

MEMORANDUM

State of Alaska

Department of Law

TO: Marty Johnston
Department of Transportation
and Public Facilities

DATE: March 22, 1991

FILE NO. 663-91-0377

TEL NO. 465-3603

SUBJECT: Legal requests/revisions
Highway Right-Of-Way

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<input checked="" type="checkbox"/>	MATERIALS	
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<input type="checkbox"/>	NEGOTIATIONS	
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FROM: Jack B. McGee *JBM*
Assistant Attorney General
Transportation Section-Juneau

In your memo to me dated December 28, 1990, you asked the following questions:

1. What effect did PLO 601 have on those segments of the Haines Highway that were under construction on the date PLO 601 was issued?
2. What effect did D.O. 2665 and PLO 1613 have on the Haines Highway?

Discussion:

Question 1: PLO 601 was issued on August 10, 1949. It created a withdrawal for highway purposes of 150 feet on either side of the center-line of the Haines Highway. This means PLO 601 attached to those segments of the highway that were under construction at the time PLO 601 was issued. It also means a very good case can be made that PLO 601 attached to those realigned sections of the Haines Highway that were surveyed out as of August 10, 1949 but on which construction had not yet taken place. The argument here is that these surveyed segments defined the actual location of the Haines Highway as of August 10, 1949 and, as a consequence, PLO 601 attached to these surveyed segments. */ Though this is a good argument, I do not mean to imply that it is a conclusive argument.

Question 2: Department Order 2665, issued on October 16, 1951, established the width of the Haines Highway to be 150 feet on either side of the highway's centerline. D.O. 2665 attached to those segments of the Haines Highway as they were located as of October 16, 1951 provided those segments crossed federal lands as of this date. D.O. 2665 left intact the original withdrawal

*/ This analysis assumes that those segments of highway that were surveyed out as of August 10, 1949 and those segments that were under construction as of this date were both located across federal land as of August 10, 1949. PLO 601 attached only to those roadways, or segments of roadways, that crossed federal lands.

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created by PLO 601. PLO 1613, issued April 7, 1958, changed the withdrawal for the Haines Highway created by PLO 601 and left intact by D.O. 2665 into a highway easement.

The question as to whether PLO 601 attached to those surveyed segments of the realigned Haines Highway on which construction had not yet taken place as of August 10, 1949 may well be academic if the answer to either of the following two questions is no:

1. Were there any conveyances to third parties of federal lands bordering on the Haines Highway after August 10, 1949 and before October 16, 1951, the date of the issuance of D.O. 2665?
2. If the answer to 1) above is yes, did any of these conveyances of federal land border on a) segments of the Haines Highway under construction as of August 10, 1949, or b) segments of the Haines Highway surveyed as of August 10, 1949?

If there were no such conveyances, the roadway width fixed by D.O. 2665 controls regardless of the effect of PLO 601 on these segments.

JBM:ae