

MEMORANDUM

State of Alaska

Department of Transportation & Public Facilities
Engineering and Operations Standards

TO: Deborah Vogt, Esq.
Assistant Attorney General
Department of Law

DATE: June 2, 1993

RECEIVED N/J

Thru: R. D. Shumway, P.E. *RDC*
Chief Engineer
Engineering and Operations
Standards

FILE NO:
TELEPHONE NO: 465-2985
FAX NO: 465-2460
TEXT NO: 465-3652

JUN 10 1993

Northern Region DOT & PF

FROM: Jeffery C. Ortesen, Chief
Right-of-Way and
Environment

SUBJECT: Request for Legal Opinion
Omnibus Act: Right-of-
Way Width on Naknek to
King Salmon Road

Attached is a request for an opinion concerning the width of the Naknek to King Salmon Road. The authorization number for the work is LC: 30769632-0012--EOS Division--Omnibus Act/ROW Width Naknek to King Salmon Road (FAS 380), not to exceed \$2,000 unless further authorization is requested.

Please direct your reply through my office.

attachment

cc: Dan W. Beardsley, Chief, ROW Section, Central Region, MS 2525
Marty Johnston, Chief, ROW, SE Region, MS 2504
John Miller, Chief of ROW, Northern Region, MS 2553

<input type="checkbox"/>	CHIEF R/W AGENT	<i>JM</i>
<input type="checkbox"/>	PRE AUDIT	
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<input type="checkbox"/>	TITLE	
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CENTRAL REGION
DEPARTMENT OF TRANSPORTATION and PUBLIC FACILITIES

MEMORANDUM


State of Alaska

TO: Jeffery C. Ottesen
Chief, Right-of-Way & Environmental
Headquarters

DATE: May 28, 1993

FILE NO: 59603

TELEPHONE NO: 266-1621

FROM:  Daniel W. Beardsley, SR/WA
Chief Right of Way Agent

SUBJECT: Omnibus Act/
R/W Width
Naknek to King Salmon
Road, (FAS 380)

This is a request for an opinion from the Attorney General's Office regarding the right of way width of the Naknek to King Salmon Road. Construction began on this road in 1950 by the Alaska Road Commission (ARC). The highway connected a developed portion of Naknek with the Airport at King Salmon a distance of 13.28 miles. The Federal interest in the right of way was transferred to the State of Alaska by the Omnibus Act as FAS Route No. 380.

The ARC obtained easements in Naknek where the road crossed privately owned lands. East of Naknek the road crossed federal lands and was subject to ~~subject to~~ PLO 601. At the time of construction the road was classified as a local road. Approved February 26, 1957, FAS Route No. 380 (now 15.5 miles in length) was reclassified to Federal-Aid Highway Secondary System - "A" (see attachment). The new classification for this highway has been considered equal to the category of Feeder Road classification in PLO 601 and D.O. 2665 for which a 100 foot right of way each side of centerline was reserved.

As a result Central Region has been of the opinion that this action of reclassification was to insure that the Omnibus Act would convey to the State of Alaska a full width corridor associated with the classification. In this case 100 feet each side of centerline. Thus, all federal lands entered after the Omnibus Act would be subject to a 200 foot wide right of way. Central Region has asserted that it had a PLO right of way 200 feet in width and required some utilities to locate improvements 5 feet from the edge of the right of way (95 feet from centerline). Some of this work occurred during the time when utility permits didn't point out that the utility needed to obtain interest from the owner of the underlying fee.

Several questions need to be answered:

1. How wide is the right of way conveyed to the State of Alaska by the Omnibus Act across federal lands? If in fact

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the right of way width was widened by the reclassification of the highway what is the effective date?

2. What is the Department's responsibility and liability to the public utilities that have located in good faith at the department's request possibly outside the right of way?

In addition to this highway, FAS 424 (Iliamna Bay - Iliamna Lake Road, 15.5 mi.) and FAS 411 (Dillingham - Aleknagik, 22.0 mi.) present a similar problem by having been reclassified at the same time without prior PLO's to create the appropriate right of way. Utilities were again instructed to locate 95 feet from centerline. The answer to the questions above may have far reaching effects.

The department is in the design phase for reconstruction of the Naknek - King Salmon Road. The Phase 3 programming request for right of way acquisition is scheduled for 12/15/93. Charges for your time can be made to LC 30769632/31, CC 24411669, Project RS-0380 (006). If you have any questions please don't hesitate to call me or Jim Sharp, Right of Way Engineering Supervisor at 266-1647.

Enclosure

cc: Hank Wilson, P.E., Project Manager
John F. Bennett, PLS, Right of Way Engineering Supervisor,
Northern Region

ALASKA'S INCLUSION IN THE FEDERAL-AID HIGHWAY ACT OF 1956,
THE WORK OF THE BUREAU OF PUBLIC ROADS AND
THE TRANSITION TO STATEHOOD

FINAL REPORT

by

Claus-M. Naske, Ph.D.
Professor of History
University of Alaska, Fairbanks
Fairbanks, Alaska 99775



JAMES H. SHARP, R.L.S.
R.O.W. ENGINEERING SUPERVISOR

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
& PUBLIC FACILITIES

P.O. BOX 196900
ANCHORAGE, AK 99519-6900
(907) 243-1111
(907) 266-1647

July 1987

FAP Route Number	Description
37	From the junction of FAP Routes 61 and 62 at Fairbanks via Ester to Nenana, with a spur to FAP Route 62, International Airport Spur.
42	From FAP Route 31 Spur at Anchorage International Airport via Spenard and Palmer to FAP Route 71 at Glennallen.
46	From FAP Route 71 at Gulkana Junction to FAP Route 62 at Tok Junction.
52	From FAP Route 71 at Paxson via Cantwell through Mt. McKinley National Park to North Park Boundary.
61	From the junction of FAP Routes 37 and 62 at Fairbanks to Fox.
62	From the Alaska-Canada Border via Tok Junction and Big Delta to the junction of FAP Routes 37 and 61 at Fairbanks, with a spur to Fairbanks International Airport.
71	From the port of Valdez to FAP Route 62 at Big Delta Junction.
95	From Ketchikan via land and ferry routes through Wrangell, Petersburg, Juneau and Haines to the Alaska-Canada Border, with a spur from Haines to Lutak Inlet and a spur from Juneau to Douglas.
97	From Haines to Skagway.

16. C.D. Curtiss to A.F. Ghiglione, January 22, 1957, 62-A-1283, box 66, Central Correspondence Files, Federal Aid General, thru 16, 1955-59, R.G. 30, Washington Federal Records Center, Suitland, Maryland; Agreement to pay territorial matching funds, BPR-Territory of Alaska, March 6, 1957, box 65414, file FAH Programs, 1956-1958, BPR, R.G. 30, Federal Records Center, Seattle, Washington.
17. Meeting between the Territorial Highway Engineer and the Acting Regional Engineer of the Bureau of Public Roads, February 20, 1957, box 65414, File FAH 14, Programs 1956-1958, BPR, R.G. 30, Federal Records Center, Seattle, Washington; Federal-Aid Primary Highway System As Approved February 26, 1957, Secondary System--"A" As Approved February 26, 1957, Addendum, Federal-Aid Highway Systems for Alaska, Approved April 22, 1957, Addendum No. 2, Federal-Aid Highway System for Alaska, May 16, 1957, 62-A-1283, box 66, Central Correspondence Files, Alaska Forest Highways, 1957-58, R.G. 30, Washington Federal Records Center, Suitland, Maryland. A list of the Alaska Federal-Aid Highway system follows:

STATE ALASKA

FEDERAL-AID PRIMARY HIGHWAY SYSTEM
AS APPROVED FEBRUARY 26, 1957

FAP Route Number	Description
11	From Kodiak Naval Air Station through Kodiak to the Coast Guard Loran Station.
21	From the port of Homer via Ninilchik, Soldotna and Coopers Landing to FAP Route 31, and a spur from Soldotna through Kenai to Wildwood Station.
31	From the port of Seward via Moose Pass, Portage, Girdwood and Anchorage to Elmendorf Air Force Base, with a spur to Anchorage International Airport.
35	From FAP Route 42 at Palmer to Wasilla.

MEMORANDUM

State of Alaska

Department of Law

TO: Jeffrey C. Ottesen, Chief
Right-of-Way and Environment
Engineering & Operations
Standards
Department of Transportation
and Public Facilities

DATE: July 28, 1993
FILE NO.: 663-93-0516
TEL. NO.: 465-3603
SUBJECT: Right-of-way width on
Naknek to King Salmon Road

FROM: Jack B. McGee
Assistant Attorney General
Transportation Section-Juneau

RECEIVED
AUG 03 1993
Northern Region District Office

In your memo to our office dated June 2, 1993, you have asked our opinion on the legal width of the road between Naknek and King Salmon (Naknek Road), a road that is about 13.28 miles in length.

Construction on the Naknek Road was begun by the old Alaska Road Commission (ARC) in the 1950's. See memo from Dan Beardsley dated May 29, 1993, attached as appendix 1. The ARC obtained easements from landowners where the road crossed privately owned lands. See appendix 1. Where the road crossed federal lands, it was subject to a PLO 601 or D.O. 2665 right-of-way. At the time of construction, Naknek Road was classified as a local road. See appendix 1.

Because Naknek Road was constructed as a local road, it has, at the very least, a "local road" right-of-way width of at least 100' (50' on either side of the center-line) by virtue of PLO 601 and D.O. 2665. The question whether it has a right-of-way width greater than 100' arises because the Naknek Road was reclassified to a federal aid secondary road on February 26, 1957. As a result of this reclassification, some argue that Naknek Road became a feeder road and, therefore, has a total right-of-way width of 200' (100' on each side of the center-line) by virtue of PLO 601 and D.O. 2665.

The question of the width of the Naknek right-of-way is determined by the language of the relevant public land orders. PLO 601 specifically identifies by name twelve feeder roads; Naknek Road is not among them. D.O. 2665 specifically identifies by name twenty-five feeder roads; Naknek is not among them. In fact, Naknek falls within the "local road" category of these two public land orders precisely because it is not identified as either a through road or a feeder road. See para. 6 of PLO 601 and sec. 2(3) of D.O. 2665.

PLO 601 and D.O. 2665 are the legal instruments whereby the Naknek Road right-of-way, as it crosses federal lands, was

Jeffrey C. Ottesen, Chief
Right-of-Way and Environment
Our file: 663-93-0516

July 28, 1993
Page 2

created in the first place.* There is no language in either of these two land orders that provides that a subsequent decision by the Bureau of Public Roads to include a local road on the secondary highway system operates to turn that local road into a feeder road for the purpose of determining the width of its right-of-way. In the absence of specific language in either PLO 601 or D.O. 2665 authorizing the Bureau of Public Roads to increase the right-of-way width of a local road by reclassifying it, one must conclude that Naknek Road must still be considered to a local road for determining the width of its right-of-way. This means that it has a total right-of-way width of 100'.

Because some utilities may have been located outside of Naknek's 100' local road right-of-way, problems might develop between the landowner and the utility. In such cases, the utility should attempt to get an easement from the landowner.

JBM:ebc

Attachment

* The essential difference between PLO 601 and D.O. 2665 is that PLO 601 created and "withdrawals" while D.O. 2665 converted the PLO "withdrawals" into public road easements.

CENTRAL REGION
DEPARTMENT OF TRANSPORTATION and PUBLIC FACILITIES

MEMORANDUM


State of Alaska

TO: Jeffery C. Ottesen
Chief, Right-of-Way & Environmental
Headquarters

DATE: May 28, 1993

FILE NO: 59603

TELEPHONE NO: 266-1621

FROM:  Daniel W. Beardsley, SR/WA
Chief Right of Way Agent

SUBJECT: Omnibus Act/
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