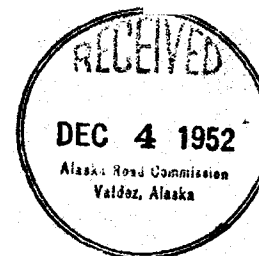


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UNITED STATES
DEPARTMENT OF THE INTERIOR
Alaska Road Commission
Juneau, Alaska



MANUAL NO. 8

REAL ESTATE PROCEDURE AND PRACTICE

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Prepared Under Direction of:

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INTRODUCTION

This Manual is prepared for the information and guidance of the officers and employees of the Alaska Road Commission for the purpose of securing, so far as possible, uniformity in the interpretation and administration of applicable laws and Headquarters office policies.

This Manual should prove a valuable forward step in securing uniformity in the functions, practices and procedures of those employees engaged in or participating in real property activities.

KEY TO CITATION OF AUTHORITIES

- Stat. United States Statutes at Large.
Revised Statutes of the United States; citation will include section numbers.
United States Reports. Decisions of the Supreme Court of the United States.
- U.S.C. United States Code (The Code of the Laws of the United States).
Decisions of the Department of the Interior relating to public lands.
- C.F.R. Code of Federal Regulations of the United States of America.

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

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

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

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

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

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

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

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

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

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

From the foregoing it necessarily follows that:

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

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

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

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

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

NOMENCLATURE

RIGHT-OF-WAY TERMS

Abandonment

Cessation of use of right-of-way or activity thereon with no intention to reclaim or use again for highway purposes. (Sometimes called Vacation.)

Abstract of Title

A document showing the condensed history of the title to property, containing portions of all conveyances or other pertinent instruments relating to the estate or interest in the property, and all liens, charges, encumbrances, and releases.

Acquisition or Taking

The process of obtaining right-of-way.

Certificate of Title

A document based on a title search stating that title or interest in property is vested in a designated person and showing outstanding liens, charges, or other encumbrances.

Condemnation

The process by which property is acquired for highway purposes through legal proceedings under power of eminent domain.

Consequential Damages

Loss in value of a parcel, no portion of which is acquired, resulting from a highway improvement.

Conveyance

A written instrument by which a title, estate or interest in property is transferred.

Dedication

The setting apart by the owner and acceptance by the

public of property for highway use, in accordance with statutory or common law provisions.

Deed

A duly attested written instrument, under seal, conveying real property or interest therein.

Direct Compensation

Payment for land or interest in land and improvements actually acquired for highway purposes. (Sometimes called Direct Damages.)

Donation

The voluntary conveyance of private property to public ownership and use, without compensation to the owner.

Drainage Easement

An easement for directing the flow of water.

Easement

A right acquired by public authority to use or control property for a designated highway purpose.

Eminent Domain

The power to take property for public use with just compensation therefor.

Fee Simple

An absolute estate or ownership in property including unlimited power or alienation.

General Benefit

Advantage accruing from a given highway improvement to a community as a whole, applying to all property similarly situated.

Guarantee Title

A title, the validity of which is insured by an abstract title, or indemnity company.

Highest and Best Use

The most productive use, reasonable but not speculative or conjectural, to which property may be put in the near future.

Highway Development Right

The right of owners to make changes in abutting property uses, which, if exercised would be inconsistent with present and future needs.

Inverse Condemnation

The legal process by which a property owner may claim and receive compensation for the taking of, or payment for damages to, his property as a result of a highway improvement.

Just Compensation

A full and fair equivalent for the loss sustained by the owner as a result of taking or damaging of private property for highway purposes.

Market Value

The highest price for which property can be sold in the open market by a willing seller to a willing purchaser, neither acting under compulsion and both exercising reasonable judgment.

Negotiation

The process by which property is sought to be acquired for highway purposes through discussion, conference, and final agreement upon the terms of a voluntary transfer of such property.

Option

A written agreement granting a privilege to acquire property or interest therein at a fixed price within a specified period.

Parcel Plat

A map of a single parcel of property or portion thereof needed for highway purposes, showing the boundaries,

areas, the remainder, improvements, access, ownership, and other pertinent information.

Partial Taking

The acquisition of a portion of a parcel of property.

Planting Easement

An easement for reshaping roadside areas and establishing, maintaining, and controlling plant growth thereon.

Quitclaim Deed

A deed conveying, without warranty, any title, interest, or claim which the grantor may have in estate conveyed.

Remainder

The portion of a parcel retained by the owner after a part of such parcel has been acquired.

Remnant

A remainder so small or irregular that it usually has little or no economic value to the owner.

Right of Access

The right of ingress to a highway from abutting land and egress from a highway to abutting land.

Right of Immediate Possession

The right to occupy property for highway purposes, after preliminary steps for acquisition have been taken and before final settlement.

Right of Survey Entry

The right of survey entry is the right to enter property temporarily to make surveys and investigations for proposed highway improvements.

Right-of-Way

A general term denoting land, property, or interest therein, usually in a strip acquired for or devoted to a highway.

Right-of-way Appraisal

A determination of the market value of property including damages, if any, as of a specified date, resulting from an analysis of facts.

Right-of-way Estimate

An approximation of the market value of property, including damages, if any, in advance of an appraisal.

Right-of-way Strip Map

A plan of a highway improvement showing its relation to adjacent property, the parcels or portions thereof needed for highway purposes, and other pertinent information.

Riparian Rights

The rights of an owner of water-fronting lands in the bed, banks, accretions, water, access, moorage, and related terms.

Roadside Control

The public regulation of the roadside to improve highway safety, expedite the free flow of traffic, safeguard present and future highway investment, conserve abutting property values, or preserve the attractiveness of the landscape.

Roadside Zoning

The application of zoning for roadside control.

Scenic Easement

An easement for conservation and development of roadside views and natural features.

Setback Line

A line outside the right-of-way, established by public

authority, on the highway side of which the erection of buildings or other permanent improvements is controlled.

Severance Damages

Loss in value of the remainder of a parcel resulting from an acquisition, sometimes called Indirect Damages.

Sight Line Easement

An easement for maintaining or improving the sight distance.

Slope Easement

An easement for cuts or fills.

Special Benefit

Advantage accruing from a given highway improvement to a specific property and not to others generally.

Torrens Title

A certificate of title issued by a public authority under a system wherein all deeds and documents affecting real property are registered.

Title

The evidence of a person's right to property or the right itself.

Title Opinion

An analysis and interpretation of a title search concerning present ownership, encumbrances, clouds on title, and other infirmities.

Title Search

An investigation of public records and documents to ascertain the history and present status of title to property, including ownership, liens, charges, encumbrances, and other evidence.

Warranty Deed

A deed containing covenants by the grantor, for himself

and his heirs, to the grantee and his heirs, to warrant and defend the title and possession of the estate conveyed.

Zoning

The division of an area into districts and the public regulation of the character and intensity of use of the land and improvements thereon.

ORGANIZATION

1.00 Those engaged in real property activities, whether in or from the District or Headquarters office, have as their primary responsibility the acquisition and management of all real properties or interests therein.

1.01 One of the principal or primary functions of the Real Estate Branch, either at the District or Headquarters office level, or both, is the acquisition of rights-of-way for road or highway purposes. Other functions include, but are not limited to, acquisition of properties for shops, maintenance sites, material sites or for any other purpose that may be necessary for the normal day to day real property operations of the Alaska Road Commission.

1.02 Those engaged in real property activities, at either the District or Headquarters office level, are responsible for negotiating and securing all necessary detour and borrow agreements and conducting, at the request of the Chief Engineer and/or the District Engineer, investigations of all real property damage claims, if any.

1.03 It is the responsibility of the Real Estate Branch at the field or Headquarters office level to make all necessary arrangements for the removal or relocation of utility facilities including electric telephone and telegraph lines, water, sewer, oil or gasoline pipe lines, to clear Alaska Road Commission rights-of-way for construction purposes, and to handle all rights-of-way clearance activities including the sale and removal or sale and demolition of buildings or other improvements.

1.04 The Real Estate Branch shall handle all rental and leasing functions covering all types of real estate held by the Alaska Road Commission during the interim between acquisition and necessary clearance to prepare for road or highway construction or for other proposed uses.

1.05 The Real Estate Branch shall be responsible for the maintenance and records of all real property holdings including excess lands acquired in the process of developing rights-of-way and in the disposition of real property no longer needed by the Alaska Road Commission.

1.06 The Real Estate Branch shall at all times assist in maintaining a current record of all land ownerships of the Alaska Road Commission.

1.07 The administration of all right-of-way functions shall be under the supervision of the Chief of the Real Estate Branch

as the direct representative of the Chief, Operations Division, in all matters pertaining to real property and land economics. More specifically, the Chief of the Real Estate Branch acts as the representative of the Chief, Operations Division, in all matters of real estate appraisal and land economic functions.

1.08 The Chief of the Real Estate Branch shall cause to be maintained in the Headquarters office necessary records of right-of-way appraisals, right-of-way acquisitions, right-of-way clearances, condemnation cases, records of rental and leaseings, and all other necessary records on a current basis, as required for the purpose of keeping the Chief Engineer and his Headquarters staff informed at all times as to the status and operations of the Real Estate Branch on a district and territorial basis.

PUBLIC RELATIONS

1.09 Those engaged in real property activities, more particularly in the field of right-of-way procurement, have the best opportunity of all employees to make friends for the Alaska Road Commission through their conduct. Their patient explanations and courteous treatment of affected property owners can leave a community of loyal supporters for the Commission. Those employees engaged in right-of-way work should fully acquaint themselves with the policies, procedures and functions of the Alaska Road Commission. They should at every opportunity fully acquaint the people with whom they come in contact as to all phases of the operations of the Alaska Road Commission.

2.00 In the matter of rights-of-way procurement it would be most desirable if all parcels or parts of parcels of land shall be appraised prior to opening negotiations. Negotiations should not be opened with any affected property owner until the appraisal of the affected parcel has had the benefit of the considered opinion of the Chief Engineer and has been approved by him.

2.01 Those personnel negotiating the right-of-way agreements, upon contacting the property owner, should keep uppermost in their minds the human reactions and characteristics that can be expected because of all the circumstances and conditions under which negotiations for the acquisition of right-of-way are being opened.

2.02 Prior to any discussion with the property owner as to the terms of settlement and the compensation to be paid, the property owner should be given full information as to the functions and workings of the Alaska Road Commission, the public necessity for the proposed highway improvement, full information through the use of design maps as to exactly how the proposed improvement will affect the subject property, with a full explanation of all the special benefits and any possible detriments.

2.03 The property owner should be thoroughly informed as to our appraisal efforts and the method of appraisal, and assurance should be given him that our efforts have been sincere and honest and for the single purpose of determining the fair market value of the affected property.

2.04 Personnel engaged in right-of-way work should at all times keep in mind in handling negotiations that they are employees of the public and that the property owner or owners with whom they are negotiating are part of the public who employ him.

2.05 Care should be exercised at all times to completely and honestly protect the interests of the affected property owner who may be unfamiliar or inexperienced in real estate transactions and real estate values.

2.06 If, during the course of negotiations, there should be brought to light certain conditions or characteristics of the property or some factors concerning it which had escaped the appraiser and which were therefore not considered or not given proper consideration in the final determination of market value, proper consideration and weight should be given these matters and, if necessary, a reappraisal of the property be made before negotiations are continued.

2.07 The policy and procedure of the Alaska Road Commission negotiators in all right-of-way negotiations shall be at all times directed to accomplish the end result that the property owner is paid the just compensation to which he is entitled; that the settlement represents compensation that is just and fair to the public; that every courtesy, consideration and patience be extended to the property owner; and that the property owner has a feeling of confidence and respect toward the Alaska Road Commission and its employees.

2.08 The threat of court proceedings should not be used to reach a settlement by negotiation. The very nature of right-of-way acquisition work for public use is such that the Commission cannot expect to reach an amicable settlement with every property owner from whom it is necessary to acquire right-of-way.

2.09 In those cases where it is not possible to reach a settlement after negotiations have been carried on for a reasonable period of time, the District Office will forward a recommendation to Headquarters Office for condemnation, not of the fee, but of a right-of-way over the surface estate.

2.10 It should be the general policy not to permit the employee who made the appraisal to later negotiate for the acquisition of the right-of-way on the same parcel or parcels.

APPRAISALS

3.00 Appraisals should be made for the guidance of the negotiator and to furnish him a reasonable check of the amount of just compensation due for the taking or damaging of property for Alaska Road Commission purposes. The approved appraisal is not to be regarded as a binding limitation on the authority of the negotiator. Facts and circumstances may develop during negotiations indicating that the approved appraisal is either too high or too low, in which cases settlements varying therefrom will be approved upon proper explanation. The general concept should be that private property shall not be taken or damaged for public use without just compensation having been made to, or paid into court for, the owner.

3.01 It is the policy of the Alaska Road Commission that appraisals must be completed, and approved by Headquarters office, before any negotiations are started for the acquisition of property or payment of damages.

3.02 The measure of just compensation in right-of-way appraisals is the highest price, estimated in terms of money, which the land will bring if exposed for sale in the open market, with a reasonable time allowed to find a purchaser, buying with full knowledge of all the uses and purposes to which it is adapted, and for which it is capable of being used.

3.03 There are four fundamental approaches to value

3.04 Market Data - This consists of a comparison of the property to be appraised with other similar properties which have been sold or which are listed for sale. It is identical with and conforms to the legal definition of market value. For this basic reason, it should be the fundamental approach in the appraisal process.

3.05 Replacement Cost New Less Depreciation - In this approach the market value of the land is found by the study of market data; to this is added the estimated cost of replacing the improvements today, less the proper depreciation due to all causes. This method shall always supplement the market data approach on improved properties.

3.06 Income Approach - For types of property where income is important the appraisers shall determine the actual and fair earnings of the property being appraised as compared to the earnings of similar properties which have been sold. The actual process to be used to arrive at indicated value from earnings will vary under different conditions.

The income approach or method should be used with caution when appraising properties which are not devoted to their highest and best use, or which have improvements thereon that are improper or inadequate.

3.07 Historic Cost New Less Depreciation - The actual cost is generally the best evidence of the value for both land and improvements when the property is new. In older properties, the historic cost becomes less and less important as an evidence of market value. This method should be used only in appraisals of properties with fairly new improvements.

3.08 After having obtained factors indicating value by those of the above approaches which are applicable, the final estimate of market value is made by giving careful thought to the advantages and disadvantages of the various methods used in each case. An attempt should be made to give each method and each known fact the weight that is just and right for each property in the final estimate of market value.

3.09 Certain types of damages have been found not to be compensable and should not be included in appraisals. (California Courts Findings)

1. Damage to business
2. Expense for moving personal property.
3. Loss of good will.
4. Damage arising from owners inability to locate an acceptable substitute location.
5. Loss of profits due to necessity of removing business to some other location; loss of profits due to interruption of business by reason and during course of construction of the public improvement.
6. Noise and fumes caused by increase of traffic
7. Rerouting or diversion of traffic.
8. Increase or decrease in the amount of traffic on the highway.

3.10 All monetary appraisal calculations should be carried out accurately to the nearest cent.

3.11 Land areas should be shown to at least two decimals where the area is expressed in acres and should be shown to the closest

square foot where such areas are expressed in square feet. Where land areas are calculated on the front foot basis, the frontage shall be shown correctly to at least two decimal places.

3.12 Building areas should be shown to the closest square foot.

✓3.13 The material in both original and supplemental appraisals shall be arranged in the following order:

1. Appraisal title sheets
2. Preliminary estimate of relocating public utilities, if any.
3. List of access openings, if any.
4. Parcel summary sheet.
5. Comparison of old and new appraisals of parcels reappraised.
6. Appraisal sheet for individual parcels with appropriate pictures.
7. Comparable sales and listing sheets, if any.
8. Index maps.
9. Appraisal maps.
10. Map showing location of sales and listings, if any.

3.14 The title sheet should show the judicial district, highway section, and township, range, and section. It should also show whether the appraisal is an original or a supplement, and indicate the project limits. It should show the names of the appraisers.

3.15 The following headings are items which should be covered in the introduction of either original or supplemental appraisals.

1. The number of parcels
2. The type of title to be taken, whether fee or easement. (In practically every case it will be title by easement.)
3. The right-of-way width and type of highway or road.

4. Soil.
5. Topography.
6. General basis of land value.

3.16 Index maps should show the general location of the appraisal and project limits, the extent of large individual ownerships and the relationship of the proposed road or highway to other roads which might afford access to the various properties. Index maps can sometimes be used to indicate the location of comparable sales, if any.

3.17 Appraisal maps should show the area and parcel to be appraised. They should also show the area and dimensions of the remaining portions of the holdings from which the right-of-way is to be taken. Where it is impractical to show the full remainder on the map, the areas and approximate dimensions should be indicated. The parcels outlined shall include any excess land which is to be acquired from the property of the owners. The appraisal maps shall also show the location and relative size of the improvements in the right-of-way area and in the vicinity thereof.

3.18 Each parcel shown on the appraisal map shall be given a parcel number which shall be used as a filing number in correspondence, deeds or other documents and schedules relating to that parcel. Parcel numbers should not be duplicated on any route or section.

✓ 3.19 The appraisers should not discuss their opinions of value applying either to land, damages, or improvements, with owners or any other parties than co-workers.

✓ 3.20 It is the appraiser's duty to obtain without commitment, factual information from every source available for later evaluation.

3.21 Any statement of proposed valuations to the property owner will later lead to misunderstandings with other property owners.

3.22 The position of the negotiator approaching the property owner who has advance and frequently erroneous information, is untenable.

3.23 In no instance are negotiations to be opened or carried on until the appraisal is approved by Headquarters office.

3.24 It is discretionary with the negotiator as to the amount of information within the appraisal to be disclosed during

negotiations, but the appraisal report is not to be shown to, read to, permitted to be read by, or loaned to any person not a co-worker employee of the Alaska Road Commission.

3.25 Appraisers and negotiators should be thorough in their work and especially diplomatic in all contacts with owners and other individuals. Controversies, arguments, or any acts that in any way can be classed as arbitrary or bureaucratic should always be avoided.

NEGOTIATIONS

4.00 Before attempting to open negotiations with affected property owners it should be determined that the negotiator has all the information necessary to conduct and complete negotiations for the orderly and efficient acquisition of the right-of-way.

4.01 Necessary information shall include, but not be limited to:

1. Title reports
2. Appraisal.
3. All factual data compiled by the appraiser for preparation of the appraisal.
4. Necessary right-of-way maps, plans, profiles, cross sections and construction details to the end that he will be able to impart to the property owner complete knowledge of the proposed construction and its effect upon the remainder of the property.
5. Complete review with the appraiser of all the elements taken into consideration in determining value.
6. Adequate time to study the territory and individual parcels in the field.

4.02 Wherever possible negotiations should be handled by personal contact with the affected owner.

4.03 If the property owner resides in the Territory but in a district outside the district in which the right-of-way is desired, Headquarters office assistance should be requested by a letter giving full details, including descriptive maps, etc.

4.04 If the property owner resides outside of the Territory negotiations for right-of-way easement will be conducted by

Headquarters office after a full and comprehensive brief has been submitted by District office giving full details of the proposed easement and both the beneficial and detrimental effects, if any, to the property.

4.05 Right-of-way personnel should under no circumstances, negotiate with, or deliver maps or appraisal information to real estate brokers, attorneys or other individuals for the purpose of permitting these people to attempt to negotiate a settlement with property owners.

4.06 The one exception to this rule is a case where the property owner specifically requests the negotiator to handle all negotiations through the owner's real estate broker, attorney, or other representatives in which case, it will be in order to handle all negotiations with said owner's representatives.

CONDEMNATION

5.00 Under Order No. 2509, Amendment No. 7, of the Department of the Interior, Office of the Secretary, Section 28 thereof relates to acquisition of real estate by condemnation.

5.01 The solicitor of the Department of the Interior is authorized to exercise the power of the Secretary of the Interior to acquire real estate for the United States by condemnation under judicial process, whenever in the opinion of the solicitor it is necessary or advantageous to the Government to do so, and the solicitor is authorized to submit to the Attorney General of the United States applications for the institution of proceedings for condemnation.

5.02 The Alaska Road Commission may acquire either in fee or in any less estate or interest, any real property which it considers necessary for road or highway purposes.

5.03 Real property for such purposes includes, but is not limited to, real property considered necessary for any of the following purposes:

1. For rights-of-way.
2. For rock quarries, gravel pits or sand or earth borrow pits.
3. For offices, shops, or storage yards.
4. For the culture and support of trees which benefit any road or highway by aiding in the maintenance

of the attractiveness of the scenic beauties of such road or highway.

5. For drainage in connection with any road or highway.
6. For the maintenance of an unobstructed view of any portion of a road or highway so as to promote the safety of the travelling public.

5.04 Where there are two or more estates or divided interests in property sought to be condemned the plaintiff (Alaska Road Commission and/or the United States of America) is entitled to have the amount of the award for such property first determined as between plaintiff and all defendants claiming any interest therein; thereafter in the same proceeding the respective rights of such defendants in and to the award shall be determined by the court, jury, or referee and the award apportioned accordingly.

5.05 The court must hear such legal testimony as may be offered by any of the parties to the proceedings and thereupon must ascertain and assess:

1. The value of the property to be condemned and all improvements thereon pertaining to the realty, and each and every separate estate or interest therein; if it consists of different parcels, the value of each parcel and each estate or interest therein shall be separately assessed.
2. If the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned, and the construction of the improvement in the manner proposed by the plaintiff.
3. Separately, how much the portion not sought to be condemned, and each estate, or interest therein, will be benefited, if at all, by the construction of the improvement proposed by the plaintiff; and if the benefit shall be equal to the damages assessed under subdivision two, the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefit shall be less than the damages so assessed, the former shall be deducted from the latter, and the remainder shall be the only damages allowed in addition to the value.

5.06 District offices, before recommending condemnation action to Headquarters office, should have carried on negotiation for

right-of-way easement for a reasonable period of time.

5.07 Each and every property owner should be called upon a reasonable number of times and, following the final offer of settlement, each property owner should be allowed a reasonable period of time, commensurate with the size of the transaction and the problems involved in that particular transaction, to accept such offer of settlement or reject same.

5.08 When, in the opinion of the District Engineer, all possibilities of negotiation have ceased, request for action by Headquarters office shall include the following information:

1. Set forth a statement as to location of project by project limits and project authorization.
2. Date design plans are turned over to District Office.
3. Date appraisal report was approved by Headquarters office.
4. Number of parcels in the project and the length of time field negotiations have been carried on.
5. A statement that each and every property owner has been called upon at least twice, and that every property owner has received a final offer of settlement and has had a reasonable period of time in which to accept or reject such offer.
6. Descriptions in duplicate of the parcels recommended to be condemned.
7. Forward one map whereon the various parcels of right-of-way to be condemned are delineated. It will be in order for the District Office to place any pertinent notes that they may desire on this map, which will aid Headquarters office in checking the description or descriptions.
8. Type of title to be condemned (an easement)

5.09 The subject of legal description, in condemnation, is very important.

5.10 The manner of describing real property often raises material issues of law and fact in the trial of a condemnation proceeding. Accordingly, the legal aspects as to certain factual situations are covered as follows:

1. Where the road or highway is to be condemned and the partial taking is from adjoining land on each side which is held in a common ownership, the property lying on each side must be separately described, thus creating two larger parcels. This will avoid the possibility of any contention being made for damages by reason of a further separation of owner's properties. It will also prevent imputing a severance damage which may in fact accrue to the property lying on one side of the highway as applying to the property lying on the opposite side merely by reason of the latter property being considered a part of the larger parcel.

5.11 Whenever a part of a parcel of land is to be taken for road or highway purposes and the remainder is to be left in such shape or condition as to be of little value to its owner, or to give rise to claims or litigation concerning severance or other damage, the Alaska Road Commission may acquire the whole parcel and may sell the remainder or may exchange the same for other property needed for highway purposes.

5.12 In the event that the parcel or parcels recommended for condemnation involve more land than actually required for the highway improvement itself, the reasons why excess land is being acquired should be clarified. These could be:

1. Because the remainder will be left in such shape or condition as to be of little value to its owner.
- 2 The excess is being acquired to eliminate high severance or other damages.
3. Excess being acquired as the remaining land will have no access rights to road or highway.

5.13 Upon the receipt by Headquarters office of the recommendation for condemnation by the District Engineer, Headquarters office will review the description of the parcels or parcel to be condemned, and will thereafter request the District office to prepare the necessary maps, exhibits, title reports, affidavits and other necessary papers.

5.14 In cases involving the condemnation of excess land the exhibits maps should clearly show the right-of-way limits and excess property being condemned.

5.15 The responsibility for the correctness of maps and exhibits rests with the District office.

5.16 Because the Alaska Road Commission proceedings will generally be condemnation of a right-of-way and not a fee, the general legal requirements are that a map or maps must be attached to the complaint showing the location, general route and termini. This legal requirement can be satisfied by a map or maps designated as follows:

1. Strip or index map showing the proposed road or highway project between termini.
2. Detail map showing an individual parcel or group of parcels to be condemned, and where space permits, the remainder of each parcel not sought to be condemned.

5.17 Care should be taken that the exhibit maps, insofar as possible be prepared so as to fit properly into the bound complaint papers. In all cases where it is possible to do so, these maps should be folded to a size of 8-1/2" x 11", allowing an additional 2" for stapling at the top, so that they can be opened from the left to right.