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STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 16, 1986

SUBJECT: P.L.O. 1613, P.L.O. 601, and related problems
[CSHB 321(Finance) am]

TO: Senator John Coghill, Chair
Senate Transportation Committee

FROM: Richard A. Bradley
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Before preceding with the sectional analysis, it may be useful to offer some background comments.

In 1940, in order to protect the roads that promoted the development of the Territory of Alaska, the Department of the Interior withdrew 150 feet of public lands along both sides of several "through roads," including the Glenn, Richardson, and Haines highways. [Public Land Order (PLO) 601.] Congress criticized these withdrawals as excessive, stating that they hindered commercial and private development, and, in 1956, enacted a law providing that if the Secretary [of the Interior] revoked such a withdrawal "the lands involved shall be subject to disposal only under laws specified by the Secretary of the Interior, subject to easements as established by the Secretary." [43 U.S.C. 971a.] The law authorized the Secretary to "sell such restored lands for not less than their appraised value, giving an appropriate preference right to the holders of adjoining

Sectional Analysis

claims or entries and to owners of adjoining private lands. [43 U.S.C. 971b.]

In 1958 the Department issued PLO 1613 revoking the earlier withdrawals, replacing them with easements, offering for sale "the lands released from withdrawal * * * which, at the date of this order, adjoin lands in private ownership," and providing that released lands which on the same date "adjoin lands in valid unperfected entries, locations or settlement claims, shall be subject to inclusion in such entries, locations and claims." [PLO 1613.] Owners of private lands and holders of such entries were given a preference right to purchase the adjoining released lands or to amend their entries to include them, respectively

Many adjoining landowners or entry holders applied for the released lands located between the adjoining lands and the centerline of the highway, made the required payments, and received receipts, but their applications were not processed [by BLM or the Interior Department] for many years. Many who applied subsequently sold the lands adjoining the released lands. In August 1984 BLM issued decisions granting the released lands to the original applicants. In these consolidated appeals, present adjoining landowners claim the released lands should have been granted to them.

Appellants argue that Congress intended that the released lands be granted to owners of adjoining lands The released lands are important, and sometimes essential, to the present owners of the adjoining lands for access to those lands . . . and of no practical use to the original applicants, some of whom are deceased persons

BLM's decisions state that when the "purchase price was received * * * and a receipt for the purchase price was issued * * * equitable title vested in the applicant * * *" [Citations omitted.] Once equitable title vests, in BLM's view, "the Secretary has no discretion in the issuance of a patent and events subsequent to such vesting can have no bearing upon the claimant's right to patent," citing Wyoming v. United States, 225 U.S. 489 (1921).

BLM's decisions must be affirmed. [Emphasis and bracketed material added.]

Senator John Coghill
Page 3
April 16, 1986

The above quote is from the decision of the Interior Board of Land Appeals, Robert and Patricia Bailey, IBLA 84-874 et al., decided November 22, 1985.

CSHB 321(Fin) am is a response to the land title situation described in the Bailey decision; the Bailey decision, in fact, implicitly invites this legislation (as I note below).

Section 1 of the bill amends AS 09.25.050 by adding a new subsection. The section itself now provides:

Sec. 09.25.050. CONCLUSIVE EVIDENCE OF ADVERSE POSSESSION. The uninterrupted adverse notorious possession of real property under color and claim of title for seven years or more is conclusively presumed to give title to the property except as against the state or the United States.

Sec. 50(b) as added in Section 1 of the bill is significant; it provides that except for the "easement created by Public Land Order 1613 [the reservation of the highway itself], adverse possession will lie against property that is held by a person who holds equitable title from the United States" under PLO 1613.

Recall that the Bailey decision holds that those who applied for the land and received a receipt from BLM have "equitable title." If the applicant has not been in "possession" of the land, then the present person in possession may gain title to the land by the principles of adverse possession under AS 09.25.050, above.

Section 2 of the bill add a new section to AS 09.45, "Actions Relating to Real Property".

Sec. 09.45.015(a) establishes a "statutory presumption" that a patent for land that was issued after April 7, 1958 (the date of PLO 1613) to land that adjoined a highway reservation listed in section 1 of PLO 1613 is presumed to have conveyed land up to the center-line of the highway subject only to the reservation for the highway itself created by PLO 601 as well as any highway easement created by PLO 1613. The statutory presumption would be of use to a person litigating the title to the land released from PLO 601 by PLO 1613.

Senator John Coghill
Page 4
April 16, 1986

Sec. 09.45.015(b) makes a similar point in a different way: it provides that the burden of proof in litigation involving title to the released land is "on the person who claims that the patent did not convey an interest in land up to the center-line of the highway."

Section 3 of the bill provides for an immediate effective date.

If I may be of further assistance, please advise.

RAB:mkr
m4/123

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
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FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

P.O. Box K
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

465-3603

April 17, 1986

Mr. Blake Call, Secretary
Senate Transportation Committee
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

Re: CS for House Bill 321 (Finance) am

Dear Mr. Call:

You have requested our review of the above bill, a copy of which is attached. A brief analysis follows.

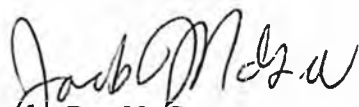
This bill has undergone a considerable number of revisions since its original introduction. In its original form, the bill appeared to eliminate certain valuable public highway easements created by Public Land Order 1613. As a result, the state would have had to incur considerable expenses in re-acquiring these easements. In its present form (CS for HB 321 (Finance) am), the existence of these highway easements is protected. Section 1 of the bill, while it allows one to assert a claim of adverse possession against certain real property, makes it clear that an adverse possession claim cannot be made against a public road easement. Similarly, section 2 of the bill, while it creates a presumption that certain conveyances conveyed land up to the center-line of a PLO 1613 highway, makes it clear that such conveyances are subject to any highway easements created by PLO 1613.

In sum, the present version of this bill does not jeopardize the existence of any public highway easements.

Sincerely,

HAROLD M. BROWN
ATTORNEY GENERAL

By:


Jack B. McGee
Assistant Attorney General

JBM:ebc
Enclosure


A.G.'s Opinion



Dept. of Transportation & Public Facilities

Position Paper

BILL NO: CS HB 321 (Fin) am

APPROVED: 
R. J. Knapp
Commissioner

TITLE: An Act relating to adverse claims and boundary disputes; and providing for an effective date

DATE: 4/11/86

CS for House Bill No. 321 (Finance) recognizes and excepts the reservations and easements created by Public Land Orders 601 and 1613. The bill places 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 on the person who claims that the conveyance did not convey an interest in land up to the centerline of the highway.

This bill should have no fiscal impact on the Department of Transportation and Public Facilities nor involve the Department in disputes between claimants.

DOT POSITION

For further information call Susan Fleischhauer at 465-3900.

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : 2/18/86

REQUEST

Bill/Resolution No.: SSHB 321
 Title: An Act Relating to adverse claims and boundary disputes; and providing for an effective date.
 Sponsor: Cotten and Marrou
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: _____
 BRU: _____

 Components: _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		-0-				
TRAVEL		-0-				
CONTRACTUAL		-0-				
SUPPLIES		-0-				
EQUIPMENT		-0-				
LAND & STRUCTURES		-0-				
GRANTS, CLAIMS		-0-				
MISCELLANEOUS		-0-				
TOTAL OPERATING		-0-				

CAPITAL		-0-				
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REVENUE		-0-				
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FUNDING : (Thousands of Dollars)

GENERAL FUND		-0-				
FEDERAL FUNDS		-0-				
OTHER		-0-				
TOTAL		-0-				

POSITIONS :

FULL-TIME		-0-				
PART-TIME		-0-				
TEMPORARY		-0-				

ANALYSIS : Attach a separate page if necessary

SSHB 321 has no measurable fiscal impact on the Department of Transportation and Public Facilities.

Prepared by: Milton H. Lentz, CRA *(Signature)* Phone: 465-2985
 Division: Engineering and Operations Standards Date: 2/18/86

Approved by Commissioner: *(Signature)* Date: 2/18/86
 Agency: Department of Transportation and Public Facilities

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS4015 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22203ROBERT AND PATRICIA BAILEY ET AL.IBLA 84-874 et al.

Decided November 22, 1985

Consolidated appeals from decisions of the Bureau of Land Management, Alaska State Office, determining that equitable title vested in Public Land Order No. 1613 applicants, approving issuance of patents, and rejecting Alaska State selection A-061179, in part, and conflicting Public Land Order No. 1613 applications. A-063457, et al.

Affirmed.

1. Act of Aug. 1, 1956—Patents of Public Lands: Generally—Public Lands: Alaska—Public Sales: Preference Rights—Withdrawals and Reservations: Revocation and Restoration

Equitable title vests in preference right applicants for public lands, restored in accordance with 43 U.S.C. § 971a through e (1982) and Public Land Order No. 1613, when they have paid the purchase price and received a receipt from BLM, and BLM may properly grant them patents even though they have subsequently sold the lands adjoining the public lands.

APPEARANCES: Donald D. Hopwood, Esq., of Anchorage, Alaska, for appellants; 1/ Robert C. Babson, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for the Bureau of Land Management.

1/ For appearances on behalf of other appellants, see Appendix A. Under the circumstances, we do not decide whether all of these appearances conform to the requirements of 43 CFR 1.3 governing who may practice before the Department.

Bailey Decision

OPINION BY ADMINISTRATIVE JUDGE IRWIN

In 1949, in order to protect the roads that promoted the development of the Territory of Alaska, the Department of the Interior withdrew 150 feet of public lands along both sides of several "through roads," including the Glenn, Richardson, and Haines highways. 2/ Congress criticized these withdrawals as excessive, stating that they hindered commercial and private development, and, in 1956, enacted a law providing that if the Secretary revoked such a withdrawal "the lands involved shall be subject to disposal only under laws specified by the Secretary of the Interior, subject to easements as established by the Secretary." 3/ The law authorized the Secretary to "sell such restored lands for not less than their appraised value, giving an appropriate preference right to the holders of adjoining claims or entries and to owners of adjoining private lands." 4/

In 1958 the Department issued PLO 1613 revoking the earlier withdrawals, replacing them with easements, offering for sale "the lands released from withdrawal * * * which, at the date of this order, adjoin lands in private ownership," and providing that released lands which on the same date "adjoin lands in valid unperfected entries, locations or settlement claims,

2/ Public Land Order No. (PLO) 601, Aug. 10, 1949, 14 FR 5048 (Aug. 16, 1949); see also PLO 757, Oct. 16, 1951, 16 FR 10749.

3/ 43 U.S.C. § 971a (1982).

4/ 43 U.S.C. § 971b (1982). The purpose of the law was to "permit the disposal of lands restored from [such] withdrawals * * * in such a manner as to recognize the equities of those landowners who have acquired lands abutting such withdrawals prior to their restoration." S. Rep. No. 2641, 84 Cong., 2d Sess., reprinted in 1956 U.S. Code Cong. & Ad. News 4052. 43 U.S.C. § 971a also authorizes the Secretary to permit amendment of the land-description of an unpatented claim or entry on adjoining land to include restored lands, notwithstanding any statutory limitation on the area which may be included in such a claim or entry.

shall be subject to inclusion in such entries, locations and claims." 5/ Owners of private lands and holders of such entries were given a preference right to purchase the adjoining released lands or to amend their entries to include them, respectively, for which they could apply any time after the date of the order by giving notice to the Bureau of Land Management (BLM). Failure to pay for the land or to make any required payments would cause a preference right claimant to lose his preference.

Many adjoining landowners or entry holders applied for the released lands located between the adjoining lands and the centerline of the highway, made the required payments, and received receipts, but their applications were not processed further for many years. 6/ Many who applied subsequently sold the lands adjoining the released lands. In August 1984 BLM issued decisions granting the released lands to the original applicants. 7/ In

5/ PLO 1613, Apr. 7, 1958, 23 FR 2376 (Apr. 11, 1958). Entries, locations and claims specifically named as included in Paragraph 8 of PLO 1613 were certificates to purchase under the Alaska Public Sale Act, 48 U.S.C. § 364a through e, (see 43 U.S.C. §§ 687b-687b-5, repealed by § 703(a), P.L. 94-579 90 Stat. 2789), and leases with option to purchase under the Small Tract Act, 43 U.S.C. § 682a, repealed by § 702, P.L. 94-579, 90 Stat. 2787.

6/ An adjoining landowner's application form read:

"I am the owner of the land described below and hereby make application to purchase the land lying between my property and the centerline of the Glenn Highway. I understand that patent, when issued, will be subject to an easement on this land for highway purposes, and to any other valid existing rights. I also understand that patent to the land between my property and the highway centerline will not be issued until the land has been surveyed and the plat of survey is filed in the Anchorage District and Land Office. I further understand that it is my responsibility to keep the Anchorage District and Land Office informed of any change of my address or transfer of title."

7/ In early November 1984, BLM published a legal notice of the list of the applications approved in the August decisions and mailed the notice to current owners of the adjoining lands. The notice gave current owners until Dec. 15, 1984, to file appeals. Because of our disposition of these appeals we need not decide whether the notice complies with 43 CFR 4.411(a) or whether persons who were served with the August decisions could file an appeal until Dec. 15, 1984, in accordance with the notice.

these consolidated appeals, present adjoining landowners claim the released lands should have been granted to them.

Appellants argue that Congress intended that the released lands be granted to owners of adjoining lands and that when the original applicants for the released lands sold their adjoining lands to appellants they intended to convey their rights to the released lands along with the adjoining lands. The released lands are important, and sometimes essential, to the present owners of the adjoining lands for access to those lands, appellants argue, and of no practical use to the original applicants, some of whom are deceased persons or dissolved corporations. Failure to grant them legal title to the released lands between the highway and their adjoining lands will cause great hardship, appellants claim.

BLM's decisions state that when the "purchase price was received * * * and a receipt for the purchase price was issued * * * equitable title vested in the applicant * * *." Equitable title vests then under 43 U.S.C. § 971b and PLO 1613, BLM states, because under the analogous provisions of the Isolated Tracts Act, 43 U.S.C. § 1171 (repealed by section 703(a), Federal Land Policy and Management Act of 1976, 90 Stat. 2789), it vests when a preference right applicant has tendered the purchase price and been issued a cash certificate by the Department. Willcoxson v. United States, 313 F.2d 884 (D.C. Cir.), cert. denied, 373 U.S. 932 (1963). 8/ Once equitable title vests, in BLM's view, "the Secretary has no discretion in the issuance of a patent and events subsequent to such vesting can have no bearing upon the

8/ BLM Answer at 7.

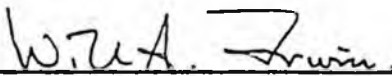
claimant's right to patent," citing Wyoming v. United States, 255 U.S. 489 (1921). 9/

[1] BLM's decisions must be affirmed. The language of the Act involved gives the Secretary the discretion to sell the released lands to adjoining landowners and to permit the holders of unperfected claims on adjoining lands to amend their land descriptions to include released lands. The language of 43 U.S.C. §§ 971a and 971b is that the Secretary "may sell" the restored lands and "may permit the amendment" of land descriptions to include them. Like the Isolated Tracts Act, supra, and unlike the statutes involved in the cases cited by appellants (e.g., Payne v. Central Pacific Railway Co., 255 U.S. 228 (1921)), the Act does not entitle one to rights in lands if he proves he meets the statutory requirements, but authorizes the Secretary to take action in his discretion. Willcoxson v. United States, supra at 888; Lewis v. Udall, 374 F.2d 180 (9th Cir. 1967); Estate of Lyle K. Gross, 77 I.D. 174 (1970); Jack H. Stockstill, 1 IBLA 278 (1971). In PLO 1613 the Secretary specified what a preference right claimant must do: give notice to BLM and pay for the land within the time specified by BLM. Once a claimant did these things and BLM accepted the payment and issued the receipt for the purchase price, his equitable title to the released land he applied for vested. The United States is therefore obligated to perform its duty to issue the patent, after completion of the appropriate survey and other ministerial acts. Benson Mining Co. v. Alta Mining Co., 145 U.S. 428 (1892). Whether the claimant (or his successor) intended to convey--or will be deemed to have conveyed--the released land when he sold his adjoining lands during

9/ Id.

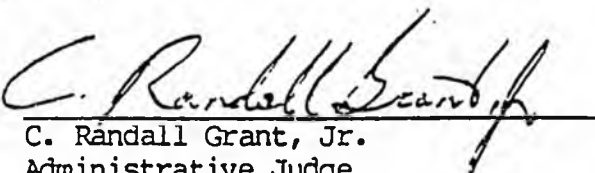
the pendency of the claim is a matter of state law dependent on the circumstances of the transaction, 10/ not a matter for the Department to adjudicate. Finally, we must observe that although the delay in acting on the applications has certainly inconvenienced appellants, it was not for their benefit that the statute was enacted but rather for "landowners who * * * acquired lands abutting [the] withdrawals prior to their restoration," i.e., for the original applicants. 11/ BLM's decisions are therefore consistent both with applicable case law and with the intent of Congress.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

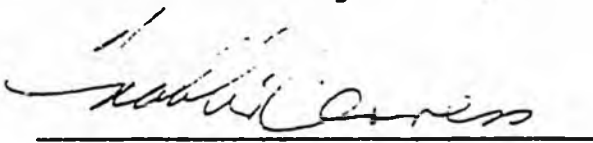


Will A. Irwin
Administrative Judge

We concur:



C. Randall Grant, Jr.
Administrative Judge



Franklin D. Arness
Administrative Judge

10/ See for example, Willis v. City of Valdez, 546 P.2d 570, 575 (Alaska 1976); Sabo v. Horvath, 559 P.2d 1038, 1041-42 (Alaska 1976).

11/ Sen. Rep. No. 2641, supra note 4.

APPENDIX A

<u>IBLA Case No.</u>	<u>Appellant</u>	<u>BIM Case No.</u>	<u>PLO 1613 Applicant</u>	<u>Appearances for Appellants</u>
1. 84-875	Lige & Ruth Wierzbicki	A-063521	Gilbert A. Henkens, Jr.	M. Ashby Dickerson, Esq. of Anchorage, Alaska
2. 84-876	Carolyn & Joseph Vallieres; John and Dorothy Liska	A-063459	Janelle F. Lamay	John & Dorothy Liska, <u>pro sese</u> ; Carolyn & Joseph Vallieres, <u>pro sese</u> .
3. 84-877	Wayne Cousineau	A-063526	E. G. Fenn	Wayne Cousineau, <u>pro se</u> .
4. 84-878	A & S Construction, Inc.	A-063525	Gilbert A. Henkens, Jr.	Salvatore Aiello, president, A & S Construction Co., Inc.
5. 84-879	Salvatore Aiello & Wayne Cousineau	A-063455	Matanuska Telephone Association, Inc.	Salvatore Aiello & Wayne Cousineau, <u>pro sese</u> .
6. 84-880	William E. & Jeannette Knowlton	A-063455	Ralph M. Anderson	William E. & Jeannette M. Knowlton, <u>pro sese</u> .
7. 84-881	William E. & Jeannette Knowlton	A-063452	Ralph & Lavenia Doyle	William E. & Jeannette M. Knowlton, <u>pro sese</u> .
8. 84-882	William E. & Jeannette Knowlton	A-063453	Ralph M. Anderson	William E. & Jeannette M. Knowlton, <u>pro sese</u> .
9. 84-883	Harold V. & Marga M. Jurgensen	AA-3794	William J. Hendrickson	Harold V. & Marga M. Jurgensen, <u>pro sese</u> .
10. 84-884	Rogers & Babler	A-063462 (conflicts with AA-51038)	Virgil D. & Lou B. Stone	Michael W. Price, Esq. of Anchorage, Alaska
11. 84-904	Jay D. & Florence Kay Williams	A-063471	McKinley Heights, Inc.	Jay D. & Florence Kay Williams, <u>pro sese</u> .

<u>IBLA Case No.</u>	<u>Appellant</u>	<u>BIM Case No.</u>	<u>PLO 1613 Applicant</u>	<u>Appearances for Appellants</u>
12. 85-21	Arthur F. Wallace	A-063495	Einer Huseby	Thillman, F. Wallace
13. 85-24	Kathryn Dawson	A-063464	Gene E. & Ruth Ann Needels	Kathryn Dawson, <u>pro se.</u>
14. 85-128	R. L. Pellissier	A-063469	Gordon H. Lee	R. L. Pellissier, <u>pro se.</u>
15. 85-129	R. L. Pellissier	A-063470	McKinley Heights, Inc.	R. L. Pellissier, <u>pro se.</u>
16. 85-130	Forest E. & Mary M. Burlew	A-063529	General Supply Company, Inc.	Forest E. & Mary M. Burlew, <u>pro sese.</u>
17. 85-138	John C. & Barbara L. Franklin	A-063498	Harry Goudchaux	John C. & Barbara L. Franklin, <u>pro sese.</u>
18. 85-139	Chugiak-Eagle River Industries	A-063477 A-063478	William H. Stephens, Jr. Cleda A. Stephens	Ruth Callan, Office Mgr., Chugiak Eagle River Industries
19. 85-140	MaryAnn C. Yoakum	A-063528	Gilbert A. Henkens, Jr.	MaryAnn Yoakum, <u>pro se.</u>
20. 85-174	Peters Creek Chapel, Inc.	A-063481 A-063482	Victory Tabernacle, Inc. Joann C. Jensen	Robert J. Byron of Chugiak, Alaska
21. 85-175	L. G. Gardner	A-063497	Clarence C. Call	L. G. Gardner, <u>pro se.</u>
22. 85-186	Kit J. & Dillia Vercella	A-063527	Gilbert A. Henkens, Jr.	Kit J. & Dillia Vercella, <u>pro sese.</u>
23. 85-198	Billy E. & Pat M. McGowen	A-063513 A-063514	Robert E. & Katherin G. Fleming Harold P. Groseth	Ray D. Gardner, Esq. of Anchorage, Alaska

<u>IBLA Case No.</u>	<u>Appellant</u>	<u>BLM Case No.</u>	<u>PLO 1613 Applicant</u>	<u>Appearances for Appellants</u>
24. 85-200	Jeff & Darlene Hunter Gary & Donna Young	A-063521	Gilbert A. Herkens, Jr.	Jeff & Darlene Hunter, <u>pro sese.</u> Gary & Donna Young, <u>pro sese.</u>
25. 85-201	Harold & Marga Jurgensen	AA-3794	William J. Hendrickson	Harold V. & Marga M. Jurgensen, <u>pro sese.</u>
26. 85-207	Bruce A. & Melody G. Swanson	A-063449	First Baptist Church of Birchwood	Bruce A. & Melody G. Swanson, <u>pro sese.</u>
27. 85-208	Lawrence D., Cecillia M., & George M. Allen	A-063449	Kerman O. Boyman	Lawrence D., Cecilia M. & George M. Allen, <u>pro sese.</u>
28. 85-209	Roland N. & Marie S. Ericson	A-063483	Mont S. Johnson, Jr.	Roland N. & Marie S. Ericson, <u>pro sese.</u>
29. 85-210	James A. Stokes	A-063502 (conflicts with AA-05976)	Herbert S. Johnson, Jr.	James A. Stokes, <u>pro se.</u>
30. 85-211	Burton Carver & Co., Inc.	A-063510	William G. & Theo. E. Knight	Dave R. Christianson, Esq., Anchorage, Alaska
31. 85-212	Estate of William G. Knight	A-063511 A-063517	Clarence C. Call Pearl M. Johnson	Ashley Schmiedeskamp, Rainier Bank, Anchorage, Alaska
32. 85-213	William H. Martin	A-064410	Geneveive M. Hayes	William H. Martin, <u>pro se.</u>
33. 85-214	Estate of Ray Allen Williams	A-064413	Glen Griffin	Roger R. Williams, P.R. for Estate
34. 85-231	Samuel S. & Christine S. Taylor	A-063525	Gilbert A. Henkens, Jr.	Samuel S. & Christine S. Taylor, <u>pro sese.</u>

IBLA 84-874, et al.

<u>IBIA</u> <u>Case No.</u>	<u>Appellant</u>	<u>BLM</u> <u>Case No.</u>	<u>PLD 1613</u> <u>Applicant</u>	<u>Appearances for</u> <u>Appellants</u>
35. 85-232	Frieda Rokita	A-063470	McKinley Heights, Inc.	Frieda Rokita, <u>pro se.</u>
36. 85-233	James A. Stokes	A-063504	Daniel & Margaret Berg	James A. Stokes, <u>pro se.</u>
37. 85-234	Claire C. Morton	A-063476	Saima E. Ising	Claire C. Morton, <u>pro se.</u>
38. 85-255	Frank F. Mullins; Jonathan Dettridge	A-063465	McKinley Heights, Inc.	Frank F. Mullins, <u>pro se.</u>
39. 85-598	Bruce A. Swanson	AA-54199 (conflicts with AA-6661A; AA-54873	Christa L. Burg	Bruce A. Swanson, <u>pro se.</u>

RTH RANGE | WEST OF THE SEWARD MERIDIAN ALASKA

STATUS OF PUBLIC DOMAIN
LAND AND MINERAL TITLES

MTP
SUPPL SEC 30

NO 12

INDEX TO SEGREGATED TRACTS				
RESURVEY TRACT NO	ORIGINAL SURVEY			SUBDIVISION
	T	R	SEC	

FOR ORDERS EFFECTING DISPOSAL OR USE OF UN-IDENTIFIED LANDS WITHDRAWN FOR CLASSIFICATION MATERIALS WATER RIGHTS OTHER PUBLIC PURPOSES REFER TO INDEX OF MISCELLANEOUS DOCUMENTS.

SUBJ TO 150' C/L East (Glenn Hwy) 1/4 of 8/1/1956 (TO 51st 85th; 48 USC 290-292) & PLO 1613 4/7/1958 (23 FR 2378)

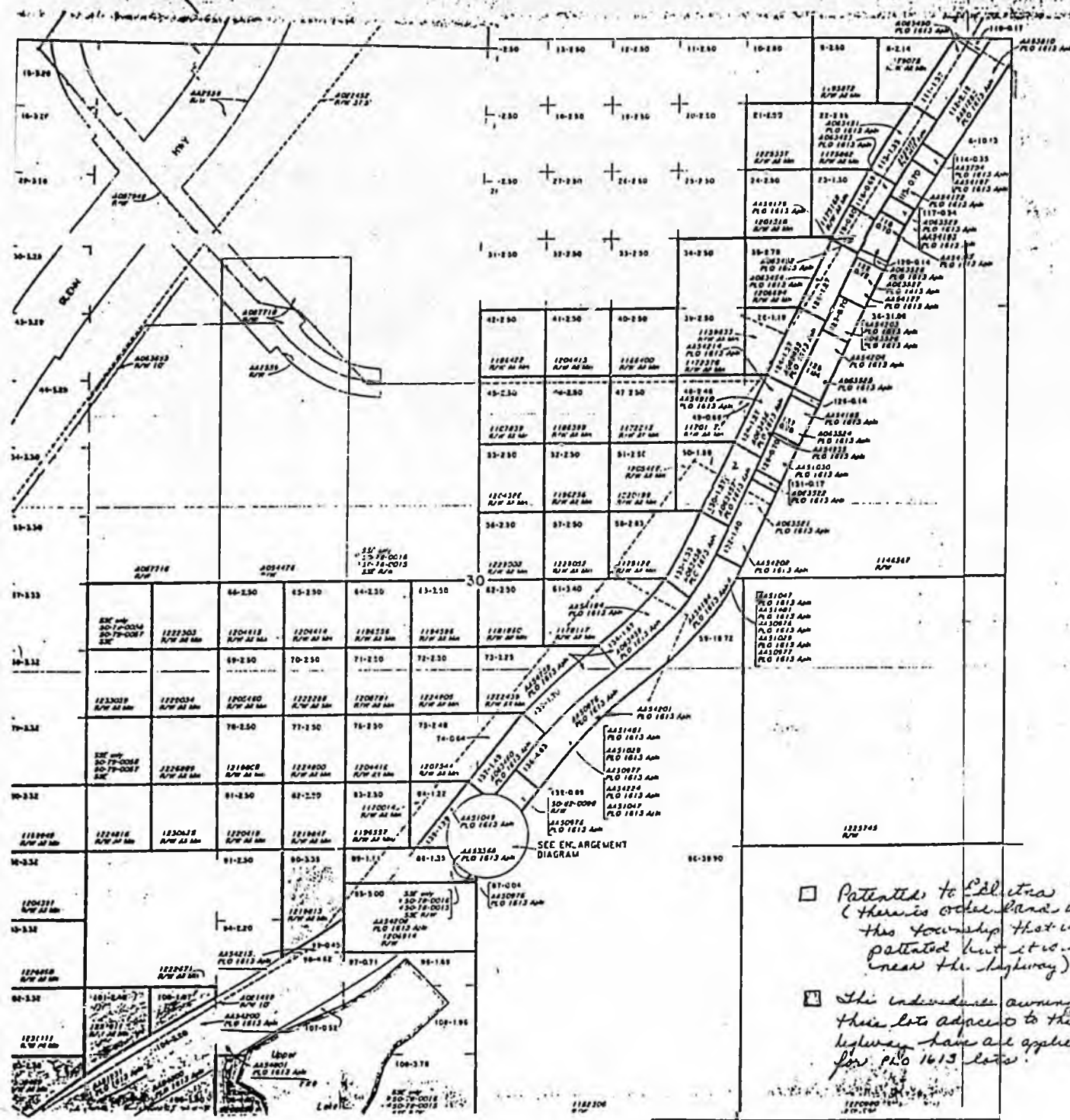
A058730 SS 2/18/1963 entire to

A05178 SS entire to Excl Pat lands

A0687 East Deed REA 25' C/L (81 51st 441-444) or to the following:
Sec 30: lots 6, 7, 8, 37, 38, 60, 67, 68, 85, 98, 99, 104, 105, 106, 107

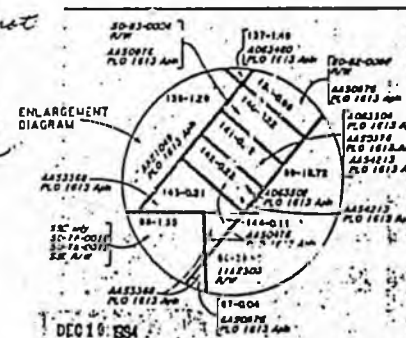
* A06881-EE East pursuant to Sec 17(b)(3) of Pl. 92-203 12/18/1971 Excluding

PLO 5164 3/16/1972 wd Cl by Stell PLO 92-203 12/18/1971 affects 101 to



Patented to Electric (there is other land in this township that is patented but it is not near the highway)

The individuals owning these lots adjacent to the highway have an appeal for PLO 1613 lots.



WARNING: THIS PLAN IS THE BUREAU'S RECORD OF TITLE AND SHOULD BE USED ONLY AS A GRAPHIC DISPLAY OF TOWNSHIP SURVEY DATA. RECORDS HEREON DO NOT REFLECT TITLE CHANGES WHICH MAY HAVE BEEN EFFECTED BY LATERAL MOVEMENTS OF RIVERS OR OTHER BODIES

DEC 16 1954

SUPPL NO 12

TO: Members, House Committee
on Finance.

DATE: March 12, 1986

FROM: Rep. Sam Cotten

RE: Proposed CS for HB
321

The proposed CS for HB 321 aims to resolve rights-of way problems plaguing Chugiak area residents living along the Old Glenn Highway; it also affects similarly situated residents living on other Alaska highways. The problem stems from the federal government awarding ownership of a narrow strip of land in front of the lots to someone else.

The situation dates back almost 30 years when the Act of August 1, 1956 and Public Land Order 1613 (in 1958) allowed people to purchase highway lots and file for patents to the abutting highway easements. The intent of the law was to award the highway easement to the abutting landowner. However, after a decades-long delay, BLM has only recently started issuing these patents. In doing so, BLM has decided to award the patents to the original applicants, who in many cases, no longer live there, rather than the abutting owners. (In some cases the original applicants have died, in other cases the land has changed hands several times.) This administrative delay by BLM has meant that current highway residents face the situation of having someone else claim ownership to the highway easement they thought they owned. This clearly contradicts the intent of the law.

The situation has caused much distress and confusion among Chugiak area residents in particular. The lots have little value except nuisance value. The lots are fairly small, and are long narrow strips. They are also subject to highway easement which diminishes any potential value.

The original version of HB 321 required involvement by the Department of Transportation and would have used condemnation as the method to gain the P.L.O. lots. The proposed CS would solve the problem without cost to the state.

The proposed CS for HB 321 gives the abutting lot owner the

COTTEN MEMO

ability to gain possession of the P.L.O. highway lots, subject to any P.L.O. easements, by use of adverse possession laws. The bill changes the existing law of adverse possession, by allowing adjoining owners to count time they occupied the highway lot while legal title was held by the federal government toward the seven year period required to gain title to the land. This is legal, as the federal government has determined that title is transferred upon payment of the purchase price of the highway lot.

Additionally, the bill provides that in cases where the existing owner believes the sale included the highway lot, the highway lot owner has the burden of proving that the deed clearly excluded the highway lot. If the highway lot owner fails to meet this burden, the adjoining land owner will get the highway lot in a quiet title action.

Passage of this bill would give the affected highway property owners a way to resolve a serious problem. The Dept. of Transportation has issued a zero fiscal note for the proposed CS.