

# Alaska Public Land Orders Relating to Highway Rights of Way

## Introduction

It is fairly clear from Alaska Supreme Court decisions that ignorance of the PLO rights of way is no defense against their effect. Professionals in the title, surveying, and real estate fields must be sufficiently knowledgeable of PLO's such that they can recognize their possible impacts on a given property. At a minimum the professional needs to be aware of the available resources that can aid in determining whether a PLO right of way exists. The following is a summary of the PLO's effecting highway rights of way in Alaska:

## Public Land Order Summary

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 feet in width from the terminal point of the highway to its point of connection with the Richardson Highway. 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. 1/28/43      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This order modified PLO 12 by reducing the areas withdrawn by that order to a 10 mile wide strip of land along the now constructed highways.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 feet 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 feet 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 feet wide and 20 feet 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 the 200' withdrawal along the Glenn Highway from Chickaloon to Glennallen.

It also revoked PLO 386 as to the 600 foot wide withdrawal along the Alaska Highway from the Canadian Boundary to Big Delta and along the Glenn Highway from Tok Junction to Gulkana.

**Subject to valid existing rights** and to existing surveys and withdrawals for other than highway purposes...PLO 601 withdrew and reserved for highway purposes... a strip of land 300 feet on each side of the centerline of the Alaska Highway, 150 feet on each side of the centerline of all **Through** roads as named, 100 feet on each side of centerline of all **Feeder** roads as named, and 50 feet on each side of the centerline of all **Local** roads. **Local** roads were defined as *"All roads not classified above as Through Roads or Feeder Roads, established or maintained under the jurisdiction of the Secretary of the Interior"*.

It is important to note that PLO 601 did not create highway easements. This Order was a withdrawal *"from all forms of appropriation under the public land laws, and reserved for highway purposes."*

This was essentially the first, and therefore one of the most important acts to comprehensively classify and define the width of the rights of way over public lands in Alaska.

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 included the Alaska Highway (600'), Richardson Highway (300'), Glenn Highway (300'), Haines Highway (300'), Seward-Anchorage Highway (300'), Anchorage-Lake Spenard Highway (300'), and the 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 S.O. 2665

The purpose of this order, issued on the same date as PLO 757, was 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."* It restated that the lands embraced in "through roads" were withdrawn as shown under PLO 757. 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 feet.

This Order provided what was termed a "floating easement" for new construction. Under this provision, *"rights of way or easements....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 the appropriate points along the route of the new construction specifying the type and width of the roads."*

9. 7/17/52 Amendment No. 1 to S.O. 2665

This amendment reduced the 100' width of the Otis Lake Road, a local road not withdrawn in the Anchorage Land District, to 60 feet.

10. 9/15/56 Amendment No. 2 to S.O. 2665

This amendment added several roads to the "through" (300' width) road list including the Copper River Highway, the Sterling Highway, and the Denali Highway. Several highways were deleted from the "feeder" (200' width) road list including the Sterling Highway and the Paxson to McKinley Park Road. The Nome-Kougarok and Nome-Teller roads were added to the list of "feeder" roads.

11. 8/1/56 Public Law 892 - Act of August 1, 1956

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.

12. 4/7/58 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 withdrawals.

Prior to PLO 1613 the road rights of way classified as "feeder" and "local" were defined as easements whereas the "through" roads were still withdrawals. PLO 1613 effectively eliminated the last of the withdrawals established by the aforementioned Land Orders by converting the "through" roads to easements.

To more clearly relay the intent of the Federal Government in issuing PLO 1613, the following is quoted from a BLM informational memo titled -

INFORMATION REGARDING LANDS ADJOINING CERTAIN HIGHWAYS

*"Between August 10, 1949, and April 7, 1958, the lands underlying the following highways in the Fairbanks Land District were withdrawn from entry for highway purposes:.....The acquisition of rights in homesteads, homesites, etc., along these highways during this period included property only up to the boundary line of the highway withdrawals. They did not include any part of the reserved area. On April 7, 1958, Public Land Order 1613 was issued revoking the withdrawals and opening the lands to application for private ownership under the public land laws. However, the Government retained an easement for highway and other purposes*

extending 150 feet from the centerline of each highway listed here. The effect on you, as owner of land or as an applicant for land adjoining these highways is as follows:

PRIVATE OWNERS OF PATENTED LAND: ....If you own land with frontage on any of the other highways listed above, there now exists 150 feet of public land between your boundary and the centerline of the highway. The same Government easement applies to this 150 feet. It cannot be used for other than highway purposes without permission of the Bureau of Public Roads. However, should the highway be changed or abandoned, the owner would have full use of the land. Owners of private lands will have a preference right of purchase at the appraised value the released land adjoining their private property. This right will extend to land only up to the center line of the highway concerned. ....However, at the time of purchase he must furnish proof that he is the sole owner in fee simple of the adjoining land.

CLAIMANTS WITH VALID UNPERFECTED ENTRIES OR CLAIMS FILED BEFORE APRIL 7, 1958: ...In this instance, you may exercise a right to amend your entry or claim to include the property (Underlying the highway easement). This additional land will not be included in the area limitation for your type of filing.

TIME LIMITATIONS: The preference right applications mentioned above must be filed in the Land Office within 90 days of receipt of the appropriate Notice from the Land Office. If not filed within at that time, the preference right will be lost. The lands then will become subject to sale at public auction."

As might be expected from the previous sentence, the preference right sales offered a great potential for future problems. A Department of Natural Resources internal memo to the Commissioner dated June 18, 1984 discusses the problems that arose.

The memo described a situation along the Old Glenn Highway in which BLM had sold the original patentee, Mr. Setters, a PLO 1613 highway lot based upon his preference right. Prior to this preference right sale, Mr. Setters had conveyed away his original patent and it was now owned by a Mrs. Pavek. At this point there was not a conflict as Mr. Setters' PLO 1613 Lot was subject to a highway easement and Mrs. Pavek had direct access onto the easement. However, DOT&PF had relinquished a portion of the right of way without realizing any ramifications. Mr. Setters now owned a strip of unencumbered land between Mrs. Pavek and the highway. Mr. Setters then approached Mrs. Pavek with an offer to sell access rights across his strip of land for \$30,000. Mr. Setters had paid BLM \$25 for the entire PLO 1613 highway lot.

In order to prevent additional occurrences of this problem, the Alaska Statutes were modified as follows:

*A.S. Sec. 09.45.015. Presumption in certain cases.*

*(a) A conveyance of land after April 7, 1958, that, at the time of conveyance was made, adjoined a highway reservation listed in section 1 of Public Land Order 1613 of the Secretary of the Interior (April 7, 1958), is presumed to have conveyed land up to the center-line of the highway subject to any highway reservation created by Public Land Order 601 and any highway easement created by Public Land Order 1613.*

*(b) The burden of proof in litigation involving land adjoining a highway reservation created by Public Land Order 601 or a highway easement created by Public Land Order 1613 is on the person who claims that the conveyance did not convey an interest in land up to the center-line of the highway. (2 ch 141 SLA 1986)*

*A.S. Sec 09.25.050. Adverse Possession.*

*(b) Except for an easement created by Public Land Order 1613, adverse possession will lie against property that is held by a person who holds equitable title from the United States under paragraphs 7 and 8 of Public Land Order 1613 of the Secretary of the Interior (April 7, 1958)*

This problem also raised the issue as to whether the State had received a fee interest or an easement interest when the highway rights of way were conveyed from the Federal Government by virtue of the 1959 Omnibus Act Quitclaim Deed. If the State had in fact received a fee interest, then there could be no sales to third parties of these highway lots and therefore no conflict. Our initial reading of the Public Land Orders suggests that by time of PLO 1613, all highway rights of way created by the PLO's existed as easements. However, over the years this has been interpreted differently by other agencies and various informal opinions from the Department of Law. The Department of Transportation has for many years and does now treat these PLO rights of way as easements. In April of 1991 the Northern Region of DOT&PF requested a formal Attorney General's Opinion on the issue of fee or easement in order to set this question aside. Although a formal opinion has not been issued to date, the draft opinion suggested that we would continue to view the PLO rights of way as easements.

13. 6/11/60      Public Law 86-512 - Act of June 11, 1960

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 centerlines 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.

14. 8/19/65      DOI Memorandum - Revocation of S.O.2665 and amendments

This memo served as notification that several Secretarial Orders were to be revoked on December 31, 1965 including S.O. 2665 and its amendments.

**Practical Applications:**

One of the many points that the 1983 Supreme Court case State of Alaska v. Alaska Land Title Association established was that the publication of a public land order in the Federal Register imparted constructive notice as to the land it affected. Therefore the title companies were liable to the policy holders for not disclosing the existence of PLO rights of way which encumbered their property.

Once a person has become involved in researching several PLO rights of way, it is fairly clear that this

much of the required information is obscure and of limited availability. We realize that if it is challenging research for our in-house staff that regularly work with these issues, then it will be very difficult work for private sector professionals and virtually impossible for the layman.

I have found form letters in the Northern Region Right of Way office dating to 1980 that one of the major title companies intended to submit to DOT&PF for each title report that they were to prepare. The letters each stated the following:

"We are presently engaged in a title search of the following described real property. Since alleged highway rights-of-way created by Public Land Orders 601, 757, 1613, or Department Order 2665 are not recorded by property description, please advise us if the State of Alaska is claiming a right-of-way for a local, feeder, or through road on the following property and specify the width of the right-of-way you are claiming:"

DOT's response to the form letters at the time was essentially the same as it is today. That is, our files are open to whomever needs to research the necessary information, but unfortunately we do not have the personnel to review and respond to these requests for every title report generated in the State.

Therefore, if you have a need to know the status of a highway PLO with respect to a particular piece of property, then you also have the need to know how to perform the proper research.

In order to evaluate the effect of a PLO, you must review three items:

1. Land Status - Dates of Entry
2. Effective Date of Public Land Order
3. Date of Road Construction (or Posting)

Land Status: A common element of each PLO that served to establish a highway right of way was that they were "subject to valid existing rights". Our interpretation of that stipulation is that if the land was withdrawn or reserved prior to the effective date of a PLO, then the PLO could not act to create a right of way. These reservations or withdrawals could include homestead entries, mineral entries, military withdrawals, and such.

The primary source of information on land status with respect to the validity of a PLO are the Bureau of Land Management status records. Generally the process is to -

1. Review the Master Title Plat in order to locate the property in question.
2. Review the Historical Index for actions involving the property in question and the dates that they occurred.

Caveats: Not all land actions would serve to preclude the application of a highway PLO. For example, in one particular situation involving a federal grazing lease the lease document

stated that "Nothing herein shall restrict the acquisition, granting, or use of permits or rights-of-way under applicable law."

Actions that might serve to create a "valid existing right" may have preceded the earliest date noted on a BLM Historical Index. For example, some very early mining claim and homestead location notices were filed in the Federal Magistrate's office (now the Recorder's office) and are not noted on the Historical Index.

There may be gaps in the "valid existing rights" that would allow a PLO right of way to take effect. For example, a homestead entry that may have precluded the application of a PLO right of way at one point in time may be relinquished, returning the land to the public domain. Upon relinquishment, the PLO right of way may be created.

Effective Date of Public Land Order: This may be the easiest part of a PLO right of way review. Assuming that you have copies of all of the pertinent Land Orders, the process can be as follows:

1. Review the PLO's to see when the road in question is specifically named. (For example, the Taylor Highway and the Manley Hot Springs to Eureka roads were named as Feeder roads with a ROW of 100' each side of centerline in DO 2665, but were not specifically named at all in PLO 601.) This exercise is necessary in order to establish the earliest date that a PLO highway right of way may have been created.

Caveat: It may be the easiest part of the research but it isn't foolproof. For example, the Edgerton Cutoff and New Edgerton highway has long been a point of confusion. The Edgerton Cutoff is the old road which has been noted in the ARC report since the 1920's as a cutoff from the Richardson to Chitina. It is the road that is specifically referenced in PLO 601 and SO 2665 as a "feeder" road (200' ROW). The new Edgerton highway was also created under SO 2665 but was not specifically mentioned as it was created under the "posting" requirements for new construction. An ARC public notice dated 9/15/56 designated the new Edgerton as a "feeder" road under SO 2665 as staked.

If you do not have copies of the PLO's available, bound volumes of all Alaska Land Orders can be viewed or copied at the BLM public room. Another interesting resource within BLM is the index of "Orders Affecting Public Lands in Alaska". This index lists the Order number, reference number, date, description, approximate land area involved, and a cross reference to other relevant land orders.

Date of Road Construction (or posting): This is likely to be the most difficult aspect of the research due to the relatively unorganized state of the documents that will establish such a date. The date of construction is particularly important when attempting to establish whether an unnamed local road right of way is subject to a conflicting land reservation or withdrawal.



1. Alaska Road Commission Annual Reports: These reports, dating from 1905 to 1954 name each road that was constructed and maintained under ARC jurisdiction along with the amount of public funds expended. Copies of these reports can be viewed at the BLM Resource Library (Anchorage, Complete set?), DOT&PF Right of Way offices (Anchorage and Fairbanks, Partial sets), University of Alaska Rasmussen Library (Fairbanks, Partial set), DOT&PF Northern Region Planning (Fairbanks, Complete set), and the Alaska Branch, National Archives (Anchorage, Complete set).

2. As-built plans, Field Books - ARC/BPR: Each DOT&PF Regional office have retained some records from the Alaska Road Commission and the Bureau of Public Roads. For example the Northern Region (Fairbanks) has ARC field books dating as early as 1907. We also have some road as-builts from the 1940's and 1950's.

3. USGS Mapping Base Photography and other Historical Aerial Photos: Private Photogrammetry firms often have an extensive photo archive which can fix a date for certain improvements such as roads. Aeromap USA of Anchorage claims to have archive photos dating back to the 1940's. Early 1950's and later photography which was the basis for the USGS quadrangle mapping is also a prime source for fixing dates on roads. Note that just because a road is shown on a USGS quad does not mean it truly exists. There have been a few occasions where roads were placed on USGS quads based upon proposed plans but for some reason were never constructed.

4. Federal Records Center/National Archives Documents: After statehood, a large amount of the archived records of the ARC/BPR were retained by the Federal Highway Administration and transferred to their regional headquarters in Portland, Oregon. These records were eventually sent to the Federal Records Center in Seattle for storage and eventual transfer into the National Archives. Almost two years ago, the National Archives opened a branch office in Anchorage (Old Federal Courthouse), and received records relating to Alaska from the Seattle office. In their possession are dozens of cases of correspondence, weekly/monthly/annual reports, field books and plans relating to the construction of roads in Alaska. A few years ago, the DOT&PF Northern Region Planning office hired U of Alaska history professor Klaus Naske to research these records for information relating to certain RS-2477 roads. The result was a 14,000 record database indexing references to particular roads as found in the ARC Annual Reports, Miscellaneous ARC/BPR documents in possession of the Federal Records Center, and references from the files of the U of Alaska Rasmussen Library (mostly newspaper clippings). Also submitted with the database were xerox copies of all of the documents referenced. Although this database has served to facilitate access to thousands of the available archived documents, there still exist many thousands of additional un-indexed documents in the ARC/BPR files at the National Archives.

5. Miscellaneous Mapping, Surveys, and Reports: Other sources of information that can be used to date the existence of a particular road can be the plats and field notes of GLO/BLM

surveys. Generally the plats and running field notes for U.S., Mineral, and Township surveys will note the intersection of survey lines with existing roads and trails. Also references of access can be found in the mineral reports of the U.S. Geological Survey. Descriptions of control monumentation established by the U.S. Coast and Geodetic Survey have also served to establish the dates of roads.

**Evaluation of Information:** Many times it will be necessary to perform a cost/benefit analysis in order to establish what level of research is warranted. Although each evaluation will necessarily include a comprehensive review of the "land status" and the "effective date of PLO" portions of the research, the "date of construction" portion can easily involve a seemingly endless number of manhours. Once you have invested an amount of research into these areas that balances with the risk you may incur, then the evaluation of whether a PLO right of way exists is fairly straight forward. For example:

1. A local (secondary) road crosses your property. The State of Alaska claims jurisdiction for the road, however the right of way was never specified in your homestead patent and you have never given a specific easement for the road. Is the road subject to a PLO right of way?
  - a. If your homestead date of entry preceded August 10, 1949 (PLO 601) then there is no PLO easement.
  - b. If your homestead date of entry was after August 10, 1949 but preceded the date of construction (or posting when allowed by SO 2665), there is no PLO easement.
  - c. If your homestead date of entry was after August 10, 1949 and after the date of construction (or posting when allowed by SO 2665), there will be a PLO right of way easement.

Caveats: Some items to be aware of when evaluating your research data are as follows:

1. Road re-classifications and name changes - Note that PLO 601 classified the Nome-Solomon road as a "feeder" road. SO 2665 maintained the "feeder" classification but extended the route and changed the name to the "Nome-Council" road. Under PLO 601, the "Taylor" highway would have fallen under the classification of an unnamed "local" road. SO 2665 upgraded the classification to a "feeder" road. SO 2665 classifies the Paxson to McKinley Park road as a "feeder". Amendment No. 2 to SO 2665 changes the name of the road to "Denali Highway" and reclassifies it to a "Through" road.
2. Note that the preceding research and evaluation will only establish whether a PLO right of way exists or not. It generally does not take into account the location of the physical road with respect to a particular piece of property or the fact that they road may have shifted by maintenance or construction realignment over a period of time.

3. Note that in some records - particularly BLM status maps and land adjudication documents, that a right of way may be noted as a "50' CL", "100' CL", or a "150'CL". Many people have erroneously interpreted these notations to mean total right of way widths when in fact they represent the half widths. (i.e. 50' on each side of centerline).