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United States Department of the Interior

BUREAU OF LAND MANAGEMENT
State Office
555 Cordova Street
Anchorage, Alaska 99501

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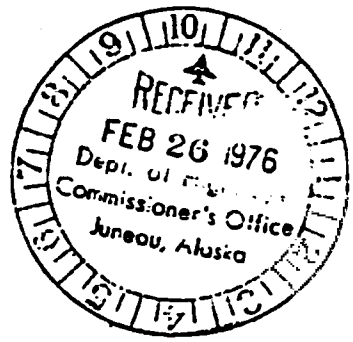

FEB 2 4 1976

Mr. Walter B. Parker
Commissioner of Highways
State of Alaska
Department of Highways
P.O. Box 1467
Juneau, Alaska 99802

Dear Mr. Parker:

In response to your December 23, 1975 letter and in furtherance of our discussions concerning R.S. 2477 and the Taylor Highway, we have thoroughly reviewed our position concerning rights-of-way under the various circumstances in Alaska. This letter and the attached history of highways expresses our viewpoint and has been reviewed by the Interior Department's Regional Solicitor. In brief, we have determined that all highway rights-of-way in Alaska are fixed except that 43 CFR 2802.2-4 provides for some deviation upon the discretion of the land management agency.

In reference to the December 23 letter, our discussion with Mr. Campbell in 1971 involved an attempt to minimize the work facing both agencies in regard to highway relocation. This meeting was, of course, prior to the intensification of environmental considerations and before ANCSA. Mr. LeDosquet is correct except that as sometimes happens to all of us, his letter could have contained some additional explanation.

In accordance with 43 CFR 2822.1-2, if R.S. 2477 is to be used, applications are required in Alaska because all of the land is now withdrawn pursuant to the authority contained in ANCSA. For R.S. 2477 to be applicable, however, the withdrawals would have to be revoked or modified to accommodate the highway (CFR 2822.1-2(b)). This is an undesirable and unwieldy approach in most cases and especially so with D-2 lands. Appropriations, therefore, under R.S. 2477, as we formerly knew it (43 CFR 2822.1-1), no longer exist. Right-of-way applications for Federal aid highways, therefore, should be made under Title 23 (43 CFR 2821).

Within the provisions of 43 CFR 2802.2-4, it is difficult to establish all-inclusive specific guidelines with regard to when new rights-of-way will be needed. In general, however, we would consider construction within the limits of the old right-of-way, even though the centerline may be moved, as not requiring a new right-of-way. We believe that the specifics of each situation will have to be analyzed on a case-by-case basis with regard to legal compliance with right-of-way regulations and

with NEPA. In many cases, it would be clearly beneficial to the State's interests to formally amend the right-of-way in order to protect the road bed. For example, if the highway centerline were moved toward the edge of the old right-of-way, the road would have no actual right-of-way outside the original right-of-way on one side.

As discussed at our recent meeting, the notice of intent with regard to a highway project is a critical point for identification of legal and environmental needs; however, we encourage the earliest coordination possible. A reminder of BLM's responsibility to specifically inform the Highway Department of right-of-way and environmental requirements at the notice of intent point or sooner is being communicated to the Federal Highway Administration and our district personnel by copy of this letter. We anticipate that a memorandum of understanding between BLM and ADH may be needed to effectively implement the necessary close coordination.

In the case of the Taylor Highway, we are continuing to complete all aspects of field work and paperwork so that a complete package can be sent to the Secretary for concurrence in construction of the bridges on D-2 lands. A comprehensive EAR on the gravel pits has already been completed. As we discussed on the telephone, we will need a copy of the EIS being completed by ADH and a complete right-of-way application for inclusion in the package.

We appreciate the concerns of the Department of Highways in expediting highway construction and maintenance. Our concern is that all land management legal procedures including NEPA be followed so that projects are environmentally sound and thus not subject to injunction because of failure to comply. We pledge our best efforts to cooperate with the Department of Highways in these regards.

Sincerely yours,

Curtis V. McVee
State Director

Enclosure
History

Status History - Alaskan Roads

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

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

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

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

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

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

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

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

A history of PLO 1613 lands is essentially similar.

Executive Order 9145, dated April 23, 1942, reserved for the Alaska Road Commission in connection with construction, operation and maintenance of the Palmer-Richardson Highway (now Glenn Highway), a right-of-way 200 feet wide from the terminal point of the highway in the NE¼ of section 36, T. 20 N., R. 5 E., Seward Meridian, to its point of connection with the Richardson Highway in the SE¼ of section 19, T. 4 N., R. 1 W., Copper River Meridian. The area described is generally that area between Chickaloon and Glennallen.

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

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

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

1. Alaska Highway - from Canadian border to Big Delta

2 Glenn Highway - from Tok Junction to Gulkana

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

1. A strip of land 600 feet wide along the Alaska Highway as constructed from the Canadian boundary to the junction with the Richardson Highway at Delta Junction.

2 A strip of land 600 feet wide along the Gulkana-Slana-Tok Road (Glenn Highway) as constructed from

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

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

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

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

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

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

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

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

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

1. It revoked the highway withdrawal on all "feeder" and "local" roads established by PLO 601.

2. It retained the highway withdrawal on all the "through roads" mentioned in PLO 601 and added three highways to the list.

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

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

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

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

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

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

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

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

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

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

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

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