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STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

OFFICE OF THE COMMISSIONER

April 29, 1988

Mr. Stan Leaphart
Executive Director
Citizen's Advisory Commission
on Federal Areas
515 Seventh Avenue, Suite 310
Fairbanks, AK 99701

Northern Region Planning

MAY 10 1988

Received

STEVE COWPER, GOVERNOR

Chief of Plan

P.O. BOX Z
JUNEAU, ALASKA 99811-2500
PHONE: (907) 465-3900

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RECE

NORTHERN REGION	
Regional Director	
D&C Director	
Planning & Research Chief	<i>oc</i>
Adm. Serv. Officer	
A&D Director	
Leasing Officer	
Southcentral Dir. Valdez	<i>oc</i>
Western Dir. Nome	
RETURN	

Dear Mr. ~~Stan~~ Leaphart:

This letter is in response to correspondence you have sent to the Attorney General and I regarding state ownership of the Nabesna Road in the Wrangell-St. Elias National Park and Preserve, and the McKinley Park Road in the McKinley National Park and Preserve. With regard to your first letter addressed to the Attorney General and dated September 1, 1987, by memorandum dated October 30, 1987 the Assistant Attorney General assigned to answer your request concluded that your questions could not be answered on legal principles alone and suggested that the appropriate procedure would be to have the line agencies involved answer your questions as a policy matter. In this regard, this letter represents answers that the Department of Transportation and Public Facilities (DOT&PF) can provide to your questions and may be viewed as a policy statement of this department for the roads you have referenced.

I have been requested to state as a matter of policy what ownership interest the department wishes to assert in the two roads you have asked about. Having said that, I hope it is understood that this letter is not intended to provide a legal analysis of the ownership issues that may be involved and if one is needed you should pursue that as an independent request from your agency.

In your letters you have linked together the Nabesna Road and the McKinley Park Road as if the state has an equal interest in both roads. In our analysis of the issues involved, DOT&PF views the interests we have in these two roads as being of different origin with distinct historical uniqueness. We have a history of controlling and maintaining the Nabesna Road, which is on the State Highway System, while we have had no known control or responsibility for the McKinley Park Road. For this purpose, I have separated my discussion of the two roads into separate segments of this letter to avoid any confusion regarding our view of this matter. We feel that the question of what rights we have in the respective roads should not be intermingled.

MCKINLEY PARK ROAD

You have raised the possibility that the state may be able to assert an RS 2477 right-of-way for the McKinley Park Road. In all references that we have seen regarding the development of the current McKinley Park Road, there is no evidence that a trail existed prior to the formation of the McKinley

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National Park. In fact, contemporaneous records of the Alaska Road Commission concerning the development of the McKinley Park Road would appear to be conclusive that a trail did not exist prior to the formation of the Park. As you are most likely aware, RS 2477 granted rights-of-way over federal land not otherwise reserved. Since our information would indicate that the Park was reserved prior to the road being developed, it would tend to discount the advisability of attempting to assert that an RS 2477 right-of-way may exist on the McKinley Park Road. As with all of our historical research, we remain open to new facts being raised which would shed additional light on the issue. However, the state has never asserted an RS 2477 right-of-way over the McKinley Park Road and I have seen no new evidence to cause us to reconsider our position.

You have correctly noted that the Quitclaim Deed of 1959 from the Secretary of Commerce to the State of Alaska includes a reference to the McKinley Park Road. We cannot explain how the Quitclaim Deed ended up referencing the McKinley Park Road since historical documents would not lend credibility to its inclusion. As a general rule, we would agree that the inclusion of a road in the Quitclaim Deed raises a presumption that responsibility for the road was transferred to the state. However, historical information we have reviewed would cast doubt on this presumption and would instead raise a likelihood that the McKinley Park Road portion of FP 52 was inadvertently included in the Quitclaim Deed. In 1964 DOT&PF recognized this probability by dropping all references to the McKinley Park Road from the State Highway System. As stated previously, we have never had any known control or responsibility for the road. Again, we remain open to new evidence being presented to us that would shed additional light on the issue.

NABESNA ROAD

Our understanding of the situation with the Nabesna Road is completely different. We believe that the Department of Commerce's Quitclaim Deed of 1959 transferred to the State of Alaska "all rights, title, and interest of the Department of Commerce" in the Nabesna Road. Although this language at first glance would seem to convey a fee interest to the state, our interpretation of the interest that the Alaska Road Commission held, which was later transferred to the Department of Commerce, was a duty to locate, design, construct and maintain roads in the Territory of Alaska. The department's position is that it was this same interest that was transferred to the State of Alaska by the Omnibus Act of 1959 and the subsequent Quitclaim Deed.

With regard to the interest we have in roads conveyed by the Quitclaim Deed, it has always been the policy of this department to vigorously defend our right to complete control over all highways and roads duly transferred to the state. Toward this end, the department has actively asserted any and all powers necessary to insure that all rights-of-way are protected for the use and enjoyment of the public and that the department's ability to perform the duties it is charged with under the statutes of the State of Alaska is not restricted. It is not, however, the policy of this department to assert powers beyond what we reasonably believe to be those conveyed to us or are necessary for the performance of our statutory duties.

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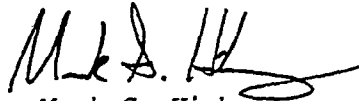
In short, with regard to the Nabesna Road, it is our view that the state possesses exclusive control of the road right-of-way as a result of the Quitclaim Deed. In addition, we also believe the state could assert an RS 2477 claim to the road if necessary. While there may be some who would want to debate the technical legal classification for the interest we have in the Nabesna Road and other roads transferred under the Quitclaim Deed, we maintain that our right to control the use of this road is not limited by federal authority. Any claim of right beyond that necessary to carry out our statutory duties is unnecessary.

GENERAL RS 2477 ISSUES

Your letter to me of February 12, 1988 also raises some points concerning the development of a state policy on RS 2477 rights-of-way which need clarification. For your information, this department shares responsibility with the Department of Natural Resources for the development of a state RS 2477 policy. This department's commitment is to the protection of potential RS 2477 rights-of-way which may serve as future transportation corridors or highways and, as such, we will continue to play a central role in the resolution of the RS 2477 issue.

At the present time both departments have been concentrating their efforts to work with the Governor's Office in Washington D.C. so that discussions can be concluded with the principles of the various federal agencies working on a new federal RS 2477 policy statement. We are pleased with the results of these discussions to date and will continue to support this effort as best we can. Additional work here in Alaska is needed following completion of this effort, and we hope to re-initiate our policy efforts this summer.

Sincerely,



Mark S. Hickey
Commissioner

cc: Judith Brady, Commissioner, Department of Natural Resources
John Katz, Special Counsel State/Federal Relations, Office of
the Governor
Lynn Harnisch, Regional Director, Northern Region, DOT&PF
Tom Hawkins, Deputy Commissioner, Department of Natural Resources
Ray Price, Special Staff Assistant, Office of the Governor
Rod Swope, Special Staff Assistant, Office of the Governor
Ron Clarke, Special Staff Assistant, Office of the Governor
Sally Gibert, Division of Governmental Coordination, Office of the
Governor
Jack McGee, Assistant Attorney General, Department of Law
M. Clyde Stoltzfus, Special Assistant to the Commissioner, DOT&PF