...tion Site Withdrawal No. 179, is hereby revoked in its entirety. The lands are described as follows:

TRACT 1

...beginning at Corner No. 15 of U.S. Survey No. 626 on Woody Island in the Kodiak Group, located in approximate latitude 57°46'30" N., longitude 152°20'30" W., thence by metes and bounds, N. 48°45' E., ...feet; N. 43°15'E., 822.0 feet; N. 28°00' ...800.0 feet; east 860.0 feet, to a point on the shoreline on the east side of Woody Island:

...Southerly 13,200.0 feet, along shore of Chiniak Bay at mean high tide to Corner No. 4 of U.S. Survey No. 1674; north 1,585.32 feet along east boundary of U.S. Survey No. 1674 to Corner No. 5 thereof; west 242.22 feet, along north boundary of U.S. Survey No. 1674 to Corner No. 6 thereof; N. 37°45' E., 1,267.0 feet, along southeast boundary of U.S. Survey No. 626; N. 52°15' W., 3,007.6 feet; N. 37°45' E., 3,285.0 feet to point of beginning, containing 728 acres.

TRACT 2

A right-of-way 100 feet wide for an access roadway the centerline of which is described as follows:

Beginning at a point on the west boundary of the tract above described, from which Corner No. 15 of U.S. Survey No. 626 bears N. 37°45' E., 3,085.0 feet, thence by metes and bounds: N. 47°52' W., 285.0 feet; S. 60°15' W., 213.8 feet; S. 89°59' W., 158.8 feet; S. 89°25' W., 201.8 feet; S. 76°13' W., 459.8 feet; S. 74°33' W., 493.8 feet; N. 48°47' W., 144.8 feet; N. 31°09' W., 166.8 feet; N. 66°14' W., 84.8 feet; N. 10°12' E., 201.8 feet; N. 01°30' E., 368.8 feet; N. 66°59' W., 663.8 feet; N. 35°07' W., 214.8 feet; N. 27°33' E., 275.0 feet; to a point near the east end of the board walk to the dock on the shore of St. Paul Harbor, containing 9 acres.

2. By virtue of the authority vested in the Secretary of the Interior by section 22(h)(4) of the Act, the Secretary has determined that none of the lands described in paragraph 1 which are within 2 miles of the city of Kodiak are subject to selection by any Native village or regional corporation under any provisions of said Act because of their location within 2 miles of the boundary of the city limits of Kodiak, as set forth in section 22(1) of the Act, and any withdrawals of the lands for such selection are hereby terminated.

3. Public Land Order No. 5353 of July 17, 1973, which withdrew lands pending determination of the eligibility of the village of Woody Island, is hereby revoked as to the lands described in paragraph 1 of this order, which are within 2 miles of the city of Kodiak.

4. All of the lands described in paragraph 1 which are within 2 miles of the city of Kodiak are hereby made available for withdrawal by the Secretary for possible selection by the Natives of Kodiak in accordance with section 14(h) of the Act and regulations 43 CFR 2650.6 and 2653.7.

5. The lands described in paragraph 1 which are within 2 miles of the city of Kodiak are withdrawn by Public Land Order No. 5180, as amended, for classification and protection of the public interest. All of the lands described in paragraph 1 which are outside of a line 2 miles from the boundary of the city of Kodiak are within the section 11(a) withdrawal for the village of Woody Island.

6. Prior to any conveyance of the lands described in paragraph 1, the lands shall be subject to administration by the Secretary of the Interior under the applicable laws and regulations, and his authority to make contracts and to grant leases, permits, rights-of-way or easements shall not be impaired by this order. Applications for leases under the Mineral Leasing Act, as amended, 30 U.S.C. 181–287 (1970) will be rejected until this order is modified or the lands are appropriately classified to permit mineral leasing.

JACK O. HORTON,
Assistant Secretary of the Interior.

DECEMBER 10, 1975.

[FR Doc.75-33719 Filed 12-12-75;8:45 am]

[Public Land Order 5554; AA-9108]

ALASKA

Withdrawal of Lands for Selection by the Natives of Kodiak, Inc.

By virtue of the authority vested in the Secretary of the Interior by section 14(h) of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688, 704 (hereinafter referred to as the Act), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws (30 U.S.C. Ch. 2), and from mineral leasing under the Mineral Leasing Act of February 25, 1920, as amended, 30 U.S.C. 181–287 (1970), and are hereby reserved so that the Natives of Kodiak, Inc., may select from these lands under section 14(h)(3) of the Act:

SEWARD MERIDIAN

T. 22 S., R. 18 W. (fractional),
Secs. 2 thru 11, 13 thru 36.
T. 22 S., R. 19 W. (fractional).
T. 23 S., R. 18 W. (fractional).
T. 27 S., R. 19 W.,

KODIAK ISLAND

MILLER POINT, SPRUCE CAPE AREA

(Former Coast Guard Loran Station)

Beginning at Corner No. 5, U.S. Survey 3101, on line 1–5 U.S. Survey 1682, thence north a distance of 2,477.42 ft., approximately along the existing fence line, to Corner No. 1, M.C. of U.S. Survey 1682, thence south 46°47'00" E., approximate distance 2,072 ft. to the mean high tide line, thence meandering southwesterly along the mean high tide line to a point which is also Corner No. 6 M.C. of U.S. Survey 3101, thence north 89°49' W., approximate distance 863.28 ft. to Corner No. 5, U.S. Survey No. 3101 along the existing fence line to the point of beginning.
T. 27 and 28 S., R. 19 W. (fractional),

Those parts of the following described lands lying within two miles of the boundary of the city limits of Kodiak:

TRACT 1

Beginning at Corner No. 15 of U.S. Survey No. 626 on Woody Island in the Kodiak Group, thence N. 48°45' E., 723.0 ft.; N. 43°15' E., 822.0 feet; N. 28°00' E., 800.0 feet; east 860.0 feet, to a point on the shoreline on the east side of Woody Island; southerly 13,200.0 feet along shore of Chiniak Bay at mean high tide to Corner No. 4 of U.S. Survey No. 1674; North 1,585.32 feet along east boundary of U.S. Survey No. 1674 to Corner No. 5 thereof; west 242.22 feet, along north boundary of U.S. Survey No. 1674 to Corner No. 6 thereof; N. 37°45' E., 1,267.0 feet, along southeast boundary of U.S. Survey No. 626; N. 52°15' W., 3,007.6 feet; N. 37°45' E., 3,285.0 feet to point of beginning.

TRACT 2

A right-of-way 100 feet wide for an access roadway the centerline of which is described as follows:

Beginning at a point on the west boundary of the tract above described, from which Corner No. 15 of U.S. Survey No. 626 bears N. 37°45' E., 3,085.0 feet, thence N. 47°52' W., 285.0 feet; S. 60°15' W., 213.8 feet; S. 89°59' W., 158.8 feet; S. 89°25' W., 201.8 feet; S. 76°13' W., 459.8 feet; S. 74°33' W., 493.8 feet; N. 48°47' W., 144.8 feet; N. 31°09' W., 166.8 feet; N. 66°14' W., 84.8 feet; N. 10°12' E., 201.8 feet; N. 01°30' E., 368.8 feet; N. 66°59' W., 663.8 feet; N. 35°07' W., 215.8 feet; N. 27°33' E., 275.0 feet; to a point near the east end of the board walk to the dock on the shore of St. Paul Harbor.
T. 28 S., R. 19 W. (fractional),
Beginning at a point where line 1–2 of U.S. Survey 484 intersects mean high tide of St. Paul Harbor, thence, S. 34°57' E., 2.50 chains to Corner No. 2, U.S. Survey 484; S. 54°54' W., 2.17 chains to Corner No. 3, U.S. Survey 484; S. 41°41' E., 5.24 chains to Corner No. 4, U.S. Survey 484; N. 88°10' E., 2.79 chains to Corner No. 5, U.S. Survey 484; S. 55°25' W., 4.77 chains to Corner No. 1, U.S. Survey 603, Tract B; S. 76°45' W., 2.21 chains to Corner No. 4, U.S. Survey 603, Tract B; S. 76°45' W., approximately 3.7 chains to mean high tide of St. Paul Harbor, thence, northeasterly along the line of mean high tide approximately 15 chains to the point of beginning.

The areas described aggregate approximately 46,080 acres, of which the Natives of Kodiak, Inc., may select no more than 23,040 acres.

2. Prior to the conveyance of any of the lands withdrawn by this order, the lands remain subject to administration by the Secretary of the Interior or the Secretary of Agriculture, as applicable, under applicable laws and regulations and their authority to make contracts and to grant leases, permits, rights-of-way, or easements shall not be impaired by this withdrawal. Applications for leases under the Mineral Leasing Act, as amended, 30 U.S.C. 181–287 (1970), shall be rejected until this order is modified or the lands are appropriately classified to permit mineral leasing.

JACK O. HORTON,
Assistant Secretary of the Interior.

DECEMBER 10, 1975.

[FR Doc.75-33720 Filed 12-12-75;8:45 am]

[Public Land Order 5555]

ALASKA

Amendment of Public Land Order No. 5176

By virtue of the authority vested in the Secretary of the Interior by section 11(a)(3) of the Alaska Native Claims Settlement Act of December 18, 1971,

85 Stat. 688, 696, and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

1. Subparagraphs a, b and c of paragraph 1 of Public Land Order No. 5176 of March 9, 1972, as amended by Public Land Order No. 5191 of March 17, 1972, Public Land Order No. 5393 of September 14, 1973, and Public Land Order No. 5454 of December 10, 1974, withdrawing, reserving and designating lands for selection by the village corporations of English Bay and Port Graham, Tatitlek, and Eyak, respectively, are hereby amended to make all of the lands withdrawn by subparagraph a available to the village corporations of English Bay, Port Graham, and Chenega, and all of the lands withdrawn by subparagraphs b and c available to the village corporations of Tatitlek, Eyak and Chenega.

2. The lands withdrawn by Public Land Order No. 5176, as amended, remain subject to all of the terms and conditions contained therein.

DECEMBER 10, 1975.

JACK O. HORTON,
Assistant Secretary of the Interior.

[FR Doc.75-33721 Filed 12-12-75;8:45 am]

[Public Land Order 5556]

ALASKA

Amendment of Public Land Orders 5179, 5396, and 5169

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), and by virtue of the authority vested in the Secretary of the Interior by section 11 of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 696 (hereinafter referred to as the Act), it is ordered as follows:

1. Paragraph 2 of Public Land Order No. 5179 of March 9, 1972, which withdrew lands in aid of legislation concerning addition to or creation of units of the national park, forest, wildlife refuge, and wild and scenic rivers systems and for classification, is hereby amended to delete the following described lands:

UMIAT MERIDIAN

PROTRACTED DESCRIPTIONS

T. 4 S., Rs. 10 thru 15 W., south of Naval Petroleum Reserve No. 4.
T. 5 S., R. 9 W., W½, south of Naval Petroleum Reserve No. 4.
T. 5 S., R. 10 W., south of Naval Petroleum Reserve No. 4.
T. 5 S., Rs. 11 thru 14 W.
T. 5 S., Rs. 15 and 16 W., south of Naval Petroleum Reserve No. 4.
T. 6 S., R. 9 W., W½.
T. 6 S., Rs. 10 thru 15 W.
T. 6 S., R. 16 W., east of Naval Petroleum Reserve No. 4.
T. 7 S., R. 9 W., W½.
T. 7 S., Rs. 10 thru 15 W.
T. 7 S., R. 16 W., east of Naval Petroleum Reserve No. 4.
T. 8 S., Rs. 9 thru 15 W.
T. 8 S., R. 16 W., east of Naval Petroleum Reserve No. 4.
T. 9 S., Rs. 9 thru 15 W.
T. 9 S., R. 16 W., outside of Naval Petroleum Reserve No. 4.
T. 10 S., Rs. 11 thru 15 W.
T. 10 S., R. 16 W., outside of Naval Petroleum Reserve No. 4.
T. 11 S., Rs. 14 and 15 W.
T. 11 S., R. 16 W., that part outside of Naval Petroleum Reserve No. 4.
T. 12 S., Rs. 14 and 15 W., fractional.
T. 12 S., R. 16 W., fractional, that portion outside of Naval Petroleum Reserve No. 4.

2. Paragraph 1 of Public Land Order No. 5396 of September 14, 1973, which amended Public Land Order No. 5179 of March 9, 1972, is hereby amended to delete the lands described in paragraph 1 of this order.

3. Paragraph 2 of Public Land Order 5169 of March 9, 1972, as amended, which withdrew and reserved certain lands for selection by the Arctic Slope Regional Corporation under section 12 of the Act, is hereby further amended to add the lands described in paragraph 1 of this order. All of the terms of paragraph 2 of Public Land Order No. 5169 of March 9, 1972, are made expressly applicable to these lands.

4. Prior to conveyance of any of the lands covered by this order, the lands shall be subject to administration by the Secretary of the Interior under applicable laws and regulations, and his authority to make contracts and to grant leases, permits, rights-of-way, or easements shall not be impaired. Applications for leases under the Mineral Leasing Act, as amended, 30 U.S.C. 181-287 (1970), will be rejected until this order is modified or the lands are appropriately classified to permit mineral leasing.

DECEMBER 10, 1975.

JACK O. HORTON,
Assistant Secretary of the Interior.

[FR Doc.75-33722 Filed 12-12-75;8:45 am]

[Public Land Order 5557]

ALASKA

Amendment of Public Land Order No. 5170, as Amended

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831) and pursuant to sections 11(a)(3) and 22(h)(4) of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688, 696, 714 (hereinafter referred to as the Act), it is ordered as follows:

1. Public Land Order No. 5170 of March 9, 1972, as amended by Public Land Order No. 5395 of September 14, 1973, and Public Land Order 5450 of November 26, 1974, which withdrew lands for selection under section 12 of the Act by the village corporations and regional corporation for the approximate area covered by the operations of the Bering Straits Association, is hereby further amended to add to subparagraph e of paragraph 1 of said order, the following described lands:

KATEEL RIVER MERIDIAN

PROTRACTED DESCRIPTION

T. 5 S., R. 40 W., S½ (fractional).
Containing approximately 1,410 acres.

2. By virtue of the authority vested in the Secretary of the Interior by section 22(h)(4) of the Act, and in reliance upon a resolution filed by the Teller Native Corporation, relinquishing any right to select the lands described in paragraph 1, the withdrawal under section 11(a)(1) of the Act for the village of Teller is hereby terminated as to the lands described in paragraph 1 of this order.

3. The purpose of this order is to delete certain lands from the section 11(a)(1) withdrawal for the village of Teller and add those lands to the deficiency withdrawal for the village of King Island.

4. Prior to any conveyance of the lands described in paragraph 1 of this order, the lands shall be subject to administration by the Secretary of the Interior under the applicable laws and regulations, and his authority to make contracts, to grant leases, permits, rights-of-way, or easements shall not be impaired by this order. Applications for leases under the Mineral Leasing Act, as amended, 30 U.S.C. 181-287 (1970), will be rejected until this order is modified or the lands are appropriately classified to permit mineral leasing.

JACK O. HORTON,
Assistant Secretary of the Interior.

DECEMBER 10, 1975.

[FR Doc.75-33723 Filed 12-12-75;8:45 am]

Title 46—Shipping

CHAPTER IV—FEDERAL MARITIME COMMISSION

[No. 72-41]

PART 551—TRUCK DETENTION AT THE PORT OF NEW YORK

Postponement of Effective Date

Final rules in this proceeding adopting General Order 35 were published in the FEDERAL REGISTER November 10, 1975 (40 FR 52385) to be effective December 10, 1975. Counsel for the New York Terminal Conference and the NYSA-ILA Contract Board have now requested a 180-day extension of the effective date, citing difficulties involved in amending tariffs to conform to the new rules and the need to educate personnel of those affected by the rules. Counsel for Middle Atlantic Conference oppose the requests.

We are of the opinion that additional time to comply with the rules is needed, but are confident such compliance will not require the full six months requested. Accordingly, it is ordered that the final rules in this proceeding shall be effective April 8, 1976. Tariffs required to be filed by these rules shall be filed sufficiently in advance of the effective date to meet applicable notice requirements.

By the Commission.

[SEAL] FRANCIS C. HURNEY,
Secretary.

[FR Doc.75-33734 Filed 12-12-75;8:45 am]

an application for entry is pending and another application is later filed, the second application should not be rejected but suspended to await action on the first. Jerry Watkins (17 L. D., 148). Cluster's application should, therefore, have been suspended to await final action on the application for Indian allotment. It is, however, unnecessary to hold Cluster's application longer in suspense as the Commissioner of Indian Affairs reported that he was unable to certify that the Indian applicant is entitled to an allotment on the public domain and recommended that the application be rejected. It is so ordered. The application for Indian allotment being out of the way, Cluster's homestead application will be allowed, if no other objection appear.

The decision is reversed and papers remanded for further appropriate action.

INSTRUCTIONS.

March 15, 1915.

ALASKA LANDS—RESERVATION OF ROADWAY IN PATENTS.

Directions given that the roadway reservation mentioned in section 10 of the act of May 14, 1898, be omitted in all future patents for lands in Alaska.

JONES, *First Assistant Secretary:*

The Department on February 26, 1914, requested an expression of opinion from your [Commissioner of the General Land Office] office as to whether the roadway reservation mentioned in section 10 of the act of May 14, 1898 (30 Stat., 409), should be held applicable to all nonmineral claims abutting on navigable waters in the district of Alaska, and also whether the practice of inserting such a reservation in patents should be continued. On July 6, 1914, you submitted your conclusions and recommended, in view of the fact the statute contained no direction that the reservation of a roadway should be recited in any patent, and the further fact that the ultimate determination of the extent of the applicability of the roadway reservation rests with the courts, that the recital be omitted from future patents.

This roadway reservation is found in section 10 of said act and that section provides primarily for the purchase of trade and manufacture sites and limits the frontage of such claims along navigable waters to 80 rods. It is prescribed that there shall be reserved between tracts sold or entered under the provisions of the act a space of 80 rods in width on lands abutting on navigable waters, and also that the Secretary of the Interior may grant the use of such reserved lands for landings and wharves—

with the provision that the public shall have access to and proper use of such wharves, and landings, at reasonable rates of toll to be prescribed by said Secretary, and a road-

way sixty feet in width, parallel to the shore line as near as may be practicable, shall be reserved for the use of the public as a highway.

In the regulations of January 13, 1904 (32 L. D., 424, 442), it was stated that:

Since it is its purpose to reserve a roadway for public use as a highway along the shore line of navigable waters, it is held to relate to the lands entered or purchased under this act, as well as to the reserved lands; otherwise it would serve little or no purpose.

The Ninth Circuit Court of Appeals on October 30, 1910, in the case of Dalton *v.* Hazelet (182 Fed., 561, 571, 572), which involved a patented soldiers' additional homestead entry abutting on navigable waters in which it was contended that the patentees littoral rights were cut off by this roadway reservation, said:

The last clause above quoted refers to a roadway through the reserved lands previously described, and not through lands granted in fee simple under the homestead laws. * * * There is no provision in this statute (act of March 3, 1903, 32 Stat., 1028) reserving a roadway or making any other reserve above high-water mark through lands granted under the homestead laws. Furthermore, no such reserve is made in the patent. The patent is in the record, and, as previously stated, the land is described by courses and distances as containing the specific quantity of 163.65 acres. The lands granted are made subject to a reservation; but it is the reservation of a "right of way thereon for ditches and canals constructed by authority of the United States," thus excluding by implication, if that were necessary, a reservation under the act of May 14, 1898. It follows that plaintiff's littoral rights were not cut off either by the railroad right of way or by a supposed roadway under the latter act.

It is well established that attempted reservation or limitation, which is not prescribed or authorized by law, when inserted in patents for public lands, has no operation and does not attach to or affect the title conveyed. Officials of the land department, being merely agents of the law, can not create reservations or make exceptions affecting titles to public lands.

In the case of Deffeback *v.* Hawke (115 U. S., 392, 406), which involved a patent under the mining laws, the court said:

The land officers, who are merely agents of the law, had no authority to insert in the patent any other terms than those of conveyance, with recitals showing a compliance with law and the conditions which it prescribed.

The case of Davis *v.* Weibbold (139 U. S., 507, 527, 528), involved the validity of a limiting clause inserted in a townsite patent, and the court there said:

But we do not attach any importance to the exception, for the officers of the land department, being merely agents of the Government, have no authority to insert in a patent any other terms than those of conveyance, with recitals showing compliance with the conditions which the law prescribes. Could they insert clauses in patents at their own discretion they could limit or enlarge their effect without warrant of law. The patent of a mining claim carries with it such rights to the land which includes the claim as the law confers, and no others, and these rights can neither be enlarged nor diminished by any reservations of the officers of the land department, resting for their fitness only upon the judgment of those officers.

The case of Shaw *v.* Kellogg (170 U. S., 312, 337), involved the approval of one of the so-called Baca Float selections, and the court there used the following language:

> What is the significance of, and what effect can be given to the clause inserted in the certificate of approval of the plat that it was subject to the conditions and provisions of the act of Congress? We are of opinion that the insertion of any such stipulation and limitation was beyond the power of the land department. Its duty was to decide and not to decline to decide; to execute and not to refuse to execute the will of Congress. It could not deal with the land as an owner and prescribe the conditions upon which title might be transferred. It was agent and not principal. Congress had made a grant.

With respect to the limitations recited in the patent for placer mining claims, the Supreme Court in Sullivan *v.* Iron Silver Mining Company (143 U. S., 431, 441), said:

> The exception of the statute can not be extended by those whose duty it is to supervise the issuing of the patent.

In the recent case of Burke *v.* Southern Pacific Railroad Company (234 U. S., 669), the Supreme Court had occasion to consider the mineral exception clause recited in railroad patents. In the course of that opinion, delivered by Mr. Justice Van Devanter, the patent cases above mentioned were cited and discussed. The court at pages 709–710 said:

> The terms of the patent whereby the Government transfers its title to public land are not open to negotiation or agreement. The patentee has no voice in the matter. It in no wise depends upon his consent or will. He must abide the action of those whose duty and responsibility are fixed by law. Neither can the land officers enter into any agreement upon the subject. They are not principals but agents of the law, and must heed only its will. . . . Nor can they indirectly give effect to what is unauthorized when done directly . . . they can not alter the effect which the law gives to a patent while it is outstanding. . . . The mineral land exception in the patent is void.

Even if it should be ultimately determined by the courts that the highway reservation under consideration applies to all claims except those under the townsite and mineral land laws (see section 26, act of June 6, 1900, 31 Stat., 321), it does not follow that patents need recite such a reservation in order that it be effective, for if such reservation is created and exists by virtue of the law, a failure to insert a recital thereof in the patent issued would not defeat the reservation. The statute contains no direction to the officials of the land department to insert any such recital in patents issued, as certain other statutes do. For instance, the act of August 30, 1890 (26 Stat., 391), prescribes:

> That in all patents for lands hereafter taken up under any of the land laws of the United States . . . west of the one hundredth meridian, it shall be expressed that there is reserved from the lands in said patent described, a right of way thereon for ditches or canals constructed by the authority of the United States.

The recent Alaska Railroad Act of March 12, 1914 (38 Stat., 305, 307), contains the following provision:

> 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 railroads, telegraph, and telephone lines, etc.

In view of the foregoing and of the doubt and conflict of opinion existing as to the scope and applicability of the Alaska highway reservation clause, I deem it advisable that there be omitted from all future patents any recital or mention of such reservation. Your office will, therefore, discontinue the present practice of inserting in Alaska patents a recital of a roadway reservation, pursuant to the act of May 14, 1898, *supra*.

ENLARGED HOMESTEAD ACT—SECTIONS 1 TO 5 EXTENDED TO SOUTH DAKOTA.

CIRCULAR.

[No. 389.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 16, 1915.

REGISTERS AND RECEIVERS,
United States Land Offices, Bellefourche, Gregory, Lemmon, Pierre, Rapid City, and Timber Lake, South Dakota.

SIRS: 1. Section 2 of the act of Congress approved March 4, 1915 (Public, No. 299), provides that the provisions of the first five sections of the enlarged homestead act of February 19, 1909 (35 Stat., 639), as amended, shall extend to the State of South Dakota.

2. Your attention is, therefore, directed to said sections of the act mentioned (as amended down to March 2, 1915), copied on pages 32 and 33 of homestead circular No. 290, approved January 2, 1914; also to the regulations under that legislation, found in paragraphs 43, 44, 45, 46, 47 and 50 of said circular. [43 L. D., 18–21.]

3. Public Act No. 279, approved March 3, 1915, provides for the allowance of additional entries under the enlarged homestead act after submission of proofs on the original filings, provided the parties still own and occupy the tracts first entered; and the first section of Public Act No. 299 (above referred to), provides for a preference right of entry to be accorded, where designation of the land involved has been made pursuant to the applicant's petition. Instructions will shortly be issued under said recent legislation..

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved, March 16, 1915:
A. A. JONES,
First Assistant Secretary.

STATE OF ALASKA

KEITH H. MILLER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL — ANCHORAGE BRANCH

360 K STREET — SUITE 105
ANCHORAGE 99501

June 19, 1970

M E M O R A N D U M

TO: Robert L. Beardsley
Commissioner of Highways
State of Alaska
Juneau

FROM: Richard P. Kerns
Assistant Attorney General
Chief, Highways Section
Anchorage

RE: Jurisdiction of Section Line Rights of Way for Highways

It has come to my attention that certain questions have arisen in connection with administering the use of section line rights of way by the public where these rights of way have not actually been utilized by the Department of Highways for the State highway system. As you know, 1969 Opinions of the Attorney General No. 7 concluded that "each surveyed section in the State is subject to a section line right of way for construction of highways" subject to certain exceptions defined in the Opinion. A copy of this Opinion is attached.

Since the publication of this Opinion, various members of the public, property owners and governmental agencies have attempted to utilize or exert jurisdiction over these rights of way resulting in a certain amount of conflict of opinion. This results in inquiries being directed either to the Department of Highways, the Division of Lands or the Office of the Attorney General which in turn does or could result in further inconsistent approaches to the use of these rights of way.

With this in mind, a meeting was held attended by representatives of the Division of Lands, the Department of Highways and the Department of Law. As a result of this meeting, it was suggested that a memo be directed to you with copies as indicated, suggesting that jurisdiction of these highway rights of way be asserted by the Department of Highways. This conclusion is in keeping with a former Memorandum Opinion issued by the Department of Law dated November 4, 1963 prepared by David B. Ruskin, then assistant attorney general. A copy of this memorandum is also attached. It is suggested that when inquiries are directed to the State as to the use of these rights of way, that such inquiries

be directed to the District Right of Way Agents. If it is determined that the Highway Department has no objection to a proposed use, that a letter of non-objection be issued. The use of the term "non-objection" is emphasized so as to suggest that the State is not granting some sort of a permit but more to indicate that the State will not resist a particular use if it is otherwise in keeping with the interests of the State.

It has also been brought to my attention that certain of the boroughs have taken it upon themselves to vacate portions of these section rights of way. It is my opinion that the boroughs have no such authority. Jurisdiction over these rights of way is with the State of Alaska, Department of Highways and the Department of Highways is the only competent authority by which the same can be vacated. Possibly the boroughs are assuming this authority under A.S. 40:15.140. If this be the case, I believe the boroughs are misinterpreting the meaning of that statute. It is my opinion that the boroughs have authority to vacate only those streets which have been created by a subdivision plat.

Although it is our conclusion that the Highway Department has jurisdiction over these section line rights of way, it is suggested that because of the obvious interest that the Division of Lands has in these section line rights of way that it be emphasized to the Districts that the Division of Lands be advised as to any actions taken in connection therewith.

If you have any questions regarding the suggestions made in this memorandum, please do not hesitate to contact this office.

RPK:sm
cc: Donald E. Beitinger - Dept. Hwys
John K. Norman - Dept. Law
Joseph Keenan - Div. Lands

W. E. HOODY
ATTORNEY GENERAL

STATE OF ALASKA
DEPARTMENT OF LAW
BOX 2170
JUNEAU

1960 Opinions of the Attorney General, No. 29

November 4, 1960

Mr. Alfred A. Baca
State Right of Way Agent
Department of Public Works
Foss-Olsen-Sands Bldg.
Juneau, Alaska

Re: Right of Way Width,
Construction of 43 U.S.C. 932

Dear Mr. Baca:

You have asked the question as to the width of the right of way of highways built on public domain. The following information should answer your question and should be sufficient to give your appraisers some definite rules to guide them in their appraisals.

1. A right of way over the public domain is granted by Title 43, U.S.C. 932. It states:

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

2. This law does not state any specific right of way width. However, it has been established by cases that the right of way reservation is as wide as the width of local roads as established by state laws, customs and usage.

3. Chapter 19, SLA 1923 establishes a 66 ft. right of way along sections lines. This law indicates that 66 ft. would be considered a reasonable width and is definite enough to define the width of the right of way in Alaska in regard to roads built on the public domain.

4. It would be to the advantage of the State of Alaska to claim a 66 ft. right of way width. Furthermore, both the Bureau of Public Roads and the Department of Public Works have claimed and continue to claim 66 ft.

5. It is concluded, therefore, that the width of Alaska highways constructed under Title 43, Sec. 932 shall be 66 ft.

6. It should be remembered, however, that there are exceptions to the 66 ft. width rule as for instance where the actual width is specifically stated in the Public Land Order or set out by later state laws.

If you need further clarification of the above do not hesitate to contact us.

Very truly yours,

RALPH E. MOODY
ATTORNEY GENERAL

By
Norman L. Schwalb
Assistant Attorney General

PBL:NLS:lgh

cc: The Honorable William A. Egan
Governor of Alaska
State Capitol
Juneau, Alaska

The Honorable Floyd Guertin
Commissioner of Administration
Alaska Office Building
Juneau, Alaska

July 22, 1952

BRIEF

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

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; 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 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 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 1t, 1951, depending on the class or road established.

(sgd) Abe Barber

Abe Barber
Member of Alaska Field
Staff Subcommittee

Rights-of-Way
4-20-78

Authorities I. Act of October 21, 1976 Federal Land Policy and Management Act (FLPMA)

A. Section 510 (a) All pending and new applications, except oil and gas pipelines filed under section 28 of the Mineral Leasing Act and Federal Aid Highways filed under Title 23, U.S.C., will be filed and processed under the authority of Title V of this act.

43 CFR 2881 II. Mineral Leasing Act of June 13, 1920 (41 Stat. 449) as amended, authorizes the Secretary to grant Rights-of-way through public lands, including forest reserves of the United States, for pipeline purposes for the transportation of oil or natural gas.

43 CFR 2821 III. Title 23, U.S.C. (Interstate and Defense Highway System) 35 F.R. 9645, June 15, 1970.

Note: Organic Act Directive 76-15 dated December 14, 1976 Interim guidance for the processing of Rights-of-way. Regulations 43 CFR 2800, 2801, 2802, 2810, 2811, 2812, 2821, 2850, 2860, 2861, 2880 are still in effect.

No longer applicable:
2800.0-1(b) 44LD513, 2822-R.S. 2477, 2840, 2841, 2842 - Railroads, 2862 - Telephone and Telegraph lines, 2870 - water facilities, 2890 - miscellaneous Right-of-Way and part 9.

Acts no longer in effect

Act of February 15, 1901 (now FLPMA)

2851 Electrical plants, poles and lines for generation and distributions of electrical power (transmission lines)
2863 Telephone and telegraph purposes
2873 Pipelines, canals, ditches, waterplants and other purposes may include an area for a well
No set time
Not to exceed 50' on each side of marginal limits or each side of centerline

Act of March 4, 1911 (now FLPMA)

2851 Poles and lines for transmission and distribution of electrical power
2861 Radio and television sites and other forms of communication transmitting, relay and receiving structures and facilities
2862 Telephone and telegraph lines
Not to exceed 50-years
Not to exceed 200' each side of centerline and 400' X 400' for structures
2851.2-1(c)(5), 2861.1(b), 2862.1(c) must have satisfactory showing if application is in excess of 100' each side of centerline or in excess of 10,000 sq. feet.

All Rights-of-Way Applications

		YES	NO
43 CFR 2802.1-2(a)	A. Cost Recovery (where applicable)	___	___
	An applicant for a Right-of-way or a permit incident to a Right-of-way shall reimburse the United States for adminstrative and other costs incurred by the United States in processing the application.		
	1. An applicant must submit with each application a non-returnable payment in accordance with schedule 43 CFR 2802.1-2(a)(3)	___	___
	2. When an application is received, the authorized officer shall estimate the costs.... if such costs will exceed nonreturnable payment above, the authorized officer shall require the applicant to make periodic payments of estimated reimbursable costs prior to the incurrence of such costs by the United States. (Does not apply to State or local governments or agencies or instrumentalities thereof.)	___	___
43 CFR 2802.1-1(a)(1)	B. The application must specify that it is made pursuant to the regulations in this part (2800)	___	___
	C. and that the applicant agrees that the Right-of-way if approved, will be subject to the terms and conditions of the applicable regulation contained in this part (2800).	___	___
	D. The application should cite the act to be invoked:	___	___
	1. Act of Oct. 21, 1976, PL 94-579 (FLPMA) 2. Mineral Leasing Act of June 13, 1920 3. Title 23 U.S.C. Federal Aid Highway		
	E. The application should cite the purposes for which the Right-of-way is to be used		

			YES	NO
	F.	If the Right-of-way has been utilized without authority prior to the time the application is filed, the application must state:		
		1. the date utilization commenced	___	___
		2. by whom	___	___
		3. when applicant obtained control of the improvements	___	___
43 CFR Part 17.2(b) also 43 CFR 2801.1-5(k)	G.	Assurances as required under the Civil Rights Act of 1964 Form 1140-5.	___	___
PL 94-579 Title V sec 501(b)(1)(2)	H.	Application must contain applicants disclosure of plans, effects on competition, agreements (Utilities with set service area will be minimal)	___	___
43 CFR 2802.1-3	I.	If the applicant is a private corporation, has it included:		
		1. Certified copy of charter or articles of incorporation	___	___
		2. Other than private corporation:		
		a. file a copy of the law under which it was formed,	___	___
		b. proof of organization under the law	___	___
		3. If not incorporated in Alaska, must submit a certificate of proper State official that it has complied with the laws of the State governing foreign corporations and is entitled to do business in Alaska	___	___
		4. A copy of the resolution or by-laws authorizing filing of application	___	___
		5. Copy of document authorizing signing individual to sign for corporation	___	___
		6. If previously filed, must make specific reference to date, place and case number	___	___
PL 94-579 Title V		7. Partnership, corporations, and associations must, when requested to do so, disclose:		
		a. Name and address of each participant in the entity	___	___
		b. Number of shares of each kind of stock owned or controlled by each participant if over 3 percent of the stock	___	___
		c. Name and address of each affiliate of the applicant including number of shares of each kind of stock owned or controlled by the affiliate	___	___

			YES	NO
43 CFR 2801.1-4	J.	Citizenship - applicant must state:		
		1. Native-born or naturalized	___	___
		2. If naturalized:		
		a. date	___	___
		b. the court	___	___
		c. the certificate number (see CFR naturalization of father, husband and wife, widow)	___	___
	K.	Association of individuals or partnerships must include:	___	___
		1. copy of articles of association or		
		2. application made over each members signature		
		3. each member must furnish citizenship		
43 CFR 2802.1-5	L.	Maps must accompany the application as follows:		
		1. 1 original mylar or other original reproducible and 5 copies-all electrical transmisssion rights-of-way 1 original mylar or other original reproducible and 3 copies-all other rights-of-way	___	___
		2. Must show survey-properly located with respect to public land surveys as follows:		
		a. scale of map-2000 ft. to the inch (see exceptions for reservoirs, less than 66KV)	___	___
		b. courses and distances of center-line traverse with station numbers at deflection points	___	___
		c. initial and terminal points of right-of-way survey connected by courses and distance to nearest public land survey (see exception 43 CFR 2802.1-5)	___	___
		d. subdivision, sections, township and range of public land to be shown in entirety	___	___
		e. (1) width of right-of-way given	___	___
		(2) width of canal ditch, lateral at high water line	___	___
		(3) Pipeline - diameter of line	___	___
		(4) reservoirs - capacity in acre feet, source of water, height and location of dam,	___	___
		f. total distance on Federal lands	___	___

			YES	NO
43 CFR 2802.1-5(a)(7) 43 CFR 2861.1(c)		g. maps bear on its face the engineer's statement and certificate of applicant (1) linear-forms 1 and 2 of apendix B (2) Sites-forms 3 and 4 of apendix B	___	___
43 CFR 2861.1(c)	M.	Sites: in addition must show buildings or other structures platted on a separate map of a scale sufficiently large to show: 1. dimensions 2. relative positions 3. 2 or more buildings must be connected by courses and distance on map	___	___
PL 94-579 Title V	N	If requested, submission prior to issuance of grant, of a plan of construction, operation, rehabilitation for the right-of-way which shall comply with the regulations for stipulations to be included in the grant		

POWER

			YES	NO
Act of June 10, 1970 as amended	A.	Applications for hydro electric power plant sites or rights-of-way for primary transmission lines for hydro electric power must be obtained as a license from the Federal Energy Regulatory commission (FERC)		
		1. sec. 3 (11) "Project" . . . the primary line or lines transmitting power therefrom to the point of junction with the distribution system or with the interconnected primary transmission system.		
43 CFR 2851.2-1(c)	B.	Power application must include:		
		1. Applicant states whether he is an REA or REA subsidized.	___	___
		2. Description of proposed power plant or connecting generating plants in such detail as to show: a. The character b. Capacity c. Location of Plants	___	___
		3. Description of transmission line system giving reasonable detail: a. Points between which it will be extended b. Characteristics c. Purposes	___	___
		4. Statement as to following: a. Voltage designed for b. Initial operating voltage c. How many customers does it serve d. If single individual, for what purpose e. Width of right-of-way f. Length on public lands	___	___
43 CFR 2851.2-1(c)(6)		5. A detailed description of the environmental impact of the project on airspace, air and water quality, scenic and aesthetic features, historical and archeological features, wildlife, fish and marine life. (Environmental criteria booklet available: sec. 43 CFR 2851.2-1(c)(g)(iii).)	___	___
F.R. 9-8-77 Vol, 42 Page 44985		6. 66 KV or over a. One line diagram of proposed line and immediate interconnecting facilities (power plants and substations) b. Power flow diagram for proposed line and connecting major lines c. Typical structures drawings of proposed line showing dimensions and list of material	___	___

		YES	NO
	B. Power plant site		
	1. Must contain a staement giving:	___	___
	a. Description of proposed power plant		
	b. Number and capacity of prime movers and generators intially and ultimately		
	c. Similar information about substations		
	d. Whether to be interconnected with other generating facilities		
	e. (1) Whether power to be sold to others at wholesale or retail		
	(2) Used by applicant for own domestic agricultural or industrial purpose.		
43 CFR 2581.1-1	F. Power 66KV or more	___	___
	1. Agrees to accept the right-of-way grant subject to conditions in 43 CFR 2851.1-1(a)(5) (Wheeling agreement).		
	2. Furnishes information on any other Wheeling contracts.		

RENTAL

Note: District requests initial appraisal

43 CFR 2800 — Payment for use of land

A. Appraisal filed

PL 94-579 sec. 504(g) — B. Advance payment made annually. Rental over $100 (not less than $25 per 5 years) annually under $100 each 5 year or lump sum.

43 CFR 2802.1-7(c)
PL 94-579 sec. 504(a) — C. No charge for:

Note: private irrigation projects no longer exempt (sec. 504(g)).

1. State or local governments or agency or instrumentality thereof
2. Non-profit project
3. REA
4. Federal agency
5. State or local governments or agencies or instrumentalities thereof

43 CFR 2802.1-7(e) — D. Re-evaluation each 5 years.

WATER

			YES	NO
43 CFR 2802.1-5(b)	A.	Projects involving storage, diversion or conveyance of water must file evidence of water rights.	___	___
43 CFR 2873.1(c)	B.	Sites: statement on	___	___
		1. Proposed use of each structure 2. Necessity of structure for proper use of right-of-way.		

COMMUNICATION

			YES	NO
Instr. Memo 71-404 November 19, 1971	A.	Communication sites need a license from either Federal Communications Commission (FCC) or Interdepartmental Radio Advisory Committee (IRAC) for Federal applicants.	___	___
43 CFR 2873.1(c)	B.	Sites: statement on 1. Proposed use of each structure 2. Necessity of structure for proper use of Right-of-way	___	___
43 CFR 2861.1(b)	C.	Any application . . . for a line right-of-way in excess of 100 feet in width or for a structure or a facility right-of-way over 10,000 square feet must state the reasons why the larger right-of-way is required.	___	___

FEDERAL AID HIGHWAY

			YES	NO
43 CFR 2821.3-3	A.	Concurrence of Federal Highway Administration.		
		1. State forwards copy of application and maps to Federal Highway Administration who sends determination that lands or interests in lands are necessary for purposes of Title 23 USC.	___	___
		2. BLM notifies State and Federal Highway Administration.	___	___
		a. Approval would be contrary to public interest or		
		b. Purposes to grant under regulations of 2821, subject to such regulations and such conditions would be indicated on this notice.		
		Note: the right-of-way granted under this subpart confers upon the grantee the right to use the lands within the right-of-way for highway and/or material source purposes only. Separate application must be made under pertinent statutes and regulations in order to obtain authorization to use the lands within such right-of-way for other purposes.		
43 CFR 2821.6	B.	All rights-of-way	___	___
		If within a highway right-of-way, "prior to the granting of an additional right-of-way the applicant will submit to the authorized officer a written statement from the highway right-of-way grantee indicating any objections it may have thereto, and such stipulations as it considers desirable for the additional right-of-way."		

ADJUDICATION

When application has been processed through Title and Land Status and assigned to an adjudicator it is thoroughly reviewed and an initial decision issued calling on the applicant for all necessary information.

Applications on Withdrawn Lands

43 CFR 2802.2-1(b)

A. All withdrawn land - check withdrawal order to see who has authority, then reject or obtain concurrence and any special stipulations.

B. If on patented lands, Fish and Wildlife, National Forest Land, reject exception: Oil and gas pipeline - where more than one agency involved BLM will process application.

C. If right-of-way crosses power site reserve, power site classification or power project request geological report from:

Regional Hydraulic Engineer
U.S. Geological Survey
Conservation Division
P.O. Box 2967
Portland, Oregon 97208

Note: Send copy of application and maps with request. U.S.G.S. in turn refers request to FERC for comment.

D. If right-of-way filed by other than State Department of Highways, request comments and recommendations per instructions on Highway Beautification Act of October 22, 1965.

U.S. Department of Transportation
Federal Highway Administration
Bureau of Public Roads
Attn: Regional Engineer
Box 1961
Juneau, Alaska 99801

E. Native selected

Note: Be sure to check the status plat to see if the ANCSA selection was a proper one, ie., if the land was withdrawn and available for selection. The plats will either show PL 92-203 and the village name or a Public Land Order providing for ANCSA selections.

Inst. Memo No. AK-76-237
Change 1, December 8, 1976
Change 2, March 25, 1977
Change 3, May 17, 1977

Request comments from both village and region. Only village comments are required within National Wildlife Refuges and where PLO 5183 appears on the plat. If the views are not submitted with application, initial decision should include following:

> The regulations governing the Alaska Native Claims Settlement Act provide in 43 CFR 2650.1(a)(i):
>
> > Prior to the Secretary's making contracts or issuing leases, permits, rights-of-way, or easements, the views of the concerned regions or villages shall be obtained and considered. . . .

It is the responsibility of the applicant to obtain the above views. In the event favorable views or comments are not obtained, it is the Department's policy not to issue the right-of-way sought unless it is in the general public interest. If the applicant feels that the right-of-way is in the general public interest and wishes to pursue the application, he should submit documented evidence of his efforts to obtain written views and a statement discussing why and how the public interest and benefit is involved and what other alternatives are available other than the requested right-of-way.

43 CFR 2851.1-1(a)(3)

F. Power 66 KV or over

Request from Administrator, Alaska Power Administration, P.O. Box 50, Juneau, Alaska 99801, advise, instructions and concurrence of the assistant secretary for water power.

1. Enclosures: applications, maps, flow diagrams, etc.

G. 1. Request field report from District office.

Note: On F.R. request also request appraisal where appropriate and ask District to contact appraiser prior to field work. Send copy of F.R. request to appraiser's office. Request F.R. simultaneous with request for any other information.

2. Request estimate of cost recovery on compliance (see manual).

Note: code time to appropriate number.

H. When case file returned should include:

1. Field report
2. EAR
3. EIS statement
4. Archeological report
5. Wilderness review where applicable
6. Report on area of critical environmentable concern where applicable
7. Term of grant (not to exceed 30 years)
8. Renewable or non-renewable
9. Stipulations
10. Width of right-of-way
11. Bonding requirements, if any
12. Cost estimate for processing the application (this was submitted earlier)
13. Cost estimate for monitoring grant
14. May include report on public hearings

BLM Manual 1323.5

I. For grants involving advance rental, send bill copy of Form 1370-1 with decision on the advance rental and request applicant submit payment to Denver Service Center. Send courtesy copies to:

Management Services (950)
and Denver Service Center

J. 1. When all reports and clearances are received and favorable, prepare grant Form 2800-1 (see typing instructions).

Note: typing has different form for FLPMA and other

43 CFR 2802.1-2(a)(z)

2. As part of the terms, request non-returnable payment for compliance due within 60 days from issuance of grant.

K. Be sure all accounting is taken care of.

Note: Code time to appropriate number.

L. FASC-proof of contruction due:
10 years on Federal Highway Aid
5 years on all other
5 years on rental review where applicable.

M. Route case notations, T & LS and docket.

(Kind of entry and acts)	(Serial No.)
Homesite (Act May 26, 1934)	018125

(Name and address)

George William Carlson
Star Route
Mile 20
Seward, Alaska

(Description of land)

Lot 1, U. S. Survey 2534

(H. S. #88)

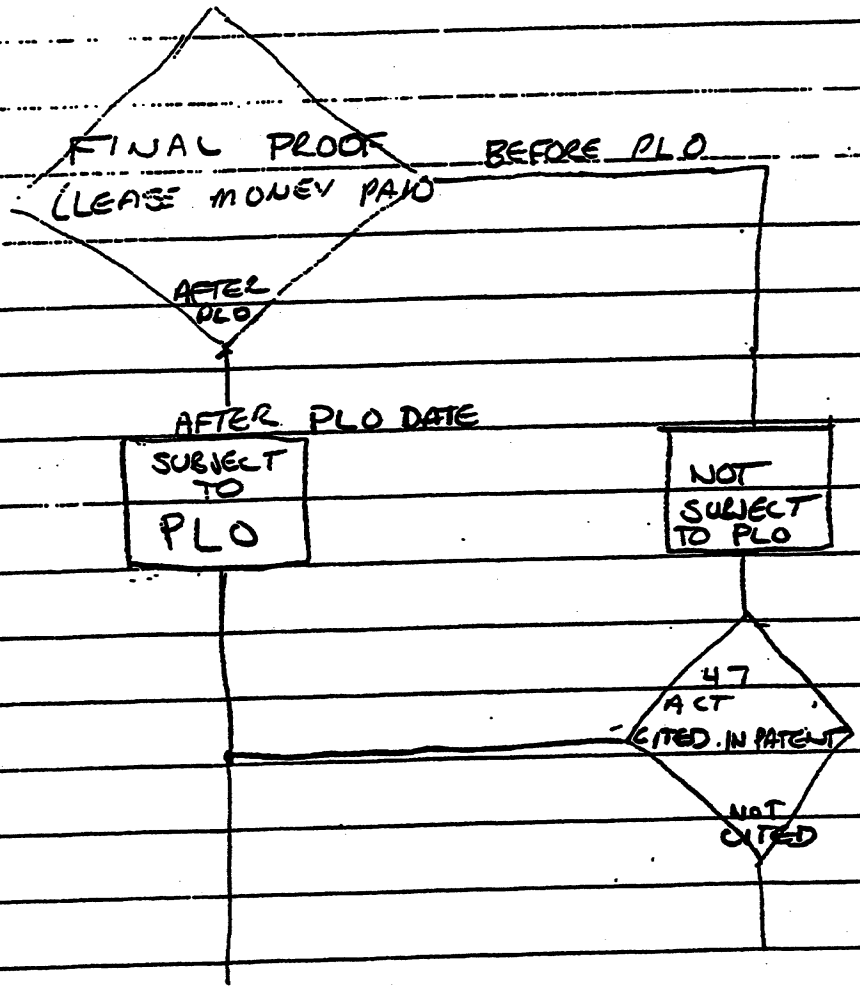
DATE	ACTION TAKEN
Feb. 20, 1951	Application received in duplicate.
5-25-51	NOTICE FOR PUBLICATION ISSUED
6/21/51	B.F.E. requests F.C. be withheld pending field examination & report
1-7-52	Proof of Publication rec'd
2/1/53	Field report received
3/30/53	Received proof of posting & Publication & $10.00
8/14/53	FINAL CERTIFICATE ISSUED
9/8/53	Pat 1140579 issued 9/2 rec'd & mailed

Patented Closed

10/31/57 Case permanently transferred to G.A. Federal Records Center, Seattle, Wash.

PLO

STATE LAND (OR FORMERLY) ... FEDERAL PATENT



EXISTING RW DETERMINATION

PURCHASING FEE TITLE OR CONDEMNATION

RW EASEMENT (SPECIFIC DESC)

RW EASEMENT (BLANKET)

SECTION LINE EASEMENTS 33' OR 50'

PATENT RESERVED

47 ACT

PLO

PRESCRIPTIVE RIGHTS

PLO

- Subdivision dedication

1. Identify property on each side of section line from a known public road to property in question.

2. From the Federal Status Plat, extract the patent number of each parcel identified.

3. Either from BLM's patent file or Historical Index, extract the serial number of the filing which led to patent.

4. Using the serial number, extract from the serial books, the date of the entry leading to patent.

5. From BLM's plats of survey, extract the date of plat approval.

6. Using the date of entry and the date of survey plat approval, prepare an analysis of the data as follows:

   a. If date of entry predated survey plat approval there is no easement.

   b. If entry predates April 6, 1923 (date of enabling legislation for section line easements) there is no section line easement.

   c. If survey plat approval predates April 6, 1923 but date of entry is after April 6, 1923, but before January 18, 1949, there is a section line easement.

   d. If survey plat approval is during the period of January 18, 1949 and March 21, 1953 and date of entry falls within this period, there is no section line easement.

   e. If survey plat approval is during the period of January 18, 1949 and March 21, 1953 and date of entry falls after March 21, 1953, there is a section line easement.

   f. If the land is in State ownership, there is a section line easement.

   g. If the land was disposed of by the State or territory during the period of January 18, 1949 and March 26, 1951, there is no section line easement.

   h. United States Surveys (U.S.S. and Number) and Mineral Surveys (M.S. and Number) are not a part of the rectangular net of survey. If the rectangular net is later extended, it is established around these surveys. There are no section lines through a U.S.S. or M.S., therefore, no section line easements can exist on such areas.

There may be many other situations which will require evaluation and decision on a case by case basis. Attachments are included to demonstrate some of the above points.

100

United States Department of the Interior

OFFICE OF THE SOLICITOR
ANCHORAGE REGION
510 L Street, Suite 408
Anchorage, Alaska 99501

IN REPLY REFER TO.

September 12, 1980

MEMORANDUM

To: State Director
Bureau of Land Management
Anchorage

From: Attorney-Advisor

Subject: Proposed Amendment to
Public Land Order 1613

The proposed amendment to Public Land Order 1613 (April 7, 1958) has been forwarded to this office for our review and comment.

The amendment seeks to accomplish three objectives:

1. Establish road widths for all roads in Alaska.

2. Assert continued Federal ownership of rights-of-way for existing roads and require that such ownership be reflected in future conveyances.

3. Amend PLO 1613 to extinguish the preference rights created by that land order and the statute it implements.

We see major problems with all three objectives. The first is a waste of time and nearly worthless in its present form. The second is contrary to existing law and Departmental policy, and would create unnecessary management problems. The third is a worthwhile objective but the proposed amendment goes further than the law would allow. Each of these statements will be elaborated below.

1. It would be nice if we could resolve in a one paragraph PLO the question of who owns what interest in every public road in Alaska. This question arises frequently in the context of land disposals and it almost always raises very

difficult questions, in part because most of the rights involved were created without a survey of the road they related to. Even today many of the public roads in Alaska are not surveyed and do not appear on the public land status plats. Another problem is that roads that were local at one time later became feeder roads. In 1958, road withdrawals were changed from a federal withdrawal of the fee to a reservation of right-of-way (PLO 1613). Then, on June 30, 1959, the government quitclaimed its interest in all roads on public lands to the State. To determine what interest exists today requires examination of the facts (i.e., when the road in question was built or staked) in the context of these various PLO's and quitclaim. It is sometimes very complex and difficult. See Alaska Land Title Association, et al. v. Alaska, et al., Superior Ct. for State of Alaska, Third Judicial District, No. 3AN79-951 Civil, May 7, 1980, opinion of Judge Carlson. To think that we can resolve all the difficult questions of width in one paragraph without even defining "through," "feeder" and "local roads" is wishful.

Given the fact that it is doubtful that any of these rights-of-way remain in federal ownership (discussed below), it also seems inappropriate that the federal government now attempt to conclusively establish their width.

2. The proposed language of the amendment assumes that the federally owned highway easements established under PLO's 601 (August 10, 1949), 757 (October 16, 1951), 1613, and under S.O. 2665, survived the quitclaim deed and that the effect of the deed was merely to make such federal easements subject to a co-extensive State right-of-way. We do not believe the federal government retained any interest after the quitclaim deed in roads existing in 1959. Nor do we believe that the federal government has a right-of-way, today, to roads built on public lands after S.O. 2665 was repealed in 1966. A closer question exists as to the present federal interest in roads built after the quitclaim but before the repeal of S.O. 2665. In any event, the Department has not taken any position on these issues and it seems unnecessary and ill-advised to do so now through amendment of paragraph 3 of PLO 1613.

3. We would suggest that the proposed addition (para. 12) to PLO 1613 concerning the extinguishment of preference rights be modified. PLO 1613 involves two types of preference rights: the first was afforded adjoining property owners at their option; the second given them should the Secretary

elect in the future to sell any of the lands which were released from withdrawal by PLO 1613. The second is statutory and mandatory. Section 2 of the Act of August 1, 1956, 70 Stat. 898, 43 U.S.C. § 971b. Absent legislative authority, we do not believe that the Department may extinguish this right by administrative action. However, the preference right arises only in connection with a decision to sell the released federal lands and is not applicable to other forms of disposal such as conveyance under the Alaska Native Claims Settlement Act or the Alaska Statehood Act. We believe that this should be clearly stated in the new PLO.

Pursuant to § 1 of the Act of August 1, 1956, supra, certain other preference rights were created in paragraphs 7 through 10 of PLO 1613. Unlike the language of § 2 of the Act, the language in § 1 is permissive rather than mandatory. These other preference rights, therefore, were created by PLO 1613 itself, rather than by statute, and as such, may be extinguished by administrative action. For these non-statutorily mandated preference rights, the approach taken in paragraph 12 of the amendment is both adequate and reasonable.[1/]

For reasons which will become apparent infra, we believe that prior to issuance of the proposed PLO, BLM should determine whether the pipeline and telephone easements established in paragraphs 2 and 4 of PLO 1613 are still necessary and/or appropriate. It is our understanding that because the pipeline has been removed, the necessity for the pipeline easement established by PLO 1613 is

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1/ We also note that there seems to be some question as to whether the preference rights authorized by the Act of August 1, 1956, supra, and created by PLO 1613, are applicable to only the seven highways listed in paragraph 1 of PLO 1613, or applicable to all Alaskan highways and roads. A review of the legislative history of the Act clearly indicates that it was to apply to the revocation of highway withdrawals in existence on the date of the Act. Since the withdrawals on all other highways and roads had been revoked previously [see PLO 757 (October 16, 1951) and S.O. 2665], the preference rights authorized by the Act are applicable only to the seven highways listed in paragraph 1 of PLO 1613.

questionable. It is also our understanding that the telephone easement established by the order has been conveyed (pursuant to the Alaska Communications Disposal Act, 81 Stat. 441, 40 U.S.C. § 771 et seq.) by the Air Force to RCA Alaska Communications, Inc., by an easement deed dated January 10, 1971 (see case file F-13508). The easement is therefore no longer in federal ownership.

We would suggest that BLM examine and determine the continued necessity for the pipeline easement and whether the telephone easement remains in federal ownership. If it is determined that the pipeline easement is no longer necessary and that the telephone easement is no longer in federal ownership, we would suggest that PLO 1613 be revoked in its entirety, rather than merely amended. We have enclosed a draft PLO, with appropriate preference right provisions, based upon the above assumption. Should it be determined, however, that either the continuation of the pipeline easement or the federal telephone easement is necessary, then a complete revocation of PLO 1613 would not be appropriate. Rather, only paragraphs 7 through 10 should be revoked and the preference rights created thereunder should be addressed in the same manner as in the enclosed draft.

If this office can be of further assistance to you in this matter, please contact us.

Robert Charles Babson

Robert Charles Babson

Enclosure

APPENDIX - PUBLIC LAND ORDER

(PUBLIC LAND ORDER _____)

A L A S K A

AMENDMENT OF PUBLIC LAND ORDER 1613

Pursuant to the authority vested in the President by Executive Order No. 10355 of May 26, 1952 (F.R. 4831) and otherwise including, but not limited to the Act of August 1, 1956 (70 Stat. 898), Title 23, Highways, Act of August 27, 1958 (72 Stat. 898), the Alaska Omnibus Act of June 25, 1959 (73 Stat. 141), and Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2743),

IT IS ORDERED AS FOLLOWS:

Public Land Order No. 1613 of April 7, 1958, appearing in the Federal Register issue of April 10, 1958, at F.R. 58-2659, is hereby revoked subject to the following provisions:

1.a. Should the lands previously released from withdrawal by paragraphs 1 and 2 of PLO 1613, supra, be offered for sale by the Secretary, persons who as of April 7, 1958, owned private lands or held valid entries, locations and claims which adjoined such released lands, and their successors in interest, shall be afforded a preference right (pursuant to section 2 of the Act of August 1, 1956, 70 Stat. 898) to purchase at current appraised value so

much of the released lands adjoining their property as the authorized officer of the Bureau of Land Management deems equitable. Said preference right shall extend only to the centerline of the highways contained therein; and shall be afforded notwithstanding the fact that adjoining entries, locations or claims have since gone to patent and notwithstanding any statutory limitation on the area that may be included in such entries, locations or claims. Should the Secretary offer for sale such released lands, the above-described preference right holders shall be first given notice served by certified mail of their privilege to exercise their preference right within at least 60 days; if an application is not filed within the time specified, the preference right will be lost. The preference right will also be lost if, upon application, the claimant fails 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.

1.b. Pursuant to section 2 of the Act of August 1, 1958, supra, the above-described preference right shall apply only when the above-described lands are offered for sale, and shall not apply to other forms of disposal such as, but not limited to, conveyance under the Alaska Native Claims Settlement Act (85 Stat. 688, 43 U.S.C. § 1601 et seq.) or the Alaska Statehood Act (72 Stat. 339).

2. Holders of all other preference rights created under Public Land Order 1613, supra, must exercise them within one year of the publication of this order, or within 60 days of receipt by them of notice served by certified mail, whichever is sooner, regardless of whether or not the land is to be offered for sale.

Supreme Court ruling upholds 1923 easements

Associated Press

The Alaska Supreme Court on Friday ruled that section line easements created by a 1923 territorial statute were not vacated when the statute was repealed in 1949.

Repeal of the 1923 statute simply suspended the creation of additional section line easements but did not vacate easements created previously, the court ruled.

The court rejected a challenge brought by Fairbanks resident Luther A. Brice and others to section line easements claimed by the state near the Tungsten Subdivision north of Chena Hot Springs Road.

Brice owns property, situated near the subdivision, which was patented in 1952, after repeal of the 1923 statute. Some of the subdivision lot owners planned an access road, using a section line easement along a portion of the Brice property boundary. Brice and others brought a lawsuit, arguing that repeal of the statute vacated section line easements created by the 1923 law.

The high court disagreed, affirming a ruling by Fairbanks Superior Court Judge Gerald J. Van Hoomissen.

Section Line Easements

Basis for section line easements:

Act of July 26, 1866	(RS 2477)	(43 CFR 2822, 43 USC 932)
Chapter 19 SLA	April 6, 1923	
Chapter 123 SLA	March 26, 1951	
Chapter 35 SLA	March 21, 1953	

The Mining Law of 1866 made an offer of free rights of way over unreserved public land for highway purposes. This offer became effective on April 6, 1923, when the territorial legislature passed Chapter 19. Any lands in Alaska appropriated and patented after April 6, 1923 were subject to an easement along all sections, 4 rods (66 feet) wide.

The section line easement law remained in effect until January 18, 1949. On this date the legislature accepted the compilation of Alaska law which also repealed all laws not included. The section line easement law was repealed.

On March 26, 1951, the legislature passed an easement law which dedicated a section line easement 100 feet wide along all section lines on land owned by or acquired from the territory. This was modified on March 21, 1953, to include an easement 4 rods wide along all other section lines in the territory.

To have an easement on a section line means that the section line must be surveyed under the normal rectangular system. On large areas such as State or Native selections, only the exterior boundaries are surveyed, hence there are no section line easements in these areas (until further subdivisional surveys are carried out.)

Since all Federal land is reserved in Alaska at this time and since the section line easement attaches only unreserved public land (at the time of survey or at the same time after survey), it is unlikely that the section line easement will have much applicability on Federal lands in the future. In any case, the section line easements will have no applicability on any finalized D-2 land since the land will be reserved at the time of any survey.

Land surveyed by special survey or mineral survey are not affected by section line easements since such surveys are not a part of the rectangular net.

Section line easements relate solely to highway or road use by the public. They cannot be used for powerlines or restricted private access. The date of survey and appropriation of the land must be considered in determining the presence of a section line easement.

February 29, 1980

Re: Public Land Orders
& Departmental Orders

Lawyers Title Insurance Agency, Inc.
400 Tudor Road, P.O. Box 2260
Anchorage, Alaska 99510

Gentlemen:

The Alaska State Department of Transportation and Public Facilities has received your form letters requesting the State's participation in determining the effects, if any, of Public Land Orders No. 601, 757 and 1613 and Departmental Order No. 2665, on property which you have described and forwarded for review.

The departmental records are public records and open to review by your company. They are not set up on a geographic basis, as in a title company, nor are they kept current on a daily basis for every newly created parcel of land that may be affected by a Public Land Order or Departmental Order. Each parcel must be reviewed as to the applicability of any Public Land Order or Departmental Order.

Decisions rendered in Federal and State cases and legal reviews by the Attorney Generals Office have been used to establish the current procedure for deciding when a Public Land Order or Departmental Order applies. The Public Land Order or Departmental Order only pertains to Federal Government highway interests. Those Federal Government highway interests were set out in various orders stated in Paragraph No. 1, originating with Public Land Order No. 601, of August 10, 1949 and remaining effective until June 30, 1959. These interests were transferred to the State of Alaska by Public Law 86-70 as of June 30, 1959.

Public Land Orders only apply to Public Domain Lands prior to Entrymans date of final proof. Any Federal Highway interest subsequent to the date of final proof for patent could not be acquired by the above stated orders.

The date of final proof is the date when all the preliminary acts prescribed by law for the acquisition of title, including the payment of the price of the land, have been performed. At that time, the applicant is considered to have a vested interest against the Federal Government of which he cannot subsequently be deprived. This date is available at the Bureau of Land Management for every patent ever issued and is the controlling date as to the applicability of all Public Land Orders and Departmental Orders. Examination of the Bureau of Land Management's records should enable you to decide as to the effect of Public Land Orders or Departmental Orders and make your decision as to the insurability of title for any particular land parcel.

We would be happy to work with your agency in determining the time as to when any road came under the jurisdiction of the Federal Government and its highway classification so that you may determine the effects of the Public Land Orders on the highway rights of way under State jurisdiction. We do not feel, however, that we are staffed for becoming involved in the review of all your title requests, many of which have no relation to any highway rights of way under State jurisdiction.

Sincerely,

James E. Sandberg
Regional Right of Way and
Land Acquisition Agent

JES/DSS/dc

MEMO TO: ALL RIGHT OF WAY PERSONNEL

FROM: John W. Snell, Chief Right of Way Agent

SUBJECT: Entry Date under 48 U.S.C. 321d

The purpose of this memorandum is to clarify certain points in connection with the Act of Congress of July 24, 1947, (48 U.S.C. 321d) in respect to whether or not a given parcel of land is subject to this Act.

The mere date of physical entry shown in the Bureau of Land Management's records is not conclusive as to this point; there are a number of extremely technical rules governing the actual date of entry. In general, all the original patents must be examined and all the exception and reservations should be copied in full, or photocopies of the patents should be obtained.

When the Entry date in the Bureau of Land management's records indicates that the physical entry was made a substantial time subsequent to July 24, 1947, it might usually be assumed that the land is subject to the Act. When the date of physical entry is a substantial time prior to July 24, 1947, and the patent does not contain the reservation, it may be assumed that the lands are not subject to the Act.

In many instances where the physical entry date is within one year of July 24, 1947, (either prior or subsequent to that date) all the records in connection with the entry should be carefully examined; in any instance where the physical entry is within three months prior or subsequent to the July 24, 1947, date, a certified copy of both the patent and the date concerning the entry should be secured and attached to the title search report

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

April 24, 1952

TO: A. F. Ghiglione, Commissioner of Roads for Alaska
Wm. J. Niemi (sp?), Chief Engineer

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

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

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

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

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

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

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

1.

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

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

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

2.

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

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

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

3.

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

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

The proposed legislation was applicable to both public domain and acquired lands of the United States. Moreover, it would authorize the head of the agency utilizing such

reserved right-of-way to make payment for the full value of the crops and improvements thereon.

4.

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

The language of Public Law 229 is as follows:

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

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

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

5.

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

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

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

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

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

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

6.

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

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

Through roads – Alaska Highway, Richardson Highway, Glenn Highway, Haines Highway, Tok Cutoff.

Feeder Roads – Steese Highway, Elliott Highway, McKinley Park Road, Anchorage-Potter, Indian Road, Edgerton Cutoff, Tok-Eagle Road, Ruby-Long-Poorman Road, 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.

7.

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

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

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

Public lands on either side of the area reserved for highways, both surveyed and unsurveyed, if available, could be included in claims extending up to but not including a part of the reserve. Where the land had been surveyed under the rectangular system and the surveys had not been closed on the reserved area, applications could be filed and entries allowed for portions of the legal subdivisions outside of the reserved area without creating additional surveys.

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

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

8.

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

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

The second was Secretarial Order 2665, the most important of the two, which fixed the width of all public highways in Alaska established or maintained under the jurisdiction of the Secretary of the Interior and, in addition, prescribed a uniform

procedure for the establishment of rights-of-way or easements over and across the public lands for such highways (47 Stat. 446, 48 U. S. C. 321a).

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

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

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

For Feeder Roads: Abbert Road (Kodiak Island), Edgerton Cutoff, Elliott Highway, Seward Peninsula Tram Road, Steese Highway, Sterling Highway, Taylor Highway, Northway Junction to Airport Road, Palmer to Matanuska to Wasilla Junction Road, Palmer to Finger Lake to Wasilla Road, Glenn Highway Junction to Fishhook Junction to Wasilla To Knik Road, Slana to Nabesna Road, 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-McKinley Park Road, Sterling Landing-Ophir Road, Iditarod-Flat Road, Dillingham-Wood River Road, Ruby-Long-Poorman Road, Nome-Council Road shall each extend 100 feet on each side of the centerline thereof.

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

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

Order No. 2665 further provides that the reservation (supra) covering the lands embraced in the through roads and the rights-of-way or easements covering the lands embraced in the feeder roads and the local roads, will attach as to all new construction involving public roads in Alaska when the survey stakes have been set on the ground and notices have been posted at appropriate points along the routes of the new construction, specifying the type and width of the roads.

And finally, Order 2665 provides that maps of all public roads in Alaska heretofore or hereafter constructed showing the location of the roads, together with appropriate plans and specifications will be filed by the Alaska Road Commission in the proper Land Office at the earliest possible dates for the information of the Public.

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

1.

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

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

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

2.

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

3.

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

4.

On December 1, 1949, Headquarters office in a letter to the Director of Division of territories and Island Possessions said in part: "The immediate problem is our

deficiency in accurate maps of old roads which are required by the District Land Offices in connection with locating entrymen and in issuance of patents. ******By the time entrymen apply for patents in the future it is planned to have available in the District and Land Offices accurate maps of our roads.

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

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

5.

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

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

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

6.

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

a. The areas reserved for roads will continue to be administered as withdrawn areas in accordance with the provisions of Public Land Order 601, dated August 10, 1949.

b. The Bureau of Land Management will determine the center lines of the constructed roads in those areas which have been previously surveyed under the rectangular system of surveys and where title is still in the Government, in order that supplemental plats may be prepared to show areas and designations for the public lands bordering on the rights-of-way.

c. The Bureau of Land Management in executing new cadastral surveys will, where necessary, determine the centerlines of the constructed roads as the proper basis for platting them through the sections. The plats representing the cadastral surveys will give the areas and designations of the lands abutting on the withdrawn area.

d. The Alaska Road Commission will reimburse the Bureau of Land Management for the cost of the field work in those cases where it is necessary to determine the centerlines of the constructed highways as the basis for computing the areas of public lands adjacent to the reserved areas for highway purposes.

e. The Alaska Road Commission will proceed as rapidly as possible to prepare maps of the definite locations for all constructed roads in Alaska and file copies of these maps with the Regional Administrator, Bureau of Land Management, at Anchorage.

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

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

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

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

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

SUMMARY

1.

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

2.

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

3.

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

4.

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

5.

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

6.

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

7.

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

SUMMARY (Continued)

Chap. 19, Session Laws of Alaska, 1923, Section 1721, reserved a strip between sections 4 rods wide for public highways with the section line being the center of such highway. However, the 1923 law is listed as invalid in the new Alaska Code and the Attorney General Considers this act invalid. No action was ever brought to test the validity of the law.

8.

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

9.

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

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

LOCAL ROADS

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

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

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

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

EASEMENTS OR RIGHTS-OF-WAY UNDER PLO 1613

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

THROUGH ROADS

150' each side of the centerline

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

963*P.Johnson*wc*9/9/83
WMC#18/j

August 27, 1958

PUBLIC LAW 86-767

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

ALASKA OMNIBUS ACT

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

IN SUMMARY

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

UNDER S.O. 2665

150' each side of center line

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

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

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

FEEDER ROADS

100' each side of center line

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

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

OPINION
SECTION LINE
DEDICATIONS

STATE OF ALASKA

KEITH H. MILLER, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY-GENERAL
ANCHORAGE BRANCH

360 K STREET, SUITE 105
ANCHORAGE 99501

December 18, 1969

1969 Opinions of the
Attorney General No. 7

Mr. F. J. Keenan, Director
Division of Lands
Department of Natural Resources
Anchorage, Alaska 99501

RE: Section Line Dedications for Construction of Highways

Dear Mr. Keenan:

Reference is made to your request for an oninion concerning the existence of a right-of-way for construction of highways along section lines in the state.

It is our opinion, subject to the exceptions herein noted, that such a right-of-way does exist along every section line in the State of Alaska. In reaching this conclusion we rely upon the following points:

(1) Congress by Act of July 26, 1866, granted the right-of-way for construction of highways over unreserved public lands.1/ The operation of this Act within the State is well recognized,2/ and it provides as follows:

1/ Act of July 26, 1866, 14 Stat. 253, 43 U.S.C.A. 932 (1964) RS Sec. 2477.

2/ Hamerly v. Denton, 359 P.2d 121 (Alaska 1961). See also: Mercer v. Yutan Construction Company, 420 P.2d 323 (Alaska 1966); Berger v. Ohlson, 9 Alaska 389 (1939); Clark v. Taylor, 9 Alaska 298 (1938); United States v. Rogge, 10 Alaska 130 (1941); State v. Fowler, 1 Alaska LJ No. 4, p. 7, Superior Court, Fourth Judicial District (Alaska 1962); Pinkerton v. Yates, Civil Action No. 62-237, Superior Court, Fourth Judicial District (Alaska 1963).

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

(2) This grant of 1866 constitutes a standing offer of a free right-of-way over the public domain.3/ The grant is not effective, however, until the offer is accepted.4/

(3) In Hamerly v. Denton, supra note 2, the Supreme Court of Alaska stated the general rule regarding acceptance of this federal grant saying at page 123:

> ... before a highway may be created, there must be either some positive act on the part of the appropriate public authorities of the state, clearly manifesting an intention to accept a grant, or there must be public user for such a period of time and under such conditions as to prove that the grant has been accepted. (Emphasis added.) 5/

(4) In 1923 the territorial legislature enacted Chapter 19 SLA, which provided as follows:

> Section 1. A tract of 4 rods wide between each section of land in the Territory of Alaska is hereby dedicated for use as public highways, the section line being the center of said highway. But if such highway 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. (Approved Apr. 6, 1923)

3/ Streeter v. Stalnaker, 61 Neb. 205, 85 NW 47 (1901), and Town of Rolling v. Emrich, 122 Wis. 134, 99 NW 464 (1904); See also 23 Am.Jur.2d Dedication, § 15.

4/ Hamerly v. Denton, supra note 2; Lovelace v. Hightower, 50 N.M. 50, 168 P.2d 864, (1946); Koloen v. Pilot Mound TP, 33 N.D. 529, 157 NW 672, (1916); Kirk v. Schultz, 63 Ida. 278, 119 P.2d 266, (1941).

5/ See also Koloen v. Pilot Mound TP, supra note 4; and Kirk v. Schultz, supra note 4.

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This Act was included in the 1933 compilation of laws as Sec. 1721 CLA 1933; however, it was not included in ACLA 1949, and therefore was repealed on January 18, 1949.6/

In 1951 the territorial legislature enacted Chapter 123 SLA 1951, which provided as follows:

> Section 1. A tract 100 feet wide between each section of land owned by the Territory of Alaska or acquired from the Territory, is hereby dedicated for use as public highways, a section line being the center of said highway. 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. (Approved March 26, 1951) 7/

In 1953 the territorial legislature enacted Chapter 35 SLA 1953, which provides as follows:

> Section 1. Ch. 123 Session Laws of Alaska 1951 is hereby amended to read as follows:
>
> Section 1. A tract 100 feet wide between each section of land owned by the Territory of Alaska, or acquired from the Territory, and a tract 4 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

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6/ Ch. 1 SLA 1949 provides in part that "All acts or parts of acts heretofore enacted by the Alaska Legislature which have not been incorporated in said compilation because of previously enacted general repeal clauses or by virtue of repeals by implication or otherwise are hereby repealed."

7/ This was a reenactment of the 1923 statute; however, in its amended form it applied only to lands "owned by" or "acquired from" the territory, and the width of the right-of-way was increased to 100 feet.

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> strips shall inure to the owner of the tract of which it formed a part by the original survey. (Approved March 21, 1953) 8/

(5) The foregoing legislative acts clearly establish a section line right-of-way on all land owned by or acquired from the State or Territory while the legislation was in force. In our opinion, the 1923 and 1953 acts also express the legislature's intent to accept the standing federal right-of-way offer contained in the Act of July 26, 1866.

There is no requirement that the act of acceptance contain a specific reference to the federal offer. In Tholl v. Koles, 65 Kan. 802, 70 P. 881 (1920), the Supreme Court of Kansas discussed legislative acceptance by reference to section lines saying at page 882:

> The congressional act of 1866, as will be observed, is, in language, a present and absolute grant, and the Kansas enactment of 1867 is a positive and unqualified declaration establishing highways on all section lines in Washington county. The general government, in effect, made a standing proposal, a present grant, of any portion of its public land not reserved for public purposes for highways, and the state accepted the proposal and grant by establishing highways and fixing their location over public lands in Washington county. The act of the legislature did not specifically refer to the congressional grants, nor declare in terms that it constituted an acceptance, but we cannot assume that the legislature was ignorant of the grant, or unwilling to accept it in behalf of the state for highways. The law of congress

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8/ With this amendment the statute once again applied to both territorial and federal lands, and except for the increased width of the right-of-way on territorial lands, the statute's application was identical to the original 1923 statute. See A.S. 19.10.010 for present codification.

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> giving a right-of-way for highway purposes over the public lands in Washington county was in force when the legislature acted, and it was competent for it to take advantage of that law, and the general terms employed by it are sufficiently broad and inclusive to constitute an acceptance. (Emphasis added.)

Other jurisdictions have enacted similar legislation, and there is abundant authority to support acceptance by legislative reference to section lines.9/

The Alaska statutes employ the phrase "is hereby dedicated", and we recognize that this phrase is not normally used as a term of acceptance. Nevertheless, the language is not inappropriate where a legislative body is seeking to accept the federal offer, while at the same time making a dedication of land it already owns.10/

Furthermore, in attempting to construe these statutes, it is presumed that the legislature acted with full knowledge of existing statutes relating to the same subject,11/ and that it:

9/ Costain v. Turner, 36 NW 2d 382 (S.D. 1949); Pederson v. Canton TP, 34 NW 2d 172 (S.D. 1948); Wells v. Pennington County, 2 S.D. 1, 48 NW 305, (1891); Walbridge v. Board of Com'rs of Russell County, 74 Kans. 341, 86 P. 473, (1906); Korf v. Itten, 64 Colo. 3, 169 P. 148, (1917).

10/ See 23 Am.Jr. 2 Dedication § 41, where it is stated:

> Technically, offer and acceptance are independent acts. Sometimes, however, the offer and the acceptance are so intimately involved in the same acts or circumstances that the necessity and the fact of the acceptance are somewhat obscured, as where the dedication is made by some governmental agency, the property already being public in ownership, or where the dedication is by statutory proceedings, ...

11/ United States v. Rogge, supra note 2.

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> ... had, and acted with respect to, full knowledge and information as to the subject matter of the statute and the existing conditions and relevant facts, relating thereto, as to prior and existing law and legislation on the subject of the statute and the existing condition thereof, as to the judicial decisions with respect to such prior and existing law and legislation, and as to the construction placed on the previous law by executive officers acting under it; and a legislative judgment is presumed to be supported by facts known to the legislature, unless facts judicially known or proved preclude that possibility. (82 C.J.S. 544 § 316)

The statutes of 1923 and 1953 purport to act upon all section lines in the territory. Such legislation affecting land not owned by the territory would have been in contravention of 48 U.S.C.A. 77 and invalid were it anything other than an acceptance of the Federal Grant of 1866.12/

The legislature is presumed to have known the law, and to have intended a valid act, and it follows that these statutes were intended as an acceptance of the federal offer.

(6) Like the standing federal offer, the Alaska statutes are continuous in their operation, and they apply to "each" section of land in the state as it becomes eligible for section line dedication. Public lands which come open through cancellation of an existing withdrawal, reservation, or entry, and subsequent acquisitions by the territory (or state), are all subject to the right-of-way.

(7) Our conclusion that a right-of-way for use as public highways attaches to every section line in the State, is subject to certain qualifications:

12/ 48 U.S.C.A. 77 provides in part that: "That legislative power of the territory of Alaska shall extend to all rightful subjects of legislation not inconsistent with the constitution and laws of the United States, but no law shall be passed interfering with the primary disposal of the soil; ***."

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a. Acceptance under the Act of 1866 can operate only upon "public lands, not reserved for public uses". Consequently, if prior to the date of acceptance there has been a withdrawal or reservation of the land by the federal government, or a valid homestead or other entry by an individual, then the particular tract is not subject to the section line dedication.13/ (However, once there has been an acceptance, the dedication is then complete, and will not be affected by subsequent reservations, conveyances or legislation.)14/

b. The public lands must be surveyed and section lines ascertained before there can be a complete dedication and acceptance of the federal offer.15/

c. The dedication of territorial or state lands does not apply to those tracts which were acquired by the territory and subsequently passed to private ownership during periods in which the legislative dedication was not in effect; that is, prior to April 6, 1923, and between January 18, 1949 and March 26, 1951.

13/ Hamerly v. Denton, supra note 2; Bennett County S.D. v. U.S., 294 F.2d 8 (1968); Korf v. Itten, supra note 9; Stofferman v. Okanogon County, 76 Wash. 265, 136 P.484, (1913); and Leach v. Manhart, 102 Colo. 129, 77 P.2d 652, (1938).

14/ Huffman v. Board of Supervisors of West Bay TP, 47 N.D. 217, 182 NW 459, (1921); Wells v. Pennington, supra note 9; and Lovelace v. Hightower, supra note 4; Duffield v. Ashurst, 12 Ariz. 360, 100 P. 820, (1909), appeal dismissed 225 U.S. 697 (1911).

15/ Note, however, that the Alaska statutes apply to each section line in the state. Thus, where protracted surveys have been approved, and the effective date thereof published in the Federal Register, then a section line right-of-way attaches to the protracted section line subject to subsequent conformation with the official public land surveys.

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d. Acceptance of the federal grant applies only to those lands which were "public lands not reserved for public uses" during periods in which the legislative acceptance was in effect; that is, between April 6, 1923, and January 18, 1949, and after March 21, 1953.

In summary, each surveyed section in the state is subject to a section line right-of-way for construction of highways if:

1. It was owned by or acquired from the Territory (or State) of Alaska at any time between April 6, 1923, and January 18, 1949, or at any time after March 26, 1951, or;

2. It was unreserved public land at any time between April 6, 1923, and January 18, 1949, or at any time after March 21, 1953.

The width of the section line reservation is four rods (2 rods on either side of the section line) as to:

1. Dedications of territorial land prior to January 18, 1949, and;

2. Dedications of federal land at any time.

The width of the reservation is 100 feet (50 feet on either side of the section line) for dedications of state or territorial land after March 26, 1951.16/

Opinion No. 11, 1962 Opinions of the Alaska Attorney General, to the extent it is inconsistent with the views expressed herein, is disapproved.

16/ For further discussion of section line right-of-way width, see Opinion No. 29, 1960 Opinions of the Alaska Attorney General.

Very truly yours,

G. KENT EDWARDS
ATTORNEY GENERAL

By: John K. Norman
John K. Norman
Assistant Attorney General

GKE:JKN:bl

cc: The Honorable Keith H. Miller
Governor for the State of Alaska

The Honorable Robert L. Beardsley
Commissioner, Department of Highways

The Honorable Thomas E. Kelly
Commissioner, Department of Natural Resources