take subject to a public easement for roads established under this prescriptive right.

Grants under this become effective upon construction or establishment of highways, in accord with State laws, over public lands, not reserved for public uses.

When R/W desired under R.S. 2477 on land reserved for public uses, and such reserved land is under Dept. of Interior., application should be made for consideration of the revocation or modification of the reserve.

sec. 244.57-244.59 Title 43 BLM,
Public Lands

Held by Forest Service or National Parks

When R/W sought through or in N.F. applicant must enter into such stipulations and execute such bond as the FS may require.

NP and M. ACT of March 3, 1921 (41 Stat. 1353, 16 U.S. C. 797) provides no R/W for dams, power works, etc. without Cong. approval.

When R/W desired for highway, usually allowed (after full presentation of fact will not damage the Park or Monument) only on showing of absolute necessity.

sec. 244.10
244.11 Ibid.

*From PPM 21-4.3. US Dept of Comme. on R/W Procedures (Public Lands and Reservations)

2477. BLM will not receive and record on its tract books R/W acquired under this section. Section does not grant the right to take materials for roads from the public lands nor does it properly document the control of access. In such cases Section 17 of the 1921 Act or Section 109(d) of the 1956 Act should be used. This law is in the nature of an offer of the R/W and an acceptance is necessary before the public right becomes effective. If superior adverse rights have accrued, the State or other public authority would have to take the land subject to such rights.

~~Section 17~~ Section 17 of the Federal Highway Act of 1921 (same 244.54 BLM Auth.)

Authorizes the transfer of public lands and reservations of the United States to the State highway departments on determination by the Sec. of Commerce that such lands are reasonably necessary for the R/W for any highway or forest road; as a source of materials for the construction and maintenance of such roads and highways; for maintenance and stockpile sites; or for roadside and landscape development. It does not authorize transfers to Territories.

Interpreted as applying onto to Federal-Aid system.

Revert to control of Federal agency from which appropriated if no longer needed

~~Section 109(d)~~ Section 109(d) of the Federal-Aid Act of 1956

Authorizes Sec. of Commerce to make necessary arrangements with the agency having jurisdiction over the land for R/W including control of access whenever such R/W on the Interstate System are required over public lands or reservations of the U.S.

~~E.O. 10355~~

E.O. 10355 (*May 26, 1952*)

President delegated to Sec. of Interior authority to withdraw or reserve lands of the public domain and other lands owned or controlled by the U.S. in the continental US or Alaska for public purposes, including the authority to modify or revoke withdrawals and reservations of such lands. File through BLM.

Forest and Park Lands: FS and NPS as a rule, do not grant R/W through their reservations under Section 17. Both resort to a "special use permit." which contains certain conditions with which the States must comply are in the nature of revocable licenses.

Other. -- Some departments have special legis. for granting R/W over lands under their jurisdiction; Defense has such and so does VA.

From letter Barnes to Baca (Oct. 27, 1960 -- R/W file B-Interior Dept.)

May of BLM instructing his people that law governing transfer of R/W should be quoted with the latest amendment "by his words" as follows:

This application is made under the authority of Section 17 of the Federal Aid Highway Act of Nov. 9, 1921 (42 Stat. 216); 23 USC 18) as amended by the Act of August 27, 1958 (72 State. 885; 23 USC 317).

Easem. vs---"
Withdr. "...easements would present far fewer problems to the disposal of the land. Let us assume that the road goes through the ~~SW~~ of a section at an angle, and does not follow along any of the borders of the quarter section. Through the promulgation of the withdrawal order, there is now withdrawn strip along the road. As homesteaders are not permitted to file on non-contiguous tracts, the homesteader will not be able to obtain the full 160 acres in that quarter section. At the present time it is necessary that we follow the procedure of allowing the ~~entry~~ homestead entry as to the full 160 acres, but we are obliged to advise the entryman that when the road is located and with it, the withdrawal, it probably will be necessary to cancel a portion of his entry. Therefore, he should place all of his improvements and all of his cultivation on one side of the road. You can well see the handicap and the confusion that is to result.

...matter of the description of the tract lying on one side of the road arises. It will be necessary for the Bureau of Land Management... to survey all areas traversed by roads so as to give a definite indication by lots as to the lands that must be described in the patent. ...where the roads have already gone through surveyed lands, we will have no description of the land to definitely put in a patent, unless we resurvey all of the areas in order to describe the lands adjoining the highways by lots.

On the other hand, if the roads were considered as easements, the homestead entry would go across the road, and if...the road were changed or abandoned the homesteader would automatically have title to that area formerly included in the right-of-way. If the designation of the rights-of-way continues as withdrawn each time the road is changed it will be necessary to open the strip of land formerly occupied by the right-of-way to preference right filing by veterans.. Need maps or plats in any event. (Puckett to Kadow, Sept 9, 1949.)¹⁵

-----Comments on E.O. 601 by Lowell M. Puckett, Regional Adm. BLM; Oct 27, 1950
 paper given to Alaska Field Committee. re desirability of doing away with
 withdrawals along highways and substituting easements.

...No withdrawals along ARR track; patents are issued to homesteader which do not interfere with the operations of the ARR, but include land on which tracks built. If later, portion abandoned, land on which track first located becomes property of the individual in whose patent or deed it was described. No complications about a strip of land running up through country owned by nobody.

Because of withdrawals along roads, has been ruled that no entry filed or initiated after Aug. 10, 1949, may go across a road, unless it is in the category of a local road with a 100' R/W. Not possible for ARC to survey all roads and tie them exactly with existing corners of rectangular net of surveys. Until surveyed, not possible in some case to determine if road crosses a given homestead entry.

Before any patent or final cert. can be issued to homesteaders who are restricted to only one side of the road, it will be necessary to survey many roads and all homesteads affected by roads running through surveyed land. Big job and expensive.

Sterling gives a good example as goes down through Kenai Penin. The exact location of that road was not known to the Anc. Land Office and many entries were allowed to straddle the road (subsequently this was found the case). The entrymen have cultivated land on one side of the road, and have built their improvements on the other side. Under present rules, each entryman must elect which side of the road he is to take and must relinquish that on the other side. E.G. in which the road has cut across, leaving 5, 6 or 10 acres on one side of the road, and it is here that the entryman has built his house. Cultivated and placed his field on the other.....

Then assuming that the entryman selects the portion of his entry which includes only ten acres or less. Under the provisions of the 1947 ACT, ARC could build road through this small acreage left to the entryman.

Homestead regulations state that each ^{qualified} individual may obtain land under the homestead laws up to a total of 160 acres. If less than 160 and some adjacent becomes available, can acquire this if does not run his total over 160. Not required to live on the additional land if it is contiguous. Withdrawals cause land across the ~~to~~ road to not be contiguous--would have to live on each piece to take up, even tho only 200 feet apart. Maybe better to be able to straddle road than to stretch out for 1-2 along highway, as legally can.

cont. on next pg.

Acquisition 3

Pickett cont.

As roads go thru unsurveyed lands, claims have been staked out and illegally filed that antedate 601. Surveying crews have no way of knowing which do and which do not--so must prepare plats on basis of two R/W, that effective before 601 and that after 601.

Maybe legal claim before 601; claimant gives it up; next person who settles there must stay on one side or the other and the wider right of way becomes effective.

Claimant there before 601 decides to stay on one side of road and extend his claim back. Therefore, he gives up his claim to the other side of road, and immediately the wide R/W becomes effective on that side, but the narrow R/W stays in effect on the side which he retains. In no one given spot will anybody be able to determine which width the R/W is without looking at official plats in Land Office.

Suppose claimant before 601 has house 50' from center line. Then sells; after 601. Buyer finds house in trespass, as in R/W and must move it back to get it on his claim, which might be 100 feet, or 300 feet, if along the Alaska Hwy.

ARC will straighten out kinks in roads; would leave strips of land closed to entry; if restored to entry, adjoining owner not have preference, but vets. of WW II would have. Have been advised that withdrawal becomes effective when ARC sets its survey stakes; might change minds and move stakes; may have very real diff. opinion as to where withdrawals actually do exist.

If road R/W were easements would not be necessary for delay in processing of applications for final proof. Not cause us to build up a backlog which will extend 2,3, or 5 years before surveys are all completed. ARC could change R/W under 1947 Act without any question as to the ownership of the land; the entryman would still own the land, and the ARC would take an easement. No additional expense in hiring additional survey crews, and no delay in survey program that will result in our putting experienced men on road survey instead of other work.

From Information sheet on road rights-of-way; from BLM on Dec. '57

Public roads and highways in Alaska are usually established and constructed by BPR under authority of act of 1932. May or may not follow section lines.

May also be established under RS 2477; Session Laws of Alaska 1923 included the 66 ft. reservation strip for public highway use;

This Territorial Act of 1923 was an acceptance of the R/W grant made by RS 2477. However 1923 act listed as ~~invalid~~ invalid in the New Alaska Code of 1949.

Territorial Act of March 21, 1953 was designed to reinstate and broaden the 1923 Act which had been left out of the Alaska Code of '49. It may be considered the effective law as of March 21, 1953, since it appears to be enacted pursuant to Section 2477 of the RS (43 USC 932).

Reads:

Section 1. A tract one hundred feet wide between each section of land owned by the Territory of Alaska, or acquired from the Territory, and a tract four rods wide between all other sections in the Territory, is hereby dedicated for use as public highways, the section line being the center of said right-of-way. But if such highway shall be vacated by any competent authority, the title to the respective strips shall inure to the owner of the tract of which it formed a part by the original survey.

MEMORANDUM

To: Right of Way Section
 From: Robert M. Redding, Right of Way Agent
 Subject: Right of Way Easements in Alaska Lands
 Date: September 30, 1958

open to question in many cases.

On July 26, 1866 the Congress of the United States passed an Act pertaining to the rights of way for highways. This Act, now known as Revised Statute Sec. 2477 (43 U.S.C. 932) states:

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

This grant by the Federal Government constituted a dedication to the several States and Territories and did not become effective until it was accepted and implemented by them.

Several principles should be considered in order to have a comprehensive understanding of the effect of dedication statutes:

(1) No patent will be issued (43 USC 1151), nor can an entry be made on land which has not been surveyed, although such land may be lawfully occupied (43 USC 161, n. 34). Such a settler, neither patentee nor entryman, acquires no vested rights in the land until survey and subsequent entry;

(2) As against everyone but the United States, the date on which a homesteader's rights become fixed, or vested, is the date of entry not the date of patent, the title given in the patent relating back to the date of entry (43 USC 161, n. 30);

(3) A dedication by Act of Congress cannot be accepted until the land dedicated is surveyed and section lines established;

(4) A dedication which has once been accepted by an act of a State or Territorial Legislature is not lost on lands so dedicated.

On January 19, 1923, the Territorial Legislature of Alaska enacted Ch. 19, SLA 1923 (subsequently codified as Sec. 1721, CLA 1933), wherein the dedication made by Congress in R.S. Sec. 2477 was accepted and an easement in a strip of land 66 feet wide on the section line in all public lands lying within the Territory was created. All surveyed public lands lying within the territorial limits of Alaska which were acquired (patented or entered) prior to this enactment are held free and unencumbered by any Federal or Territorial right of way easement.

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Persons who acquired land from either the United States or the Territory on or after January 19, 1923, took the land subject to the easement so created.

On January 18, 1949, a special session of the Legislature enacted Ch. 1, ESIA 1949, which purported to adopt the Alaska Compiled Laws Annotated 1949. The 1923 law was not included in the compilation and so was repealed by implication. In 1950 a decision was handed down by the District Court for the District of Alaska in the case of Ashley v. City of Anchorage, 13 A 168, 95 F Supp 189, which cast some doubt on whether or not ACLA 1949 was in effect. A reading of this case indicates that ACLA 1949 was adopted in 1949, but should there be any discrepancy between it and the session law it embodies, the session law will control. The repeal of any prior session law would be effective as of January 18, 1949. The effect of ACLA 1949 was to allow all lands surveyed after its adoption and acquired prior to March 21, 1953, to be held unencumbered by any Territorial right of way easement.

The status of lands acquired from the Federal Government on or after July 24, 1947, was further determined by 61 Stat. 418 (48 U.S.C. Sec. 321d) which made all lands acquired from the Federal Government subject to a right of way easement in the United States and the yet to be formed State of Alaska. The widths of these rights of way were established by Public Land Order 601 of August 10, 1949, as amended by Public Land Order 757 of October 16, 1951, and by Secretary of the Interior Order 2665 of October 16, 1951, at 600 feet for the Alaska Highway, 300 feet for through roads, 200 feet for feeder roads and 100 feet for local roads.

On March 26, 1951, the Territorial Legislature in Ch. 123, SLA 1951, dedicated an easement for a right of way 100 feet wide along section lines in all property owned by the Territory or acquired from the Territory. This law had the effect of giving the Territory an easement in all lands acquired from it after March 26, 1951, but did not provide for a right of way easement on lands acquired from the United States, the Act of 1947 (61 Stat. 418) being inapplicable to the Territory of Alaska.

On March 21, 1953, Ch. 123, SLA 1951, was amended by Ch. 35, SLA 1953, to include an additional 66 foot right of way easement in lands acquired from the Federal Government. This act constituted a re-acceptance of the dedication provided for by R.S. 2477 and which had lapsed with the adoption of ACLA 1949. Lands acquired after this date were subject to a Territorial easement of 100 feet along the section line if acquired from the Territory and to a Territorial easement of 66 feet along the section line if acquired from the Federal Government.

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Lands which were surveyed between January 18, 1949 and March 20, 1953, and had not been acquired would be treated similarly with lands surveyed after March 20, 1953.

SUMMARY

(1) Land (meaning surveyed land) lying within the Territorial limits of Alaska acquired (patented or entered) either from the Federal Government or the Territory of Alaska prior to January 19, 1923, is unencumbered by any right of way easement of either the United States or the Territory.

(2) Land acquired either from the Federal Government or the Territory between January 19, 1923, and July 23, 1947, is subject to a Territorial 66 foot right of way easement along the section line.

(3) Land acquired from the Federal Government between July 24, 1947, and January 17, 1949, is subject to a Territorial 66 foot right of way easement along the section line and also a 100 to 600 foot right of way easement reserved to the United States and the State of Alaska.

Land acquired from the Territory during this period is subject to a 66 foot right of way easement along the section line.

(4) Land acquired from the Federal Government between January 18, 1949, and March 25, 1951, is subject to a 100 to 600 foot right of way easement of the United States and the State of Alaska. Such land is not burdened by any Territorial easement if the survey also took place between these dates.

Land acquired from the Territory during this period is subject to no right of way easement if surveyed between these dates.

(5) Land acquired from the Federal Government between March 26, 1951, and March 20, 1953, is subject to a 100 to 600 foot right of way easement of the United States and the State of Alaska. There is no Territorial easement on the land if it was surveyed during this period.

Land acquired from the Territory between these dates is subject to a 100 foot Territorial right of way easement along the section line.

(6) Land acquired from the Federal Government between March 21, 1953, and the day preceding that on which the Territory of Alaska is proclaimed a State is subject to a 100 to 600 foot right of way easement of the United States and the State of Alaska as well as a 66 foot

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Territorial right of way easement along the section line.

Land acquired from the Territory during this period is subject to a 100 foot Territorial right of way easement along the section line.

(7) Land acquired after the Territory becomes a State will be in the same status as that in paragraph 6.

Remember:

- (1) Land must be surveyed.
- (2) Date of entry controls.

These rules should be used in determining whether or not the Territory has any presently existing rights in property which may be under consideration for acquisition for highway right of way purposes.

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<u>Dates (Inclusive)</u>	<u>Land Acquired from U. S.</u>	<u>Land Acquired from Alaska</u>
Prior to	Fed: No easement	Fed: No easement
Jan. 19, 1923	Terr: None	Terr: None
Jan. 19, 1923 to July 23, 1947	Fed: None Terr: 66 foot section line	Fed: None Terr: 66 foot section line
July 24, 1947 to Jan. 17, 1949	Fed & State: 100-600 foot Terr: 66 foot section line	Fed: None Terr: 66 foot section line
Jan. 18, 1949 to Mar. 25, 1951	Fed & State: 100-600 foot Terr: None-if surveyed	Fed: None Terr: None
Mar. 26, 1951 to Mar. 20, 1953	Fed & State: 100-600 foot Terr: None-if surveyed	Fed: None Terr: 100 foot section line
Mar. 21, 1953 Until Statehood	Fed & State: 100-600 foot Terr: 66 foot section line	Fed: None Terr: 100 foot section line
After	Fed: 100-600 foot	Fed: None
Statehood	State: 100-600 foot	State: 100 foot section line

ACQUISITION - FROM OLD BPR FILES (excerpts from correspondence)

---"The Alaska Road Commission has several times had difficulty on account of rights-of-way for road construction across patented homestead land in Alaska. In several instances condemnation proceedings have been necessary. This situation will doubtless become acute with an increase of public lands taken up for patent in areas in which no public roads have been projected.

We would like to request your department to take steps toward initiating a policy that will reserve a sixty foot rightof way for at least one highway route across all lands for which patent is hereafter applied. The location of the route should not be specified in the patent but left for future determination by the Federal or Territorial road building authorities. It is our understanding that provision is now made in some patents, and probably in Alaska, for a road right of way along section lines, but this would not suffice for the Territory as on account of the rugged topography, it is seldom practicable to follow ~~the~~ section lines in road construction." (letter from Malcolm Elliott, President ABRC; to J.A. Ramsey, Division Inspector, General Land Office in Anc. April 18 1929.)¹⁴

----...No specific statutory direction is given that patents for lands upon which these roads or trails are constructed shall contain a reservation to the U.S. of R/W as was the case in the act of March 12, 1914 (38 Stat. 305), providing for the construction of lines of railroad in Alaska by the Government, wherein it was directed that a reservation be expressed in all patents for lands taken up, entered or located in Alaska after March 12, 1914, reserving to the U.S. a right of way for the construction of railroads, telegraph and telephone lines. Nor does the necessity appear for such a reservation of R/W for roads, trails or bridges in advance of construction.

The construction of roads and trails by the road commission is by specific direction of Congress. The authority to lay out and construct same for the public benefit over and across the public lands is clearly granted. The authority to do this is not dependent upon the grant of right of way for the construction of ~~the~~ highways over public lands, not reserved for public uses, under section 2477, R.S., but rests upon the special statutes above referred to. In the absence of specific statutory direction, there clearly would be no authority for the insertion of a reservation in patents generally of a R/W for such roads and trails in advance of their being laid out or constructed. Goes on then to say that where have been constructed or laid out should probably include reservation, but that public use right exists whether such an exception is in the patent or not. (Letter from Edwards, J. H., Asst. Sec. Interior, to Commissioner of General Land Office -- in response to his forwarding Elliott's inquiry -- July 8, 1930)¹⁴

---Land Office directed that patents issued for Alaskan lands outside of N.F. should contain clause excepting roads, trails, etc. already built. In adjudication of these cases, ARC should furnish appropriate maps and field notes of all such constructed roads, trails, etc., as well as those to be constructed later, so can locate and note on Gen. Land Office tract books. (letter J. H. Edwards, Acting Sec., Interior, to Sec. of War. Sept. 3, 1930)¹⁴

---"1. The Board of Road Commissioners for Alaska has not prepared ~~data~~ and maps of sufficient accuracy to enable the GLO to chart Alaskan roads in the tract books of their office. 2. As the tract books kept by the Land Office are the basis of land records and descriptions of property it is essential that data furnished that office be prepared with the utmost care. This would entail considerable expense. In view of the relatively small part of the area of the territory that has been surveyed by the General Land Office, the expense of compiling accurate data and maps of all roads constructed in Alaska is not believed to be justified. 3. It is recommended that in each case of application for patent, this office be informed of the location. Should no road or trail be located on the area to be patented, prompt notice to that effect will be given the General Land Office. If a road or trail is located on the area, a survey will be made as soon as practicable and data and maps furnished showing the location of the area to be excepted in issuing patent." (letter from L. E. Atkins Major, Corps. of Engineers, Engineer Officer, ~~to ARC~~ to ARC)-Oct. 11, 1930)²⁰
J. H. Edwards

---The reconnaissances and surveys upon which Alaskan road construction has been laid out have been made only with a view to furnishing the engineering data and

Acquisition -- old BPR files cont.

are not sufficiently comprehensive or accurate to serve as a basis for land records as kept by the General Land Office. Original road locations have been departed from where minor relocations were laid out on the ground without prior or subsequent surveys. Goes on to incorporate suggestions and ideas of above note.

Except indicates applications should be sent to ARC. (Letter from F.H. Payne, Acting Sec. of War. to Sec. of Interior--Nov. 6, 1930)¹⁴

--- see page following for more 1932 correspondence

--- Series of communications between GLO and ARC of specific patents and cases. ARC then supplied surveys, etc. slowly at times apparently.

"Submission of this data may be somewhat delayed, due to depth of snow in interior Alaska...." (Atkins to GLO- Feb. 11, 1931)¹⁴

--- "Be it enacted by the Senate and House of Representative of the United States of America in Congress assembled, that rights of way through the lands of the U.S. in the Territory of Alaska are hereby granted for the construction of highways, and in all patents for lands hereafter taken up, entered or located in the Territory of Alaska there shall be expressed that there is reserved to the United States a right of way for the construction of highways to the extent of thirty feet on either side of the center line of any such road, and the President of the United States may, in such manner as he deems advisable, make reservation of such lands as are or may be useful for furnishing materials for construction and maintenance of such roads as he may deem necessary or desirable." (draft of a bill sent to Elliott in response to verbal request by J. A. Ramsey, Chief of Field Division, GLO, March 13, 1931).¹⁴

Ala.

--- Letter from ~~Wickersham~~ Elliott to Wickersham, Delegate from Alaska to the House, about the request; notes need for reservation to "safeguard the interests of the people of Alaska in regard to the future construction of roads..." Rights of homesteader should be protected. (March 20, 1931)¹⁴

--- New draft of bill -- to include that "...nothing in this Act shall be construed so as to authorize the construction of roads over cultivated or improved lands without compensation for actual damages to the owner thereof."
(sent with letter to Commissioner, GLO on March 20, 1931 by Elliott)

"The construction of roads and trails in Alaska is a continuing process, and the work that is to be done within any definite future period can not be foreseen because it must follow the development of the territory which in turn depends on the mineral and agricultural developments which can not be predicted....

"It is quite desirable that there should be some such statutory provision [to allow for reservation] because in the absence thereof the construction of a road or trail to a desired locality might be impracticable. It would be to the interest of the settlers themselves that no such obstacle should be placed in the way of road building in their vicinity." (Elliott's letter re above)

--- Feels that power of eminent domain might be taken away from the Territory by such a bill. (Wickersham to Elliott, March 28, 1931.)

--- "...The General Land Office...now has authority to make the reservation in specific terms upon a showing that a road will be needed in some definite locality. The purpose of this legislation is merely to give this same authority in more general terms so that it can be exercised without the great expense and lost time which would be incident to making surveys in remote localities....it is our opinion that there would be no tendency to abuse any such authority, and the passage of an act like this would assist very materially in the work that the Alaska Road Commission is doing for the development of the Territory." (Elliott to Wickersham April 6, 1931.)¹⁴

--- We realize that an attempt to secure legislation of this character might be construed as an effort to interfere with homesteaders or perhaps encroach on the territory, but I am sure you will realize that we have no such motive in proposing to handle the matter in this way. Legislation of this kind would really give the Road Commission more power than it now has to facilitate and help homesteaders and I am sure it is not my disposition nor will it be that of my successors, to use this authority in an arbitrary manner. The main purpose we seek to accomplish is to facilitate the transaction of public business of this kind without spending time and money on surveys that could be very much better employed on constructing roads." sent along copy of proposed memorial to Congress that Terr. leg. might want to present. (Elliott to Gov. Parks at Juneau-April 7, 1931)¹⁴

Acquisition -- old BPR files cont.

---"I have given further consideration to this matter and discussed the subject informally with a number of the legislators. ...Now appears that it would be inadvisable to press the suggestions that I made in my previous letter at this time but it is believed that the agency which is charged with the survey of public lands could facilitate matters if it would survey existing roads at the same time that any tracts are being surveyed in connection with the issuance of the patents." (Elliott to Parks -- April 10, 1931)¹⁴

---"...I have had some conversations on this subject with various local interests and it now appears that an attempt to stir up this matter would encounter serious opposition. It is suggested therefore that no further consideration be given to the matter at this time." (Elliott to Wickersham - April 10, 1931)¹⁴

---A bill was introduced to the Senate by Mr. Bingham on May 29, 1930 asking for reservation of a 40 ft R/W in all patents for highways established or to be established. S. 406.¹⁴

--- Memo recommending its enactment. (Moore, C.C., Commissioner for GLO to Sec. of Interior. Dec. 17, 1930)¹⁴

---Sec. R. L. Wilbur agrees with above (Wilbur to G.P. Nye, Chairman, Committee on Public Lands and Survey, U.S. Senate Dec. 23, 1930)¹⁴

---Bill failed (Wilbur to Elliott April 7, 1931)¹⁴

---...discusses roads on a particularly Homestead. "...a survey was made over the winter trail and a line that was cut in 1923 for a road to the Chena Hot Spring. The winter trail varies every year and the line that was cut is now practically impossible to follow except where it enters heavy timber. As it was impossible to find any corners on the Eastern boundary a closed traverse was run and ties made to a private survey corner and a section corner. If more data is (sic) necessary it may be possible, later, to find corners which so far have eluded us. However, owing to the uncertainty of definitely locating these roads on the ground it is believed impracticable. (C.E. Burgline, Jr. Eng., ARC to Maj. L.E. Atkins, Engineer Officer, Juneau -- April 14, 1931)¹⁴

---Series of letters from GLO wanting to know about roads for specific patents; return info. from ARC; "There is enclosed herewith field notes and sketch showing the location of the road across Section 28 which embraces Homestead Entry ~~28~~ Anchorage No. 07074. It is requested that a reservation for right of way 30 feet wide on each side of the center line be made. (Elliott to C.C. Moore, Commissioner, GLO - July 16, 1931)¹⁴

---On request for field notes and tracing for a homestead entry crossed probably by the Richardson Hwy (from GLO) is a penciled note "No tracing or field notes of a character to be useful in defining...the precise location of the road through this tract are available." and "Richardson Highway at lower Tonsina." (orig. letter from Moore to Elliott, Spt. 16, 1931).¹⁴

---"...In view of the fact that the road was built by the Government (referring to above) and has been used continuously as a public highway, it is not believed that the interests of the Government demand that any reservation thereof be made in the patent. Surveys necessary for defining such reservations could not be made without considerable expense as the permanent surveying organization of this commission could not handle such surveys in addition to their regular work." (Elliott to Moore, Oct. 1, 1931)¹⁴

---This seems the stock answer where no field notes or tracings were available.

---"Having reference to my letter...requesting that the General Land Office be furnished with maps and field notes of...I have to advise you that departmental instructions of July 8, 1930, which required such information, have been revoked as such procedure has not been found practicable or necessary, and no further

ACquisition -- old BPR files conts. 4

requests for such information will be made of the Alaska Road Commission by the Commissioner of the General Land Office." (To Sec. of War from Edwards?, Asst. Sec. Interior -- Nov. 24, 1931)¹⁴

---Time jump in records -- during transition apparently; next heard from is ARC under Interior.

---"Hereafter no road or trail will be constructed across private property, which will include mining claims even though not patented, unless you have a formal easement from the owner." (I. P. Taylor, Chief Engineer to all Districts Oct 6, 1936)¹⁴

---In letter asking for E.O. to reserve R/W along existing roads "Condemnation proceedings have proven equally unsatisfactory...It is our opinion that \$500 per acre would really be more than could be realized on a sale of the property. Yet we are informed that the three appraisers appointed by the Court to determine the value of the area, while unable to definitely agree, used in their deliberations such figures as \$10,000 and \$20,000 (\$100,000 to \$200,000 per acre). While, of course, it is not believed that any such award would have been accepted by the Court, it is mentioned as illustrative of the unconscionable attitude that is sometimes displayed when the Government attempts improvement work in thinly populated areas where a jury of appraisers selected from local inhabitants are not unlikely to permit personal and ulterior motives to entirely govern their awards." (Taylor to Hampton, R. Asst Dir Div. of Terr and Is. Poss., Dept. of Interior -- Dec. 1 1938) "Some years ago ARC sought similar relief and copies of correspondence.... It seems that the request of the Commission was denied for the reason that a reserve ~~was sought in advance of actual location and construction of the roadway--obviously undesirable.~~ What is now contemplated, however, is a reserve to cover roads in existence, applying not only to those at present constructed to those hereafter constructed but taking effect only after the route has been definitely located and construction work is in process. In the Alaska laws referred to (ACL 1933) ...the Territorial Legislature has endeavored to correct this matter to some extent, but it is doubtful if the Legislature has jurisdiction."

---GAO requests vouchers of road commission purchase of right of way. (Hampton to Chief Engineer ARC, June 7, 1939)¹⁴

---"Your tel seventh Alaska Road Commission has purchased no rights of way except by condemnation proceedings and except for Ganes Creek Bridge case condemnation proceedings have not been resorted to for many years stop In all other instances rights of way have been donated by owner of area stop Form of easement previously used provided consideration one dollar which however was never claimed by grantor stop Present form however which approved by United State District Attorney provides other form of consideration stop." (Tele. from Taylor to Hampton, June 7, 1939)¹⁴

---ARC has no funds for recording of deeds and easement. However, the Territory has agreed to assume this expense and in future bills in favor of commissioners for recording should be made up on Territorial voucher form. (Taylor to all Districts, Jan. 17, 1940)¹⁴

---"...(has) any action been taken on our letter...in which ~~we~~ we recommended legislation in connection with road rights of way in Alaska? The situation continues to become more complicated as the territory is being settled and instances have recently arisen in which trees are being planted within less than 30 feet of the center of the roadway; not only presenting a hazard on curves but seriously interfering with normal maintenance. While there is probably little that can be done with respect to land already patented, legislation enacted now would meet the situation for large areas not included in the public domain." (Taylor to Hampton, March 7, 1940)¹⁴

- "~~It is~~ I enclose a draft of a bill "To amend an act entitled 'An Act providing for the transfer of the duties authorized and authority conferred by law on the board of road commissioners in the Territory of Alaska to the Department of the Interior, and for other purposes', approved June 30, 1932. Purpose is to protect the interests of the United States in construction roads...by providing a right-of-way on lands, now public domain, to which patents may in the future be issued....For the proper location of the road and in the interest of public service it is necessary in some cases, however, to cross lands to which title has passed from the United States. These instances are becoming more numerous as the population of the Territory increases. Obtaining rights-of-way across privately owned lands has in a number of cases presented difficulties calling for court action and requiring the expenditure of Federal funds....The proposed amendment (to the Act of '32) is similar to the provision of the Act of August 30, 1890 (26Stat. 391), which reserved rights-of-way for canals on lands west of the one hundredth meridian and is also similar to the provisions of the Act of March 12, 1914 (38Stat. 305), in which rights-of-way for railroads were reserved to the United States in all patents for lands thereafter taken up in the Territory of Alaska." (Sec. of Interior to Pres. of Senate, U.S. Senate - Mar. 30, 1940)¹⁴
- Bill, ^{with above} states R/W reservation -- no width -- no payment for crops and/or improve.
- "...bill does not carry with it any specified width. This was believed to be undesirable because at some future date we might find that whatever width we might specify at this time to be inadequate. In addition, it is held in the Department that if our amendment is passed the width of the right-of-way will be at the discretion of the Sec. of the Interior...." (Hampton to Taylor, Mar 22, 1940)
- "...any action is likely on this legislation during this session of Congress? In view of the present increased rate of development throughout the Territory, early action seems very desirable." (Taylor to Hampton, Oct. 11, 1940)¹⁴
- "...we have not yet been able to have the bills introduced either in the Senate or the House. It seems out of the question, therefore, to secure the passage of any such legislation during this session of Congress." (R. Emerson, Director, Div. of Terr and Is. Poss., Dept. of Int. to Taylor, Oct. 24, 1940)¹⁴
- ...suggest further effort during this Congress. The importance of legislation to remedy the present situation can hardly be overstressed. While the Commission operated for many years without experiencing any difficulty with the pioneer population of the Territory with respect to all needed rights of way for roads in those limited areas where the land had been appropriated, the recent large influx of settlers now presents quite a different picture. Timely legislation on the subject will undoubtedly save to the Government considerable future expenditures for rights over areas which it now owns, and similarly result only in benefit to the communities which the roads are designed to serve." (E. Gruening, Governor of Alaska, to R. Emerson, Feb. 1, 1941.)¹⁴
- ...we do not acquire title to road right of way. (Taylor to ARC districts, Feb. 5, 1941)¹⁴
- The question of right-of-way over lands embraced in valid unapertented settlement or homestead claims is contained in Sec. 2283 of the R.S. as amended by act of March 3, 1905. (Emerson to Taylor, May 12, 1941).¹⁴
- As late as 1942, ARC still had filed no maps as to location of Palmer-Richardson (Glenn) Highway; Interior couldn't withdraw land until knew what to withdraw; said could withdraw location of general route where not constructed to take effect ~~with~~ when constructed.
- "...our policy generally ^{is} to dedicate rights-of-way to Territory of Alaska." (Taylor to Bright, J.S., District Engineer, Nov 23, 1942; in response to question as to whether R/W should be dedicated to ARC or Terr.)¹⁴
- Jan. 17, 1947 letter from ^{J.} Flakne, Chief, Alaska Branch, Div. of Terr. and Is. Poss. to Taylor to advise that H.R. 1554 had been submitted -- this subsequently was the Act of '47. Bill include payments for improvements, or moving of improvements as well as severance costs.

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"...subcommittee...voted to report favorably...H. R. 1554." (Bartlett, Delegate to Taylor, June 5, 1947).¹⁵

- "Dear Ike: Well, Ike, while I suppose you may already have heard of it through other channels, I am pleased to say that the H. R. 1554 Right-Way in Alaska Land Grants has passed both Houses of Congress and now rests on the President's desk. It will undoubtedly be signed so the, at long last, you will have the road legislation ;you had requested." (Flakne to Taylor, July 21, 1947)¹⁵
- "...my opinion that requirement of Public Law 229 not apply where either a valid settlement or a valid filing leading to a patent has been made prior to the date of the Act on lands open to settlement or to such filing." (J. N. Wasserman, Chief Counsel, BLM, to Chief Counsel, Div. of Terr and Is. Poss. Jan 29, 1947)¹⁵
- "...enclosed...a copy of a letter we have written to Mr. James P. Davis, Director of Division of Territories & Is. Possessions, calling attention to apparent inconsistency between PLO c)L and the act of July 24, 1947....229 was passed at the request of the Department of the Interior in order to simplify the acquisition of rights-of-way through lands upon which entry had been made. It is our contention that this law ~~was~~ intended to avoid the difficulty of determining for each entry or patent the exact location of the road. Public Land Order No. 601, on the other hand, calls for withdrawals, and unless present regulations governing withdrawals can be broadened to permit the passage of a road through land upon which entry has been made without invalidating the entry, the purpose of Public Law 229 is defeated. We will support strongly any action you may take to correct this situation....." (Letter to Puckett, Reg. Adm. BLM ANC, from J. R. Noyes, Commissioner of Roads for Alaska) Dec5. 1949)¹⁵
- Letter to Anderson, A. L. Sec. Alaska Miners' Association, FBX from O.L. Chapman, Undersec. Dept of Inter -- Mov 28, 1949. Anderson had apparently urged postponement of the withdrawal of 601 and modifications to permit mining locations. Notes that should be possible in the field to determine distance of ~~claim~~ from center line; also "since mining claims occupy surface areas, it does not appear that these should be excepted from the effect of the withdrawal." "The Alaska Road Commission is already at work on the matter of survey and preparation of plats showing the location of the highways with respect to the public land surveys, and as the plats are filed, it is proposed to revoke the withdrawal order from time to time as to the lands in the highway surveys."¹⁵
- Early in 1949, a parcel of 1.9485 acres was needed from a ~~man~~ Delaney at Indian Station on the Alaska Railroad, Anchorage Recording Precinat. Turnagia.
- March 1, 1949, Taylor, I. P. Chief Engineer ARC wrote to Niemi in Anc. to "...ascertain if the present owner of the land will give us a right-of-way for nominal costs and, if so, obtain easement on our Form.... If the owner will not grant easement for a nominal consideration, please advise us the amount they demand together with your recommendation."
- March 10 reply Niemi to Taylor. "Mr. Delaney asks \$190.00 for the parcel of land which makes ; it \$100.00 per acre. I discussed land values ~~at~~ in this area with Mr. Lowell Puckett, Regional Administrator, Bureau of Land Mangement, and one of his appraisers....five-acre tracts on the Potter Road have been appraised at \$40,00 to \$50.00 per acre. CAA has paid up to \$280.00per acre for airport right-of-way. The main objection to the price asked...may establish a precedent for unit price. Mr Delaney...not particularly interested in disposing of any ~~part~~ ~~interest~~ of his land. He feels the road will not particularly benefit his plan of maintaining a more or less secluded homesite.... There appears to be no advantage in pressing the matter further from the District Office toward a more favorable price. Perhaps we will not be able to do any better on future negotiations for R/W in the populated areas of our road system, except possibly by doing such work as clearing land to offset any improvements that are lost to an owner through granting easement through his property. Some will readily grant an easement at no cost and others will not feel the same way. It is recommended that the price be accepted."
- March 15, 1949; Taylor to Puckett requestng latter to have someone familiar with land values fin that area express an opinion as to the \$190

Acquisition 8 -- old BPR files.

---March 22, 1949. Puckett to Taylor. "...Without taking into consideration; any benefits which might accrue to the Delaney holdings, which might thus be used to show that he could well afford to donate the land, it is my opinion and that of others in the Bureau that \$100.00 per acre is not inconsistent with prices now being paid for land in the area, and thus may be considered as not an exorbitant charge. This is opinion is given you, however, without an examination of the land having been made by a representative of this bureau, and should be considered as advisory only."²¹

Purchase --- "...necessary to acquire right-of-way over privately-owned land on the Alaska
Delaney Railroad near Indian, Mile Post 88.2 (Turnagin Arm). This land is owned by Mr. Delaney, of Anchorage, who is agreeable to deeding it to the Gov. for Right-of-way purposes. Mr. Delaney prices his land at \$100 per acre and approximately 1.9 acres will be required. We have investigated the price...and find that the price asked by Mr. Delaney is not unreasonable. It appears that, if our pending appropriation is passed with the wording approved by the Budget in which we are authorized to acquire land by purchase, it will only be necessary to complete certain formalities as to title and as to the value of the land. Please therefore advise what procedure the Department requires in determining the value of land where it is not necessary to resort to condemnation proceedings. Will the method we have used in determining the value be sufficient (previously said this method involved price at which land has recently sold in the vicinity, and consultation with BLM), or will it be necessary to have it evaluated by a Board of Appraisers? We would like this information not only for the present case, but for any similar cases in the future." (Taylor to Div. of Terr. and Isl. Poss., April 6, 1949)¹⁵

---April 15, 1949. Moody, R. E., Assistant Chief, Division of Terr. and Isl. Poss. to Taylor. Requests plat showing proposed right-of-way.

---April 18, 1949. Taylor to Niemi. Asks him to obtain from ARR a print of their drawing File No. 2230 which is a plat of the proposed R/W and send to Moody.

---April 22. Niemi to Taylor. sent.

---May 9. Taylor to Division of Terr. Please expedite answer to letter of April 6.

---May 9, 1949. From GHS to Col. Noyes. Memo. "...Heretofore we have secured rights-of-way in favor of the United States but called upon the Territory to pay recording fees. In only one instance in recent years have we had to buy a piece of right of way. Lately we have had so much trouble in getting recording fees paid by the Territory that we concluded we might as well handle the entire transaction ourselves. Even when they agreed to pay the recording fees they delayed payment so long that the Commissioner at Anchorage refused to do any more recording for us until other arrangements were made for payment, stating that they had instructions from the Dept. of Justice to that effect. Our pending appropriation act contains specific language permitting us to buy right of way where necessary. Our letter to the Division is merely requesting instructions as to detail in handling this."

---May 17, 1949. J.T. Flakne, Div. of Terr. to Taylor. Letter of April 6 ~~no receipt~~ no receipt; please airmail copy.²¹

---May 18, Skinner (GH Skinner, Chief Administrative Division, ARC) to Divis. of Terr. sent.

---May 23, 1949 Moody to Taylor. Dept of Justice in Washington D.C. has instructed this office to ask your Agency to obtain complete title evidence. After title abstract obtained and submitted to this office, our title opinion covering the proposed acquisition will be submitted to the Dept. of Justice. In connection suggested that an abstract covering the land described in reference letter and the proposed Warranty Deed be obtained. Policy of Justice that grantor to bear expense of getting title evidence. Therefore it is view of this office that you request Delaney to contact a local abstracting co. in Anc. view to obtaining such title evidence. When obtained submit to this office.

---June 10, 1949. J. P. Davis, Director, Divi. of Terr and Is. Poss. to Taylor
"...no prescribed department procedure for determining the value of land to be acquired. However, the National Park Service has adopted a procedure which has secretarial approval and which the Alaska Road Commission may wish to adopt to its needs. ...calls for an appraisal of the land by a competent and qualified individual

Acquisition 9 -- Old BPR files

. If you have no such person in the employ...perhaps the National Forest Service can make such a person available on a reimbursable basis. If such an arrangement does not appear to be feasible, perhaps a local and disinterested real estate man can be hired to make the appraisal. In any case, the objective is to have available an appraisal which can serve as a basis for determining whether the value set by the prospective seller is a reasonable one, and also justify and support the price paid by the Alaska Road Commission in the event that the General Accounting Office questions the price paid in a post audit of the contract of sale."²¹

---July 15, 1949 from G. H. Skinner to Anchorage office. "Please advise the status of this matter."²¹

---July 27, 1949. Moody to Taylor. "...this office be advised at the earliest practicable date as to what action has been taken in regard to obtaining an abstract covering the land which it is proposed that the Government purchase from Mr. Delaney."²¹

---July 29, 1949. Skinner to Anc. office. No reply yet to letter of July 15. Please let us have your reply.

---~~July~~ August 1, 1949. Niemi to Skinner. Deed must be changed to include Mrs. Delaney as grantor. Mr. Delaney is sick, will revise as soon as able."²¹

---Sept. 9, 1949. E.C. Simmons, District Chief Clerk ARC, Anc. to Mr. JJ Delaney. Under date of Sept 8. U.S. Attorney advised that the Attn Gen's office has directed that complete title evidence be obtained (informal abstract previously sent by Delaney not sufficient). Must be in the form of a formal Abstract of Title, prepared by a bonded abstractor or licensed attorney - preferably the former. ~~It~~ Cannot use the informal statement and thus cannot pass on sufficiency of the deed. Request that you furnish with formal abstract.

Pencil note on bottom of letter "Possibly the abstract will cost him about as much as he got for the property." (JN; "Sorry" ~~is~~ (?))

---Memo to Juneau office from E.C. Simmons, District Chief Clerk, Anc -- Oct. 10 "The information relative to the formal abstract of title was passed on to Mr. Delaney by our letter of Sept. 9,....Last Friday Oct. 7, Mr. Delaney advised by telephone that he had just recently been informed that we required an additional 18 foot strip for the right-of-way. He stated he had just completed arrangements with a local bonded abstractor ~~of~~ to furnish the formal abstract of title for the land included in the previous deed. It was agreed, however, that in view of the additional land required, it would now be better to disregard the previous deed and prepare an entirely new deed covering the entire tract. In other words, one deed instead of two. If two deeds were executed it would require two abstracts of title and two recording fees."²¹

---Oct. 12, 1949 Taylor to J. P. Johnson, General Manager. ARR. Asks if correct will need more r/w.

---Oct. 17, 1949. J.E. Manley, Asst. Gen. Man. ARR to ARC. says Noyes (Commissioner of Roads for Alaska) has advised (verbally) that the width of R/W at this place (mile 88.7 on the ARR.) should be increased to provide a 50' r/w northerly from the center line of highway. Thus need larger parcel from Delaney and also land from John. P. Johnson. Please get. ²¹

---Oct. 17, 1949. Skinner, Chief, Admin. Div. Juneau to Anc. ARC. Sends work of ARR letter of Oct. 17, and directs someone to interview Mr. Johnson and see what kind of agreement ~~he~~ he wants. "If he will not grant us the right-of-way without charge, ascertain what he wants."²¹

---Simmons to Juneau Office, Nov. 9, 1949. Niemi talked with Johnson; latter agreed to give the R/W ~~to~~ "Only proviso Mr. Johnson made was that if abstract of title is required in this case the cost of same will have to be paid by us....contacted him (Delaney) and he advised he had been waiting thinking he would possibly hear further from your office in connection with the land required from him." Suggested he go ahead with title abstract; he readily agreed to do so, also advised that his abstract will cover the land being secured from Johnson

Acquisition 10 -- old BPR files

- Nov. 14, Skinner to Anc. ARC. No deed or abstract needed if Johnson will afford R/W without charge; just easement.
- Dec. 30, Taylor to Anc ARC. Got Johnson's easement; what about Delaney?
- Jan 3, 1950. Simmons to Juneau office. Delaney had been outside and so deed delayed. However he will get right at it.
- Jan. 10, 1950. Simmons to E.J. Cooper, U.S. Attorney, Third Judicial Div. Anc. sending need Delaney deed together with original Abstract of Title. Please advise us of your opinion as to the sufficiency of the attached documents.²¹
- Jan. 13, 1950. Moody (Asst U.S. Attorny, 3rd) to ARC. Deed okay; Abstract of Title does not show that the land has been registered by Mr. Delaney with the Territorial Tax Assessor as required by law. "It is therefore requested that you have Mr. Delaney register the land with the Territorial assessor and pay the penalty now charged against the said land for failure to register in accordance with said law. ... forwarded to this office."²¹
- Jan. 16, 1950. Simmons to Delaney. Sent above letter and request for receipt for tax registration.
- March 21, 1950. Simmons to Jno office. Delaney stopped in at office and ~~stated~~ stated was on his way to deliver the necessary receipts to the District Attorney. Contacted D.A. office and said had received receipts from Delaney; thought all the papers were in order and had been forwarded to the Attorney General's office with the recommendation that they approved. I inquired of Mr. Moody if anything further had been heard of the deed and if he knew what disposition the Att. Gen. office would make of it it. He stated nothing had been heard and that assumed it would be filed in the Attorney General's office. "Unless you have further instructions in the matter we will continue to inquire at the District Attorney's office and get the approved deed returned to us if and when it is returned here."²¹
- Memo to J. I. Noble, Acting Chief, Operations Division, from F. F. Faires, Office Engineer, ARC, Juneau. March 24, 1950. "A review has been made of the correspondence on the above mentioned subject. It appears that this is one of the first cases in which the ARC has sought to obtain a right of way by purchase from the owner. As we are authorized to enter into correspondence with the Attorney General concerning title, a letter describing the land, the proposed warranty deed, and later a plat were sent to the District Attorney at Anchorage requesting advice as to the title. The District Attorney replied that our agency should obtain the title evidence and warranty deed, and submit them directly to him for his opinion. It was suggested that Mr. Delaney bear the expense of searching this title since it is the policy of the Department of Justice that the grantor bear this expense. After some delay due to Mr. Delaney's having been ill, and a change in the acreage involved, the abstract and deed were obtained and forwarded to the District Attorney. However, as the abstract of title did not show that the land had been registered with the Territorial Tax Assessor, it was returned to Mr. Delaney, and he was informed that when he had obtained tax receipts from the Territory, the warranty deed would be forwarded to the Department of Justice and approval recommended as to title. Upon approval, a purchase could be accomplished. The question seems to lie in the last paragraph of Mr. Simmons's ~~last~~ memorandum. As this is one of the first purchases of right of way, he asked that the final disposition of the deed to ground be clarified. No definite procedure seems to have been established on this type of acquisition, and it is recommended that a letter be prepared to the District Attorney at Anchorage requesting that information be obtained from the Department of Justice as to the final disposition of deeds. Perhaps the inclusion of a statement to the effect that payment for this right of way would be deferred pending receipt of said information would be helpful in obtaining it. In View of this letter it would seem that Mr. Simmons should continue the inquiries locally."²¹
- March 27, 1950. Noble to ARC Anc. "It is immediately apparent that a great deal of time is consumed in attempting to get approval from the Attorney General as to the legal sufficiency of deeds, abstracts, and descriptions and as to the reasonableness and justice of the negotiated purchase price.... In any event, it is apparently the intention to give the Commissioner of Roads for Alaska authority to procure

Acquisition 11 -- old BPR files

real estate for rights-of-way. Assuming the extension of delegation from the Secretary, there does not appear to be any further restrictions on the Commissioner in making such purchases. Under the provisions of previous general delegations, the Commissioner is authorized to seek advice of the Attny Gen in such matters, but is not required to do so. Such being the case, it would appear to be much simpler, and certainly much more expeditious, to proceed without reference to the District Attorney or the Attorney General. We now know that the Justice Department procedure insists upon title abstracts as well as warranty deeds and evidence of equitable purchase prices. If we are to proceed independently of the Justice Department, we must still see to it that we have negotiated a reasonable price and obtained good and sufficient documentary evidence of our ownership. It is believed that title abstracts may be difficult, if not impossible, to obtain in many instances, but local inquiry would probably assure us that the title was clear even though recordings and other documentary evidence could not be found. ...further inquiry being made as to our exact state in regard to real estate purchases....every effort should be made to reach a conclusion in the Delaney case by continuing to urge action on the part of the local District Attorney." 21

---~~March 16, 1950~~ April 13, 1950. J. P. Davis, Director, Div. of Terr. and Island Possessions to J. R. Noyes, Commissioner of Roads for Alaska. Sent along letter (below) from Attorney General. "I am informally advised by the Department of Justice that this letter and material should have been sent to the United States District Attorney in Alaska, in the first place, who had apparently submitted the title question to the Dept. of Justice....suggest you refer...to U.S. District Attorney and provide any ~~xxx~~ assistance...." 21

enclosed letter: March 16, 1950. J. H. McGrath, Attorney General to Cahpman, Sec. of Interior. Notes lacks in materials furnished for title approval, including record of taxes and assessments against the land, rights or claims of persons in possession, if any, mechanics' liens, if any, rights of U.S. under deed, registration of land with Territorial Assessor. Bring title check up to date. after this taken care of, plus a couple more items, then will approved title.

---April 17, 1950. To T. W. Taylor, Administrative Officer, Div. of Terr. and Is. from D. H. Miller, Chief, Administrative Division, ARC, June. sent him copy of memo addressed to Anc dist. eng. Notes that Attorney Gen. letter had not been acknowledged. Will keep you informed.

---April 17, Miller to Niemi. Discuss Att. Gen. letter with U.S. Dist. Att. at Anc. and arrange satisfactory handling of the matter. Then advise.

---April 14, 1950. Simmons to Moody. Asking to check with Attn. Gen. office and see about getting title and deed back to ARC.

---May 18, 1950, Noble to Niemi. What is status of Delaney acquisition?

---May 17, 1950. Simmons to JNO hdq. In answer to questions in Attn. Gen.'s letter; Wonders why, if Commissioner of Roads has authority to acquire title, not consider the Warranty Deed and Abstract of Title as sufficient proof of correct title; have him sign a voucher for the amount due and pay him direct. (Deed attached)

---May 29, 1950, Noyes to Division of Terr. and Is, Poss. "As there undoubtedly will be numerous transactions of a similar nature in the future, it seems that the procedure employed in obtaining the ground in this instance is unsatisfactory, both from the standpoint of the correspondence involved, and the time consumed in obtaining final title. An even more serious objection to this procedure is found in the lack of qualified abstractors in the Territory of Alaska. As the Department of Justice procedure requires title abstracts as well as warranty deeds, it is felt that title abstracts may be difficult, if not impossible, to obtain in many instances, but that sufficient documentary evidence such as recordings with the U.S. Commissioners could be obtained to assure a clear title to the land being purchased.

Reference is made to my letter of March 29, 1950 and subsequent wire of May 1, 1950, which requested the issuance of a Secretarial order to me as Commissioner of Roads for Alaska, and to Mr. A. F. Ghiglione, Chief Engineer of the Road Commission, delegating authority for procurement of lands or interests in land for road purposes. Since it appears that some land problems of this character will become even more involved than those encountered in the Delaney purchase, any action that can be taken by your office to expedite the issuance of the Sec. order will be appreciated." 21

Acquisition 12 -- old BPR files

- Nov. 24, 1950, Simmons to Moody. Sending original warranty deed, which had been properly recorded and attached: abstract of title, continuation abstract of title, certificate of inspection and possession, certificate relative taxes and registration of title, certificate relative option. "Please acknowledge receipt of the above and advise if we may now consider the transaction completed. Also advise as to the disposition your office will make of the original deed."21
- April 9, 1951 Letter to Charles Sawyer, Sec. of Commerce from J. Howard McGrath, Attorney General.
-
- Noyes, No date, but probably around May 11 1951. There is enclosed herewith a final opinion of the Department of Justice ...inadvertently addressed to the Secretary of Commerce, approving the warranty deed executed by ...Delaney...on Nov 23 1949."21
-
- July 17, 1950. ARC in FBX to Hedq. ARC. Enclose deed to R/W recently purchased from the Bentley Bros. by the Territory, who, in turn deeded said Right of Way to ARC.
- Nov. 3, 1949. Zimmerman, FBX to Taylor, JNO. re R/W easements for proposed construction on the Steese Highway. "By making an even trade of that portion of old R/W which lies outside the new R/W lines in exchange for new R/W and considering the deduction of the old R/W lying inside the new R/W lines, leaves about 1.6 acres that will actually have to be purchased....Additional costs will be incurred for resetting of fence lines, providing sleeve for water line atand moving of hay shed located left of center line at Sta....These could probably be listed as contract bid items or else accomplished with ARC forces."22
- Nov. 10, 1949. Zimmerman, Acting Chief Eng., FBX to Tapley, Chief, Eng. Div. JNO. Mr. Bentley is of the opinion that his land should bring as much per acre as acreage that has been subdivided and is being sold in lots. This would probably run around \$3500/acre. Mr. Bentley is to quote a price during the first of next week." "...live stock crosses road on an average of four times daily (summer) and it is highly recommended that a cattle pass be constructed. ..." Mr. Bentley agrees, locating given, could use for drainage flow from N side of highway also. "An early reply as to feasibility of a cattle pass would be appreciated because, if constructed, it would be a talking point in our favor for purchase of right of way easement."23
- Nov. 14, 1949, Tapley to ARC FBX. Cattle pass approved as recommended. 22
- Nov. 30. Zimmerman to Tapley. suggest cattle pass be of concrete; or second, creosoted timber. Bentley's busy, but will discuss price some time.
- Dec. 8, 1949. Bentleys (G.H. & H. J.) to Nash, District Eng. ARC, FBX. Want \$1200/acre.
- Dec. 16, 1949. Taylor to Nash. "In order to justify the price determined for the easement it is necessary to have a statement from an unprejudiced appraiser. It is requested that you obtain such a statement from Mr. Fred Wyller of the District Land Office. This statement should be in writing setting forth his views as to the value of the land to be obtained."22
- Dec. 19, 1949. Fred J. Weiller, Manager BLM, FBX to Nash, Superintendent, ARC FBX. acknowledges request for opinion as to land value. "During the past several years we have had to appraise for lease and sale under our small tract regulation considerable acreage in the vicinity of Faribanks. The lands with which we have been concerned are all "unimproved", being covered in varying degrees by brush or timber; our top values have been \$100.00 per acre and prices have ranged from that amount downwards; depending upon road frontage or accessibility to roads. Although this price is considerably lower than that being charged for some local real estate we consider it to be a reasonable and fair price. Lands about which you inquire are improved lands, some of which are fenced, and being used for permanent pastures. Considering \$50.00 per acre to be a fair, high price for clearing land it is my opinion that \$150.00 per acre would be a reasonable value for the lands in question, especially as the remainder of the owner's property would be improved in value by the re-location of the road."22

Acquisition 17 -- Old BPR files

- Dec 23, 1949, Nash to Taylor. Sent Weiler's opinion; also discussed price for which subdivided lots selling; also assessed valuation of the lots. Notes ca \$3800/acre for subdivied land; and suggests that \$233.75 would be a value of improved land that has not been subdivided. To get this used ratio 1.79, derived from average \$625.00/lot selling price; \$350/lot assessed price on these; and \$125./acre for improved land assessment. Thus $1.79 \times \$125. = \$233.50/\text{acre}$.²²
- Dec. 30, 1949. Taylor to Nash. "Mr. Weiler's statement...does not appear to have taken into consideration the possible value of this land if it were converted to building lots. In view of Mr. Weiler's statements, it would be very difficult for us to justify the payment of \$1200 per acre for any part of this land While it is recognized that we should not attempt to influence Mr. Weiler's opinion, nevertheless, it is requested you discuss this with him and also attempt to reopen negotiations with the Bentleys...any...reduction...can be obtained....It was assumed that due to Mr. Weiler's familiarity with the increases in value of the land adjacent to Fairbanks, his appraisal would be more nearly in line with the going prices."²²
- Jan. 4, 1950. Weiler to Nash. "...As I had stated previously, I was under the impression that the lands in question were similar to those which the Bureau of Land Management recently offered....Our examination of your maps shows that the lands you are interested in are much closer to town than I had expected and that they are located in a locality where residential subdivision is now taking place. I believe the lands in question should be appraised on approximately the same basis as those being presently sold by other private parties....It appears then, that the \$1200 per acre price quoted to you would be a very fair valuation for this amount to about \$.025 per square foot. (Notes above that selling from \$.08 to \$.15 per sq. ft) As the remainder of the owner's lands would be increased in value by the relocation and construction of a new road it appears to me that he has set a reasonable and fair price on the land, even though this price is lower than that presently being received for similar lands in the same locality."²²
- *Dec. 30, 1949. Nash to Taylor. After further explanation to Weiler the above estimate was sent. "I do not believe it advisable to reopen negotiations with Bentley's as I am sure it would only cause further delay and effect no reduction in their asking price. In fact, I expected their figure to be more than \$1200.00."²²
- Feb. 10, 1950. Easement signed by Bentleys. "as a part of the good and valuable considerations mentioned above the grantee agrees to move existing fences to the new right-of-way lines, to provide an underpass for livestock and to move existing structures as and if necessary, all in a workmanlike manner and without expense to the Grantors."²²
- April 6, 1950. To Ghiglione, Chief Eng. ARC., Juneau from Interior Equipment Co. Fairbanks. Seems the co. has some heavy equipment (10 tons of it) on the land purchased from Bentley's (rented), and about 100 tons of misc. iron in way of the new road. Nash served notice to get them off. "I then checked with Mr. Harry Bentley, one of the owners of the ground, and he stated it was up to the ARC to move the items in our yard. He said that he had conferred with a man from the ARC and that this person advised that we write you in Juneau as to what should be done about the matter." They can't move the stuff, have heavy financial obligations at the local banks and don't have the nec. equipment. "The local ARC has many pieces of equipment necessary for moving the items and it is located only about 1000 feet from our yard. My estimate to move all these items by the ARC would be no more than \$400.00 in labor, gas, oil and normal wear and tear on their equipment."
- April 13, 1950. Ghiglione to Metcalf (Terr. High. Eng.) suggests transfer Bentley easement to ARC, so they can evict the Interior Equipment Co. stuff. Alternative would be for Territory to do the evicting.

Transfer made to ARC.

Deed and Easement Exhibits:

1.

Acquisition - 14 - old BPR files

- 1. Typed agreement dated July 10, 1935, Palmer, Alaska
 "I, the undersigned (Einer Huseby) do hereby permit without remuneration or obligation, the Alaska Road Commission to construct and maintain a road, _____
 _____." (Land 3 - FAS 570)
- 2. Typed agreement dated Sept. 28, 1933, Homer, Alaska.
 "This certifies that the undersigned agrees to deed to the Territory of Alaska a right of way SIXTY feet wide (60 feet) for a public road from mile five, near the Woodard Homestead, leading to the homestead of Mr. Stanton Shaffer where the location of this road crosses their property...." (513.511) (842)
- 3. Typed Right of Way Deed, dated August 25, 1936, Seldovia Recording District, ~~3rd~~ Fourth Judicial Division.

"That for and in consideration of one dollar in hand paid, the receipt where-of is duly acknowledged, the Grantor does hereby grant, bargain, sell, convey and confirm unto the Grantee, an easement and right-of-way in gross over and across the following described tract, lot piece or parcel of land..." R/W was 60 ft and angled across her homestead. Revertment clause included. (Land 3 - FAP 21) Mrs. E. A. Reber.

- 4. Mimeo. Right-of Way Deed, dated Feb. 8, 1950, Homer.
 Sixty foot right of way. Revertment clause upon abandonment. (Land 3 - FAP 21)
- 5. Letter from Eugene J. Evancoe, Resident Engineer, Kenai, ARC. to Mr. G. C. Lafflee, Kenai, dated July 8, 1952.

"I have tried to talk to you in person, but have had no luck in contacting you. As you know the Road Commission is building more road to extend the present North Kenai Farm Road. Last year a survey was made by our engineer, Mr. L. E. Grammer and we suppose that he got your consent to locate a road across your land. We will be constructing shortly and ask your approval by putting your signature on this letter below agreeing to grant the Road Commission a 100 foot Right of Way.... This road as you know will add considerable value to your land." (Signed by Lafflee on bottom of page.)

Note included from Lafflee. (dated July 10, 1952, apparently returned with the signed "agreement".)

"I received yours letter July - 8th You have my Permit to go through My Ranch with the Road could you send me a Rough Drawing of where road goes through or tell me where I could get a map of it so I would know just wher Road cut through at I would thank you very much if you are able to do this favor."

(Land 3 - FAP 21, 853. Grover Cleveland Lafflee)

"...we still have to go through the District Attorney and the Attorney General's office in making any purchase from our funds.

You may remember when Juneau started the purchase of the Delaney tract at Indian just about eighteen months ago by referring the matter to the U.S. Attorney's office in Anchorage. The matter dragged along until last Monday when the U.S. Attorney's office called me and said they were then ready to turn the check over to the Delaneys....Due to this being the first case of this kind handled within recent years, apparently by the ARC as well as the local U.S. Attorney's office, no one knew the exact procedure that had to be followed....However, it appears that in any event we would be lucky to get one of these purchases completed in less than a year and if there is any other means whereby we can get our needed rights-of-way, we should keep the matter out of the Department of Justice hands. In Bill's (Niemi) memorandum he mentioned the possibility of the Territory making purchases. As we know, this was done in former years and I believe several of our rights-of-way in the Homer area were purchased by the Territory. Apparently purchases with our own funds came about for the same reason that we had to change the method of paying for the recording during the last couple of years when the Territory was flat broke.

Another disadvantage of handling these purchases with our funds and through the Department of Justice is their requirement for an abstract of title in all cases. Out of curiosity, in talking with Himmy Delaney, I asked him what the abstract of title cost him. The amount was a little over \$80.00....Obviously the cost would be well-right prohibitive in some of the outlying places such as Homer, where there is neither a Bonded Abstractor or a licensed attorney." (From E. C. Simmons to Ghiglione, Chief Engineer, December 15, 1950) (511 Withdrawals - Procedure)

Notes on bottom of letter

1. "Metcalf agrees to handle any and all R/W procurement for us, as in the past, with title being given the Territory. Since this is so much more workable I believe we should handle all R/W ~~FFF~~ purchases through him. AFG"
2. "Have always considered purchase by ARC well nigh impossible since we were turned down on our request to be allowed to determine adequacy of title through adequate legal advice without resort to ~~Attorney~~ Attorney General. It was this that led to the memo mentioned in the second paragraph. With the Territory willing to cooperate this is far better than our trying to purchase R/W/ FFF" (Faries)

"...with regard to title to lands purchased for the ARC by the Territory of Alaska out of funds committed in the cooperative agreement between the Territory and ARC. I realize that the cooperative agreement for each year should be as flexible as possible...it may be to our advantage to allow title to remain with the Territory." (Miller, D. H. Chief, Administrative Div. Hdq. to Ghiglione.) *am 1951?*

Acquisition 17

- *In consideration for you granting the easement for right of way as requested, we will provide at government expense a satisfactory approach to your property from the new road to the present cleared area. We will also provide a pipe drain under your approach at a point designated by you. All timber cut from your property will be saved and piled for you off the right of way. Select gravel amounting to ten~~4~~ yards will be deposited near your drive at a point nearest the path to the house for your use. We will also furnish 18 feet of 30" or 26" culvert pipe to rehabilitate the water system. I assure you that when the road is under construction contractors' operations will be carried on so no damage will result to your property. (H. A. Alderton, Dist. Eng. Seward District BPR to R.S. Burchard, May 1, 1953.) (Land 3-FaP 21.
- ↑
-Mr. E.C. Binger, now owner of the property, states that all items have been accomplished by the Government except furnishing the culvert pipe. Please advise the status of this agreement and whether a plat and easement have been prepared to cover the transaction." (M.C. Zimmerman, Dist. Eng. Anc., to C. Wyller, Bureau of Public Roads, Juneau District, August 5, 1957)
- "....No formal right-of-way was ever secured for this road. Our files contain several letters from Mr. Foss and petitions signed by him requesting that the Alaska Road Commission improve a trail on the location of the present road. This correspondence dates to 1917. In 1937, the Alaska Road Commission built a bridge and started maintenance on the road. Formal easements or deeds for rights-of-way were not thought to be necessary in those days so the only right-of-way we have is by virtue of the years of public use. The width of easement established in this manner is commonly accepted to be 66'. We have no record of any survey of this route so cannot give you the exact location in relation to the homestead corners." (in response to a query from a John Spencer of Pedro Bay) (From E. H. Swick, Regional Engineer to John Spencer, Oct. 22, 1957) Land 3
- "...I have been informed that we must have landowners permission to construct any road on their property and they should give the same in writing stating also that at a later date when the formal papers are drawn up they will grant the required 100 foot right of way to the Alaska Road Commission. You may sign this letter if the above is agreeable to you." (E.J. Evancoe, Resident Engineer, ARC, Kenai to Mr. Waldo Coyle, Kenai, June 12, 1952) Land 3. FAS 4841
- "The Alaska Road Commission has never been called upon to pay for easements for roads or highways through properties occupied by entrymen or owned by patent ~~and~~ can be understood in terms of increment value to paralleling or contiguous properties because of their subsequent accessibility to and from adjoining areas. In this particular case, (Indian allottee's heir's demand for money for R/W and removed gravel) you will probably consider the fact that the highway, as presently located through the property of your allottee, has not been the subject of dispute or question since it was constructed in the 1942-43 season."
- earlier in letter "...Commission did not condemn for the particular right-of-way at the time of relocation (of the Richardson) for the reason that it was believed that the new right-of-way was located within Public Domain." (A. F. Ghiglione, Commissioner of Roads for Alaska to Alaska Native Service, Juneau, Sept. 21, 1955) Land 3 FaP 71, ANS
- "....After talking with them (probable heirs) last June, I expect they will demand a cash settlement for the present value of the land." (C.H. Jones, Area Realty Officer, Alaska Native Service, Sept. 30, 1955) (land 3 FAP 71,ANS)
- "Your letter of October 25, 1957, advising that...will accept \$250.00 as payment for two parcels of land to be used for.... The above offer is accepted by this office...." (F.A. Metcalf, Alaska Highway Commissioner, Juneau, to Faulkner, Banfield & Boochever, Oct. 28, 1957) Land 3. FH 2-0, FH 5-0754(9).

— A Mrs B. E. Nachtweih closed off a road used by the ARC to haul gravel from a beach area. Kodiak region

THE RESTRICTING OF THE Alaska Road Commission from obtaining gravel is getting more common. New people acquire land on which gravel pits are located where no reserve have been made. Original owners usually offered no objection to our taking gravel, in fact were glad to see roads being built, but newcomers are not so public spirited, at least some of them are not, and prevent us from going on to their property." (M.C. Edmunds, Supt. ARC Kodiak? to Taylor, April 1947) (Land 2 Nachtweih sic)

"....If it necessary to haul gravel 10 miles because of being shut out of this place the best thing is to haul very little gravel, explaining to any who complain why it is not possible to put on more gravel. Perhaps some local sentiment may help." (Taylor to Edmunds, April 30, 1947) (Land 2. Nachtweih)

"....Since that time....has not been maintained by us for the reason that it has not been open to public travel due to blackades installed by Mrs. Nachtweih." (Niemi, District Eng. Anc to Noble, Acting Chief, Operations Div. Hdq., ARC, June 30, 1950.) (same)

File ended with ARC hot on the trail of some gravel at Ft. Abercrombie. Stopped condemnation proceedings that were working up to re Mrs Nachtweih.

To: E.H. Swick, Regional Engineer, Juneau

From: C. W. Enfield, General Counsel, Washington, D.C. April 1, 1958

Subject: Legal Problems Relating to R/W Acquisition in Alaska

.....

It is considered that, under the authority of the Act of Congress approved July 24, 1947 (61 Stat. 418; 48 USC 321d), all entries made on public lands subsequent to said date and all patents based thereon have been and are subject to a reservation in the United States of any and all R/W, without limitation as to number or widths, for public highways already constructed or to be constructed on said land.

As was stated by the House Committee on Public Lands in Report No. 673, dated June 24, 1947, "The Committee on Public Lands unanimously agreed that passage of this legislation will help to eliminate unnecessary negotiations and litigation in obtaining proper rights-of-way through Alaska." This legislation was introduced at the request of the Department of the Interior as expressed in a letter dated January 13, 1947, to the Speaker of the House, which was set forth and made a part of the Committee Report. The letter states in part, "...However, for the proper location of roads and in the interest of public service, it is necessary in some instances to cross lands to which title has passed from the U.S. These instances are becoming more numerous as the population of the Territory increases and obtaining R/W over such lands, has in a number of cases, presented difficulties requiring court action and the expenditure of Federal funds. The proposed legislation is similar to the provisions of the Act of August 30, 1890 (43 USC 945) which reserves R/W for ditches and canals constructed by the authority of the U.S. west of the 100th meridian. The proposed bill would be applicable to both public domain and acquired lands of the U.S.

The 1890 Act was construed by the Supreme Court of the United States in the case of *Ida vs. U.S.* (263 US 497). The court pointed out that, at the time of enactment of the legislation, the U.S. had no canals or ditches either constructed or in the process of construction, but that investigations were being conducted toward the formulation of plans for reclamation projects. "At an early stage of the investigations, Congress became solicitous lest disposal of lands in that region under the land laws might render it difficult and costly to obtain the necessary R/W for canals and ditches when the work was undertaken. To avoid such embarrassment, Congress at first withdrew great bodies of the lands from disposal under the land laws.... That action proved unsatisfactory and by the Act of August 30, 1890, Congress repealed the withdrawal, restored the lands to disposal under the land laws, and gave direction that in all patents there should be a reservation of R/W...." The court held further that the statutory reservation was known to all and "all entrymen thereafter acted in the light of that knowledge so charged to them. As said by the lower court in *Green v. Willhite* (93 P. 973) the "Congress was taking this precautionary measure for the protection of a right-of-way to the Government in the event it should later adopt a reclamation policy and enter upon such works. It intended thereby to save the Government from the expense of purchasing and condemning right-of-way when the Government became ready to construct any canal or ditch."

...Thus 1947 Act is an inseparable incident and burden of ownership of such land... Bureau not pay for R/W but only for crops etc. Also check and make sure entry is valid, since, if not, entryman's sole rights would be those of removal.

Parties holding patents dated subsequent to July 24, 1947 who made valid homestead entry prior to said date are entitled to "just compensation" for the taking of any of their lands, unless a particular patent includes a general R/W reservation in which event the patentee would be entitled to payment only for crops and improvements.

Parties holding patents dated prior to July 24, 1947, are, of course entitled to just compensation.

If R/W not defined on ground or by plats, then would be that encompassing the roadway itself plus such additional widths as were, at time of establishment, considered to be reasonable necessary for the protection of the roadway. "Generally, it would appear from the facts heretofore submitted that you will be able to support a claim to a 66-foot R/W."

BPR Acquisition of R/W on Forest Highways.

(Excerpts from Letter from C. F. Wyller, District Engineer, Juneau to A.C. Clark Deputy Commissioner, Wash. D.C.)

Territorial cooperation was considerably larger, percentagewise in earlier years than in later years. As Forest Highway authorization increased, Territorial Board of Road Commissioners felt that what Terr. money was available for road construction should be spent in sections of the Terr. which did not benefit from the Forest Highway appropriations.

Cooperation on construction projects just about ceased about 1930, except the Terr. did cooperate later in construction of a few isolated projects in which the Terr. Board was particularly interested. Cooperation in maintenance continued in accordance with the original agreements up to about fiscal 1935. Could find no written cancellation of previous agreements, but know that since that year, no Terr. funds for maintenance.

While cooperation of construction became more infrequent, coop. in maint. ceased, Territorial Hwy. Eng. continued with full coop. in acquiring R/W. Two cooperative agreements dated Aug. 9, 1939 and Aug. 27, 1940, specify Terr. obligation to obtain R/W and pay for it. Both agreements state that BPR will cooperate with actual plats, surveys, etc.

General procedure prior to 1926--was for BPR to do actual survey, prepare plats and easements forms and negotiate with owners for R/W. "In practically all cases R/W could be obtained for a nominal sum, usually \$1.00 and this, together with any recording fees required, was paid personally by the BPR engineer handling the matter. The Territorial Hwy. Eng. office reimbursed the Public Roads employee on a Territorial Voucher. Only if it became impossible to obtain the R/W for a nominal sum did the Terr. Hwy. Eng. enter into personal negotiations with the property owners. This happened, for instance, on Project a-A9, Salmon Creek Bridge, which involved relocation of a section of Glacier Highway. The property owners made an exorbitant demand of \$5000 for the R/W involved and refused to negotiate any further. Mr. Wm. Hesse, at that time Terr. Hwy. Eng., then took over the case and by threatening condemnation, obtained the R/W for \$500."

This general procedure continued with complete agreement and harmony between the Terr. Hwy Eng. and BPR until about 1948, when Mr. Frank Metcalf took over as Terr. Hwy. Eng. Objected to paying for R/W; after being informed of the long standing of the agreement and established procedure, agreed to continue providing R/W. Agreement dated Dec. 2, 1949, was drawn up to this effect and signed by Metcalf for the Board of Territorial Road Commissioners and Mr. H. A. Stoddart for the BPR.

Soon apparent that the special program financed by the special appropriation for Tongass National Forest would involve extensive R/W acquisitions and considerable money. Several agreements on R/W on specific parcels that would probably go into condemnation: (1) May 16, 1950, FS, BPR, TRC; (2) Feb. 1, 1951 for R/W for Project 2-DU, Fc; (3) Sept. 22, 1952 for R/W on Tongass Hwy. In these, FS entered as a third party, agreement being made to handle condemnation suits if necessary; these because BPR did not have rights of condemnation; and Territorial laws of condemnation were inadequate. FS could condemn and had the right of immediate taking of land under authority granted the Sec. of Agriculture. Forest Service later ruled that due to the 1948 transfer of appropriations for Forest Highways to Commerce, SEC. of Ag. no longer had authority to condemn lands for FH purpose.

1953, Territorial legislature passed a modern condemnation law including a law for taking possession by Eminent Domain--then had necessary legal machinery.

Funds used by Territory to pay for R/W were a portion of forest receipts turned back to the Terr. for highway use. For some years, these funds have been held in escrow pending settlement of the Indian Aboriginal Claims. Territorial Att. Gen. ruled that receipts under the Alaska Gas Tax Law could not be used for R/W acquisition. Terr. Hwy. Eng. then pleaded that he did not have funds for use in this purpose.

Changed in 1955, when Territorial Legislature changed Gas Tax Law so that these monies could be used for R/W acquisition as well as other hwy. purposes. Income from Gas Tax to the highway fund now ca \$2,600,000/year. "Incidentally, Mr. Reed, the present Highway Engineer did not push either the condemnation laws or the change in the Gas Tax Law and it was largely through the efforts of the U.S. Forest Service and the BPR that these laws were enacted."

Difficulties are inherent in BPR obtaining R/W; in 1942, obtained some R/W for Project DA-WR3 paid for by access funds.; found then how hard it is in Alaska to obtain a title search and generally conduct R/W acquisition to meet Federal standards. No lawyers would bid on the title search; had to get abstract from U.S. Commissioner. A year after starting, got completed only because owners were very cooperative.

According to W. B. Adams, Chief of Real Estate Branch of ARC, ARC has authority to purchase R/W with Federal funds; that they obtain easements in name of ARC (e.g. Fed. govt.) For this latter reason, Terr. funds not being used....
page missing in letter.....

Less and less cooperation; this tendency to shove more and more onto the Federal Govt. is inconsistent with the statement that the Territory is ready for statehood and is in financial position to operate as a state. Also inconsistent with fact that Territorial funds available for highway now much greater than when they cooperated; more in Forest Highway program. No justification for further exceptions. Do not recommend that R/W be obtained by BPR with FH funds, but that R/W acquisition continue as a Terr. obligation as a matter of cooperation. Do not believe BPR should be involved in the actual acquisition, since "it does actually mean the expenditure of Territorial funds by a government employee not directly responsible to the Territory. However, until the Highway Engineer's office is in a position to handle this work, we would have no objection to doing the negotiating as heretofore on the request of the Territorial Highway Engineer."

-----Policies and Procedures - R/W Acquisition in Alaska since 1920.
Excerpts from Letter from C. F. Wyller, Divisional Engineer, Juneau to W. F. Raugust, R/W Officer, Region 10, Juneau, Alaska August 20, 1958.

1920--funds under BPR made available for Alaska
1921--BPR got representative in the Terr.; first office in Ketchikan
1923 --moved to Juneau, where a subdistrict office under District Office in Portland was set up.
1927--Alaska became a District of its own--Dist. 11; this continued ;until July 1, 1945.
1945--Alaska again a district ; under the Old Division 8 with hdq. in Portland.
1948--September; Division 10 created to handle the large coop. construction program with the former ARC under Dept. of Interior.
1954--Jan. 1, Division 10 abolished; Alaska again a District under Division 8 ; in Portland.
1956--ARC and BPR consolidated and Division 10, now Region 10, was again established

With exception of periods when Division 10 was in existence, only funds available to Alaska through BPR were FH Funds. BPR activities were contained in National Forests (Tongass, Chugach). 1948-54 much work; total cost ca \$35,000,000 done on interior road systems by BPR under coop. agreement with Dept. of Interior.

Acquisition of R/W on forest highways across privately owned land has, all the time, been a Territorial obligation. In early days, this was set out in specific coop. agreements drawn for each project; later years, covered by more general agreements covering all projects. Territorial representatives largely confined to the actual cost of purchasing R/W and other incidental expenses in connection therewith. Surveying, preparing of data, actual negotiations with property owners were done by BPR men. If R/W could be obtained for a nominal sum, paid by Bureau man out of pocket- reimbursed by Territory directly. If larger amount was involved, Terr. Hwy. Eng. took over the case and concluded the negotiations and the final purchase agreement. In early years, it was seldom that R/W could not be obtained for the one dollar--after war, when started considerable reconstruction program, cost of R/W went up considerably and just ;in vicinity of Ketchikan spent over ca 3 years ca \$60,000 of Terr. funds for R/W.

Territorial receipt

"...The Federal Government gives to the Territory 25% of the receipts from timber sales, permits and land use in the Chugach and Tongass National Forests. Of this amount...earmarked for this office to spend on roads...18.75% of the total receipts ~~from~~ received by the Federal Government...However the timber receipts from the Tongass National Forest have been impounded pending the settlement of aboriginal claims....The Forest Fund, prior to this limitation of revenue, was large enough to pay for all right-of-ways (sic) necessary for road construction by the Bureau of Public Roads....Commencing with any new road project the forest funds for right-of-ways will be completely depleted....While the Territory is not required by Federal law to provide right-of-ways for the Bureau of Public Roads, this office has tried in the past to assume this responsibility, partly because the Bureau claims it has not the authorization to purchase right-of-ways, and partly because, until now, the funds were coming from Federal revenue received from the...National forests."

"I would like to point out that until the Twenty-first Legislature passed an act (Chapter 58, SLA, 1953) giving the Territorial Board of Road Commissioners on behalf of the Territory the right to acquire by gift, purchase or condemnation, any property and property rights,...necessary for...public roads...there was no way for the Territory to acquire right-of-ways. It may possibly be that the action of the previous administration in buying these right-of-ways would not be upheld in a court of law...."10

Newspaper clippings

1. collected by "Dutch" Derr; loaned to Pentecost, who loaned them to R/W
2. collected by Pentecost and loaned to R/W.

Acquisition

Anchorage Times - December 11, 1953

Territory might have to buy gold mine to get R/W for highway relocation BPR planning to undertake. 14 claims held by Charles Hubbard, an oldtimer of the Kenai Peninsula, lie right where the Bureau wants to set the piers and abutments for a new Schooner Bend bridge which will straighten out a bad section of the Sterling Highway. Prospector sure his claims "in time-honored tradition" are rich with placer gold. No compromise yet worked out. Territory trying to provide necessary R/W for BPR to use to relocate and improve 14 miles of road and replace this covered bridge.

No designation: in June 1954 probably

Reed settled Sterling Hwy R/W purchase of mining claims owner Charlie Hubbard. The gold bearing claims which have been sporadically worked in the past by Hubbard were purchased by the Territory for \$5,000. Hubbard had asked \$25,000 for the property--about 35 acres. Also announced injunctions was to be applied today against Anc. area owners of outdoor ad. signs placed in violation on R/W.

Anchorage Daily News - August 3, 1955

Plans for construction of the Chester Creek freeway which would eventually knit the Ft. Rich. cut-off with the Knik arm freeway got a major boost when the council moved to pay \$15,000 for the Peterkin subdivision R/W. Land valuation committee, which has been working with the tax assessor had examined the proposed parcel of land which the city expects to acquire for hwy. R/W in the new Peterkin subdivision in Mtn. View.

Anchorage Times - August 4, 1955

City advised to get the rest of the R/W needed for Chester Creek Freeway. Land Valuation committee appraised the Peterkin portion at \$2500 as a fair market value. The R/W of 100 feet in width comprises 3.178 acres at an applied appraised value of \$7,945. Shannon said that the \$15,000 offer was based on the fact

July 1956 - Anchorage Daily Times. Bill signed to authorize payment of 25% of revenues from national forest in Alaska for roads and schools. 10% to go to U for roads and trails in the forest. Indian claims to forest lands etc. safeguarded by the remaining 65%. (Jackson bill). *see Hamilton released*

August 24, 1956 - "DT - If native claims should be found to amount to more than the total left in the fund, the territory would have to pay the difference, up to the amount received.

Fairbanks News Miner - September 18, 1956

The Federal road act divides roads into three classes: urban, primary and secondary. Alaska section of the act (Gov. Heintzleman said) permits BPR to spend primary road funds inside city limits to supplement road funds allocated to Alaska. With the exception of the low standard roads (feeder roads, access roads, stub roads), the governor said, all of the roads now constructed or the proposed roads which will now or later be placed on the Alaska road system can be placed in one class rather than divided between primary and secondary, as is done in the states. This combination, he said, will be called the primary system of Alaska, and funds from both classes of roads can be spent on it. The low standard roads (as above) will be classed as secondary roads and built with secondary funds. "In effect," the governor said, "all the money is available to Alaska in one big pot--we can draw it out for any class of roads where the money is needed."

ENCROACHMENTS

"It is requested that you arrange in the very near future to remove the bars you now have across the road at Willow Creek so as to leave the right of way entirely unobstructed. This road has been much improved at considerable expense and quite a volume of traffic is passing over it. The continued obstruction of the right of way is therefore decidedly undesirable." (Sept. 10, 1924, L. E. Oliver, Engineer Officer, to Bingham)²³

Nov. 14, 1924. Valdez Chamber of Commerce petitioned ARC to have a gate removed from across the right-of-way of the Richardson Highway near the junction of the Chitina Branch road with the main highway at Willow Creek.²³

Nov. 10, 1924. Common Council, Town of Valdez petitioned ARC to get Bingham's gate removed.²³

Nov. 20, 1924. Oliver to Shipp, Frank, Supt., ARC. Chitina. noted letter sent in sept. requesting Frank Shipp to deliver letter to Bingham. Letter from Town clerk indicates gate still up. Please report.²³

~~Nov~~ Dec. 1, 1924. ~~Shipp~~ Shipp to Oliver; Arranged with Bingham in Sept and he promised to remove the gate. No traffic on the road since Sept. 20; don't understand how the town Clerk got the information. Will check.²³

"The road through my property has never been dedicated to the public but if you will fence both sides of the road through my property I will remove all obstructions"
L. J. Bingham to L. E. Oliver, May 6, 1925²³

(Apparently got it.)

---In the matter of the controversy between Frank Bingham and ourselves....At a recent hearing before the U.S. Commissioner at Cordova Mr. Bingham was examined for insanity and adjudged sane. Mr. Bingham still insists that he will fence up the Edgerton Cut-Off next year and objects to any road improvements that involves widening within the boundaries of his homestead. Mr. Bingham, I understand, has a patent to this homestead in which no reservations are made for roads. It appears therefore that our right to a rightofway on the Edgerton Cutoff can be based only on easement acquired by use and occupation. Whether this easement entitles us to the right to widen the road is a matter which may require a court decision to decide....I suggest that we get an opinion from the Attorney General or from Govern. Parks in this matter. to get a temporary injunction at any time that it might be necessary, restraining Bingham from interfering with our road work. Also I would like to get authority from you to start replevin action to recover the 1600 pounds of forage he took from our cache. Personally I believe Mr. Bingham is merely playing a big game of bluff. He got a mile of fence out of us at one time, 1600 pounds of feed at another and now he is trying to start an action to recover damages....I am told that when the Eagle trail was put through in 1900, signs were posted claiming a reserve of one hundred feet on each side. The present highway follows the location of this old trail, across Mr. Bingham's homestead. I believe it would be advisable for us to determine whether such a reserve was actually made and if so whether or not it has been cancelled." (From R. J. Shepard, Supt. Chitina, to Major M. Elliott. Pres. ARC. Sept 22, 1928.)²³

---"...about to institute a suit... against above (Bingham)...seeking to restrain him from interfering with the use of and the work of improvements sought....We are satisfied that the right of way to the Richardson Highway, as the same passes through his homestead, is established by the general grant (2477)...together with the prescriptive right...as such highway for more than 25 years....believe that right of way for the Chitina road...by prescriptive right, or user as such highway for some 17 years. ...Mr. Bingham, as it appears, bases his claims of ownership of these rights of way on his patent, issued to him some three years ago, which is said not to exclude these roads, or the rights of way for the same. If so...seek to have this patent corrected or annuled....and ..new patent issued....Bingham...now pacified by an agreement made with Mr. Shepard not to continue the proposed grading and widening of the highway through his premises until this matter be settled...." questions on dates of the roads, requests a request for suit, etc. (W. H. Hodge, Asst U.S. Attorney, Land Division, Valdez, to Elliott, Sept. 24, 1928.)²³

Encroachments 3

Directors of the Bureau....This, I believe, indicates that there are to be no special use permits issued within any highway rights-of-way withdrawals in Alaska except with the right-of-way of the Alaska Highway." (Puckett to Ghiglione, Feb. 20, 1952). Pencil note on bottom: "Mr. G. says we will continue to issue permits when we consider adviseable. BBS";6

---"...have received instructions to advise trespassers within the 600 foot right-of-way along the Alaska and Slana-Tok Highways to move, and to make collection for their past occupancy....A regulation is in effect which permits the Secretary of the Interior to grant special use permits within areas withdrawn and retained under the jurisdiction of the Secretary. I have received communications which indicate that on very special occasions the granting of special use permits within the above mentioned rights-of-way will be seriously considered. It is to be the position of our office that we will not encourage the filing of applications for such permits. ...regulation of signboards along the Alaska and Slana-Tok....It is required that permits be secured for the building of signs along roads on the public domain....have written Washington asking if we are to assume that we have any authority in connection with the erection of signboards on the rights-of-way." (Puckett to Taylor, Chief Eng. ARC, Dec 26, 1947)17

---Taylor thanked him and concurred; noting should consult district superintendent of ARC to see if any postulated permits would conflict with ARC plans. -- Dec. 29

---"....1. All road rights of way in Alaska of 300 feet or less in width should be administered by the Alaska Road Commission and no special permits should be granted on these rights of way. 2. On road width rights of way in excess of 300 feet wide, the area beyond 150 feet from each side of the center line should be administered by the Bureau of Land Management and special use permits should be issued for this portion of the rights of way. The center 300 feet of such roads should be administered by the Alaska Road Commission as set forth in paragraph above." From Kadowak, Director of Alaska Field Staff, Juneau to Asst Sec. of Interior, Oct 24, 1950. (Niemi, Chief, Operations Div., ARC, to W.B. Adams, Head of Real Estate, May 14, 1951)17

---"1. The Alaska Road Commission will be responsible for the administration and care of all roads up to 150-feet from center line. 2. Road right-of-ways (sic) in excess of 150-feet from the center line will be administered by the Bureau of Land Management on the basis of special use permits. 3. There are to be no special use permits granted on any highway that does not have a right-of-way in excess of 300-feet. ..." (W. E. Warne, Office of Sec. of Interior to BLM, NPS, Terr and Isl. Possb., BIA, Alaska Field Staff, 1949, March 14)15

Rental of ARC Equipment *is use for private individuals*

---In early 1952, Mr. Bunk Dykes of Glenallen attempted to get some gravel hauled and to use some ARC equipment (for reimbursement) to bury his gas pumps. Cameron and Stewart, Asst. Engr., at Glenallen, and Engineer, Valdez, refused. Dykes then wrote to Ghiglione and to Senator E. W. McFarland, to the latter enclosing a suggested Executive Order he thought was needed.

~~*From the memo to the Commissioner of the Road Commission dated July 19, 1950, with the memo to~~

In letter to McFarland, Feb. 19, 1952. "July 1, 1950, I obtained two business sites near junction of the Richardson and Glenn Highways, Glenallen Alaska, with the aforeknowledge that the ARC had an order on the rental of equipment...."

Did get some gravel hauled.

On June 1951, Stewart wired Juneau to see if could do work for Dykes.

---"Your message yard work for roadhouse not authorized as previously instructed road work only maybe undertaken on a reimbursable basis where no privately owned equipment available present contractors in area now obviously prohibit use government equipment for such work " (Ghiglione to Stewart, June 1, 1951).

McFarland then sent Dykes letter to Davis, Director, Terr. and Island Poss. Davis wrote to McFarland March 20, 1952.

"..specific statutory authority of the Alaska Road Commission is contained in paragraphs 321 to 327, Title 48, United States Code....In addition to its Congressional appropriation, the Road Commission is authorized to accept such funds as may be contributed, from any source, for expenditure in accordance with the purpose for which contributed, so long as such funds are to be expended on authorized work. This permissive section (327) has been construed to authorize routine acceptance of contributions from the Territory of Alaska for extending construction and maintenance activities, and for acceptance of contributions from individuals and organizations covering costs of special winter maintenance (snow removal) on roads formerly allowed to close during the winter months. It has also been the authority for acceptance of contributions to cover assistance to homesteaders, settlers, or commercial operations when a clear showing of emergency conditions is made and when no conflict with established private enterprise in the area results....Many requests for assistance were answered negatively (after 1949) on the basis that the interests of the Federal road program must be first in priority. Every request which was granted was on a 'when available' basis."

---The guy just doesn't quit!

---"I am in immediate need of some gravel before I can proceed with the development of my place of business at the above location. As I notice the Road Commission is hauling gravel past my place now, I would like to make formal application for the use of equipment for the delivery of gravel to my place at your earliest convenience as permitted under legislative authority contained in Title 48, U.S. Code, section 327. If necessary, I shall be glad to put up a deposit to cover payment of same." (Dykes to Cameron, Asst. Eng. ARC, Glenallen) May 5, 1952)¹⁶

---"...Mr. Ghiglione, I must--have some gravel before I can proceed with the development of my place of business and there is no way to get it except from the Road Commission...." (May 26, 1952, Dykes to Ghiglione)¹⁶

---"....I appreciate you need for assistance in such an isolated area as Glennallen. However, it is not possible for the Road Commission to undertake any work that is not directly connected with road construction. Any work done by the Alaska Road Commission on a reimburseable or contributory basis is only done when men and equipment are not needed for active construction work in the area. Such, of course, is very seldom the case during the summer construction program....Road Commission...hauling gravel past your place...determined that...gravel...is being hauled by the contractor....suggest that you contact contractor...." (Ghiglione to Dykes, June 3, 1952)¹⁶

---"...Now, we do this throughout Alaska; remove snow from roads on a set charge of \$20.00 an hour. For \$20.00 an hour we will swing our equipment into a private road to clear out the snow; that is; ~~the~~ when there is no commercial equipment available

Rental 2

in the near vicinity. When it is near a town, near private equipment, obviously we will not compete with private industry, but many roads 15 or 20 or farther miles from sources of equipment certainly need help and we do have the authority to move in, as I say, at a set rate of \$20.00 per hour which is much less than it actually costs us. So we do have that to offer if we finally have to drop a road and an individual is left stranded." (Chiglione at hearings on proposed abandonment of 15 roads in Mantanuska Valley, Palmer, Nov. 30, 1955)²⁴

---"5. Funds received as contributions from individuals, companies, and groups for various services which were performed by the Alaska Road Commission."²⁸

Mining Cos. and the ARR

- "I WOULD Like to point out some differences between the Articles of the Agreement (between ARR and ARC) and past practices. Under Article 2,...the Agreement state, "The Commission shall at its own expense, construct the road grade and furnish and install the necessary planking for the road crossings to the satisfaction of the Railroad". The practice in this District has been for the Railroad to furnish and install the necessary planking in order that it be constructed according to the requirements of the Railroad. The cost of labor and material has been paid by the Alaska Road Commission. Under Article 3, Protective Signs, the Agreement states (Commission install and maintain). In a recent agreement between the Railroad and the Road Commission the Railroad agreed to bear 10% of the installation cost and to bear all of the maintenance costs for three automatic flashing light devices installed in the immediate Fairbanks area." (H. W. Johansen, District Engineer, ARC, FBX to Chief Engineer, ARC, Feb. 23, 1956.) (552.130 Alaska RR, Contract No. 1039).
- "Please return, unsigned, the eight copies of proposed contract No.... From the contents of his letter, it is evident that Mr. Delaney (Real Estate & Contract Agent, ARR) intends to make the provisions of the contract conform more closely to current practice regarding the construction of railroad crossings in this area." (Johansen to Chief Engineer, March 12, 1956). same
- *Returning the unsigned copies; "...understand you will change to provide for the installation of the crossing planking by the Alaska Railroad at Alaska Road Commission expense and, also, that the Alaska Road Commission pay only 90 percent of the crossing protection of the automatic flashing light of gate type, if required. In accordance with previous discussions, the Alaska Railroad will maintain the automatic signals at their expense." (Niemi, Chief Engineer, ARC to Delaney, March 16, 1956) same.
- Changed and signed.
- Agreement between the Lost Chicken Mining Co. and the Alaska Road Commission
September 10, 1949.
- "The Lost Chicken Mining Co. hereby grants right of way for the highway construction by the Alaska Road Commission with the following conditions:
1. That the Lost Chicken Mining Co. may at any time destroy the road as required for their mining operations with no responsibility for its replacement. They will, however, give ample advance notice before cutting into the road in order that the Alaska Road Commission may provide adequate detours.
 2. That any ditches required by the Lost Chicken Mining Co. may be dug through the road and bridges or culverts in the road will be the responsibility of the Alaska Road Commission."
- Road Right-of-Way Deed, between Lost Chicken Mining Co. and the U.S. of A., dated Jan 23, 1950. Attached to the Deed as part of it "In consideration of the granting of this right of way to the United States of America, The Alaska Road Commission agrees to rebuild any road (crossing mining claims held in good standing before the location survey) destroyed by mining operations or to detour around the mining operations, whichever will expedite matters to the greatest advantage, at no cost to the Claim holders. The claim holders agree to give sufficient notice to the Alaska Road Commission so as not to interrupt the flow of traffic. The Alaska Road Commission further acknowledges the right of Grantor to construct, maintain and use across this right of way such pipelines, power lines, ditches and drains as Grantor may consider necessary in connection with Grantor's mining operations on Chicken Creek and Lost Chicken Creek and agrees to construct and maintain at its own expense or pay for any approaches which may be necessary at the point where said pipelines, ditches or drains cross the road." (Land 3 - FAS 785, Lost Chicken)
- "The Yukon Placer, Inc., a mining company...plans to mine Livengood Creek during the ensuing year. The area to be mined extends through the existing Elliott Highway. You are requested to give us an opinion on the following question: "Is the

Mining and ARR 2

Road Commission required to move the road to allow mining to proceed or must this be done by the mining company?" The mining company is not unwilling to undertake the road moving but would like to know what is required.

Filing on the mining claims (about 1902) preceded the building of the road (about 1936). The answer to the above question should ~~be~~ determine our conduct in future situations of this kind." (Johnsen to Chief, Real Estate Div., ARC, May 8, 1956) (Land 3 FAS 680)

---Ghiglione wrote letter asking above question of E.H. Lew Field Solicitor, ARC.

received reply below

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : A. F. Ghiglione, Director
Alaska Road Commission

FROM : Charles L. Madison,
Attorney-Advisor

SUBJECT: Livengood Road, Mining Status

DATE: May 20, 1956

Your memorandum of May 10, 1956, asks whether or not the Commission is obligated to relocate the Livengood Road to permit mining operations by Yukon Placers, Inc.

It is the opinion of this office that the Commission is not legally obligated to relocate the road.

The issue here is whether or not the Commission has an easement over the property in question. It is our opinion that the Commission has a right of way or easement by prescription established by adverse possession and the continued, exclusive, uninterrupted use of the road over a period of 20 years by the public with knowledge and acquiescence of the owners of the mining claims. It was held by the District Court of Alaska in 1936, Clark v Taylor, 9A 298, that such conditions as above noted establish a prescriptive right to an easement by adverse possession. Section 55-2-2, A.C.L.A., 1949, prescribes 10 years as the limitation on actions to recover real property.

Thus, the Commission, although not having the right to establish a road over the mining claims in the original instance, has established its easement over the property by adverse possession.

There is nothing in the law requiring the Commission to relocate roads. If the Commission had not established its right of way in this instance it would be obligated as a practical matter to either relocate the road or get off the property entirely.

Charles L. Madison

Charles L. Madison
Attorney-Advisor

~~Acquisition 10~~

Chief, Operations Division, ARC, July 25, 1955) Land 3. Nome Locals.

---Instrument titled "An Agreement", dated September 2, 1949, at Jack Wade, Alaska

"...is presently working and will continue to work the property as a mining operation. Where and when these operations should require the Wade Creek Dredging Co. to destroy the proposed highway in places the Alaska Road Commission agrees to replace the highway at no expense to the Wade Creek....By agreement the Wade Creek...will give advance notices of operations liable to interrupt ~~the~~ traffic....Company recognizes the importance of maintaining traffic at all times...operations will be so conducted to allow the maintenance of constant traffic over the proposed highway...the right of way shall be of sufficient width to maintain a finished road bed of twenty four (24) feet." Land 3 FAS 785.

---Instrument dated October 30, 1912 between Alaska Juneau Gold Mining Co., and the Alaska Road Commission.

"...for an in consideration of the benefits it will receive from the construction by the(ARC)...of that certain wagon road along the northerly side of Gastineau Channel between Juneau, Alaska, and Sheep Creek, Alaska, does hereby grant unto ... (ARC)...a right-of-way over and upon all of its land and premises lying and being on and along the...side of said Gastineau Channel...along the line now brushed and laid out by...(ARC), for the construction and maintenance of a wagon road between the....; right-of-way to be sixty feet in width or so much thereof as may be necessary, for the construction and maintenance of said wagon road....Provided, however, that...(AJ) reserves unto itself the right to pass under or over, as its necessity demands, the said wagon road with its pipe-lines, flumes, tramways, and other structures, and said party of the first part hereby agrees to so construct and maintain said pipe-lines, flumes,...as not to obstruct, injure or interfere with said wagon road or endanger the safety of the public using the same....(AJ) reserves unto itself the right to change or alter the course of said wagon road along said right of way, if it becomes necessary so to do, but such change or alteration is not to be made without notice to and approval of the...(ARC)...(AJ) shall at its own cost and expense construct the new portion of ~~the~~ said wagon road in a manner to meet with the approval of...(ARC), and during the construction thereof the old portion of the said wagon road shall remain free, unobstructed and safe to the public". Land 3 - FAS 975.

---Instrument "Agreement for Road Crossing" between ARC and ARR, dated July 1, 1949. Contract No. 1-3arr=8416.

"3. PROTECTIVE SIGNS. The Commission shall provide and maintain such protection by signs or otherwise as the Railroad may consider necessary." (552.410.15 Road Crossing)

---"...our thinking is that the easement should be so worded as to provide for G.V.E.A. (Golden Valley Electric Assoc.) moving their utility line should the installation conflict with our future planning for construction in the Birch Lake camp area." (Raugust, Realty Officer, BPR, Jno, to H. W. Johansen, Div. Eng., FB, Alaska)* (Land 3, FAP 62.) sent to state Dec. 16, 1959.
*Dec. 3, 1959.

--- Utility Permit, to Chugach Electric Assoc. from ARC. "In the event that any relocation of said electric transmission lines is necessitated by a subsequent highway realignment, or construction within the Commission's right-of-way, said relocation will be done at the expense of the Permittee and at no cost to the Commission." (Jan. 26, 1954.) (Land 3-5 Chugach Elec. Assn. Lake Otis Rd.

---"...Work remaining....The U.S.S.R.&M. has cut this road with their dredging operations, precedent requires that we make repairs. Our rights in this matter are limited and might not hold if the issue is forced as the district records show no formal right-of-way easements. It is understood that right-of-way easements across mining ground in this vicinity was acquired by gentlemen's agreement which is good only as long as the local official or policy is not changed." (Frank Morris, District Engineer, ~~Nome~~ Nome to B. D. Steward,

Records (?)

"...it will be necessary that the Commissioner of the General Land Office be furnished by your department with appropriate maps and field notes of all such constructed roads, trails, etc., as well as those hereafter completed, so ~~xxx~~ prepared as to enable him definitely to locate them and note the same upon the tract books of the General Land Office. To this end it is respectfully requested that you have such data furnished the General Land Office, at the earliest practical date." (J. H. Edwards, Acting Secretary, Dept. of Int., to Secretary of War, Sept. 3, 1930)¹⁴

---Request from V. L. Peterson, Major, Corps of Engineers to President, ARC, Sept 11, 1930, as to practicability of furnishing data and maps requested.

--"1. The Board of Road Commissioners for Alaska has not prepared data and maps of sufficient accuracy to enable the General Land Office to ~~xxx~~ chart Alaskan roads in the tract books of their office. 2. ...expense not justified" (to prepare maps with sufficient precision.) (Atkins, L. E., Major, Corps of Engineers, Engineer/ Officer; letter from ARC to Chief of Engineers, U.S. Army, Wash., Oct. 11, 1930)¹⁴

---"....reconnaissances and surveys upon which road construction in Alaska has been laid out have been made only with a view to furnishing the engineering data and are not sufficiently comprehensive or accurate to serve as a basis for land records as kept by the General Land Office. Original road locations have been departed from where minor relocations were laid out on the ground without prior or subsequent surveys. It would be impracticable, therefore, to furnish the information desired by the GLO without the very large expense of making a new and very accurate survey of the entire road system consisting of 11,000 miles of roads and trails. A very large ~~proportion~~ proportion of the lands through which these roads and trails pass will probably not be located on or patented for many years...." (F. H. Payne, Acting Sec. of War to Sec. of the Interior, Nov. 6, 1930)¹⁴

---"Having reference to my letter of September 3, 1930, requesting that the General Land Office be furnished with maps and field notes of roads and trails in Alaska constructed, or to be constructed by the Alaska Road Commission, and your reply thereto of November 6, 1930, I have to advise you that departmental instructions of July 8, 1930, which required such information, have been revoked, as such procedure has not been found practicable or necessary, and no further requests for such information will be made of the Alaska Road Commission by the Commissioner of the General Land Office." (J. H. Edmunds, Asst Sec. of Interior to the Sec. of War., Nov 24, 1931)¹⁴

Essentially the same from Comm^{issioner} of Land office to ARC.

---"...it appears to me that the purpose of the proposed withdrawal may well be accomplished by filing of maps showing the location of the roads and width of the rights-of-way therefor, for notation on the land office records in accordance with ...instructions of January 13, 1916....This would do away with the necessity for the survey of the right-of-way strip, in the event the public land surveys are extended over the areas crossed by the roads or highways....The filing of maps ...would ~~definitely~~ definitely place on record the width of the right-of-way shown thereon, which, it is believed, would also be protected by R. S. 2477...in the event of the subsequent disposal of the land....call attention to the act of June 30, 1932...which is administered by the Alaska Road Commission, and which contemplates that maps and plans shall be made showing the location of roads constructed or to be...." (Puckett to Director, BLM, April 11, 1949)¹⁵

---"Your memorandum of July 25 addressed to the Managers of the District Land Offices has been noted. One print each of the plans of all the new roads we have located in the past few years have been forwarded to you Office. Please advise if it is now necessary for the Alaska Road Commission to submit three additional prints of these maps to the District Land Offices concerned with the written application as outlined in your memorandum. For your information, the plan maps of our road locations are on a scale of 400 feet to the inch and one print to cover a road location such as that for instance from the Forest Boundary to Homer on the Kenai Peninsula, 129 miles, would require approximately 320 square feet of blueprinting. The three sets required in your memorandum would total a approximately 1000 square feet." (Taylor to Puckett, July 28, 1949)¹⁵

Records (?) 2

---suggested at a conference that BLM accept the maps of 400 ft to the inch, since ARC did not have staff or money to reduce them; ; will use 1000 ft to inch from now on. (Taylor to Puckett, Dec 5, 1949)¹⁴

---"We do not have easements or right-of-way on any of these roads in question and admittedly we don't have right-of-ways on some of our main highways; they have never been dedicated to us"(page 33)*

"...we actually do not have easements on a good many of our feeder roads. They were roads built in the early days when nobody questioned it, they were so happy to get a road, we just built across property so we have actually no more title to the land than the disturbed area. We can hold on to that by public use right to our ditch line, or to the outer edge of the ditch..." (page 40)*

*statements by Ghiglione - Mantauaska road abandonment hearings.²⁴

SUPERIOR FIGURE CITATIONS, REFERENCE SOURCES, FILE LOCATIONS

1. Verbal communication: Kaye Freeman.
2. Verbal communication: M. Pentecost.
3. Alaska Highway Division -- October 1957. paper prepared by Pentecost; Alaska Department of Highways and Public Works. (loaned by Pentecost).
4. Letter from Wyller, C. F., District Engineer, Juneau to Clark, A. C., Deputy Commissioner, Washington, D. C.) February 29, 1956. (loaned by K. Freeman)
5. Letter from Wyller, C. F., Divisional Engineer, Juneau to Raugust, R. F. R/W Officer, Region 10, Juneau, Titled "Policies and Procedures -- R/W Acquisition in Alaska since 1920." Dated August 20, 1958. (loaned by K. Freeman).
6. Niemi, W. Talk to be presented to the road conference of the All Alaska Chamber of Commerce, July 27 & 28 at Juneau. Undated, probably late 1959. (material loaned by Pentecost.)
7. Scrapbook of newspaper clippings related to highways; collected by R. A. "Dutch" Derr; (loaned by Pentecost).
8. Newspaper clippings collected and loaned by Pentecost.
9. Annual Reports. Alaska Road Commission. (loaned by Pentecost).
 - a. 1936
 - b. 1944
 - c. 1953
 - d. 1954
 - e. 1955
 - f. 1956
10. Biennial Report. Alaska Territorial Highway Engineer and Superintendent of Public Works. 1953-54. (loaned by Pentecost).
11. Biennial Report. Alaska Territorial Highway Engineer and Superintendent of Public Works. 1955-56. (loaned by Pentecost).
12. Alaska Omnibus Act. House Bill Committee Report No. 369.
13. Alaska Road Commission Engineering Manual #14. U.S. Dept of Interior, Office of Territories. Issued June 1956. (loaned by K. Freeman)
14. BPR file Land 3. FAP 42. Glenn Highway General, 1929-43. (in State R/W files).
15. BPR file: Land 3-8. R/W. 1944-49. (in State R/W files).
16. BPR file: 510.120. R/W. Richardson Highway. (in State R/W files).
17. BPR file: Land 3. Alaska Highway. (in State R/W files).
18. BPR file: 510.630. Bentley R/W. (in State R/W files).
19. State R/W file: B-Commerce (BPR) 1960.
20. State R/W file: B-Interior 1960.
21. BPR file: 510.410. Turnagin Arm Road Project. (in State R/W files)
22. BPR file: 510.630. Bentley R/W (repeat) (in State R/W files).

23. BPR file: Land 3-6. FAP 71. Bingham. (in State R/W files).
24. Record of Public Hearing, in the matter of: The Alaska Road Commission's Announced Intention to Discontinue Maintenance on 13 Farm Roads in the Mantanuska Valley. Palmer, Alaska. Nov. 30, 1955. (in R.W files).
25. Paper compiled from old ARC and Territorial Highway Engineer records, by S. Johnson, District Engineer. Nome.