

## Alaska Public Land Orders Relating to Highway Rights of Way

**Introduction:** The 1983 Supreme Court case State of Alaska v. Alaska Land Title Association established that the publication of a public land order in the Federal Register imparted constructive notice as to the land it affected. Therefore the fact that these encumbrances cannot be found at the recorder's office and are commonly not referenced in title reports is not a 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:

**Summary of Public Land Orders:** Several PLO's in the 1940's were established in order to secure rights of way for certain primary roads in Alaska. These PLO's included E.O. 9145 (4/23/42 - Glenn), PLO 12 (7/20/42 - Alaska), PLO 84 (1/28/43 - Richardson), PLO 270 (4/5/45 - Alaska & Glenn) and PLO 386 (7/31/47 - Alaska, Tok Cutoff).

On 8/10/49, PLO 601 was established. 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. This PLO partially revoked E.O. 9145 and PLO 386 and withdrew and reserved for highway purposes, **Subject to valid existing rights** and to existing surveys and withdrawals for other than 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"*.

On 10/16/51 the simultaneous enactment of PLO 757 and S.O. 2665 (Secretarial Order) converted "Feeder" and "Local" road withdrawals into easements and added certain roads to the "Through" list. The primary purpose of S.O. 2665, 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."* 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."*

On 7/17/52, Amendment No. 1 to S.O. 2665 modified the right of way width for certain roads. Amendment No. 2 to S.O. 2665, dated 9/15/56 added certain roads to the "Through" & "Feeder" list.

On 4/7/58, PLO 1613 was enacted. 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.

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

1. Land Status - Dates of Entry: PLO's were "subject to valid existing rights". Therefore, homestead entries, mineral entries, military withdrawals, and such which preceded the effective date of a PLO could act to prevent the establishment of a right of way. A review of the BLM Master Title Plat and Historical Index will generally reveal these prior existing rights. Note that some early land actions such as mining claims may have preceded the BLM records system and might only be found at the recorder's office.

2. Effective Date of Public Land Order: 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 S.O. 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. Copies of the PLO's can be found at BLM.

3. Date of Road Construction (or Posting): 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. Sources of construction dates include the Alaska Road Commission Annual Reports, as-built plans, field books, USGS Mapping Base Photography, Federal Records Center/National Archives Documents and miscellaneous mapping, surveys, and reports.

**Evaluation of Information:** Example - 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.

**In Closing:** Although, I have not made a formal accounting, I would venture a guess that rights of way created through Public Land Orders constitute the majority of the existing highway rights of way in Alaska. As such, an understanding of PLO's is an important tool for the land professional.

This summary was reduced from the original 10 page presentation. If you are interested in obtaining a copy of the complete report, contact John Bennett at 474-2413.