SB

141

File 1

SENATOR
JOHN B. "JACK" COGHILL
Chairman

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Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
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Senate Committee on Transportation

M E M O R A N D U M

To: Committee members
From: Chairman Coghill
Date: February 19, 1985
Re: SB 141, Relinquishment of rights-of-way

As the attached background information will show, SB 141 is intended to release the State's claim to certain portions of highway rights-of-way which were not clearly identified in land patents. This has given rise to the problem faced by many landowners who live or hold land adjacent to highways the State now wishes to upgrade, straighten or expand and who have been or could be abruptly and without compensation deprived of land they assumed was theirs, and which their legal documents have not identified as belonging to the government.

These rights-of-way were withdrawn by the federal government through public land orders or as a result of various Acts of Congress during territorial days, and did not necessarily make their way either to the homesteaders' patents or the district recorders' offices. This has subsequently caused heavy liabilities for the state's title insurance companies, who traditionally insure property based upon what has been recorded at the recorder's office, not upon what has been published in the Federal Register.

As this problem has evolved, the State Supreme Court has ruled that the State's claims to the rights-of-way are valid, and therefore, title insurers are liable for any claims by the insured for takings for which the State has declined to compensate the property-owner. Of course, this presumes that the property-owner has title insurance. In the many instances where the property-owner does not, he or she is simply out of luck, and has no recourse to gain compensation.

The background material will more completely go into the history of the problem, however, a brief explanation of the enormous fiscal note may be in order. We are not sure how DOT/PF generated this much fiscal impact, but assume they have figured the repurchase price at top market value, and of the entire width of right-of-way (in other words, the entire 300 or 500 feet, not just the portion they will actually need to expand a road).

COMMITTEE STAFF SYNOPSIS

MEMORANDUM RE HOUSE BILL

TO RELINQUISH RIGHTS-OF-WAY

Alaska achieved statehood twenty-five years ago. Before stathood the Department of Interior, through certain Pulic Land Orders, took rights-of-way for roads from landowners without compensating the landowners. Since statehood the Department of Transportation and Public Facilities (DOTPF), acting for the State of Alaska, is still taking private property without compensating the landowners.

In 1966, the Alaska State Legislature enacted Ch. 92 (HB 415 am) which prohibited such takings by the State. The purpose of the law was to "alleviate economic hardship and physical and mental distress occasioned by the taking of land by the State of Alaska [for] which no compensation is paid to the person holding title to the land." The Legislature prohibited any further utilization of rights-of-way pursuant to various Public Land Orders and federal acts.

At the time of Statehood the State received a quit claim deed from the federal government conveying to the State certain roads built by the United States. DOTPF claims that the quit claim deed also conveyed certain easements or rights-of-way that were not described therein but included in Public Land Orders that were not even recorded in the various Recorders Offices throughout the state. DOTPF presently claims a right to highway rights-of-way varying in width from 100 to 300 feet surrounding

PROPONENT'S SUMMARY

every major highway in the state and a smaller easement for most of the local roads throughout the state. When DOTPF determines that it needs to expand or modify an existing roadway where it claims a right-of-way exists by virtue of the federal government, it does so without paying compensation to the landowner for the value of the property taken.

The reservations for rights-of-way and easements were made by the federal government between 1947 and 1956. They were set forth in a series of Public Land Orders (namely PLO 601, 757, and 1613) and a Department of Interior Order (DO 2665) which were not recorded in District Recorders Offices in Alaska but were published in the Federal Register, which was a publication utilized by federal agencies.

The rights-of-way and reservations were not specifically included in the patents issued to homesteaders in Alaska. Homesteaders in Alaska were not informed of the existence of the easements and rights-of-way at the time they were issued patents and did not know the federal government was claiming a portion of their property for highway purposes. Now DOTPF is claiming right-of-way easements in the same way by virtue of the quit claim deed mentioned above.

No landowner or member of the public can know where DOTPF claims a right-of-way easement because those easements are not recorded and are not shown on plats available in the Recorder's Offices.

The Supreme Court of Alaska, in State v. A.L.T.A., has held that the easements are valid. The decision is wrong and must be reversed through the enactment of a law that will relinquish these easements and require DOTPF to pay just compensation for lands taken by them.

TAKING OF RIGHTS-OF-WAY WITHOUT COMPENSATION

In recent years there has been a tremendous amount of road construction by the State of Alaska to serve the needs of the State's growing population and economic development. An important part of building new roads and expanding old ones is establishing the right-of-way upon which the road can be constructed. In the Lower 48 and, to some extent in Alaska, when a state wishes to construct a road it purchases the right-of-way across private land either by direct negotiation or by condemnation. Thus, a private land owner whose property is effected by a highway is compensated for the loss of the use of his property.

This is not so for a large number of land owners in Alaska. The State of Alaska has determined that it can take rights-of-way and expand existing roads over private property without compensation to the land owners based upon some obscure federal regulations and statutes, despite the fact the Alaska State Legislature has already made one attempt to prohibit such takings.

In order to understand how the State can claim an easement or right-of-way for highway purposes across private land without paying compensation one must look at the history of road development in Alaska. Prior to 1947, there were two primary ways by which roads could be established. The first was by appropriation. Under the doctrine of appropriation, if the federal government wished to build a road, it could do so on public lands simply by expending money for the construction of the road. As a matter of custom the width of such roads was generally 33 feet either side of the center line.

Roads were also established prior to 1947 under a special federal statute (48 U.S.C. §932) which granted the right to the public to construct highways across vacant and unappropriated federal public lands. Several territorial enactments established a right-of-way along all section lines in the state four rods (66 feet) wide.

Following World War II numerous veterans found Alaska an appealing place to live and migrated to our state, These Homesteaders soon had identified parcels for entry and proceeded to lawfully obtain title to these lands. The Department of Interior which was responsible for the construction of most roads in Alaska through the Alaska Road Commission soon discovered that

its road construction could not keep up with the pace of settlement. Homesteaders would often enter the property before the Alaska Road Commission could build a road by appropriation. Once the homesteader entered the property the right to build a road by appropriation was lost since the property was no longer considered public lands.

To remedy this problem, Congress passed a law in 1947 requiring a general reservation for highway rights-of-way be placed in all patents where the homesteader entered after July 24, 1947. It was envisioned that as the Alaska road network developed in the territory, the Alaska Road Commission could then construct a road across the patented property even though it was no longer in the hands of the federal government.

Unfortunately, the 1947 law did not establish where the roads were or their width. This placed the homesteader at risk, that, at any time in the future, a road could be constructed across his property. In 1949 the Department of Interior attempted to clarify this problem by publishing Public Land Order No. 601 which established the width for various types of roads in Alaska. The Public Land Order withdrew from the public domain strips of land along all highways in Alaska. By withdrawing the strips of land the federal government actually made those portions of federal public lands unavailable for homesteading.

PLO 601 established several classifications of roads. For through roads such as the Alaska Highway, Richardson Highway, Glenn Highway, Haines Highway, and Tok Cutoff, the right-of-way was 150 feet either side of center line or 300 feet total. For feeder roads such as the Steese Highway, Elliott Highway, McKinley Park Road, Anchorage-Porter-Indian Road, etc. the rights-of-way was 100 feet either side of center line or 200 feet total. The last classification was entitled local roads and represented a withdrawal of 50 feet either side of center line or 100 feet total. However, unlike the through roads and feeder roads, local roads were not specifically identified by name.

The problem with PLO 601 was that homesteaders who entered their property after August of 1949 were often not told that their property might be effected by PLO 601.

The BLM was required, because of the withdrawal by PLO 601, to survey those withdrawals and to post them to their plats. Additionally they were required to tell a homesteader who entered the property and who claimed land under his application which was effected by the PLO 601 that his homestead could not include those lands which PLO 601 effected. The BLM did neither. The

cost and manpower involved in identifying and surveying the property effected by the Public Land Orders and posting it to the plats was beyond the physical and fiscal capability of the BLM in the late 40's and early 50's.

As a result of local BLM protest to Washington the Department of Interior recognized the difficulties inherent in the withdrawals under PLO 601. In 1951 therefore they published PLO 757 which ended the withdrawals as to local and feeder roads and simultaneously published Department Order 2665 which converted those withdrawals to easements. Therefore, a homesteader who entered the property after D. O. 2665 could claim up to the center line of a local or feeder road but would take subject to an easement in favor of the federal government. But, as had happened when PLO 601 was in effect, many homesteaders were not informed of the full nature of the federal government's interest in their property. Some homesteaders had the existence of the local or feeder road easement noted in their prepatented documents but many did not. The easement was never noted in the patent that was issued to them.

The last difficulty associated with these rights-of-way was that the withdrawal that had remained in effect as to through roads. Congress in the late 1950's decided to sell the withdrawn land to the adjoining land owners and convert the remaining through road withdrawals to easements. The Department of Interior published Public Land Order 1613 which converted the withdrawals to easements and the underlying fee was to be sold to the then current adjoining land owner.

The Department of Interior did not immediately institute the program because of Statehood in 1959. During the transition phase much of the federal responsibility for highways and highway rights-of-way passed to the State of Alaska. The State claims its interest to the rights-of-way pursuant to a quitclaim deed issued by the Federal Government in 1959. The State did not bother to record the quitclaim deed until 1969. Thus, there was no document of record in a recording district by which the State claimed any title. The United States government had also never placed the easements of record in the territorial commissioner's office (the predecessor to recorders office).

In the mid 1960's the Bureau of Land Management once again rediscovered its obligations under PLO 1613 to convey the land to the adjoining land owner. It sent out to many of the adjoining land owners notices that they had the right to purchase the underlying fee to the highway along their property. Some of the adjoining land owners paid the purchase price. However, because

of the general freeze on the conveyancing of federal lands in Alaska the federal government failed to issue patents to those individuals.

In the last two years the BLM has once again discovered its obligations under PLO 1613 and have now made the property available to the adjoining land owners, but at today's prices. Further, where the 1965 adjoining land owner had filed an application to purchase and paid his purchase price in 1965, the BLM will now issue the patent to him and not the current adjacent land owner. This causes a great concern among current land owners who believed that they owned the property in front of their homes and businesses. It is conceivable that not only will they have an interloper between themselves and the highway but perhaps even a loss of access to their property.

In 1966, the Alaska legislature became aware that the State was building certain roads along these federally created highway rights-of-way without paying compensation. The only land owners which were effected by this unfair taking were those who entered the property after July of 1947 and before statehood. All other Alaskans were entitled to compensation if such a taking occurred on their property.

Representative Hillstrand bought the issue before the Alaska legislature and they virtually unanimously agreed that such a taking was unfair and unjust to the land owners. The legislature in 1966 therefore passed the Right-of-Way Act of 1966 which barred the state from taking any further land under the grants by the federal government. Between 1966 and 1970 the State therefore paid citizens in Alaska for highway construction and expansion on their lands. Indeed, in 1970 the commissioner for the Department of Transportation testified before the United States Congress that the State had paid several million dollars to land owners in compensation for the federal rights-of-way which had been created in the 1940's and 50's.

In the early 1970's however the problem re-emerged. The rapid increase in the population of Alaska and development of its economy required the State to build additional roads and to expand existing roads to accommodate the growth. In the mid 1970's the State once again began to take property under the 1947 Act. When confronted with the 1966 Act which barred the State from taking property without compensation, the State came up with a legal theory circumventing the Act. In the late 1970's and early 1980's several cases went to the Alaska Supreme Court concerning whether the State had a highway right-of-way across private land which it could take without compensation. In each

of those cases the trial court after having heard the evidence and arguments by the State and land owners ruled in favor of the land owners. In each case the Alaska Supreme Court reversed.

The Alaska Supreme Court's reversal rests on two weak premises. First, that the Alaska legislature in 1966 intended only to end those easements under the 1947 act. The Court's second premise was that the 1947 Act was an independent statute and did not modify the prior act authorizing the Secretary of Interior to build roads in Alaska. The Court found that that prior legislation which authorized the Secretary of Interior to build highways in Alaska permitted him to also create easements independent of the fact that Congress in 1947 modified the law to require that those easements be placed in the patent. Since Department Order 2665 states that it is promulgated under the Department of Interior's responsibility to construct roads in Alaska Department Order 2665 survives the 1966 Act and is not affected by it.

The position of the Alaska Supreme Court seems incredible. It is difficult to believe that in 1966 the Alaska Legislature was only doing away with the right of the State to take an easement under the 1947 Act, which was at least identified to the land owner in his patent, and not prohibit the taking of a concurrent easement which was not identified in the land owners patent. Indeed the premise of the Alaska Supreme Court is refuted by the BLM's own memorandum discussing these rights-of-way.

The most burdensome aspect of the highway right-of-way problem lies in the fact that the federal government mishandled the implementation of the programs. The only notice was published in the Federal Register. The Federal Register is a relatively obscure document to most people. Indeed in the late 1940's and 1950's the existence of the Federal Register, let alone the potential impact on their lives was not realized by most people. The rights-of-way were not placed of record against specific parcels and in cases where the statute or land order required that a map be made of the highway and placed of record with the BLM that was often not done. Further, over the years the State of Alaska in upgrading and improving highways has moved the location of the highway. Now it is difficult to know exactly where the highway was in the 1950's to determine how much property could be taken from the land owner without compensation.

Recently the State has aggravated the problem by permitting other activities to take place on the rights-of-way such as bike paths, horse trails, and utility lines but forced the entity

constructing this nonhighway use to place it on the far edge of the easement thus long before the road might have to actually be expanded, if at all, the easement is being utilized and the homeowner suffers from the loss of trees, shrubs, and use of his land as well as any improvements thereon.

It is this combination of factors which makes the taking by the State of Alaska unfair and inequitable. Lack of adequate notice to the original patentee, lack of notice contained in the patent, lack of notice to the general public except as published in the Federal Register, no recording of the easements in the recording district of the territory or State of Alaska, failure of the State of Alaska to record its quitclaim deed until 1969, and the belief that the 1966 Act by the Legislature ended once and for all the controversy, all contribute to make this taking without compensation extremely unfair.

It is clear that the legislative relief is required to close the loopholes created by the Alaska Supreme Court in the 1966 Act. It was unjust and inequitable then and it is unjust and inequitable now.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SB 141

Title: An Act releasing claims of State land within certain rights of way

Sponsor: Cochill

Requestor:

Date of Request: February 15, 1985

FISCAL DETAIL

Agency Affected: Transportation & Public Facili

Program Category Affected: Design and Construction

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		75	75	75	75	75
200 TRAVEL		15	15	15	15	15
300 CONTRACTUAL		1,750	1,750	1,750	1,750	1,750
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES		225,500	225,500	225,500	225,500	225,500
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		227,340	227,340	227,340	227,340	227,340
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		227,340	227,340	227,340	227,340	227,340
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

See attached Analysis

Prepared By: Milton H. Lentz

Phone: 465-2985

Division: Standards & Technical Services HQ

Date: February 14, 1985

Approved by Commissioner:

Date: 2/15/85

Agency: Department of Transportation & Public Facilities

Distribution (by Agency preparing fiscal note):

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

DOT/PF FISCAL NOTE

7/1/84

Dept. of Transportation & Public Facilities

Position Paper

BILL NO: Senate Bill No. 141

TITLE: An Act releasing claims of the State to land within certain rights of way

APPROVED: R. J. Knapp
Commissioner

DATE: 2-15-85

The Department of Transportation and Public Facilities opposes Senate Bill 141. This bill would have a major negative impact on the State of Alaska. It could restrict our ability to serve the public effectively and create a heavy financial burden for the State. In addition, there is a concern that, if this bill is enacted into law, it will jeopardize present or future federal-aid participation in highway rights of way.

The validity of these easements has been reviewed by the U.S. Supreme Court and the passage of this bill would reverse any legal grounds already established through the judicial system.

For further information call Susan Fleischhauer at 465-3900.

ANALYSIS OF FISCAL NOTE FOR SENATE BILL 141

This bill would relinquish highway easements created by the federal government under several laws and land orders. Most of the highway rights of way in the State would be affected. This bill would relinquish or vacate all those rights of way except those portions which are physically occupied on the effective date of the Act. Under this Act, the adjacent landowners would immediately become owners of the affected rights of way except those portions between slopes and ditches.

The enactment of this bill would put the Department in the position of having to purchase any rights of way needed for planned expansion, maintenance (brush cutting and snow storage), protection of utility permit areas, permitted encroachments, etc.

The cost of almost all future upgrading or widening of existing highways and the building of planned highways would be increased drastically because of the expense of acquiring additional right of way. This bill would also affect federal funding on federal-aid projects. It is the Federal Highway Administration's position that there can be no federal reimbursement for funds expended by the State of Alaska for the acquisition of right of way from lands subject to the reservation contained in the 1947 Act.

This fiscal note is based on the following assumptions:

1. Primary highways normally control 300-foot rights of way in general but physically occupy 100 feet for the actual roadway.

2. Secondary highways normally control 200-foot rights of way but physically occupy 60 feet for the actual roadway.

3. The State would have to reacquire approximately one half the relinquished rights of way for planned expansion, maintenance, clear zones, utility permits, etc. This would have to be done as expeditiously as possible to satisfy maintenance agreement obligations with the federal government on federal-aid highways.

U.S. Department of Transportation
Federal Highway Administration

Alaska Division

P.O. Box 1648
Juneau, Alaska 99802

February 19, 1985

HRW-AK
013

R. J. Knapp, Commissioner
Alaska Department of Transportation
and Public Facilities
Juneau, Alaska

Dear Commissioner Knapp:

Senate Bill 141

We have reviewed Senate Bill #141 introducted in the State Senate February 8, 1985. This Bill is similar to previously introduced legislation and we still have the following concerns:

1. If the right-of-way remaining will only include the road shoulders and the ditching, several problems are envisioned. There may not be sufficient sight distance to provide for the safety of the traveling public, as you would be unable to clear vegetation on the inside of curves. You would be unable to clean ditches and maintain structures without encroaching on other properties. There would be no mechanism to prevent construction of facilities next to the traveled way.

2. It was the intent of the Federal Government in estabishing Public Land Orders to provide land for highway construction at no additional expense to the states or the United States. If the State of Alaska should choose to abandon this right, and later find that this right-of-way is necessary for the construction or operation of the highway, there can be no Federal reimbursement for funds expended by the State of Alaska for reacquisition.

Sincerely yours,

Barry F. Morehead

Barry F. Morehead
Division Administrator

FHWA BILL ANALYSIS

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

REPLY TO:

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PHONE: (907) 465-3600

465-3603

March 5, 1985

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

Re: Request for Opinion on SB 141
Our File: 366-380-85

Dear Mr. Call:

This letter is in response to your request for our analysis of SB 141 which has as its subject matter Public Land Orders 601, 757, 1613 and Department Order 2665.

Public Land Orders 601, 757, 1613 and Department Order 2665 are responsible for the creation of 80 percent of the public road rights-of-way in Alaska. Moreover, the legal validity of the rights-of-way and easements created by these land orders was upheld by the Alaska Supreme Court against numerous legal challenges raised by the Alaska Land Title Association in a case that went all the way up to the U.S. Supreme Court. See Alaska Land Title Association v. State of Alaska, 667 P.2d 714 (Alaska 1983), cert. denied, 104 S.Ct. 704 (1984).

The effect of SB 141 would be to require the state to vacate and relinquish to certain private landowners significant portions of public highway rights-of-way that were created by PLO 601, PLO 757, PLO 1613 and D.O. 2665. Specifically, those portions of the rights-of-way not physically occupied on the effective date of the bill would have to be relinquished by the state.

There are at least two major legal concerns raised by this bill. The first involves article IX, section 6, of the Alaska Constitution. This provision reads as follows:

> Section 6. PUBLIC PURPOSE. No tax shall be levied, or appropriation of public money made, or

ATTORNEY GENERAL'S OPINION

public property transferred, nor shall the public credit be used, except for a public purpose.

The easement rights created by PLO 601, PLO 757, PLO 1613, and D.O. 2665 are held in common by the general public. These rights, therefore, are a form of public property. The clear effect of Senate Bill 141 is to transfer this public property to certain private individuals. This is so because the bill, while relinquishing public road easements held in common by the general public, bestows the right to the fair market value of these easements upon those private landowners whose property was previously subject to them. See sections 2 and 3 of SB 141. The bill, in effect, transfers public property to private individuals who would not pay anything to the state for the value of the rights transferred to them. Such a transfer, on its face, would appear to violate the public purpose provision of the state Constitution. This is underscored by the fact that the public, if it requires the vacated road easement area for future road improvement, must purchase it back from private ownership. Only these private individuals would benefit from this arrangement and the repurchase costs would probably be significant. Thus, it is difficult to understand how this bill would not violate the public purpose requirement of article IX, section 6, of the Alaska Constitution that must be met whenever public property is transferred. 1/

A second legal difficulty concerns article 1, section 1, of the Alaska Constitution. This provision provides that all persons are entitled to equal rights under the law and, conversely, prohibits unfair distinctions between classes of persons.

1/ Because this bill would eliminate significant portions of public road easements, it would most likely have a negative effect on public access to various areas of the state. As a result, SB 141 appears to be inconsistent with article VIII, sections 1 and 2 of the Alaska Constitution. Article VIII, Section 1 states that it is the policy of the state "to encourage the settlement of its lands and development of its resources by making them available for maximum use consistent with the public interest." Article VIII, section 2 requires the legislature to "provide for the utilization, development, and conservation of all natural resources belonging to the state . . . for the maximum benefit of its people."

See Ale v. State, 484 P.2d 677 (Alaska 1971); Leege v. Martin, 379 P.2d 447 (Alaska 1963) .

The effect of this bill is to divest the general public of its right to utilize significant portions of the public road easements created by public land orders. Since the effect of this divestment would be to eliminate the public's right to claim these public road easements, only those private individuals owning land fronting on the public roads created by these land orders would benefit from this divestment. That is to say, after the effective date of this bill, the public, acting through the state, would have to purchase from this class of individuals the right to use the same public road easements that were previously owned by the public.

In sum, as matters stand now, the public road rights granted by these land orders are owned by all members of the public in common. Should this bill become law, it would mean that the cash value of these rights, rights which were formerly held by all, would be granted to a class of property owners, i.e., those individual property owners fortunate enough to own land fronting on the very roadways created by these public land orders. Thus the practical effect of this bill is to take away potentially valuable property rights owned by the general public as a whole and bestow the right to the fair market value of these rights upon a class of private individuals. Since article I, section 1 of the Alaska Constitution adopts the principle that "all persons are equal and entitled to equal rights, opportunities, and protection under the law," the granting of special privileges by this bill to a particular class at the expense of the public may very well violate this provision.

At present, only one class of persons exists relative to the public road easements created by these public land orders. This class is made up of members of the general public who own these public road easements in common. Should this bill become law, these easement rights would, in effect, be taken from the general public. 2/ The right to the cash value of these public road easement rights would then be bestowed, not on the general

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2/ This "taking" from each member of the public by itself may violate article XIII, section 16 of the Alaska Constitution which provides that "no person shall be involuntarily divested of . . . his interests in lands . . ." unless the divestment is for a public purpose and he is paid just compensation.

public as a whole, but on a special class of property owners. This bill, in effect, would create two classes of persons: the class of all those members of the general public who do not own real property fronting on the roadways created by the public land orders and the class of those property owners who do own property fronting on the roadways created by these public land orders. This latter class would then be given the right to the fair market value of the easements previously owned by the entire public. It is likely that such discriminatory treatment is barred by article I, section 1, of the Alaska Constitution.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Jack McGee
Jack B. McGee
Assistant Attorney General

JBM:ebc:prm

RUBY CREEK
"L" 6 "O"
Δ = 32°51'
D = 5° Lt
T = 337.8'
L = 657.0'
S = 0.06
T 5 S R 14 W
S M
"0" 5677+54.3 PT
5677+89.8 PT
"0" 5681+39.7 PC
5681+65.3 PC
5670+00 ~ 5680+50 Rt Lt
Install 44 Guide posts
50 Centers
"0" 6 "L"
Δ = 43°34'
D = 3°30' Rt
T = 652.2'
L = 1244.8'
S = 0.06
5689+00 ~ 5692+00 Lt
Install 7 Guide posts
50' Centers
5692+30 ~ Construct Type 1B Approach Rt
5696+00 ~ 5700+00 Rt
Install 9 Guide posts
50' Centers
S 1°02'30" W ~ 343.7'
Clearance 23'
Δ = 52°15'
D = 3° Lt
T = 936.7'
L = 1741.7'
S = 0.05
T 5 S R 14 W
S M
P.I. 5724+70.9
5720+00 ~ 5825+
Install 20 Guide posts
50 Centers Lt
PC 5720+21.2
Δ = 42°51'
D = 5° RT
T = 449.7
L = 857.0
S = 0.07
5704+85 ~ 15 x 32 CMP
in place Remove, Clean and Relay
5715+90 ~ Construct Type 1B Approach
To be wasted
Orange line is boundary of land listed in US Patent 1174133
Red line is what State of Alaska Claims
Black line between red lines is Center line of present Rd.
Green line 33' ROW listed in Patent #1174133
Blue line is property Concerned in Correction of legal description in Federal Register
Dated 9-27-62

IN THE SENATE BY COGHILL

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act releasing claims of the state to land within certain rights-of-way; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. LEGISLATIVE PURPOSE AND FINDING. The purpose of this Act is to release certain highway rights-of-way claimed by the state that are causing economic hardship and physical and mental distress to persons who hold title to land under a reservation to the state by virtue of 33 Stat. 616 (Act of January 27, 1905); 47 Stat. 446 (Act of June 30, 1932); 48 U.S.C. secs. 321(a) - 327 (Act of July 24, 1947); Public Land Order 601, 14 Fed. Reg. 5048 (1949); Public Land Order 757, 16 Fed. Reg. 10, 749 (1951); Public Land Order 1613, 23 Fed. Reg. 2376, 2378 (1958); or Departmental Order 2665, 16 Fed. Reg. 10, 752 (1951).

* Sec. 2. RELINQUISHMENT OF RIGHT-OF-WAY. The commissioner of transportation and public facilities shall vacate and relinquish to the adjoining property owners any and all rights-of-way for a road, roadway, highway, tramway, trail, bridge, or appurtenant structure created, withdrawn or reserved under 33 Stat. 616 (Act of January 27, 1905); 47 Stat. 446 (Act of June 30, 1932); 48 U.S.C. secs. 321(a) - 327 (Act of July 24, 1947); Public Land Order 601, 14 Fed. Reg. 5048 (1949); Public Land Order 757, 16 Fed. Reg. 10, 749 (1951); Public Land Order 1613, 23 Fed. Reg. 2376, 2378 (1958); or Departmental Order 2665, 16 Fed. Reg. 10, 752 (1951) if the right-of-way on the effective date of this Act is not physically occupied by a road, roadway, highway, tramway, trail, bridge, or appurtenant

structure.

* Sec. 3. TAKING OF RIGHT-OF-WAY WITHOUT JUST COMPENSATION VOID. The vacated and relinquished right-of-way under sec. 2 of this Act may not be taken, claimed, asserted, or used by the state without the payment of just compensation.

* Sec. 4. PHYSICAL OCCUPATION OF RIGHT-OF-WAY. (a) The provisions of this Act do not divest the state of its interest in a right-of-way to land or require compensation by the state for land physically occupied on the effective date of this Act by a road, roadway, highway, tramway, trail, bridge, or appurtenant structure then constructed within the right-of-way created, withdrawn, or reserved under the Acts of Congress and the orders described in sec. 2 of this Act; nor do the provisions of this Act divest the state of an interest in an easement of specific width set out in the original patent from the state or federal government.

(b) Expansion beyond an existing road, roadway, highway, tramway, trail, bridge, or appurtenant structure requires the payment of just compensation to the owner of the land and no other acts or actions by the state constitute a physical occupation within the meaning of this section. The state has the burden of proof to show by clear and convincing evidence that the physical occupation occurred before the effective date of this Act.

* Sec. 5. APPLICATION TO FEDERAL LAND. The provisions of this Act do not divest the state of its interest in a right-of-way that affects land in which fee title is, on the effective date of this Act, vested in the United States of America.

* Sec. 6. DEFINITION. As used in this Act, "physically occupied" means the construction of the actual roadway, including its shoulders and ditching, highway, tramway, trail, bridge, or appurtenant structures, before the effective date of this Act.

* Sec. 7. RETROACTIVE APPLICATION. This Act does not relieve, alter, or void a voluntary conveyance of an easement including an easement dedicated by plat.

* Sec. 8. EFFECTIVE DATE. This Act takes effect immediately in accordance with AS 01.10.070(c).

TAKING OF RIGHTS-OF-WAY WITHOUT COMPENSATION

In recent years there has been a tremendous amount of road construction by the State of Alaska to serve the needs of the State's growing population and economic development. An important part of building new roads and expanding old ones is establishing the right-of-way upon which the road can be constructed. In the Lower 48 and, to some extent in Alaska, when a state wishes to construct a road it purchases the right-of-way across private land either by direct negotiation or by condemnation. Thus, a private land owner whose property is effected by a highway is compensated for the loss of the use of his property.

This is not so for a large number of land owners in Alaska. The State of Alaska has determined that it can take rights-of-way and expand existing roads over private property without compensation to the land owners based upon some obscure federal regulations and statutes, despite the fact the Alaska State Legislature has already made one attempt to prohibit such takings.

In order to understand how the State can claim an easement or right-of-way for highway purposes across private land without paying compensation one must look at the history of road development in Alaska. Prior to 1947, there were two primary ways by which roads could be established. The first was by appropriation. Under the doctrine of appropriation, if the federal government wished to build a road, it could do so on public lands simply by expending money for the construction of the road. As a matter of custom the width of such roads was generally 33 feet either side of the center line.

Roads were also established prior to 1947 under a special federal statute (48 U.S.C. §932) which granted the right to the public to construct highways across vacant and unappropriated federal public lands. Several territorial enactments established a right-of-way along all section lines in the state four rods (66 feet) wide.

Following World War II numerous veterans found Alaska an appealing place to live and migrated to our state, These Homesteaders soon had identified parcels for entry and proceeded to lawfully obtain title to these lands. The Department of Interior which was responsible for the construction of most roads in Alaska through the Alaska Road Commission soon discovered that

its road construction could not keep up with the pace of settlement. Homesteaders would often enter the property before the Alaska Road Commission could build a road by appropriation. Once the homesteader entered the property the right to build a road by appropriation was lost since the property was no longer considered public lands.

To remedy this problem, Congress passed a law in 1947 requiring a general reservation for highway rights-of-way be placed in all patents where the homesteader entered after July 24, 1947. It was envisioned that as the Alaska road network developed in the territory, the Alaska Road Commission could then construct a road across the patented property even though it was no longer in the hands of the federal government.

Unfortunately, the 1947 law did not establish where the roads were or their width. This placed the homesteader at risk, that, at any time in the future, a road could be constructed across his property. In 1949 the Department of Interior attempted to clarify this problem by publishing Public Land Order No. 601 which established the width for various types of roads in Alaska. The Public Land Order withdrew from the public domain strips of land along all highways in Alaska. By withdrawing the strips of land the federal government actually made those portions of federal public lands unavailable for homesteading.

PLO 601 established several classifications of roads. For through roads such as the Alaska Highway, Richardson Highway, Glenn Highway, Haines Highway, and Tok Cutoff, the right-of-way was 150 feet either side of center line or 300 feet total. For feeder roads such as the Steese Highway, Elliott Highway, McKinley Park Road, Anchorage-Porter-Indian Road, etc. the rights-of-way was 100 feet either side of center line or 200 feet total. The last classification was entitled local roads and represented a withdrawal of 50 feet either side of center line or 100 feet total. However, unlike the through roads and feeder roads, local roads were not specifically identified by name.

The problem with PLO 601 was that homesteaders who entered their property after August of 1949 were often not told that their property might be effected by PLO 601.

The BLM was required, because of the withdrawal by PLO 601, to survey those withdrawals and to post them to their plats. Additionally they were required to tell a homesteader who entered the property and who claimed land under his application which was effected by the PLO 601 that his homestead could not include those lands which PLO 601 effected. The BLM did neither. The

cost and manpower involved in identifying and surveying the property effected by the Public Land Orders and posting it to the plats was beyond the physical and fiscal capability of the BLM in the late 40's and early 50's.

As a result of local BLM protest to Washington the Department of Interior recognized the difficulties inherent in the withdrawals under PLO 601. In 1951 therefore they published PLO 757 which ended the withdrawals as to local and feeder roads and simultaneously published Department Order 2665 which converted those withdrawals to easements. Therefore, a homesteader who entered the property after D. O. 2665 could claim up to the center line of a local or feeder road but would take subject to an easement in favor of the federal government. But, as had happened when PLO 601 was in effect, many homesteaders were not informed of the full nature of the federal government's interest in their property. Some homesteaders had the existence of the local or feeder road easement noted in their prepatented documents but many did not. The easement was never noted in the patent that was issued to them.

The last difficulty associated with these rights-of-way was that the withdrawal that had remained in effect as to through roads. Congress in the late 1950's decided to sell the withdrawn land to the adjoining land owners and convert the remaining through road withdrawals to easements. The Department of Interior published Public Land Order 1613 which converted the withdrawals to easements and the underlying fee was to be sold to the then current adjoining land owner.

The Department of Interior did not immediately institute the program because of Statehood in 1959. During the transition phase much of the federal responsibility for highways and highway rights-of-way passed to the State of Alaska. The State claims its interest to the rights-of-way pursuant to a quitclaim deed issued by the Federal Government in 1959. The State did not bother to record the quitclaim deed until 1969. Thus, there was no document of record in a recording district by which the State claimed any title. The United States government had also never placed the easements of record in the territorial commissioner's office (the predecessor to recorders office).

In the mid 1[illegible] the Bureau of Land Management once again rediscovered its obligations under PLO 1613 to convey the land to the adjoining land owner. It sent out to many of the adjoining land owners notices that they had the right to purchase the underlying fee to the highway along their property. Some of the adjoining land owners paid the purchase price. However, because

of the general freeze on the conveyancing of federal lands in Alaska the federal government failed to issue patents to those individuals.

In the last two years the BLM has once again discovered its obligations under PLO 1613 and have now made the property available to the adjoining land owners, but at today's prices. Further, where the 1965 adjoining land owner had filed an application to purchase and paid his purchase price in 1965, the BLM will now issue the patent to him and not the current adjacent land owner. This causes a great concern among current land owners who believed that they owned the property in front of their homes and businesses. It is conceivable that not only will they have an interloper between themselves and the highway but perhaps even a loss of access to their property.

In 1966, the Alaska legislature became aware that the State was building certain roads along these federally created highway rights-of-way without paying compensation. The only land owners which were effected by this unfair taking were those who entered the property after July of 1947 and before statehood. All other Alaskans were entitled to compensation if such a taking occurred on their property.

Representative Hillstrand bought the issue before the Alaska legislature and they virtually unanimously agreed that such a taking was unfair and unjust to the land owners. The legislature in 1966 therefore passed the Right-of-Way Act of 1966 which barred the state from taking any further land under the grants by the federal government. Between 1966 and 1970 the State therefore paid citizens in Alaska for highway construction and expansion on their lands. Indeed, in 1970 the commissioner for the Department of Transportation testified before the United States Congress that the State had paid several million dollars to land owners in compensation for the federal rights-of-way which had been created in the 1940's and 50's.

In the early 1970's however the problem re-emerged. The rapid increase in the population of Alaska and development of its economy required the State to build additional roads and to expand existing roads to accommodate the growth. In the mid 1970's the State once again began to take property under the 1947 Act. When confronted with the 1966 Act which barred the State from taking property without compensation, the State came up with a legal theory circumventing the Act. In the late 1970's and early 1980's several cases went to the Alaska Supreme Court concerning whether the State had a highway right-of-way across private land which it could take without compensation. In each

of those cases the trial court after having heard the evidence and arguments by the State and land owners ruled in favor of the land owners. In each case the Alaska Supreme Court reversed.

The Alaska Supreme Court's reversal rests on two weak premises. First, that the Alaska legislature in 1966 intended only to end those easements under the 1947 act. The Court's second premise was that the 1947 Act was an independent statute and did not modify the prior act authorizing the Secretary of Interior to build roads in Alaska. The Court found that that prior legislation which authorized the Secretary of Interior to build highways in Alaska permitted him to also create easements independent of the fact that Congress in 1947 modified the law to require that those easements be placed in the patent. Since Department Order 2665 states that it is promulgated under the Department of Interior's responsibility to construct roads in Alaska Department Order 2665 survives the 1966 Act and is not affected by it.

The position of the Alaska Supreme Court seems incredible. It is difficult to believe that in 1966 the Alaska Legislature was only doing away with the right of the State to take an easement under the 1947 Act, which was at least identified to the land owner in his patent, and not prohibit the taking of a concurrent easement which was not identified in the land owners patent. Indeed the premise of the Alaska Supreme Court is refuted by the BLM's own memorandum discussing these rights-of-way.

The most burdensome aspect of the highway right-of-way problem lies in the fact that the federal government mishandled the implementation of the programs. The only notice was published in the Federal Register. The Federal Register is a relatively obscure document to most people. Indeed in the late 1940's and 1950's the existence of the Federal Register, let alone the potential impact on their lives was not realized by most people. The rights-of-way were not placed of record against specific parcels and in cases where the statute or land order required that a map be made of the highway and placed of record with the BLM that was often not done. Further, over the years the State of Alaska in upgrading and improving highways has moved the location of the highway. Now it is difficult to know exactly where the highway was in the 1950's to determine how much property could be taken from the land owner without compensation.

Recently the State has aggravated the problem by permitting other activities to take place on the rights-of-way such as bike paths, horse trails, and utility lines but forced the entity

constructing this nonhighway use to place it on the far edge of the easement thus long before the road might have to actually be expanded, if at all, the easement is being utilized and the homeowner suffers from the loss of trees, shrubs, and use of his land as well as any improvements thereon.

It is this combination of factors which makes the taking by the State of Alaska unfair and inequitable. Lack of adequate notice to the original patentee, lack of notice contained in the patent, lack of notice to the general public except as published in the Federal Register, no recording of the easements in the recording district of the territory or State of Alaska, failure of the State of Alaska to record its quitclaim deed until 1969, and the belief that the 1966 Act by the Legislature ended once and for all the controversy, all contribute to make this taking without compensation extremely unfair.

It is clear that the legislative relief is required to close the loopholes created by the Alaska Supreme Court in the 1966 Act. It was unjust and inequitable then and it is unjust and inequitable now.

U.S. Department
of Transportation
Federal Highway
Administration

Alaska Division

P.O. Box 1648
Juneau, Alaska 99802

March 8, 1985

HDA-AK
013

R. J. Knapp, Commissioner
Alaska Department of Transportation
and Public Facilities
Juneau, Alaska

Dear Commissioner Knapp:

Senate Bill 141

The enclosed is a paper Gary Wilson did for me explaining the differences in 1947 Act easements and Public Land Order (PLO) easements. Since the 1947 Act easements in essence no longer exist I think it would be helpful to all of us if discussions, including examples, only referred to PLO easements.

Our office would certainly be willing to work with you in resolving this issue. The resolution would seem to tie in with your plan to develop an immediate, intermediate, and long term program of proposed improvement projects. Once this is done you could determine which of the proposed improvements involve PLO easements. We could then agree to the number of lanes needed, and a typical section, including shoulders and ditches; plus any additional areas needed to maintain your roadway. Lands beyond what we agree are needed could then be unencumbered by PLO easements.

The mechanics of how this could be recorded needs to be explored. For instance, could the right-of-way lines be established from areial photography and mathematical calculations? Would something like this be recordable? If so, this could be done rather quickly. However, if a physical survey is needed I can see this resolution would be quite costly and time consuming.

If at some later date it was determined lands outside our agreed to right-of-way limits were needed for a roadway improvement, we would participate in the acquisition even though it may be lands previously included in Public Land Orders.

Sincerely yours,

Barry F. Morehead

Barry F. Morehead
Division Administrator

COPY

Enclosure

FHWA PLO ANALYSIS

U.S. Department of Transportation
Federal Highway Administration

Memorandum

Subject: Senate Bill 141

Date: March 7, 1985

From: Division Right-of-Way Officer
Juneau, Alaska

Reply to Attn. of: HRW-AK
013

To: Mr. Barry F. Morehead
Division Administrator
Federal Highway Admininstration
Alaska Division
Juneau, Alaska

The testimony and material presented at the Senate Committee hearing on March 6, 1985 confused Public Land Order (PLO) right-of-way with "47 Act" right-of-way. The pertinent differences that were not explained are:

"47 Act":

1. Was established by an Act of Congress effective 7/24/47 and codified into 48 USC, Section 321.d. It reserved from subsequent lands patented, a right-of-way. The right-of-way was available to the United States or any state created out of the Territory of Alaska.

2. It was repealed by Public Law 86-70, the Alaska Omnibus Act, effective July 1, 1959, however, the reservation contained in patents issued between 1947 and 1959 remained valid.

3. It was specifically noted in patents issued between 1947 and 1959.

4. Specific areas or locations were not identified in the patents.

5. The State of Alaska relinquished their right to any unutilized reservations by the Alaska Right-of-Way Act of 1966.

6. The Federal Government relinquished their right to any unutilized reservations by Section 138 of the Federal-aid Highway Act of 1970.

PLO: 1. Established a withdrawal from Public domain which was subsequently changed to an easement and established and/ or revised corridor widths by:

Executive Order 9145 dated 4/23/42.
PLO 12 dated 7/20/42
PLO 84 dated 1/28/43
PLO 270 dated 4/5/45
PLO 386 dated 7/31/47
PLO 601 dated 8/10/49
PLO 757 dated 10/16/51
Secretarial Order 2665 dated 10/16/51
Amendment #1 to 2665 dated 7/17/52
Amendment #2 to 2665 dated 9/15/56
PLO 1613 dated 4/7/58

The above were issued by the Executive Branch rather than the Congress.

2. They established the original corridor for the Alaska and Glenn Highways. They withdrew from Public Domain a specific width corridor along existing highways. They changed the withdrawals to easements.

3. The withdrawals or easements were not identified in patents issued by the Federal Government nor were they recorded.

4. The withdrawals or easements were not affected by the Alaska Right-of-Way Act of 1966 or Section 138 of the Federal-Aid Highway Act of 1970. The hearings and introductory remarks pertaining to these pieces of legislation always referred to 48 USC, Section 321d or the "47 Act" with no mention of Public Lands Orders.

In summary, the "47 Act" reserved an area from the land patented but did not identify where it was. The PLO's created an easement over the land and located it by designating the highway name and corridor width.

The question of payments and reimbursement was raised but not sufficiently answered.

Prior to 1966:

the State of Alaska did not pay for land utilized under provisions of the "47 Act" or within the PLO corridors. Since there was no expense, there was no federal-aid reimbursement.

From 1966 to 1970:

the State of Alaska paid fair market value for right-of-way covered by the "47 Act" but there was no federal-aid reimbursement for these expenses (see attached listing of parcels and amounts expended prior to 5/1/67).

The State of Alaska did not pay for land within the PLO corridors.

From 1970 to the present

the State of Alaska has paid fair market value for right-of-way covered by "47 Act" and federal-aid funds have participated in the expense.

The State of Alaska has not paid for land within the PLO corridors.

Gary E. Wilson

Attachment

1/64)

MEMORANDUM State of Alaska

TO: William J. Niemi
Interim Regional Administrator
Federal Highway Administration
Juneau

DATE: May 1, 1967

FILE NO: 23-2900

ATTN: Calvin Ringgenberg
Regional R/W Officer

SUBJECT: Small Tracts and Right of Way Act

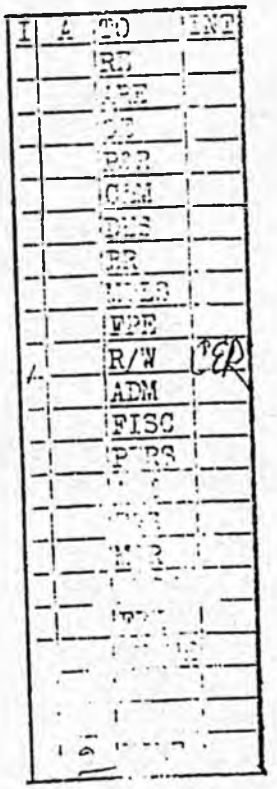
FROM: Dick Chitty
Chief Right of Way Agent
Department of Highways
Juneau

~~[illegible]~~
061 - cross reference
to 062

We have enclosed a copy of our listing of parcels for which land payments have been made in accordance with the State Supreme Court Opinion No. 322 for Small Tracts as well as the Right of Way Act as passed by the 1966 Legislature. The listing as submitted is subject to change as it has been necessary to obtain additional title information on some projects and parcels.

Additional listings will be furnished on a monthly basis as requested in your memorandum of April 7, 1967.

Attachments: As stated



PROJECT	PARCEL	SUBJECT TO 47 ACT	SUBJECT TO SMALL TRACT ACT	LAND	DAMAGES
S-0461(1)	10	X		$ 2,300.00	
Ninilchik	16	X		625.00	
	4	X		65.00	
S-0490(2)	30		X	176.40	
North Kenai Road	12		X	205.83	
	15		X	206.25	
	17		X	165.00	
	20		X	206.25	
	32		X	139.65	$1,800.00
	24		X	173.25	
	72L	X		2,226.00	1,000.00
	11		X	165.53	
	18		X	247.50	
	23		X	123.25	
	34		X	147.50	66.53
	4	X		772.87	
	9		X	209.10	
	10		X	208.00	
	13		X	165.00	
	14		X	206.25	
	16		X	247.50	
	19		X	206.25	
	21		X	173.25	
	22		X	173.25	
	25		X	173.25	
	26		X	151.80	
	27		X	151.80	
	28		X	173.25	
	29		X	174.30	
	31		X	139.65	
	33		X	200.40	
	70	X		1,898.20	
	70C	X		825.00	
	70D	X		127.60	
	72	X		7,384.50	
	62		X	2,225.00	
	63	X		3,000.00	
	63A	X		132.00	
	63B	X		75.00	
	66	X		2,350.00	
	69	X		3,038.00	229.00
	70A	X		1,125.00	
	70B	X		800.00	
	72B	X		70.00	
	72E	X		240.00	
	72H	X		459.00	177.00
	72J	X		740.00	230.00

PROJECT	PARCEL	SUBJECT TO 47 ACT	SUBJECT TO SMALL TRACT ACT	LAND	DAMAGES
S-0490(2)	72M	X		$1,042.50	$ 500.00
	72G	X		330.00	
	72N	X		341.00	
	72K	X		330.00	
	72A	X		975.00	135.00
	65	X		1,682.00	
	72F	X		354.00	
	72D	X		1,050.00	
	59	X		650.00	
	67	X		150.00	
S-0501(1)	30		X	1,250.00	
Girdwood -	7		X	137.84	
Alyeska	15		X	193.42	
	17		X	195.05	
	26		X	368.47	
	14		X	194.23	
	21		X	255.80	
	6		X	289.70	
	16		X	195.86	
	23		X	239.89	
	24		X	276.85	
S-0512(2)	1109		X	629.75	
O'Malley Road	1067		X	755.70	
	1110		X	2,516.33	
	1111		X	755.70	
	1114		X	629.75	
	1402		X	629.75	
	1120		X	7,000.00	
S-0547(6)	16		X	1,222.84	4,980.96
Lake Otis Road	17		X	1,023.56	
(Tudor to	10		X	586.73	
Dowling)	22		X	6,263.75	
	4	X		34.50	
	9		X	925.65	
	11		X	806.70	
	12		X	648.00	
	14		X	970.00	
	15		X	562.50	
	19		X	1,056.00	
S-0520(8)	5A	X		475.00	
Dimond Blvd	5B	X		790.00	
(Jewel Lake West)	20	X		1,700.00	
	5	X		1,500.00	
	5C	X		545.00	
	5D	X		1,625.00	
	8	X		1,100.00	
	10		X	1,450.00	
	4	X		875.00	
	7		X	650.00	

PROJECT	PARCEL	SUBJECT TO 47 ACT	SUBJECT TO SMALL TRACT ACT	LAND	DAMAGES
S-0549(1) Abbot Road (4 Miles South of Anchorage)	12		X	$ 276.00	
	13		X	296.22	
	14		X	296.22	
	15		X	265.88	
	16		X	265.88	
	17		X	296.22	
	18		X	296.22	
	19		X	463.59	
S-0959(1) North Douglas Highway	12		X	33.43	
	15		X	40.80	
	16A		X	41.15	
	17A		X	29.48	
	20A		X	570.06	
	21		X	223.52	
	22		X	186.00	
	23		X	165.76	
	28		X	56.65	
	29		X	54.79	
S-0970(2) Fritz Cove Road (Juneau)	6		X	116.76	
	7		X	275.04	
	9		X	1,342.00	
	10		X	2,044.50	
	15		X	16.63	
	17		X	32.55	
	18		X	26.39	
	22		X	1,252.80	
	23		X	1,037.70	
	24		X	494.96	
	24A		X	186.90	
	28		X	1,276.92	
F-021-1(3) Viaduct to Soldotna	096	X		1,623.65	
F-021-1(14) Homer Streets & Homer Spit	6		X	1,323.00	
	7		X	652.40	
	8		X	652.40	
	9		X	1,401.00	
	22		X	320.00	
	23		X	3,431.00	
	25		X	5,813.00	
	27		X	3,440.98	
	28		X	1,197.70	
	20		X	2,070.00	
	21		X	241.00	
	20A		X	35.00	
	17		X	2,314.00	
	18A		X	384.00	
	26 & 27A		X	1,128.57	

PROJECT	PARCEL	SUBJECT TO 47 ACT	SUBJECT TO SMALL TRACT ACT	LAND	DAMAGES
F-062-4(11)	29	X			
Shaw Creek &	31	X		$966.85	
Eielson AFB	28			765.50	
(Fairbanks)	30		X	903.87	
	32		X	440.00	
	33		X	529.65	
			X	701.80	
F-095-8(5)	13	X			
Tureen Outer Drive				5,252.00	

1947 act land $54,681.17

Small Tracts $ 85,402.16

54,681.17

Total to May 1, 1967 $140,083.33

PERCENTAGE OF AREA SUBJECT TO PLO TAKINGS WITHOUT COMPENSATION.

Due to the existing Alaska Supreme Court cases indicating that land homesteaded after August 10, 1949 may have the easements taken without compensation, the following are best guess estimates of land in the following areas that would be subject to taking without compensation:

Anchorage - 60%-75%

Kenai - 90%

Fairbanks - 5%-10%

Juneau - 5%-10%

As you can see in the Anchorage and Kenai areas, this means that the majority of the land bordering these roads may be taken without any compensation whatsoever.

% EFFECTED LAND

OWNERS V. MORTGAGEE'S TITLE INSURANCE POLICY

A point was made at the Hearing 3-6-85 for Senate Bill 141 that banks required insurance policies on most of the urban transactions. However, there is a basic distinction between an owner's policy and a bank's policy known as a mortgagee's policy. The owner's policy insures title to be in the name of the fee owner of the property, e.g. John Smith. The mortgagee's policy does not insure title is held in any particular person, but only insures that the mortgage to the bank has a certain priority as to other recorded instruments. Many times an owner pays for a mortgagee's policy, but does not pay for an owner's policy whereby he is not insured and in fact if loss occurs to the lending institute, the title insurance company may sue the owner under the doctrine of subrogation to recover any losses. Often times, a mortgagee's policy is the only one acquired and that owner's go uninsured as to their property. This is especially true in more rural areas.

TITLE INSURANCE

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

November 19, 1984

RECEIVED
MAR 7 1985
GROH, EGGERS & PRICE

The Honorable Frank Murkowski
United States Senate
317 Hart Building
Washington, DC 20510

Dear Frank:

I have been informed that representatives of the Alaska Land Title Association (ALTA) may ask you to consider introducing legislation concerning highway easements created by public land orders and department orders issued by the Department of Interior from 1943 through 1958. I am writing to let you know of our strong opposition to such legislation, for the reasons detailed below.

The central issue is whether existing State and federal statutes limit the State's right to utilize public road easements granted by particular public land orders and department orders. The Alaska Supreme Court has clearly disagreed with ALTA's view that existing laws (the Alaska Right-of-Way Act of 1966 and AS 34.15.290) prohibit the State from utilizing the powers granted in Public Land Order 601 and Department Order 2665 to expand or widen public roads. In January 1984, the U.S. Supreme Court denied ALTA's request to review the Alaska Supreme Court decision.

With statehood, the road powers originally granted by a series of Department of Interior public land orders and department orders were transferred to the State. In 1966, the Alaska Legislature limited those powers. The Alaska Legislature has recently considered legislation further limiting those powers but has not acted on it to date. We believe that federal legislation in this area would be an unwarranted intrusion into matters best addressed, if necessary, at the State level.

The Alaska Department of Transportation and Public Facilities estimates that the total monetary impact to the State's road program could ultimately reach several hundred million dollars if the ALTA proposal were enacted.

GOVERNOR'S LETTER

Property owners purchase title insurance precisely to protect themselves from the problems presented by the present situation. To enact legislation absolving the title industry of its responsibilities for this issue would simply shift the costs that the private entity has agreed to bear by contract on to the public.

The Alaska Supreme Court's decision in this matter also determined that the publication of the Department of the Interior orders in the Federal Register provided proper notice and that the title industry should have been cognizant of the effect of the orders. It should be noted that title companies now exempt these rights-of-way from their insurance policies. Consequently, they have already taken steps to limit their contractual liability.

I appreciate your consideration of our views. Please let me know if you have any questions or comments.

Sincerely,

Bill Sheffield

Bill Sheffield
Governor

cc: The Honorable Ted Stevens
United States Senator

The Honorable Don Young
United States Representative

The Honorable Norman Gorsuch
Attorney General

The Honorable Richard Knapp
Commissioner
Department of Transportation
and Public Facilities

Mr. John W. Katz
Director, Washington D.C. Office

FEDERAL ACT OF 1947

[CHAPTER 313]

AN ACT

July 24, 1947
[H. R. 1554]
[Public Law 229]

To amend the Act entitled "An Act providing for the transfer of the duties authorized and authority conferred by law upon the board of road commissioners in the Territory of Alaska to the Department of the Interior, and for other purposes", approved June 30, 1932.

Alaska.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An Act providing for the transfer of the duties authorized and authority conferred by law upon the board of road commissioners in the Territory of Alaska to the Department of the Interior, and for other purposes", approved June 30, 1932 (47 Stat. 446), is hereby amended by adding at the end thereof the following new section:

48 U. S. C. §§ 321a-327.

Reservation of right-of-way for roads, etc.

"SEC. 5. In all patents for lands hereafter taken up, entered, or located in the Territory of Alaska, and in all deeds by the United States hereafter conveying any lands to which it may have reacquired title in said Territory not included within the limits of any organized municipality, there shall be expressed that there is reserved, from the lands described in said patent or deed, a right-of-way thereon for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures constructed or to be constructed by or under the authority of the United States or of any State created out of the Territory of Alaska. When a right-of-way reserved under the provisions of this Act is utilized by the United States or under its authority, the head of the agency in charge of such utilization is authorized to determine and make payment for the value of the crops thereon if not harvested by the owner, and for the value of any improvements, or for the cost of removing them to another site, if less than their value."

Payment for value of crops, etc.

Approved July 24, 1947.

FEDERAL AID HIGHWAY ACT - 1970

ALASKAN ASSISTANCE

Sec. 138. (a) Subsection (b) of section 7 of the Federal Aid Highway Act of 1966 is amended to read as follows:

"(b) There is hereby authorized to be appropriated for construction of Federal-aid highways of the State of Alaska, out of the Highway Trust Fund and in addition to funds otherwise made available to the State of Alaska under title 23, United States Code, $20,-

43. 23 U.S.C.A. § 307(b). 44. 23 U.S.C.A. § 606.

000,000 for each of the fiscal years ending June 30, 1972 and June 30, 1973."

(b) Any right-of-way for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures reserved by section 321 (d) of title 48, United States Code (61 Stat. 418, 1947), not utilized by the United States or by the State or territory of Alaska prior to the date of enactment hereof, shall be and hereby is vacated and relinquished by the United States to the end and intent that such reservation shall merge with the fee and be forever extinguished.

FEDERAL ACTS OF 1947 & 1970

HIGHWAY RIGHT-OF-WAY

I. Alaska Highway

II. Through Roads

a. Richardson Highway

b. Glenn Highway

c. Haines Highway

d. Seward-Anchorage Highway (exclusive of that part thereof within boundaries of the Chugach National Forest)

e. Anchorage-Lake Spenard Highway

f. Fairbanks-College Highway

III. Feeder Roads

a. Abbert Road

b. Taylor Highway

c. Palmer-Matanuska-Wasilla-Knik Road

d. Glenn Highway Junction-Fishook Junction-Wasilla-Knik Road

e. Slana-Nebsana Road

f. University-Ester Road

g. Kenai Junction-Kenai Road

h. Manley Hot Springs-Eureka Road

i. Paxon-McKinley Park Road

j. Iditarod-Flat Road

k. North Park Boundary-Kantishna Road

l. Nome-Council Road

m. Seward Peninsula-Tram Road

n. Northway Junction-Airport Road

o. Palmer-Finger Lake-Wasilla Road

p. Central-Circle Hot Springs-Portage Creek Road

q. Sterling Landing-Ophir Road

r. Dillingham-Wood River Road

s. Nome-Bessie Road

IV. Local Roads (unidentified by name; 50 feet either side of center line right-of-way)

LIST OF
THROUGH & FEEDER ROADS

197 376 110005

Form 4-1113
(Sept. 1955)

Anchorage 073311

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, a certificate of the Land Office at Anchorage, Alaska, is now deposited in the Bureau of Land Management, whereby it appears that pursuant to the act of Congress of June 1, 1938 (52 Stat. 609), as amended by the Act of July 14, 1945 (59 Stat. 467), the claim of Vernon Lenne Lofstedt has been established and that the requirements of law pertaining to the claim have been met, for the following-described land:

Seward Meridian, Alaska.

T. 12 N., R. 3 W.,

Sec. 33, Lot 191.

The area described contains 2.50 acres, according to the official plat of the survey of the said land, on file in the Bureau of Land Management: Dependent Resurvey officially filed April 14, 1952.

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, DOES HEREBY GRANT unto the said claimant and to the heirs of the said claimant the tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to (1) any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; (2) the reservation of a right-of-way for ditches or canals constructed by the authority of the United States, in accordance with the act of August 30, 1890 (26 Stat., 391, 43 U. S. C. sec. 945), and (3) the reservation of a right-of-way for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures constructed or to be constructed by or under authority of the United States or by any State created out of the Territory of Alaska, in accordance with the act of July 24, 1947 (61 Stat., 418, 48 U. S. C. sec. 321d). There is also reserved to the United States a right-of-way for the construction of railroads, telegraph and telephone lines, in accordance with section 1 of the act of March 12, 1914 (38 Stat., 305, 48 U. S. C. sec. 305). Excepting and reserving, also, to the United States, all oil, gas, and other mineral deposits, in the land so patented, together with the right to prospect for, mine, and remove the same according to the provisions of said Act of June 1, 1938. This patent is subject to a right-of-way not exceeding 33 feet in width, for roadway and public utilities purposes, to be located along the south and east boundaries of said land.

Reserving unto the United States, its permittees or licensees, the right to enter upon, occupy and use, any part or all of said lands for the purposes provided in the Act of June 30, 1920, (41 Stat. 1065) and subject to the conditions and limitations of Section 24 of said Act, as amended by the Act of August 26, 1935 (49 Stat. 846).

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat., 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in the District of Columbia, the FOURTH day of OCTOBER in the year of our Lord one thousand nine hundred and FIFTY-FIVE and of the Independence of the United States the one hundred and EIGHTIETH.

For the Director, Bureau of Land Management.

By Rose M. Beall
Acting Chief, Patents Section

ANCHORAGE PRECINCT, ANCHORAGE, ALASKA

1/2 5 22 JAN 1 4 1956

FILED FOR RECORD [illegible] DISTRICT REC.

ISSUED TO Mr. Lofstedt

Patent Number 1151792

1955 PATENT WITH 33' RIGHT-OF-WAY
AND R.O.W. FROM 1947 FEDERAL ACT

SO a 326

BUREAU OF LAND MANAGEMENT

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, a certificate of the Land Office at Anchorage, Alaska, is now deposited in the Bureau of Land Management, whereby it appears that pursuant to the act of Congress of May 20, 1862, "To secure Homesteads to Actual Settlers on the Public Domain," and the acts supplemental thereto,

the claim of Grant Henry Forsythe has been established and that the requirements of law pertaining to the claim have been met, for the following-described land

Seward Meridian, Alaska.
T. 12 N., R. 3 W.,
Sec. 14, W½NW¼,
Sec. 23, W½NE¼.

The area described contains 160 acres, according to the official plat of the survey of the said land, on file in the Bureau of Land Management:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, DOES HEREBY GRANT unto the said claimant and to the heirs of the said claimant the tract above described TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature, thereunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to all rights vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; (2) the reservation of a right-of-way for ditches or canals constructed by the authority of the United States, in accordance with the act of August 30, 1890 (26 Stat., 391, 43 U. S. C. sec. 945), and (3) the reservation of a right-of-way for roads, roadways, highways, transmission lines, telephone and telegraph lines, and appurtenant structures constructed or to be constructed by or under authority of the United States or by any State organized out of the Territory of Alaska, in accordance with the act of July 24, 1947 (61 Stat., 418, 48 U. S. C. sec. 321d). There is also reserved to the United States a right-of-way for the construction of railroads, telegraph and telephone lines, in accordance with section 1 of the act of March 12, 1914 (38 Stat., 305, 48 U. S. C. sec. 305); excepting and reserving also, to the United States, pursuant to section 8 of the act of August 1, 1946 (60 Stat., 760, 42 U. S. C. sec. 1985), all uranium, thorium, or any other material which is or may be determined to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, together with the right of the United States through its authorized agents or representatives at any time to enter upon the land and prospect for, mine, and remove the same.

← (3). 1947 R.O.W.

3/2 2.75

Filed for record at Anchorage, Alaska, this 15 day of OCT 15 1952 o'clock 3:30 P M
By Grant Forsythe Mail to. Box 1453.
At Anch. and mail to Same
District Recorder

IN TESTIMONY WHEREOF, the undersigned officer of the Bureau of Land Management, in accordance with section 1 of the act of July 16, 1948 (62 Stat., 476, 43 U. S. C. sec. 1201), in the name of the United States, causes these letters to be made Patent, and the seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in the District of Columbia, the [illegible] day of OCTOBER in the year of our Lord one thousand nine hundred and FIFTY-TWO and of the Independence of the United States the one hundred and SEVENTY-SEVENTH.

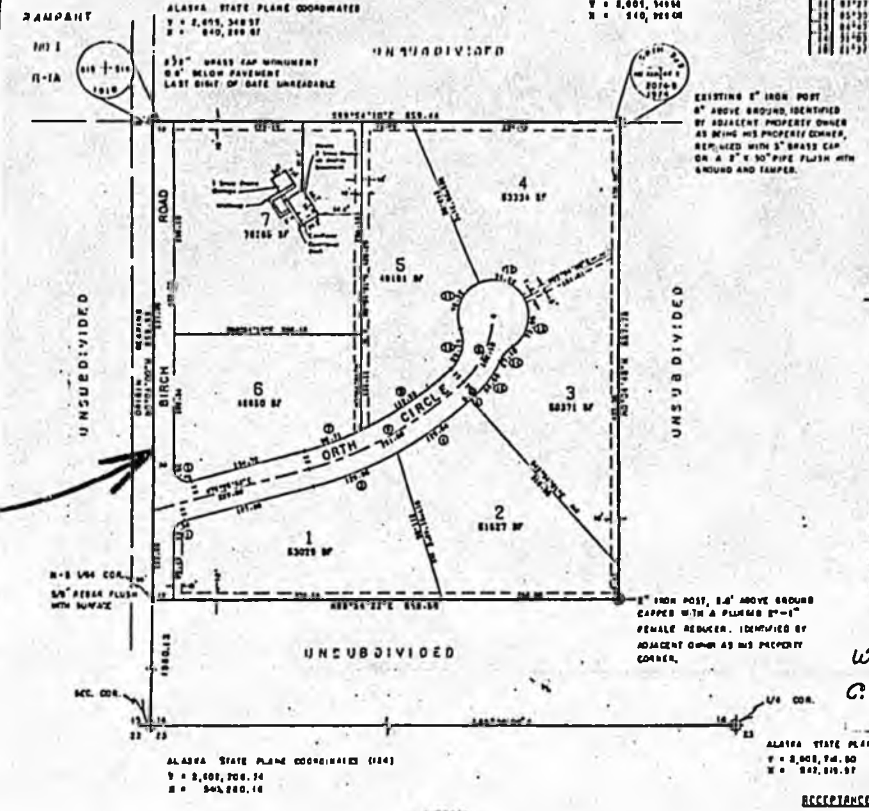
For the Director, Bureau of Land Management.

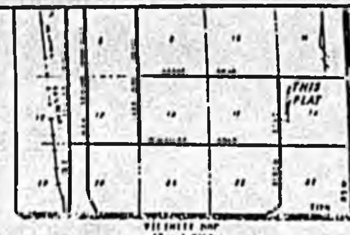
By Merle R. Jeffery
Chief, Branch

RECORD OF PATENTS. Patent Number 1136555

1952 BIRCH ROAD PATENT

CHRIS WYATT HOME - LOT 6





VICINITY MAP
1" = 1 MILE

CERTIFICATE OF OWNERSHIP AND DEDICATION

WE HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE PROPERTY SHOWN AND DESCRIBED HEREON, WE HEREBY REQUEST APPROVAL OF THIS PLAT, SHOWING SUCH EASEMENTS FOR PUBLIC UTILITIES, ROADWAYS AND ALLEYS DEDICATED BY US FOR PUBLIC USE. THERE SHALL BE RESERVED ADJACENT TO THE DEDICATED RIGHTS-OF-WAY SHOWN HEREON, A SLOPE RESERVATION SUFFICIENT TO CONTAIN CUT AND FILL SLOPES OF 1 1/2 FEET HORIZONTALLY FOR EACH FOOT VERTICALLY (1 1/2 TO 1) OF CUT OR FILL, FOR THE PURPOSE OF PROVIDING AND MAINTAINING LATERAL SUPPORT OF THE CONSTRUCTED STREET, AND THERE IS RESERVED TO THE GRANTORS, THEIR HEIRS, SUCCESSORS AND ASSIGNS, THE RIGHT TO REMOVE SAID SLOPES AT ANY TIME UPON PROVIDING AND MAINTAINING OTHER ADEQUATE LATERAL SUPPORT, AS APPROVED BY THE CITY OR BOROUGH.

DATE: Aug 20, 1974

Henry J. Orth — Katherine Orth

HENRY J. ORTH, BOX 10100, KLATT STATION, ANCHORAGE, ALASKA 99500
KATHERINE ORTH, SAME

NOTARY'S ACKNOWLEDGEMENT

SUBSCRIBED AND SWORN TO BEFORE ME THIS 21st DAY OF August, 1974

[signature] — May 9, 1978
NOTARY FOR ALASKA — MY COMMISSION EXPIRES

PLAT APPROVAL

PLAT APPROVED BY THE BOROUGH PLATTING AUTHORITY THIS 26th DAY OF AUGUST, 1974

[signature]
AUTHORIZED OFFICIAL

SURVEYOR'S CERTIFICATE

I, Leon A. Stevens, PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THIS PLAT IS A TRUE AND CORRECT REPRESENTATION OF LANDS ACTUALLY SURVEYED AND THAT ALL THE DISTANCES AND BEARINGS ARE SHOWN CORRECTLY AND THAT ALL PERMANENT EXTERIOR CONTROL MONUMENTS, ALL OTHER MONUMENTS, AND LOT CORNERS HAVE BEEN SET AND STAKED, OR IF FINAL COMPLETION IS ASSURED BY SUBDIVISION AGREEMENT, THEY WILL BE SET AS SPECIFIED IN SAID SUBDIVISION AGREEMENT.

Leon A. Stevens
SIGNATURE OF LAND SURVEYOR

STATE OF ALASKA — 4913 — Leon A. Stevens

W Cole August 26, 1974
C.W. Rainer August 27, 1974

LEGEND

- EXISTING 5/8" REBAR
- EXISTING IRON POST
- BRASS CAP MONUMENT, SET
- BRASS CAP MONUMENT, EXISTING

SCALE IN FEET

ALASKA STATE PLANE COORDINATES (133)
Y = 2,603,741.80
X = 542,819.97

ACCEPTANCE OF DEDICATION BY GAAB

THE BOROUGH HEREBY ACCEPTS FOR PUBLIC USES AND FOR PUBLIC PURPOSES THE REAL PROPERTY DEDICATED ON THIS PLAT INCLUDING, BUT NOT LIMITED TO THE EASEMENTS, RIGHTS-OF-WAY, ALLEYS, ROADWAYS, THOROUGHFARES, AND PARKS SHOWN HEREON. DATED AT ANCHORAGE, ALASKA, THIS 28th DAY OF AUGUST, 1974

ATTEST:

CITY CLERK OR BOROUGH CLERK — CITY MANAGER OR BOROUGH MAYOR

NOTES:

1. BASIS OF ORIGIN BEARING IS CITY OF ANCHORAGE AND 1330, ALSO BLM PLAT OF SEC 14(1 27 59)
2. SOURCE FOR ALASKA STATE PLANE COORDINATES & CITY OF ANCHORAGE HORIZONTAL CONTROL DATA BOOK, POINTS 133 AND 134.
3. 5/8" x 30" REBAR SET ON ALL EXTERIOR CORNERS UNLESS OTHERWISE NOTED
4. ALL CORNER TIES ARE IN H.V.L. FIELD BOOK NO. 74-056.
5. NR DENOTES NON-RADIAL LOT LINES.
6. ALL EASEMENTS ARE UTILITY EASEMENTS.
7. HUB AND TACK SET ON ALL INTERIOR CORNERS UNLESS OTHERWISE NOTED.

74-177
Approved August 71 GAAB

PLAT OF

ORTH SUBDIVISION

A SUBDIVISION OF THE
NW 1/4, NW 1/4, SW 1/4, SECTION 14
T12N, R3W, S.M., ALASKA

CONTAINING 9.335 ACRES AND 7 LOTS

HEWITT V. LOUNSBURY & ASSOCIATES
ANCHORAGE — ALASKA

DATE: AUGUST 1974	SCALE: 1" = 100'
DRAWN: COMP. TECH	SHEET: 1 OF 1
CHECKED: A.S. FB. 74-056	GRID: 2330

S-3397