

#10.11

STATE OF ALASKA
DEPARTMENT OF PUBLIC WORKS

INTRA-DEPARTMENTAL CORRESPONDENCE

SUBJECT: Right of Way Widths on existing roads

JAN 2 10 23 AM

DATE: November 28, 1961

TO: Robert V. Barnes, R/W Research Analyst III (HPS)
Division of Highways

FILE REFERENCE: 2-23-00
B-Legislation and
ATTENTION OF: Legal

FROM: Thomas E. Fenton, R/W Agent I
Division of Highways

QUESTION: What width may the HPS program claim on roads which are not covered by deed or recorded plat?

ANSWER: I. Roads Built prior to July 24, 1947.

The Department of Law in Attorney General's Opinion No. 29 of November 4, 1960, declared that the width of Alaskan highways constructed under 43 U.S.C. 932 is 66 feet. Forty-three U.S.C. 932 provides: "The right of way for the construction of highways over public lands, not reserved for public use, is hereby granted."

An office memorandum of the BPR, dated April 1, 1958, casts some doubt as to whether roads in Alaska built over public domain were constructed under 43 U.S.C. 932. In that opinion, however, the General Counsel for the BPR believed that a 66 foot right of way could be supported.

It would appear therefore that we can claim 66 feet for all right of way when the highway was built prior to 1947 or thereafter. This 66 feet width applies even though the land was entered prior to construction because 66 feet should be easily supported on the theory of prescriptive easement.

II. Roads Built after July 24, 1947.

In a letter dated November 17, 1960, the Department of Law stated that the width of right of way utilized under the Act of 1947 was unlimited. Therefore, you may claim any amount in addition to the basic 66 feet by use of the Notice of Utilization if the land is subject to said Act of July 24, 1947. It must be remembered however, that we are required to pay for improvement if we claim under the authority of this act. 14 Alaska Admin. Code 382.

To claim more than 66 feet without paying for improvements we must turn to other authority. United States Department of the Interior, Order 2665, October 16, 1951, as amended on July 17, 1952 and September 15, 1956, and P.L.O. 1613, April 7, 1958, provided for easements for highway purposes along certain existing roads. You may claim right of way widths consistent with these regulations.

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A. Claim 150 feet on each side of the centerline for the following:

1. Alaska Highway
2. Richardson Highway
3. Glenn Highway
4. Haines Highway
5. Seward - Anchorage Highway (exclusive of part w/in forest)
6. Anchorage - Spenard Highway
7. Fairbanks College Highway (after April 7, 1958; see #53)
8. Fairbanks International Airport Road
9. Anchorage - Fourth Avenue - Post Road
10. Anchorage International Airport Road
11. Copper River Highway
12. Fairbanks - Nenana Highway
13. Denali Highway
14. Sterling Highway (after September 15, 1956; see #23)
15. Kenai Spur from Mile 0 to Mile 14
16. Palmer - Wasilla - Willow Road
17. Steese Highway from Mile 0 to Fox Junction (after September 15, 1956; see #22)

B. Claim 100 feet on each side of the centerline for the following:

18. Albert Road (Kodiak Island)
19. Edgerton Cutoff
20. Elliott Highway
21. Seward Peninsula Tram Road
22. Steese Highway (see #17 above)
23. Sterling Highway (from October 16, 1951 - September 14, 1956; see #14 above)
24. Taylor Highway
25. Northway Junction to Airport Road
26. Palmer to Matanuska to Wasilla Junction Road
27. Palmer to Finger Lake to Wasilla Road (prior to September 15, 1956; see #48)
Glenn Highway Junction to Fishhook Junction to Wasilla to Knik Road
29. Slana to Nabesna Road
30. Kenai Junction to Kenai Road (prior to September 15, 1956; see #47)
University to Ester Road (prior to September 15, 1956; see #46)
32. Central to Circle Hot Springs to Portage Creek Road
33. Manley Hot Springs to Eureka Road
34. North Park Boundary to Kantishna Road
35. Paxson to McKinley Park Road (prior to September 15, 1956; see #49)
36. Sterling Landing to Ophir Road
37. Iditarod to Flat Road
38. Dillingham to Wood River Road
39. Ruby to Long to Peerman Road
40. Nome to Council Road

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- 41. Nome to Bessie Road
- 42. Kenai Spur from Mile 14 to Mile 31 (after September 15, 1956; see #50)
Nome - Keugarek Road (after September 15, 1956; see #51)
Nome - Teller Road (after September 15, 1956; see #52)

C. Claim 50 feet on each side of the centerline for the following:

- Otis Lake Road (except: Seward Meridan, T. 13 N., R. 3 W., Sec. 21, N $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$; which is 30 feet after July 17, 1952)
- 46. University to Ester Road (after September 15, 1956; see #31)
Kenai Junction to Kenai Road (after September 15, 1956; see #30)
Palmer to Finger Lake to Wasilla Road (after September 15, 1956; see #27)
Faxon to McKinley Park Road (after September 15, 1956; see #35)
Kenai Spur from Mile 14 to Mile 31 (prior to September 15, 1956; see #42)
Nome to Keugarek Road (prior to September 15, 1956; see #43)
Nome - Teller Road (prior to September 15, 1956; see #44)
Fairbanks - College Highway (prior to April 7, 1958; see #7)
- 54. All other roads

It should be remembered that these widths and/or easements were established subject to valid existing rights. Therefore, an entry allowed prior to the date of the orders is not subject to the orders.

Dates established

#1 - #6	October 16, 1951
#7	April 7, 1958
#8 - #17	September 15, 1956
#18 - #41	October 16, 1951
#42 - #44	September 15, 1956
#45	October 16, 1951
#46 - #52	September 15, 1956
#53	October 16, 1951
#54	October 16, 1951

For claims prior to the above dates we must rely on the Act of 1947 if applicable.

There appears no legal basis for paying for improvements if the land is subject to the orders. The Administrative Code does not require us to do so. Also, it must be remembered that the Act of 1947 involved an indefinite and uncertain right of way; whereas, the orders involve a definite and certain right of way. Therefore, we need not compensate for improvements.

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Roads Built Along Section Lines

Roads built along section lines present a different problem. Case law from other states indicate that the Alaskan Statutes concerning section -line highways constitute acceptance of the grant in 43 U.S.C. 932. Therefore, we may claim the following:

1. Road built between July 6, 1923 and February 17, 1949 and entry after July 6, 1923 but before February 17, 1949 - claim 66 feet. Chapter 19 SLA 1923.

2. Road built between February 18, 1949 and June 25, 1951 - no provision.

3. Road built between June 26, 1951 and later and entry is June 26, 1951 or later - claim 100 feet only if land was acquired from the Territory. Do not claim if acquired from U.S.A.. Chapter 123 SLA 1951. If entry was made after March 21, 1953 - claim 100 feet if from Territory or State and 66 feet if from U.S.A.. Chapter 35, SLA 1953.

Conclusion

The above information is the best that I can give you. If you have any questions please let me know. I am interested in any comments you may have. I expect to go over this memorandum with you sometime in the next few weeks.

TEFirst

cc: Bill Stouder, R/W Agent I
Anchorage R/W Office

cc: Thomas E. Fenton, R/W Agent I