

POSITION PAPER  
PUBLIC ROADS AND TRAILS

A matter of concern for nearly every citizen of Alaska is the issue of existing roads and trails. Since settlement started in Alaska after purchase in 1867, the majority of the roads and trails were constructed out of necessity by the users of the public land. The construction was carried out under a number of statutes including in part the 1866 mining law which gave us RS2477 and sectionline easements. The 1872 mining law, the homestead act and other settlement laws granted the right to construct access to claim areas across public lands. The rights granted, in all cases, were non-exclusive with public roads and trails resulting.

The roads and trails for the most part have never been platted or noted to the public records. As a result, the grants have never been included as patent reservation but rather the patents are issued subject to valid existing rights which include the right of public access over roads and trails such as we are discussing here. As settlement expands and lands pass into private ownership or single use management areas, the issue of public use on existing roads and trails intensifies into conflicts. At present conflicts can only be resolved in court and the decision usually is based on less than a full understanding of the rights granted under Federal law and less than a complete record of the construction, use and land ownership at the time public use was initiated.

Various State agencies have different interpretations of the public rights granted under Federal law and often have different interpretations within the same agency depending upon the management scheme of the day for a specific area. In short there is no consistent policy on the public's right of access granted under Federal law even though these rights cannot be legally abrogated by unilateral individual or agency action.

Unfortunately the public rights under these rights-of-way are only enforceable by an individual in court. Between individuals, court action is possible but should not be necessary if the state exercises proper authority over the Federal grants. There is virtually no chance for an individual to litigate an access issue if a State agency opposes use of a road and trail since most individuals cannot afford to fight once the full resources of the State are brought to bear against an individual. If justice is to be served and the public rights protected, the State must be forced to gather and present the facts of a case and protect the public interest rather than litigate on the basis of an agency position as is now the case.

Recent cases of note on the issue of Federal right-of-way grants are:

1. The Stampede Trail controversy between DOT-PF and ADL. The trail was constructed under the auspices of the State under the "pioneer access program" under RS2477. Because of National Park Service interest in the area, ADL took the position that the Stampede Trail was not a public road. Fortunately DOT-PF prevailed. Otherwise the miners of the area would have lost their only overland access.

2. The Salcha Trail built under RS2477 and the 1872 mining law was used by a GVEA contractor to remove right-of-way timber in advance of powerline construction. The contractor was served with notice of trespass and finally was forced to get a permit for use of this public road. Alyeska was denied use of this public road and was forced to construct and use alternate access at great expense.
3. Only recently, Alaska Division of Parks has started issuing "tickets" to residents using the Colorado Creek Road within the Chena Recreation Area. This road not only predated the creation of the Chena Recreation Area but also predated Alaska Statehood. This case is another example of citizens trying to fight a State agency which has unlimited State resources to bring to bear. It is interesting and germane to note that Dave Snarski, the local director of the Division of Parks, stated at the Tanana Trail Council meeting held on January 9, 1980, that the Division of Parks had no obligation to recognize prior existing rights in park and recreation areas.

Much more is at issue than conflicts between citizens or citizens and the State. The Federal D-2 issue must come to grips with valid existing right-of-way grants which are unrecorded. Similarly the issue must be resolved on Alaska Native Claims Settlement lands. At stake is millions of dollars of private interest which have been lawfully acquired and maintained. These rights will be lost if access is closed or curtailed. It is time that the State of Alaska accepted its role as protector of the public rights. It is time that the State accepted its role as manager of Federal access grants rather than leaving that responsibility to the citizens to defend.

To eliminate agency disputes, citizen-State conflicts, and to prevent the loss of legal existing access, legislation is needed which establishes a clear specific State policy on access grants received from the Federal government and is binding on all State agencies. Also needed is a specific procedure for determining the existence of a Federal access grant. This phase of the legislation must be based on Federal law rather than past State policy which has been inconsistent.

To avoid costly litigation which the average citizen cannot afford, a Board of Arbitration should be established to determine the existence of a Federal access grant. At a minimum, this board should consist of the Commissioners of DOT-PF, DNR and C & RA, a representative of local government, and a member of the American Right-of-Way Association. Upon a determination of the Board that a Federal grant does exist, the State must then be bound to manage and defend the public's right to utilize the grant.

Other items needed in this legislation are:

1. Clear assignment of management responsibilities preferably to a single State agency such as DOT-PF.
2. Require a clear and accessible public record of all such grants. At present permission must be obtained from the State before a sectionline easement may be utilized but the State refuses to acknowledge existence of the easement even when furnished adequate information.

3. Vacation procedures are needed in a clearly defined manner to eliminate Federally granted access rights which are no longer needed.
4. Amendments to all legislation which established Parks and Recreation Areas to reflect the intent to honour or eliminate Federal access grants.
5. A stand in opposition to the recently proposed Federal Right-of-Way regulations, 43CFR2800, which require identification and survey of Federal Right-of-Way grants within three years or lose them.

The concerns set out in this paper will not go away and will certainly intensify. The State, its citizens, and local governments will be subjected to loss of rights, continuing litigation at great public and private expense, and acquisition of alternate access at great public expense. It is in the public interest to address this issue now.

*Allen R. Cronk*

( 2215-117 )

A BRIEF HISTORY OF PLO 1613

1. 4/23/42      E.O. 9145

This order 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' wide from the terminal point of the highway in the NE $\frac{1}{4}$  of Sec. 36, T. 20 N., R. 5 E., S.M. to its point of connection with the Richardson Highway, in the SE $\frac{1}{4}$  of Sec. 19, T. 4 N., R. 1 W., CRM. The area described is generally that area between Chickaloon and Glennallen.

2. 7/20/42      PLO 12

This order 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.

3. 1/25/43      PLO 84

This order 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.

4. 4/5/45      PLO 270

This order modified PLO 12 by reducing the areas withdrawn by that order to a 10 mile wide strip of land along the now constructed highways. The highways affected by this order are as follows:

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

5. 7/31/47      PLO 386

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' 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' 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' wide and 20' 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.

6. 8/10/49 — PLO 601

This order revoked E.O. 9145 as to 200' withdrawal along Glenn Highway from Chickaloon to Glennallen.

It also revoked PLO 385 as to the 600' 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. Those underlined are in the Anchorage Land District.

Alaska Highway: 600' wide  
Richardson Highway: 300' wide  
Glenn Highway (Anchorage to Glennallen): 300' wide  
Haines Highway: 300' wide  
Tok Cut-Off (Tok Jct. to Gulkana): 300' 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' wide was withdrawn for each of them. Only those underlined are within the Anchorage Land District.

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

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

7 10/16/51 PLO 757

This order 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 are those listed below. Also shown is the total width of the withdrawal. Highways in the Anchorage Land District are underlined.

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

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

8. 10/16/51 Secretarial Order No. 2665

This order, 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 the roads then classified as feeder roads and set the right-of-way or easement (as distinguished from a withdrawal) for them at 200'. The right-of-way or easement for local roads remained at 100'.

9. 7/17/52 Amendment No. 1 to Secretarial Order No. 2665

This amendment reduced the 100' width of the Otis Lake Road, a local road not withdrawn in the Anchorage Land District, to 60' in Section 21 of T. 13 N., R. 3 W.

10. 9/15/56 Amendment No. 2 to Secretarial Order No. 2665

This amendment added the following highways to the list of "through" roads:

Fairbanks-International Airport Road  
Anchorage-Fourth Avenue-Post Road  
Anchorage-International Airport Road  
Copper River Highway  
Fairbanks-Nenana Highway  
Sterling Highway  
Kenai Spur from Mile 0 to Mile 14  
Palmer-Wasilla-Willow Road

Steese Highway from Mile 0 to Fox Junction  
The Anchorage-Lake Sparrard Highway was redesignated  
the Anchorage-Sparrard Highway  
The Fairbanks-College Highway was deleted from the  
list of through roads.

The following highways were deleted from the "feeder" road list:

Sterling Highway  
University to Ester Road  
Kenai Junction to Kenai Road  
Palmer to Finger Lake to Wasilla Road  
Paxson to McKinley Park Road  
Steese Highway from Mile 0 to Fox Junction

The following roads were added to the list of "feeder" roads:

Kenai Spur from Mile 14 to Mile 31  
Nome-Kougarok Road  
Nome-Teller Road

11. Act of August 1, 1956      Public Law 892

The purpose of this Act was to provide 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.

April 7, 1958      PLO 1613

This order 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.

Act of June 11, 1960      Public Law 86-512

This Act 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.