

A3603

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT

90 MAY 23 10:10  
FILED  
STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT

STATE OF ALASKA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
KEVIN C. KEENER; SHERRILL L. )  
KEENER; HAROLD R. OGDEN; GARNET )  
OGDEN; GOLDEN VALLEY ELECTRIC ASSN; )  
CITY OF FAIRBANKS; TRANSAMERICA )  
TITLE INSURANCE CO.; FAIRBANKS )  
NORTH STAR BOROUGH; 4,365 sq. ft., )  
more or less; and also all other )  
persons or parties unknown claiming )  
right, title, estate, lien, or )  
interest in the real estate )  
described in the complaint in this )  
action, )  
 )  
Defendants. )

GOVERNMENT

RECEIVED R/W  
MAY 25 1990  
Northern Region DOT & PF  
RECEIVED R/W  
MAY 2 1990  
Northern Region DOT & PF

Project No. RS-M-0608(2)/63192  
Parcel Nos. 1, E-1, X-1  
Case No. 4FA-89-1954 Civil

MEMORANDUM DECISION

Plaintiff State of Alaska [State] and defendant Kevin Keener [Keener] have each filed motions for summary judgment on the issue of the width of the State's easement across Keener's property, said property having been taken by the State.<sup>1/</sup>

FACTS

On May 14, 1952, a lease was issued to Irwin Patrick Henry by the United States government pursuant to the Small Tract Act of 1938. On November 18, 1955, Mr. Henry was issued a patent

<sup>1/</sup>Although referred to in the cross-motions, Keener has withdrawn his objections as to the authority and necessity for the taking. As such, the only issue before the Court in the instant motion is whether the easement extends 50 or 33 feet from the centerline of Davis Road.

I certify that on 5-23-90  
copies of this form were sent to:  
CLERK: [Signature]  
R. H. B. C.

for the property. The patent deed clearly states that the "patent is subject to a right-of-way not exceeding 33 feet in width, for roadway and public utilities purposes." Mr. Henry later sold this property to Keener, advising him of the 33 foot easement referenced in the deed.

On November 3, 1989, the State of Alaska filed an action for taking property under the power of eminent domain. The eminent domain proceeding was necessary for the Davis Road Upgrade Project and affected the Keener property. While Keener does not dispute the State's authority for such an action, he alleges the State is required to compensate him for an additional 17 feet of land. The State contends that the easement extends 50 feet from the center line of Davis Road onto Keener's property, while Keener argues that such easement is only 33 feet from the center line onto his property.

#### LAW

The Secretary of the Interior promulgated DO 2665 on October 19, 1951. It established, among other things, easements of 50 feet on each side of the center line of every local road. DO 2665 (16 Fed. Reg. 10, 752 (1951)) provides in pertinent part:

#### Rights-of-Way for Highways in Alaska

Section 1. Purpose. (a) The purpose of this order is to (1) 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....

Section 2. Width of public highways.  
The width of the public highways in Alaska shall be as follows:

...

(3) For local roads: All public roads not classified as through roads or feeder roads shall extend 50 feet on each side of the center line thereof.<sup>2/</sup>

...

(c) The reservation mentioned in paragraph (a) [for through roads] and the rights-of-way or easements mentioned in paragraph (b) [for local roads] will attach as to all new construction involving public roads in Alaska when the survey stakes have been set on the ground and notices have been posted at appropriate points along the route of the new construction specifying the type and width of the roads.

The Alaska Supreme Court has twice construed the effect of DO 2665 on the 33 foot easements found on the face of Small Tract Act patents.<sup>3/</sup> Under the case law, a 50 foot easement is created and binding if construction of the road and publication date of DO 2665 precedes the issuance of a Small Tracts lease, notwithstanding language in the patent to the contrary. The easements attach to new construction entered into following the publication of DO 2665 when the survey stakes have been set on the ground and notices have been posted at appropriate points along

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<sup>2/</sup>It is undisputed that Davis Road is a local road.

<sup>3/</sup>State v. Alaska Land Title Association, 667 P.2d 714 (Alaska 1983), cert denied, 464 U.S. 1040, 104 S.Ct. 704, 79 L.Ed.2d 168 (1984), and Department of Highways v. Green, 586 P.2d 595 (Alaska 1978).

the route of the new construction specifying the type and width of the road.

#### DISCUSSION

A motion for summary judgment can be granted when "there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Civil Rule 56(c). The moving party has the burden of proving the allegations he makes are true and that any defenses alleged are inapplicable under the facts of the case. Braund, Inc. v. White, 486 P.2d 50 (Alaska 1971). The movant must show the absence of material issues of fact. Clabaugh v. Bottcher, 545 P.2d 172 (Alaska 1976).

In considering such a motion, all inferences of fact must be drawn in favor of the party opposing summary judgment and against the movant. Nizinski v. GVEA, 509 P.2d 280 (Alaska 1973); Alaska Rent-A-Car, Inc. v. Ford Motor Co., 526 P.2d 1136 (Alaska 1974). Summary judgment is proper where the facts are not controverted. Alaska National Bank v. Linck, 559 P.2d 1049 (Alaska 1977). Where there are genuine issues of fact, it is error to grant summary judgment. Ransom v. Haner, 362 P.2d 282 (Alaska 1961); Williams v. Municipality of Anchorage, 633 P.2d 248 (Alaska 1981).

#### CHRONOLOGY<sup>4/</sup>

08-17-51 Staking for construction begins  
09-10-51 Work Order #349 is 50% completed  
10-08-51 Work Order #349 is completed

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<sup>4/</sup>Davis Road is also referred to as Priority #6, Priority #9, Work Order #349, Small Tracts Road, and Route 132.1.

10-20-51 DO 2665 published  
05-14-52 Lease issued to Mr. Henry  
11-18-55 Patent issued to Mr. Henry

The above chronology is supported by documentary evidence and establishes that construction on Davis Road began in August of 1951 and was completed (except for gravel surfacing) by October 8, 1951. As both the construction and the publication of DO 2665 occurred prior to May 14, 1952, a 50 foot easement across the Keener parcel was established and remains in existence.

Keener asserts that the State's claim to a 50 foot easement is barred by the statute of limitations. Keener refers the Court to AS 09.10.120 and AS 09.10.230 as authority for this proposition.<sup>5/</sup>

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<sup>5/</sup>AS 09.10.120 states, in pertinent part:

Actions in name of state, political subdivisions, or public corporations. An action brought in the name of or for the benefit of the state, any political subdivision, or public corporation may be commenced only within six years of the date of accrual of the cause of action.

AS 09.10.230 states, in pertinent part:

Certain actions relating to real property. No person may bring an action for the determination of a right or claim to or interest in real property unless commenced within the limitations provided for actions for the recovery of the possession of real property. But no person may bring an action to set aside, cancel, annul, or otherwise affect a patent to land issued by this state or the United States, or to compel a person claiming or holding under a patent to convey the land described in the patent or a portion of the land to the plaintiff in the action, or to hold the land in trust for, or to the use and benefit of

(continued...)

However, the supreme court has previously rejected this very argument.<sup>6/</sup> In State v. Alaska Land Title Association, 667 P.2d at 726-27, the court stated:

The premise of this argument is that a patent which does not say that it is issued subject to a public easement operates to transfer the property free from the easement. We rejected this premise in Green. We held there that an unexpressed DO 2665 easement was effective. Green, 586 P.2d at 603.

... by operation of law, land conveyed by the United States is taken subject to previously established rights-of-way where the instrument of conveyance is silent as to the existence of such rights-of-way. No suit to vacate or annul a patent in order to establish a previously existing right-of-way is necessary because the patent contains an implied-by-law condition that it is subject to such a right-of-way. Thus the statute of limitations expressed by 43 U.S.C. §1166 does not apply. (footnotes omitted).

The same result must hold true for a state statute of limitations. As such, Keener's argument must fail.

Keener also argues that the State is estopped from asserting the 50 foot easement on the grounds of laches and quasi-estoppel. This argument was similarly disposed of in State v. Alaska Land Title Association, where the court held:

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<sup>5/</sup>(..continued)

the plaintiff, or on account of any matter, thing, or transaction which was had, done, suffered, or transpired before the date of the patent unless commenced within 10 years from the date of the patent.

<sup>5/</sup>Although Justice Rabinowitz, whose opinion is relied upon by Keener, was of the belief that the State's claim was barred by AS 09.10.230, his opinion is in dissent to the majority's holding.

Estoppel requires "the assertion of a position by conduct or word, reasonable reliance thereon by another party, and resulting prejudice." Jamison v. Consolidated Utilities, Inc., 576 P.2d 97, 102 (Alaska 1978) (footnote omitted). Plaintiffs claim that the State has asserted by conduct that it claims no easements by allowing the owners to develop their property inconsistently with the easements, and by not recording the land orders. They assert that reasonable reliance on that assertion has taken place. Because we have already found that publication of the land orders imparts constructive notice of the easements which they create, that notice makes plaintiffs' reliance unreasonable. Thus, the estoppel claim lacks merit.

Id. at 726.

In the case at bar, Keener too is charged with constructive notice of the easement by means of DO 2665. Consequently, Keener's arguments with respect to quasi-estoppel and laches lack merit.

Keener's final argument is that the State must prove that Davis Road was adequately posted and staked prior to the lease in order to claim a 50 foot easement. Keener overlooks, however, that DO 2665's staking and posting requirements apply strictly to new construction, entered into following the publication of DO 2665. Davis Road does not qualify as new construction. Thus, the State need not prove its compliance with such requirements in order to claim a 50 foot easement.

#### CONCLUSION

For the foregoing reasons and for those reasons stated on the record in open court on May 21, 1990, the State's motion

for summary judgment is GRANTED and Keener's motion for summary judgment is DENIED.

IT IS SO ORDERED.

DATED at Fairbanks, Alaska, this 23 day of May, 1990.



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RICHARD D. SAVELL  
Superior Court Judge



# STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES  
NORTHERN REGION, RIGHT OF WAY

STEVE COWPER, GOVERNOR

600 UNIVERSITY AVENUE, SUITE F  
FAIRBANKS, ALASKA 99709-3695  
PHONE (907) 474-2405

May 26, 1989

Re: Davis Road Right of Way  
Alaska Project No.  
RS-M-0608(2)/63192  
Parcel No. 2  
Bowers Investment Co.

Michael W. Price  
Groh, Eggers, & Price  
2550 Denali Street  
Anchorage, Alaska 99503

Dear Mr. Price:

I have reviewed your letter of May 19, 1989 and enclosed supporting documents regarding our determination of the width of the existing right of way in front of your client's property along Davis road.

Our position is based upon an analysis of documents relating to the leases and patents of Government Lots 25 and 26, Public Land Orders establishing public rights of way for highways, and the construction of Davis road by the Alaska Road Commission.

As you may be aware from similar cases, the fact that a specific right of way is not referenced in a patent or conveyance does not extinguish a right of way previously created. Therefore the specific reference in the patents to a 33 foot wide right of way is not a limiting factor as a 50 foot wide right of way was created prior to date that the leases were issued.

You have made a reference and attached copies of a portion of the 1959 Quitclaim Deed from the Federal Government to the State of Alaska with respect to Federal Aid Secondary, Class "B" Route 5621, "Davis Road". Furthermore you state that the constructed mileage noted in the Quitclaim Deed for "Davis Road" is seven tenths of a mile and that this length of "Davis Road" is not bounded by Government Lots 25 and 26. On this issue, we concur that "Davis Road", FAS Route 5621 does not bound Government Lots 25 and 26. Please note that the "Davis Road", (Route 5621) as described in the Quitclaim Deed by reference to Federal Aid Secondary Routes 562 and 570 is located just outside of Wasilla and is not the "Davis Road" in question. The "Davis Road" in question is Federal Aid Secondary Class "A" Route 661 as described in the attached pages from the 1959 Quitclaim Deed and graphically located on the attached Bureau of Public Roads Vicinity map. Route 661 as

described in the Quitclaim Deed has a constructed length of 1.8 miles beginning at the intersection of University Avenue and Airport Way, then proceeding South, 0.8 miles to the West one quarter corner of Section 17, then East for one mile to Peger Road.

A determination as to the creation of a highway right of way by Public Land Order requires an analysis of the effective date of the appropriate order, the date of construction of the highway using public funds, and the dates of entries or reservations upon public domain lands over which the highway was built.

Based upon your documentation and our prior research we have established the "date of entry" to be the "effective date of lease" as indicated on the Bureau of Land Management leases. For Government Lot 25, the effective date of lease is April 14, 1952 and for Government Lot 26, the effective date of lease is June 1, 1955.

The orders by which we claim a right of way of 50 feet on each side of the centerline of Davis road include Public Land Order No. 601, dated August 10, 1949 and D.O. No. 2665, dated October 16, 1951. Under these orders, Davis road would fall under the classification of a "local" road. PLO 601 defined "local" roads to include "All roads not classified above as Through Roads or Feeder Roads, established or maintained under the jurisdiction of the Secretary of the Interior."

In order to establish the date of construction using public funds, I have enclosed Alaska Road Commission documents relating to Davis road ranging from May 3, 1950 to December 29 1952. A summary of the documents are as follows:

1. Petitions for the construction of roads within Section 17, Township One South, Range One West, Fairbanks Meridian, dated May 3, 1950 and July 20, 1950. The petitions are labeled "Priority 6" and "Priority 9" and are attached to a map showing the West one-half mile of what we now know as Davis Road labeled as "Small Tracts".
2. Alaska Road Commission survey field notes dated July 8-11, 1950. These notes are a preliminary survey for Davis Road.
3. A document dated December 18, 1950, outlines the general program for Maintenance and Construction for the 1951 season. The description of projects "Priority Number Six" and "Priority Number Nine" are clearly roads now known as Davis and Alston.
4. An August, 1951 Alaska Road Commission map depicts the right of way for the roads now known as Alston and Davis roads as 50 feet on each side of centerline.

5. Alaska Road Commission survey field notes dated August 17, 1951 relating to the staking of Davis road prior to construction.
6. A September 10, 1951 Situation Report states that work on a farm road referred to as "Work Order #349" was commenced and is fifty percent complete.
7. An October 8, 1951 Situation Report states that work on a farm road referred to as "Work Order #349" was completed.
8. A November 28, 1951 report for the 1952 general program states under "Local Roads"...recently constructed during the 1951 season there was included a road referred to as "Small Tracts" and also a cross reference as "Priority #6 and #9 as listed in the 1950 recommendations"
9. The December 3, 1951 Annual Report cross references "Priority #6 and #9" as Work Order #349.
10. The February 20 1952 "Change in recommendations - 1952 operations" shows Small Tracts Road as part of Route 132.1
11. The December 29, 1952 Annual Report cross references the Route Number 132.1 to Alston and Davis roads.

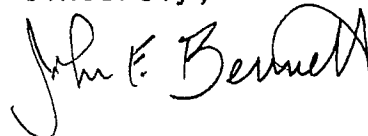
Based upon this documentation, we have established that the construction for Davis road commenced no later than September 10, 1951 and was completed at least by October 8, 1951. As the date for completion of construction preceded the effective dates of the leases for both Government Lots 25 and 26, they are subject to a local road right of way of 50 feet on each side of centerline of Davis road as provided by Public Land Order No. 601.

Government Lot 25 was subject to an acquisition of a 17 foot wide by 297 foot long strip of land by the State of Alaska Department of Highways for Project RS-M-0617(1) "University Avenue South" in April of 1977. Bower's Investment Company was the owner of the Lot (Parcel No. 8) at the time and the acquisition was based upon the opinion that there existed only a 33 foot wide right of way easement. Although I have not researched the history of University Avenue, I did note on the enclosed copy of the plat of the Dependent Resurvey and Subdivision of Sections 7, 17, 19, and 20, that a road existed along the West boundary of Government Lot 25 according to the BLM survey which is noted as having taken place between July 3, 1951 and August 25, 1951. I suspect that a further investigation would have determined that Public Land Order No. 601 was applicable and that compensation for the 17' strip was erroneous. I do not believe that the fact that we may have paid

the Bower's Investment Company for what was possibly existing right of way in 1977, requires the State to commit the same error in 1989. The Right of Way Plans for the Davis Road Upgrade project as approved by the Federal Highway Administration on June 9, 1988, represent the first official set of plans depicting the existing right of way conditions as they affect all of the properties along Davis road. The existing right of way was determined by a detailed analysis of all of the land title and public records which related to the individual properties. To my knowledge, this is the first time research of this type has been performed for the Davis Road right of way. I am unaware of any correspondence between the Northern Region Right of Way section and your client stating that the right of way along Davis road was limited to 33 feet on each side of centerline.

I hope this response will sufficiently answer your questions relating to the right of way width on Davis Road.

Sincerely,



John F. Bennett, P.L.S.  
Engineering Supervisor  
Northern Region

jfb

Enclosures

cc:Karen Tony, DOT/PF Right of Way Agent  
Paul R. Lyle, Assistant Attorney General

CLIFFORD J. GROH, SR.  
KENNETH P. EGGERS, P. C.  
MICHAEL W. PRICE  
LANCE E. GIDCUMB  
SALLY KUCKO  
ROBERT T. PRICE, P. C.  
DENNIS G. FENERTY  
DAVID A. DEVINE, P. C.  
REBECCA S. COPELAND  
RICK L. OWEN  
DOUGLAS A. CARSON  
SHAWN J. HOLLIDAY

LAW OFFICES OF  
**GROH, EGGERS & PRICE**  
2550 DENALI STREET, 17TH FLOOR  
ANCHORAGE, ALASKA 99503

TELEPHONE  
(907) 272-6474  
TELECOPIER  
(907) 272-4517

May 26, 1989

RECEIVED R/W

JUN 1 1989

Northern Region DOT & PF

Karen Tony  
Right-of-Way Agent  
Northern Region  
600 University Ave., Suite F  
Fairbanks, Alaska 99707-1096

RE: Bowers Investment Company - Lots 25 and 26, Section 17,  
T1S, R1W, Fairbanks Meridian  
Our File No. 85-18-157

Dear Ms. Tony:

Apparently, you have advised Mr. Bowers that the Davis Road which I referred to in my previous letter to you dated May 19, 1989 was one located in another location in the state of Alaska as opposed to the road of the same name adjoining Mr. Bower's property. Upon further review, that appears to be the case.

However, that does not substantially change the content and questions contained in my letter to you. If you can identify the road by the Quitclaim Deed or produce other evidence of its construction prior to the entry by the lessees/patentees then analysis can be made as to whether the State of Alaska may take without compensation a fifty foot right-of-way. Without that primary question being answered in the affirmative; however, under the applicable cases as established in Alaska, the State may not take Mr. Bower's property without compensation. I still await yours or someone's response to my letter and I apologize for any inconvenience the misreference to Davis Road may have caused.

Sincerely,

GROH, EGGERS & PRICE

  
Michael W. Price

MWP/dag

cc: Jerry Bowers

CLIFFORD J. GROH, SR.  
KENNETH P. EGGERS, P. C.  
MICHAEL W. PRICE  
LANCE E. GIDCUMB  
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May 19, 1989

RECEIVED R/W

Karen Tony  
Right-of-Way Agent  
Northern Region  
600 University Ave., Suite F  
Fairbanks, Alaska 99707-1096

MAY 22 1989

Northern Region DOT & PF

RE: Bowers Investment Company - Lots 25 and 26, Section 17,  
T1S, R1W, Fairbanks Meridian  
Our File No. 85-18-157

Dear Ms. Tony:

I have been employed to represent the interests of Bowers Investment Company to preclude the taking without just compensation of any right-of-way for the Davis Road expansion beyond the 33 foot right-of-way which my client asserts is the extent of the highway right-of-way along the southern portion of his property for Davis Road. It is my understanding that the State of Alaska, Department of Highways may be taking the position that the right-of-way along the two above-referenced lots is 50 feet from centerline of the Davis Road. The purpose of this letter is to dissuade you from that position.

I enclose for your review and reference the materials derived from the National Archives for both Lot 25, which was originally leased and subsequently patented to Edward W. Branch, and Lot 26, which was originally leased and subsequently patented to Helen P. Flynn. These packages both contain the Offer to Lease and Lease Under the Small Tract Act which specifically set out only a 33 foot right-of-way even though both leases occurred after the October, 1951 date establishing a date for Department Order 2665.

It appears from the enclosed materials that neither of these properties were served by an existing road between 1952 and 1955. Further, I would guess that the patent which refers to the dependent resurvey and subdivision of sections officially filed June 3, 1953 similarly does not show a road, let alone a road right-of-way of 50 feet.

I also enclose a copy of the Quitclaim Deed dated in 1959 from the Federal Government to the State which indicates only seven tenths of one mile of Davis Road (and that being a portion

not bounded by Government Lots 25 and 26) was constructed as late as 1959. As the Supreme Court repeatedly indicated in numerous cases beginning with State v. Green, 586 P.2d 595 (Alaska 1978), the road must have been brought into existence and the road surveyed and staked prior to the entry of the lessees. From the records from National Archives (and the State of Alaska resulting from numerous lawsuits filed in the Third Judicial District), there is no evidence indicating that Davis Road had been built and maintained by the old Alaska Road Commission prior to the Small Tract Lease on these lots. Further, under the State's Right-of-Way Act of 1966 taking now without compensation under 48 U.S.C. 321(d) is now prohibited.

Finally, I note in the DOT's own records for the Davis Road Project, the State had conceded that my client's property is encumbered only by the 33 foot easement. Further, Mr. Bowers indicates that when he platted and built upon the property the City of Fairbanks, and the State of Alaska, Department of Transportation passed upon construction plans placing his improvements within the disputed 17 foot section.

If the State, after review of the enclosed materials, believes that the property is encumbered by a fifty foot right-of-way; I would ask that you provide the following:

1. Upon what authority, that is on which specific Federal/State statute do you rely and upon what specific public land order do you base the fifty foot right-of-way claim?

2. When do your records indicate that Davis Road was first constructed and maintained by the Bureau of Public Roads or Alaska Road Commission where it is contiguous to Government Lots 25 and 26?

3. If you assert that construction occurred after October, 1951, what was the width of the staking which was accomplished when the existing road was built?

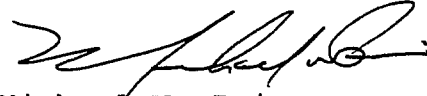
If the State still continues to assert a 50 foot right-of-way, the above information will allow me to better advise my client as to his legal rights and remedies. Though I am aware that the Assistant Attorney General's office in Anchorage has numerous documents in reference to the public land order litigations, my office has maintained a voluminous file from the National Archives and State offices. If I may be of any assistance in the providing of any documents, I will be more than pleased to do so

Karen Tony  
May 19, 1989  
Page 3

in order to hopefully demonstrate to you that my client's property is encumbered only by a 33 foot right-of-way. I will await your response.

Sincerely,

GROH, EGGERS & PRICE

A handwritten signature in black ink, appearing to read "Michael W. Price". The signature is fluid and cursive, with a prominent initial "M" and a long, sweeping underline.

Michael W. Price

MWP/dag

Enclosures

cc: Jerry Bowers



# MEMORANDUM

TELECOPIER #: 456-1317

State of Alaska  
DEPARTMENT OF LAW  
RECEIVED w/w  
JAN 19 1989

TO: John F. Bennett, PLS  
Engineering Supervisor  
DOT/PF, Northern Region

DATE: January 18, 1989  
Northern Region DOT & PF

FILE NO: 30440832 (665-88-106)

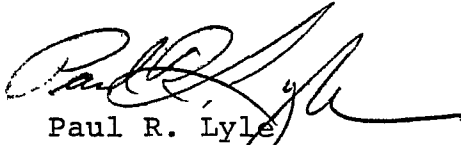
TELEPHONE NO: 452-1568

THRU:

**CONFIDENTIAL  
ATTORNEY/CLIENT  
COMMUNICATION**

SUBJECT: Davis Road Right-of-Way  
Title Questions  
Project No. RS-M-0608(2)/  
63192  
Supplemental Memorandum  
of Advice

FROM:

  
Paul R. Lyle  
Assistant Attorney General

I have reviewed your memorandum of January 5, 1989 in the above-referenced matter and supporting documents along with my memorandum of advice dated June 14, 1988. In the light of your newly discovered evidence, I agree that Government Lots 25, 28, 37 and 40 should now be included in the class of cases for which the state has a clear case for a 50-foot right-of-way.

However, the legal analysis supporting this conclusion is somewhat different than that set forth in my June 14, 1988 memorandum. I had previously assumed that Davis Road was new construction under Section 3(c) of Departmental Order 2665. As it turns out, Davis Road was completely constructed by no later than October 8, 1951. DO 2665 and PLO 757 were not effective until 10/19/51. Therefore, Section 3(c) of DO 2665 does not apply to Davis Road because Davis Road was constructed before the Departmental Order's effective date. PLO 601 was in effect on 10/8/51. Under State Department of Highways v. Green, 586 P.2d 595, 606 (Alaska 1978), appeal after remand, 823 sq. ft. v. State (Goodman), 660 P.2d 443 (Alaska 1983) actual physical appropriation of the road prior to the date the Small Tract leases were entered into establishes the 50-foot right-of-way.

The concurring opinion in 823 sq. ft., supra, takes a more conservative approach. Under the concurring opinion if a road was constructed across a parcel after the effective date of PLO 601 but before a lease was issued, the parcel would be impressed with 601's 50-foot withdrawal. See footnote 3 of my 6/14/88 memorandum of advice. Thus, under this reasoning PLO 601 attached to Davis Road no later than 10/8/51 and withdrew all land within 50 feet of its centerline. When PLO 757 and DO 2665 were issued 11 days later the withdrawal was repealed and a 50-foot easement was substituted for Davis Road pursuant to Section 2 of DO 2665.

John F. Bennett, PLS  
Engineering Supervisor

**CONFIDENTIAL  
ATTORNEY/CLIENT  
COMMUNICATION**

January 18, 1989  
Page 2

Therefore, under the majority opinion in Green actual physical appropriation of the road prior to the effective date of the Small Tract lease impresses the lease with a 50-foot right-of-way. There is some language in Green and in 823 sq. ft. that indicates the right-of-way width will be determined by the actual width of the construction and clearing that occurred on the ground. Your evidence indicates that actual width was 50 feet. Under the concurring opinion in 823 sq. ft., actual physical appropriation must be accompanied by some PLO authority. Justice Burke concluded that PLO 601 attached to all roads built after 1949 and before the repeal of PLO 601 on October 19, 1951. Therefore, under either approach, the state now has a strong argument for a 50-foot right-of-way on the Government Lots noted above.

If you have any questions concerning this matter, please do not hesitate to contact me.

PRL/jh

**M E M O R A N D U M**

**S t a t e o f A l a s k a**  
Department of Transportation & Public Facilities  
*Northern Region Right of Way*

**To:** Paul Lyle  
Attorney General's Office

**Date:** January 5, 1989

**File No:**

**Telephone No:** 474-2413

**From:** John F. Bennett  
ROW Engineering Supervisor  
Northern Region

**Subject:** Project No. RS-0608(2)/63192  
Davis Road Upgrade

For you files and future reference, if necessary, are documents retrieved from the National Archives in Seattle which establish a date of construction for Davis Road.

The major problem in establishing the date of construction was due to the fact that what we now know as Davis-Alston roads were at the time referred to by many designations. A review of the attached documents will reveal the links that establish that the project was referred to as, "Small Tracts Road", "Work Order #349", "Farm Road Priority Number Six and Nine", and "Route No. 132.14".

1. The first documents are the Petitions for roads within Section 17, Township One South, Range One West, Fairbanks Meridian, labeled "Priority 6" and "Priority 9". These are dated May 3, 1950 and July 20, 1950. An attached map also shows the West one-half mile of Davis Road labeled "Small Tracts".
2. On July 8-11, 1950 we have original field notes indicating a preliminary survey was performed by Alaska Road Commission personnel along Davis Road.
3. A document dated December 18, 1950, outlines the general program for Maintenance and Construction for the 1951 season. The description of project "Priority Number Six" is clearly the Davis-Alston road.
4. Original field note on file indicate staking for construction commenced August 17, 1951.
5. A September 10, 1951 Situation Report states that work on a farm road referred to as "Work Order #349" was commenced and is fifty percent complete.
6. The October 8, 1951 Situation Report states that work on a farm road referred to as "Work Order #349" was completed.

7. The November 28, 1951 report for the 1952 general program states under "Local Roads"...recently constructed during the 1951 season there was included a road referred to as "Small Tracts" and also a cross reference as "Priority #6 and #9 as listed in the 1950 recommendations".
8. The December 3, 1951 Annual Report cross references "Priority #6 and #9" as Work Order #349.
9. The February 20, 1952 change in recommendations - 1952 operating shows Small Tracts Road as part of Route 132.1.

Based upon this documentation, I feel safe to say that we have sufficient evidence to establish the Date Construction began at least by September 10, 1951.

Given this date, and in comparison with Lease issue dates of the Government Lots that you believed we have only a strong argument for a fifty foot right of way, I feel we can move these into the category of "Clear case for fifty foot right of way". Note below:

G.L. 25	lease issued 4/14/52
G.L. 28	lease issued 9/2/52
G.L. 37	lease issued 5/14/52
G.L. 40	lease issued 5/14/52

Although it appears that there is a great deal of valuable information within the National Archives, relating to right of way issues, unfortunately it has taken since October 3, 1988 to have our request processed. Also, due to the method of long distance research, a shotgun approach required the retrieval and purchase of over 1,050 pages of documents from a total of 19 pages that were deemed pertinent.

Nevertheless, I will rest easier knowing that this particular right of way issue is supportable.

1kh

Attachments: as stated

# MEMORANDUM

# State of Alaska

TO: John F. Bennett, P.L.S.  
Engineering Supervisor  
DOT/PF, Northern Region

DATE: June 14, 1988

FILE NO: 30440832 (665-88-106)

THRU:

**CONFIDENTIAL  
ATTORNEY/CLIENT  
COMMUNICATION**

TELEPHONE NO: 452-1568

SUBJECT: Davis Road Right-of-Way  
Title Questions  
Project No. RS-M-0608(2)

FROM:

  
Paul R. Lyle  
Assistant Attorney General

RECEIVED R/W

JUN 17 1988

Northern Region DOT & PF

You have asked how wide the right-of-way is on Davis Road from its intersection with University Avenue to its intersection with Hill Road. This portion of Davis Road is scheduled for upgrading and widening.

## FACTS

The sixteen parcels affected by this project were patented under the Small Tract Act of 1938 [43 USC § 682a-682e (1938), Repealed by Pub. L. No. 94-579, Title VII, § 702 (1976)]. The patents contain two reservations for roads. The reservation relevant to your question reserves a 33 foot right-of-way for roadway purposes along certain boundaries as set forth in each patent. However, Department of Interior Public Land Orders (hereinafter "PLO") 601 (effective date August 10, 1949), PLO 757 (effective date 10/19/51) and Departmental Order (hereinafter "DO") 2665 (effective date 10/19/51) established the right-of-way

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width for local roads at 50 feet. Davis Road is a local road. You have asked which width controls for the purpose of calculating the necessary "takes" for the above-referenced project.

You have established the following essential facts which form the basis of this opinion. Surveyors' field notes for Davis Road (attachment 2 of your 2/19/88 memo) indicate that the road was reconnaissance surveyed on July 8, 1950 and its center line staked from August 17, 1951 through August 24, 1951. Drawings based on these field notes (attachments 3A and 3B to 2/19/88 memo) shows the right-of-way limits as 50 feet on each side of the center line. The field notes label the road as a "proposed road" as of September 1, 1951. A map of the area (attachment 6 of 2/19/88 memo) shows Davis Road as an existing road in the Alaska Road Commission system at least as of December 8, 1953. The map shows only existing roads. Attachment 5 is an "as built" for Davis Road and is dated January 25, 1955. Although it is unclear from this evidence when construction actually began on Davis Road it is clear it was staked in August, 1951 and constructed not later than December 8, 1953 which is the last revision date of the earliest map you have provided to me.

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SUMMARY CONCLUSION

Generally, whether the 33 foot right-of-way in the patent or the 50 foot PLO/DO right-of-way controls hinges on the date each original patentee first entered into a lease with the United States for the subject parcel as compared with the effective date of PLO 757 and DO 2665. Based upon my review of the patents, BLM file abstracts, and the evidence summarized above, the right-of-way width is 50 feet on government lots 26, 27, 30 and 34. The right-of-way width is 33 feet on government lots 29, 31, 32, 33, 35, 36, 38 and 39. DOT/PF has a good argument that the right-of-way width is 50 feet on government lots 25, 28, 37 and 40, and should proceed to assert that right-of-way width in computing its "takes" for this project.

LEGAL ANALYSIS

PLO 601 (effective 8/10/49) withdrew, inter alia, from all forms of appropriation public lands in Alaska lying within 50 feet of all local roads. PLO 757 (effective 10/19/51) repealed the PLO 601 withdrawals for local roads. DO 2665 (also effective 10/19/51) simultaneously established 50 foot easements, rather than withdrawals, on each side of the centerline for all local

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roads. DO 2665 also prescribed "a uniform procedure for establishment of rights-of-way for easement over or across the public lands" for all public highways in Alaska. Section 3(c) of DO 2665 provides:

The reservation mentioned in paragraph (a) [for through roads] and the rights-of-way or easements mentioned in paragraph (b) [for feeder and local roads] will attach as to all new construction involving public roads in Alaska when the survey stakes have been set on the ground and notices have been posted at appropriate points along the route of the new construction specifying the type and width of the road.

Two Alaska Supreme Court cases have construed the effect of PLO 757 and DO 2665 on the 33 foot right-of-way reservations in Small Tract Act patents. These cases are State v. Alaska Land Title Association, 667 P.2d 714 (Alaska 1983), cert. denied, 464 U.S. 1040, 104 S.C. t. 704, 79 L. Ed. 2d 168 (1984), and Department of Highways v. Green, 586 P.2d 595 (Alaska 1978), appeal after remand, 823 sq. ft. v. State, 660 P.2d 443 (Alaska 1983).<sup>1</sup>

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<sup>1</sup> Alaska Land Title Association, 667 P.2d at 718-20 has a thorough review of the history of PLO 601, 757 and DO 2665 and their effects upon the widths of rights-of-way in Alaska.



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In Green the state asserted a 100 foot right-of-way for Tudor Road (a local road under DO 2665) along its border with property owned by the Greens and separate parcels owned by the Goodmans. The Greens' predecessor patentee entered into a Small Tract Act lease on September 1, 1952. Patent was granted on December 1, 1953 and contained a 33 foot right-of-way reservation. After first holding DO 2665 applicable to Small Tract Act leases and finding that the 33 foot right-of-way in the patent and 50 foot right-of-way in the Department Order were compatible, Green, 586 P.2d at 603, the court ruled that the Greens' property was impressed with the 50 foot easement established by DO 2665. The court explained its ruling as following:

We already have concluded that the Small Tract Act and Small Tract Classification No. 22 did not segregate all small tracts from the operation of other discretionary right-of-way reservations. Accordingly, prior to issuance of a lease or patent, appropriation of a roadway on lands classified as small tracts and operation of Secretarial Order No. 2665 were sufficient to establish a 50 foot right-of-way. Green, 586 P.2d at 604 (emphasis added).

The Greens' predecessor patentee did not obtain a lease until September 1, 1952, nearly one year after the effective date of DO 2665. The evidence indicated that construction of Tudor Road began in May or June, 1950 well

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before the Greens' original patentee obtained his small tract lease. Therefore, since the Greens' parcel was still open to appropriation when the 50 foot right-of-way width established by DO 2665 went into effect, their parcel was burdened with the 50 foot easement.

The Goodmans' predecessor patentee had obtained his lease on June 30, 1950, over one year before the effective dates of PLO 757 and DO 2665. The court found that the signing of the Small Tract lease segregated the parcel from other small tracts open to appropriation. Once a small tract was segregated, DO 2665 could not operate to expand the right-of-way on Goodmans' parcel:

Once a lease to a particular parcel had been issued, circumstances were different. Essentially, the lease separated the land from other small tracts; the lessee took the property subject to both the general right-of-way reservations which applied at the time of the lease and the specific right-of-way reservations which applied through the lease's provisions. Thus, the general right-of-way reservation in Secretarial Order No. 2665 applied to the Goodman property only if the effective date of lease was preceded by both the construction of Tudor Road and the issuance of Secretarial Order No. 2665. That is, until the Department of the Interior had acted to bring Tudor Road into existence, there was no basis for the Secretary's reservation of rights-of-way. Once construction of Tudor Road had begun, however, the full administrative authority granted by 48 U.S.C. § 321a (1952) became operative and

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the lessee of lot 12 took his lease subject to such authority. The Secretary did not exercise that authority until he issued Secretarial Order No. 2665 in October 1951. Thus, prior to October 19, 1951, no general right-of-way reservation for Tudor Road had been established. If the order became effective with respect to Tudor Road before issuance of the lease, we think the property was subject to the 50 foot right-of-way; ... However, if the general reservation became effective after the lease had been issued, we believe the Secretary must have intended that subsequent general reservations [i.e. DO 2665] would not apply and that his discretionary reservation in the lease would operate instead of such later reservations. Green, 586 P.2d at 604 (emphasis added)<sup>2</sup>

The Green court thus established the small tract lease date as the date at which small tracts were segregated for purposes of determining whether the general right-of-way reservations of DO 2665 applied to any particular parcel. In addition, the Green decision established that: (1) the 50 foot right-of-way width of DO 2665, rather than the 33 foot right-of-way patent reservation, applies where the effective date

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<sup>2</sup> There was some question when Tudor Road was actually constructed. The Green case was remanded to the Superior Court to determine when physical appropriation of Tudor Road occurred. If the road existed with a 50 foot right-of-way prior to the lease of the Goodman parcel, the parcel was subject to the pre-existing 50 foot right-of-way regardless of PLO 757 and DO 2665. On appeal after remand the court found that Tudor Road was completed 30 to 45 days before the Goodman lease was signed. 823 sq. ft., 660 P.2d at 443, concurring opinion, note 3 at 445.

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of the lease is preceded by both construction of the road and issuance of the order, and, (2) that, parcels leased prior to the effective date of DO 2665 are impressed only with the 33 foot right-of-way patent reservation.<sup>3</sup>

Therefore, in the instant case, the small tract parcels bordering Davis Road on which leases were issued after December 8, 1953 (the latest possible date that construction of Davis Road could have been completed) are subject to DO 2665's 50 foot right-of-way reservation because the leases were preceded by both the construction of Davis Road and the issuance of DO 2665. The parcels burdened with the 50 foot right-of-way are government lots 26, 27, 30 and 34.<sup>4</sup>

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<sup>3</sup> This latter statement needs to be qualified. If a road was constructed across a parcel after the effective date of PLO 601 but before a lease was issued, the parcel would be impressed with 601's 50 foot right-of-way. 823 Sq. Ft., 660 P.2d at 444-45 (concurring opinion). However, Davis Road was constructed after the effective date of PLO 757 and DO 2665 which repealed PLO 601's local road withdrawals. Therefore, PLO 601 would have no impact on the Davis Road parcels leased prior to the effective date of PLO 757 and DO 2665.

<sup>4</sup> The appendix attached hereto contains the relevant chronology for each Davis Road parcel.

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Likewise, since Davis Road was probably not constructed until after October 19, 1951 (the effective date of PLO 757 and DO 2665) all leases issued prior to October 19, 1951 are subject only to the 33 foot right-of-way patent reservation because the leases were issued prior to both construction of Davis Road and issuance of DO 2665. These parcels are government lots 29, 31, 32, 33, 35, 36, 38 and 39.

The four remaining Davis Road parcels (government lots 25, 28, 37 and 40) are more difficult to analyze because it is not clear precisely when Davis Road was actually constructed. Three of these leases were issued in April and May, 1952 and one in September, 1952. A facial reading of Green indicates that, in order to impress a 50 foot right-of-way on these parcels, the leases would have to be issued after both the issuance of DO 2665 and construction of Davis Road. However, at least as to the Goodman parcel, the Green decision addressed a situation where the lease was issued prior to the issuance of DO 2665. In the Davis Road parcels under consideration all four were leased after DO 2665 was issued. In addition, it appears Davis Road was constructed after the effective date of DO 2665. Davis Road would have been considered "new construction" under DO 2665. Under section 3(c) of the order (quoted at p. 4 of this

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memorandum) the 50 foot right-of-way width attached to new construction when the survey stakes were set in the ground and notices were posted specifying the type and width of the road. Davis Road was staked on August 17, 1951 through August 24, 1951. DO 2665 was issued on October 19, 1951. This is eight months and six months, respectively, before the earliest lease of the four parcels under consideration.<sup>5</sup> Therefore, as the Green court stated:

If the order became effective with respect to [the road] before issuance of the lease ... the property was subject to the 50 foot right-of-way. Green, 586 P.2d at 604.

Davis Road had been staked and posted prior to the effective date of DO 2665 and was constructed after its effective date. Therefore, Section 3(c) of DO 2665 impressed a 50 foot right-of-way on Davis Road as of October 19, 1951,

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<sup>5</sup> It should make no difference that staking occurred prior to DO 2665's effective date. The evident purpose of the staking and posting requirements was to put the public on notice that a public road was being appropriated. The 1952 lessees of these parcels would have seen these stakes upon conducting an inspection of their respective parcels prior to lease. Therefore, the purpose behind the staking requirement was satisfied. The fact that staking occurred prior to DO 2665's effective date should be immaterial. I am assuming for purposes of this memorandum that posting occurred. It would be helpful if we could locate evidence to this effect.

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DO 2665's effective date. The Alaska Land Title decision supports this conclusion:

One purpose of DO 2665 was to define as a matter of local law or usage the width of road way easements which had been created by the construction of roads and which would be created in the future by the construction of new roads.... In the case of new construction, the order can only be effective when the survey stakes have been set on the ground. Alaska Land Title, 667 P.2d at 722 (emphasis in original)

Therefore, there is a good argument that government lots 25, 28, 37 and 40 are impressed with a 50 foot right-of-way.

However, even if a court were to find that DO 2665 did not apply to these four leases the state could argue, as it did in Green, that actual physical appropriation of Davis Road preceding lease issuance was sufficient to establish a 50 foot right-of-way. In its opinion after remand the Green court "...found that surveying, staking, striping, and clearing the entire 100 feet [of the road] were sufficient acts of appropriation to create a 50 foot right-of-way on the lot." 823 sq. ft., 660 P.2d at 443. Therefore, the state does not have to show completed construction of Davis Road prior to April 1952 in order to prevail on this issue. All DOT/PF has to prove is sufficient acts of appropriation prior to each lease date. Surveying, staking and minimal clearing occurring prior to April,

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1952, may be enough to establish a roadway appropriation regardless of PLO 757 and DO 2665. The width of the right-of-way is established by the center line staking field notes. In order to nail down our right to a 50 foot right-of-way on these four parcels we should attempt to either establish the construction date of the road or establish the extent of appropriation as of the day preceding the lease issuance date of each of the four Davis Road parcels under consideration.

If you have any further questions concerning this matter please do not hesitate to contact me.

PRL/jag  
Enclosure



APPENDIX A

COLOR CODE

Strong Argument for 50 foot ROW

Clear Case for 50 foot ROW

Clear case for 33 foot ROW

G.L. 25

08/17/51 Davis Road staked

10/19/51 D.O. 2665

04/14/52 Lease issued

12/08/53 Maps shows Davis Road built.

Conclusion - 50 foot ROW applies.

G.L. 26

08/17/51 Davis Road staked

10/19/51 D.O. 2665

12/08/53 Map shows David Road as part of ARC system.

01/25/55 As built on David Road

06/01/55 Lease issued

Conclusion - 50 foot ROW applies.

DAVIS ROAD/SMALL TRACTS ACT PARCELS

G.L. 27

08/17/51 Davis Road staked  
10/19/51 D.O. 2665  
12/08/53 Map shows Davis Road constructed as part of ARC system.  
02/17/54 Lease issued (This is the application received date. No lease issue date appears in file abstract).

Conclusion - 50 foot ROW applies.

G.L. 28

08/17/51 David Road staked  
10/19/51 D.O. 2665  
09/02/52 Lease issued  
12/08/53 Map shows Davis Road constructed as part of ARC system.

Conclusion - 50 foot ROW applies.

G.L. 29

06/22/50 Lease issued  
08/17/51 Davis Road staked  
10/19/51 D.O. 2665

12/08/53 Map shows Davis Road built.

Conclusion - 33 foot ROW in patent applies.

**G.L. 30**

08/17/51 Davis Road staked

10/19/51 D.O. 2665

12/08/53 Map shows Davis Road built.

04/02/56 Lease issued

Conclusion - 50 foot ROW applies.

**G.L. 31**

04/13/50 Lease issued

08/17/51 Davis Road staked

10/19/51 D.O. 2665

12/08/53 Map shows Davis Road built.

Conclusion - 33 foot ROW applies.

**G.L. 32**

07/11/50 Lease issued

08/17/51 Davis Road staked

10/19/51 D.O. 2665

12/08/53 Map shows Davis Road built.

Conclusion - 33 foot ROW applies.

**G.L. 33**

05/18/50 Lease issued

08/17/51 Davis Road staked

10/19/51 D.O. 2665

12/08/53 Map shows Davis Road built.

Conclusion - 33 foot ROW applies.

**G.L. 34**

08/17/51 Davis Road staked

10/19/51 D.O. 2665

12/08/53 Map shows Davis Road built.

01/25/55 As built for Davis Road

08/01/55 Lease issued

Conclusion - 50 foot ROW applies.

**G.L. 35**

05/14/51 Lease issued

08/17/51 Davis Road staked

10/19/51 D.O. 2665  
12/08/53 map shows Davis Road built.  
Conclusion - 33 foot ROW applies.

**G.L. 36**

05/05/50 Lease issued  
08/17/51 Davis Road staked  
10/19/51 D.O. 1665  
12/08/53 Map shows Davis Road built.  
Conclusion - 33 foot ROW applies.

**G.L. 37**

08/17/51 David Road staked  
10/19/51 D.O. 2665  
05/14/52 Lease issued  
12/08/53 map shows Davis Road built.  
Conclusion - 50 foot ROW applies.

**G.L. 38**

04/21/50 Lease issued  
08/17/51 Davis Road staked

10/19/51 D.O. 2665  
12/08/53 Map shows Davis Road built.  
Conclusion - 33 foot ROW applies.

**G.L. 39**

05/2/50 Lease issued  
08/17/51 Davis Road staked  
10/19/51 D.O. 2665  
12/08/53 Map shows Davis Road built.  
Conclusion - 33 foot ROW applies.

**G.L. 40**

08/17/51 Davis Road staked  
10/19/51 D.O. 2665  
05/14/52 Lease issued  
12/08/53 Map shows Davis Road built.  
Conclusion - 50 foot ROW applies.

# MEMORANDUM

## State of Alaska Department of Transportation & Public Facilities

TO Paul Lyle  
Assistant Attorney General  
Dept. of Law

DATE February 19, 1988

FILE NO

TELEPHONE NO 474-2413

FROM John F. Bennett, P.L.S.  
Engineering Supervisor  
Northern Region

SUBJECT Project No. RS-M-0608(2)  
Davis Road Upgrade

Based upon our earlier conversation with regard to PLO rights of way through the Small Tracts Subdivision along Davis Road, I am submitting to you the result of our investigation. I have enclosed several attachments as follows:

Attachment No. 1 - Copies of 16 patents and abstracts of parcels on each side of Davis Road from University Avenue to Hill Road. The patents indicate that all parcels were patented under the Act of Congress of June 1, 1938 (52 Stat 609) as amended by the Act of July 14, 1945 (59 Stat 467) also known as the Small Tract Act. The abstracts indicate the dates of application or entry for each parcel.

Attachment No. 1A - A half-size copy of our preliminary Right of Way Plans for Davis Road. I have labeled upon these plans the dates of entry and patent according to Attachment No. 1 and highlighted with pink the parcels I believe may meet the test of a PLO 601 local road easement of 50' each side of centerline.

Attachment No. 2 - These field notes are our primary evidence. They reflect two separate surveys, one performed beginning July 8, 1950, which I believe was primarily a reconnaissance survey and one performed August 17, 1951, which I believe to be the centerline staking for construction. The 1951 survey used the center section line as centerline and I have, therefore, used the date of August 17, 1951, as the date of comparison against dates of entry for my analysis of the existence of PLO easements.

Attachment Nos. 3A and 3B - These are two drawings based upon the August 17, 1951, field notes which show the stationing, referencing and right of way limits which scale as 50' each side of centerline.

Attachment Nos. 4, 5 and 6 - These are three maps representing Davis Road at various dates. Attachment No. 5 calls for a 100' right of way on Davis and Alston Roads. As these maps were revised from time-to-time, I do not consider them highly reliable as evidence of Davis Road's status at a particular date.

Attachment Nos. 2 and 3A are the best evidence of the date of staking or construction of Davis Road that we will ever be likely to find.

From our discussion of State of Alaska vs. Alaska Land Title Association it appears to me that we may have a reasonable justification for claiming a PLO 601 50' easement along Government Lots 25, 26, 27, 28, 30, 34, 37 and 40. This represents an area of 17' x 330' x 8 lots for 1.03 acres. With our basic estimate of \$2.00/sq.ft., this 1.03 acres could appraise for approximately \$90,000.00.

Paul Lyle

-2-

February 19, 1988

Please review these documents and determine whether you feel we have a defensible claim to this PLO 601 easement and should consider it as existing right of way.

I will be on vacation from February 20 to March 7; however, should you need additional information or you reach a conclusion based on this information, please contact John Curtright at 474-2465. John is currently working on the Davis Road plans and would be able to put your decision to work immediately.

Also, on another subject, we were able to locate the field books of the survey of Ester Dome Road and I will contact you on this subject as soon as I return.

/skc

Enclosures: as stated