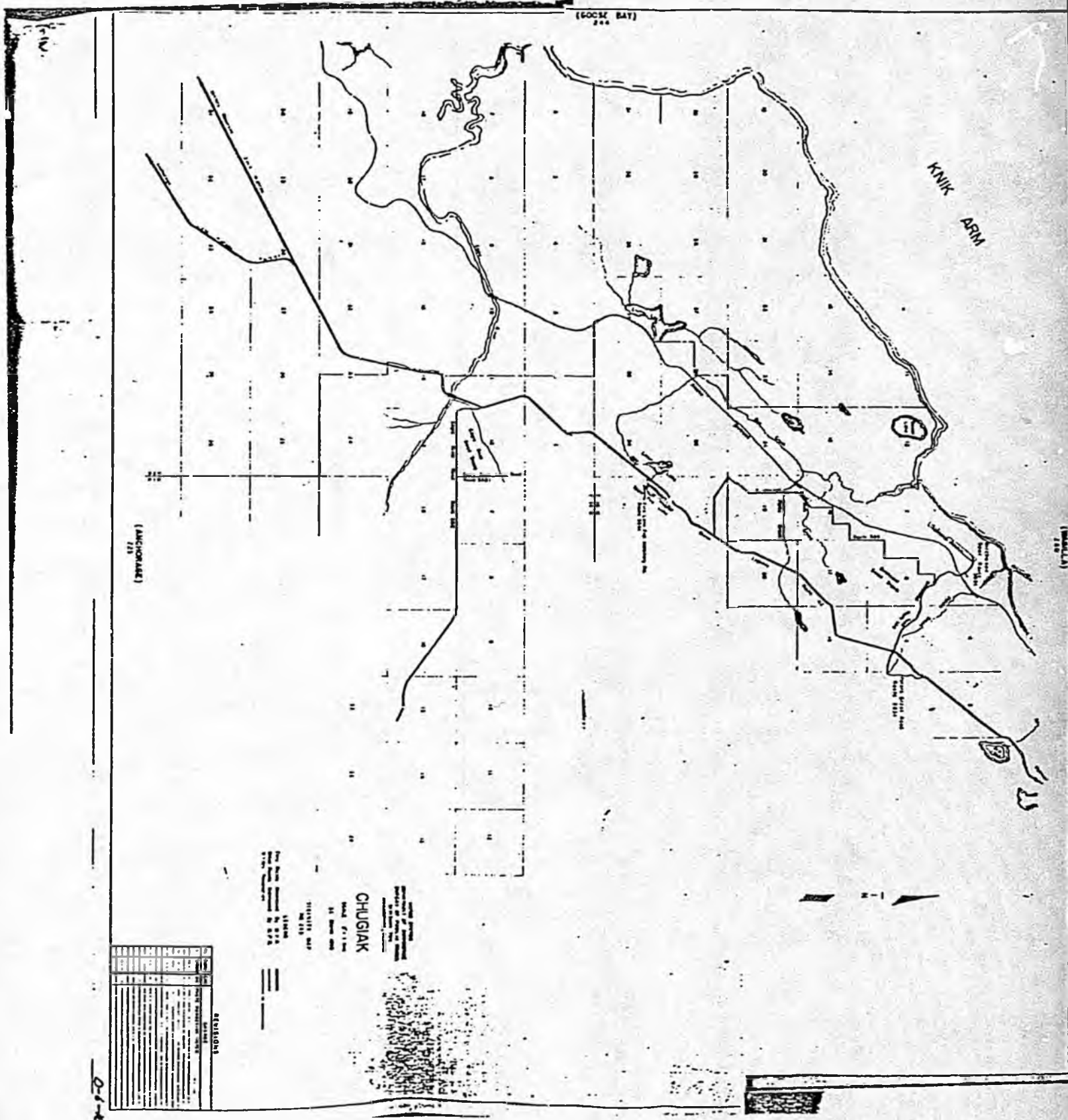


ALASKA LEGISLATIVE COMMITTEE FILES 1900-1900 00/2

4402 STRA SB 141 (FILE 3)

1281

Exhibit B



Subject to valid existing rights pre-dating the public land orders, the highway right-of-way widths are as follows:

- 2 Digit Route Nos. (Primary Highway) - 300 feet
- 3 Digit Route Nos. (Secondary Highway) - 200 feet
- 4 Digit Route Nos. (Local Road) - 100 feet

Exhibit C



DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
DIVISION OF TERRITORIES AND ISLAND POSSESSIONS
WASHINGTON

Files

May 6, 1948.

*9-1-55
app-
ten.*

Memorandum

To: Mr. Flakne
From: Mr. Silverman *[Signature]*

Subject: Authority of Alaska Road Commission to construct a
bridge within the corporate limits of a town.

Reference is made to your memorandum of April 26, asking whether the Alaska Road Commission has authority to construct a bridge within the corporate limits of a town.

The authority of the Alaska Road Commission to construct and locate roads in Alaska is derived from section 2 of the Act of January 27, 1905, as amended by the Act of May 14, 1906 (34 Stat. 192; 48 U.S.C.A. sec. 322), which provides: "The said Board (Secretary) shall have the power . . . to locate, lay out, construct, and maintain wagon roads and pack trails from any point on the navigable waters of Alaska to any town, mining or other industrial camp or settlement, or between any such town, camps, or settlements therein, if in their judgment such roads or trails are needed and will be of permanent value for the development of Alaska . . ." (Emphasis supplied.)

I believe it is apparent from the foregoing that the Alaska Road Commission is without authority to construct a bridge within the corporate limits of a town.

6/3/48

*Discussed personally with
Colonel Johnson,*

*J. J. Flakne
(R)*



Exhibit D

**FEDERAL HIGHWAY ACT OF 1970
AND MISCELLANEOUS BILLS**

PART 1

HEARINGS

BEFORE THE

SUBCOMMITTEE ON ROADS

OF THE

COMMITTEE ON PUBLIC WORKS

UNITED STATES SENATE

NINETY-FIRST CONGRESS

SECOND SESSION

ON

**FEDERAL AID HIGHWAY ACT OF 1970 AND
MISCELLANEOUS BILLS**

MAY 19, 20; JUNE 9, 10, 11, 12, AND JULY 13, 1970

Printed for the use of the Committee on Public Works



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1970

COMMITTEE ON PUBLIC WORKS

JENNINGS RANDOLPH, West Virginia, *Chairman*

STEPHEN M. YOUNG, Ohio
EDMUND S. MUSKIE, Maine
B. EVERETT JORDAN, North Carolina
HIRCH BAYH, Indiana
JOSEPH M. MONTOYA, New Mexico
WILLIAM B. SPONG, Jr., Virginia
THOMAS F. EAGLETON, Missouri
MIKE GRAVEL, Alaska

JOHN SHERMAN COOPER, Kentucky
J. CALEB BOGGS, Delaware
HOWARD H. BAKER, Jr., Tennessee
ROBERT J. DOLE, Kansas
EDWARD J. GURNEY, Florida
ROBERT W. PACKWOOD, Oregon

RICHARD B. ROYCE, *Chief Clerk and Staff Director*

J. B. HUYETT, Jr., *Assistant Clerk and Assistant Staff Director*

BARRY METER, *Counsel*

BAILEY GUARD, *Assistant Chief Clerk (Minority)*

TOM C. JORLING, *Minority Counsel*

Professional Staff Members: JOSEPH F. VAN VLADRICKEN, LEON G. BILLINGS, RICHARD D. GRUNDY, STEWART E. MCCLURE, ADRIEN WALLER, HAROLD H. BRAYMAN, JOHN YAGO, RICHARD W. WILSON, and PHILIP T. CUMMINGS

SUBCOMMITTEE ON ROADS

JENNINGS RANDOLPH, West Virginia, *Chairman*

B. EVERETT JORDAN, North Carolina
BIRCH BAYH, Indiana
JOSEPH M. MONTOYA, New Mexico
STEPHEN M. YOUNG, Ohio
WILLIAM B. SPONG, Jr., Virginia
MIKE GRAVEL, Alaska

JOHN SHERMAN COOPER, Kentucky
J. CALEB BOGGS, Delaware
HOWARD H. BAKER, Jr., Tennessee
EDWARD J. GURNEY, Florida
ROBERT W. PACKWOOD, Oregon

(II)

C O N T E N T S

(The same table of contents appears in Parts 1, 2, and 3)

(Pages 1-540 appear in Part 1; pages 541-1104 appear in Part 2; pages 1105-1244 appear in Part 3)

ALPHABETICAL LIST OF WITNESSES

TUESDAY, MAY 19, 1970

	Page
Cannon, Howard W., U.S. Senator from the State of Nevada.....	27
Davidson, Doyle L., executive vice president of the National Highway 50 Federation.....	29
Dilks, Robert, the Route 219 Association.....	3
Eckberg, Lloyd E., executive vice president, Thomasville-Thomas County Chamber of Commerce, Thomasville, Ga.; accompanied by Michael McCloud, assistant to Senator Herman E. Talmadge of the State of Georgia; Dr. Walter A. Blasingame, chairman, Tri-State-Interstate Connector Association; Peter J. Novak, secretary-treasurer, Tri-State-Interstate Connector Association; Hon. Willard B. Withers, mayor of Moultrie, Ga.; Lloyd Baxter, city manager of Moultrie, Ga.; William Tucker, executive vice president, Tifton-Tift County Chamber of Commerce, Tifton, Ga.; William Russell, councilman, Moultrie, Ga.; and James Williams, executive vice president, Swainsboro Chamber of Commerce, Swainsboro, Ga.....	44
McCarthy, Richard D., a Representative in Congress from the State of New York.....	19
McClellan, John, Roswell, N. Mex.; accompanied by Frank Kaufman, Roswell, N. Mex.....	22
Pickel, J. J., a Representative in Congress from the State of Texas.....	20
Schweiker, Richard S., U.S. Senator from the State of Pennsylvania.....	3
Scott, Hugh, U.S. Senator from the State of Pennsylvania.....	2
Whalley, J. Irving, a Representative in Congress from the State of Pennsylvania.....	18

WEDNESDAY, MAY 20, 1970

Beardsley, Robert L., Commissioner, Alaska Department of Highways; accompanied by Dick Chatty, Director, Right-of-Way Division.....	121
Camacho, Carlos C., Governor of Guam; accompanied by Juan Tenorio, Director of Public Works; and James S. Brooks, Legal Advisor.....	140
De Lugo, Ron, Washington representative of the Virgin Islands.....	218
Evans, Melvin H., Governor of the Virgin Islands; accompanied by Pellum Williams, Commissioner of Public Works.....	213
Stevens, Ted, U.S. Senator from the State of Alaska.....	118
Won Pat, Antonio B., Washington representative of Guam; accompanied by Joaquin Arriola, speaker of Guam Legislature; and Edward Tearlaje, Vice Speaker of Guam Legislature.....	147

TUESDAY, JUNE 9, 1970

Chapman, E. C., Director, American Road Builders' Association.....	256
Hansen, Clifford P., a U.S. Senator from the State of Wyoming.....	241
Hathaway, Stanley K., Governor of the State of Wyoming.....	243
Heffner, Ralph E., President, American Road Builders' Association.....	247
Holmes, Robert S., past president, American Road Builders' Association.....	251
Long, A. B., Jr., president, Contractors Division, ARBA.....	258
Miller, Burton F., executive vice president, American Road Builders' Association.....	244

(III)

Engineering Division..... 253
Proxmire, William, a U.S. Senator from the State of Wisconsin..... 225

WEDNESDAY, JUNE 10, 1970

Rhyner, Emerson, deputy chief, Legal Division, Department of Public Works, Sacramento, Calif.; accompanied by James Moe, director of Public Works..... 344
Slayton, William L., executive vice president, American Institute of Architects; accompanied by Jaquelin T. Robertson, director, Office of Mid-Town Planning and Development, New York City; and Joseph R. Passonau, Chairman of the Transportation Subcommittee, AIA; and statement of Walter J. Monasch, president, American Institute of Planners; accompanied by Dorn C. McGrath, Jr., member, AIP Board of Governors, and chairman of the Department of Urban and Regional Planning, George Washington University; and Thomas H. Roberts, executive director of AIP..... 319
Sturrett, Joseph A., P.E. Stark County engineer, Stark County, Canton, Ohio; accompanied by Mr. Meek..... 349

THURSDAY, JUNE 11, 1970

Fugate, Douglas B., president, American Association of State Highway Officials and commissioner, Virginia Department of Highways; accompanied by A. E. Johnson, past president, AASHO..... 381
Haydon, John M., Governor of American Samoa..... 365

FRIDAY, JUNE 12, 1970

Gilvin, L. P., president, Associated General Contractors of America; accompanied by James M. Sprouse, assistant director, Washington, D.C., Office; and Richard C. Creighton, director, Highway Division..... 421
Hall, John F., director of Government and Forestry Affairs, National Forest Products Association..... 465
Sturman, Gerald M., Director, Advanced Technology Division, Parsons, Brinckerhoff, Quade & Douglas, Inc., New York..... 455
Meurer, Malcolm R., Secretary-Treasurer, Consulting Engineers Council, and President, Meurer, Serafini & Meurer, Denver, Colo.; and Brian J. Lewis, President of Lewis-Redford Engineers, Inc., Bellevue, Wash., on behalf of the Consulting Engineers Council of the United States..... 443

MONDAY, JULY 13, 1970

Allen, Albert E., County Board of Chosen Freeholders, Monmouth County, N.J.; accompanied by Henry Ney, County Engineer, and Ralph L. Tabor, Director of Federal Affairs, on behalf of the National Association of Counties..... 510
Elliott, Donald H., Chairman of the City Planning Commission, City of New York, N.Y..... 518
Knight, Joan, representing Friends of the Earth..... 526
Nelson, Gaylord, a U.S. Senator from the State of Wisconsin..... 474

TUESDAY, JULY 14, 1970

D'Alesandro, Thomas J., Mayor of Baltimore; accompanied by Milton Pikarsky, Commissioner of Public Works, city of Chicago, representing the National League of Cities and U.S. Conference of Mayors..... 602
Goodell, Charles E., a U.S. Senator from the State of New York..... 549
Kennedy, Edward M., a U.S. Senator from the State of Massachusetts..... 541
Koch, Edward I., a Representative in Congress from the State of New York..... 559

WEDNESDAY, JULY 15, 1970

Mandel, Marvin, Governor of the State of Maryland, and Vice Chairman, Committee on Transportation, Commerce, and Technology, National Governors' Conference..... 619
Mecham, L. R., Federal Cochairman, Four Corners Regional Commission, Department of Commerce..... 657
Pearson, James B., a U.S. Senator from the State of Kansas..... 615

Percy, Charles H., a U.S. Senator from the State of Illinois.....
 Volpe, John A., Secretary of Transportation; accompanied by Francis C. Turner, Federal Highway Administrator; Douglas Toms, Director, National Highway Safety Bureau; David E. Wells, Chief Counsel, Federal Highway Administration; and J. Thomas Tidd, Assistant General Counsel for Legislation of the Department of Transportation.....

FRIDAY, JULY 17, 1970

Baerwald, John E., President, Institute of Traffic Engineers; Director, Highway Traffic Safety Center and Professor of Transportation and Traffic Engineering, University of Illinois, Urbana-Champaign Campus; accompanied by Burton W. Marsh, Past Executive Director, and Kenneth H. Layer, Executive Director of the Institute of Traffic Engineers.....
 Bridwell, Lowell K., President, System Design Concepts, Inc., Washington, D.C.....
 Pyle, Howard, President, National Safety Council; accompanied by Paul Hill, Assistant General Manager, and Harry N. Raenfield, General Counsel.....
 Smith, Wilbur S., Chairman, National Transportation Policy Committee, American Society of Civil Engineers; accompanied by James O. Granum, President, National Capital Section of American Society of Civil Engineers.....

MONDAY, JULY 20, 1970

Abbott, Sammie A., Emergency Committee on The Transportation Crisis.....
 Carter, John, Representing Citizens' Coalition Against D.C. Transit.....
 Matthews, Virgil, Councilman at Large City of Charleston, W. Va.; accompanied by William Preston, Vice President, Triangle Improvement Council; Ruth Robinson, Chairman, Save the Triangle Committee; Norman Kilpatrick, Urban Planner Employed by the John F. Kennedy Center of the Triangle Improvement Council; Henry C. Haynes, Financial Secretary, Triangle Improvement Council; and Lee Myers III, President Triangle Improvement Council.....

WEDNESDAY, SEPTEMBER 9, 1970

Volpe, Hon. John, Secretary of Transportation, accompanied by Francis Turner, Federal Highway Administrator; Douglas W. Toms, National Highway Safety Bureau; and J. Thomas Tidd, Assistant General Counsel for Legislation.....

THURSDAY, SEPTEMBER 17, 1970

Fugate, Douglas B., president, American Association of State Highway Officials and Commissioner of Virginia Department of Highways; accompanied by A. E. Johnson, executive director, AASHO.....

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

American Association of State Highway Officials:
 Interstate system financing analysis..... 402
 Outline of the 1970 report to Congress on a continuing Federal-aid highway program..... 390
 Questions and answers supplied for the record..... 408
 Survey of critically deficient bridges on the State highway system (table)..... 399
 American Road Builders' Association:
 A study of the materials industry capacity to adequately supply the continuing highway program..... 275
 Major highway corridors of North America..... 273
 Resolution adopted by..... 245
 Stewardship report by Frank Turner, Federal Highway Administrator..... 270

	Page
American Samoa, Government of, support paper.....	376
American Concrete Pipe Association, statement of.....	468
Appendix, additional statements and material supplied for the record.....	1063
Appendix to hearing of June 11, 1970, additional correspondence received for the record.....	402
Appendix to hearings of September 9 and 17 containing additional informa- tion relative to S. 4055 and S. 4260.....	1223
Associated General Contractors of America:	
Highway construction price index for first quarter 1970.....	430
Tables:	
Price trends for Federal-aid highway construction.....	428
Highway construction indexes.....	427
Beardsley, Robert L., Alaska Commissioner of Highways: Alaska, pre- liminary needs (map).....	132
Bills, reprints of:	
H.R. 18319.....	563
S. 933.....	118
S. 4055.....	1107
S. 4260.....	1131
Davidson, Doyle L., executive vice president, the National Highway 50 Federation:	
Maps:	
Interstate Highway System for Utah.....	34
Western United States showing the dead ending of I 70.....	35
Proposal to continue Interstate Highway 70 west to Sacramento.....	36
Dilks, Robert, Route 219 Association:	
Additional statements and communications.....	53-101
Maps:	
Distribution of latent terminal recreation centers.....	14
Route 219 corridor.....	9
The map with a gap.....	6
Tables:	
Per capita personal income, Route 219 corridor.....	11
Population and net migration, Route 219 corridor.....	10
Guam, Government of:	
Camacho, Hon. Carlos C., Governor, statement of.....	140
Executive orders.....	142
Report on Federal aid.....	182
Suggested organization highways.....	144
Traffic analysis report.....	152
Won Pat, Antonio B., Washington representative, statement of.....	147
Haigley, Gary P., statement of.....	1059
Idaho Board of Highway Directors, statement of.....	1035
Koch, Robert M., president, National Limestone Institute, statement of.....	359
League of Women Voters, position paper.....	318
Mandel, Hon. Marvin, Governor of Maryland:	
Letter to Senator Tydings.....	657
National Governor's conference:	
Policy statements.....	635
Report of.....	628
Matthews, Virgil, councilman at large, city of Charleston, W. Va.:	
Additional correspondence.....	1002
History of interstate battle in Charleston area.....	978
Reprints from various publications.....	985
Mecham, L. R., Federal cochairman, Four Corners Regional Commission:	
Tables:	
Arizona improvement projects (highways).....	663
Colorado highway improvement projects.....	664
Highway improvement projects, four corners region.....	662
New Mexico highway improvement projects.....	664, 665
Utah Highway improvement projects.....	665, 666
National League of Cities and U.S. Conference of Mayors, statement of.....	602
National Safety Council:	
Appraisal of the Baltimore-Washington Parkway.....	937
Source of additional funds for financing highway safety.....	943
Summary of States' use of alcohol tax revenues.....	943

VII

	Page
Nelson, Hon. Gaylord, U.S. Senator from the State of Wisconsin:	
Reprints from various publications.....	496
Tables:	
Cash subsidy to domestic airlines.....	495
Federal revenue from taxes on motor fuel, lubricating oil and motor vehicle use.....	489
Passenger miles traveled, four modes of transportation.....	479
Regular Federal-aid funds authorized and expended for the Interstate Highway System.....	487
Total receipts for highways, all units of government, 1921-70..	486
U.S. Government spending for domestic transportation, 1947-70..	485
Volume and characteristics of travel, 1967.....	479
Netsch, Walter A., partner, Skidmore, Owings, and Merrill, statement of..	360
Transportation, Department of:	
Alcohol safety countermeasures program.....	825
Answers to questions posed by the committee.....	742
Blood alcohol and fatal accidents.....	724
Drinking and highway safety.....	731
National System of Interstate and Defense Highways (map).....	711
Prior records of convicted drinking drivers.....	726
Tables:	
Apportionment of Federal-aid highway funds authorized for fiscal year 1971.....	720
Highway trust fund—Federal-aid highway programs financed.....	717
Toms, Douglas W., director, National Highway Safety Bureau, statement of.....	721
Turner, F. C., Federal Highway Administrator, statement of.....	697
Tri-State Interstate Connector Association:	
Additional correspondence.....	107-113
By-laws adopted at the organizational meeting, May 8, 1970.....	104
Eckberg, Lloyd E., executive vice president, Thomasville-Thomas County Chamber of Commerce, statement of.....	44
Tables:	
Estimated vehicular traffic entering Florida.....	107
Origins of Florida tourists by States.....	106
Passengers arriving by common carrier.....	106
Traffic flow into Florida at check points, 1967-68.....	106
Reprints of editorials relative to.....	113-115
Talmadge, Hon. Herman E., U.S. Senator from the State of Georgia, statement of.....	47

FEDERAL HIGHWAY ACT OF 1970 AND
MISCELLANEOUS BILLS

WEDNESDAY, MAY 20, 1970

U.S. SENATE, SUBCOMMITTEE ON ROADS OF THE
COMMITTEE ON PUBLIC WORKS,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to call, in room 4200, New Senate Office Building, Senator Mike Gravel, (Member of the subcommittee)-presiding.

Present: Senators Gravel, Jordan, and Baker.

Also present: Barry Meyer, counsel, Tom Jorling, minority counsel, and Adrien Waller, professional staff member.

Senator GRAVEL. The hearing will come to order.

It is my pleasure to have my senior colleague from the State of Alaska, Senator Ted Stevens, to present testimony on S. 933, a copy of which is included in the record at this point.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 7, 1969

Mr. STEVENS introduced the following bill: which was read twice and referred to the Committee on Public Works

A BILL

To vacate and relinquish the reservation of rights-of-way for certain purposes made pursuant to section 321 (d) of title 48, United States Code.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That any right-of-way for roads, roadways, highways, tram-
4 ways, trails, bridges, and appurtenant structures reserved by
5 section 321 (d) of title 48, United States Code (61 Stat.
6 418, 1947), not utilized by the United States or by the State
7 or territory of Alaska prior to the date of enactment hereof,
8 shall be and hereby is vacated and relinquished by the
9 United States to the end and intent that such reservation
10 shall merge with the fee and be forever extinguished.

II

Senator GRAVEL. Senator Stevens, you have the floor.

STATEMENT OF HON. TED STEVENS, A U.S. SENATOR FROM THE
STATE OF ALASKA

Senator STEVENS. Thank you, Mr. Chairman.

I would like to introduce to the members of the committee our Commissioner of the Department of Highways of the State of

Alaska, Robert L. Beardsley. He is accompanied by the Director of the Right-of-Way Division, Mr. Dick Chitty. I am here with my legislative assistant, Red Rickett.

Mr. Chairman, thank you for this opportunity to appear before you on behalf of legislation which has long been needed to correct a glaring inequity among property owners in my State.

In 1947 Congress enacted a law which automatically reserved, in all Federal patents issued thereafter, rights-of-way for highways built either by the Federal Government or by the territorial government of Alaska. This act was terminated shortly after statehood, but unfortunately the reservations are still a valid cloud on all patents issued between 1947 and statehood.

In simple terms, this means that the Federal Government can build a road across property subject to the reservation without paying any compensation, without any condemnation proceedings—in short, without any concern whatever for the property rights of the owner. This condition does not exist on any land patented by the Federal Government either prior to July 24, 1947, the effective date of the act, or since its repeal July 1, 1959. Those persons holding property subject to this reservation have found difficulty in obtaining financing for development because of the possible entry on to the property by the appropriate road-building authority and subsequent uncompensated devaluation of the property.

So acute are the inequities involved in this reservation that the State of Alaska, by act of the State legislature in 1966, renounced its rights under this reservation and now pays compensation and follows due process for all rights-of-way across private lands, whether subject to the 1947 act or not. My bill, S. 933, would eliminate the reservations altogether.

This bill will cost the Federal Government very little. There are few rights-of-way not already taken that will be acquired for Federal road-building purposes in the future. The State has renounced its rights under the act and the Federal Government has no intention at present of undertaking any major road-building activities of its own in Alaska. But, as long as the reservations remain in effect, the Bureau of Public Roads, the Post Office Department or the Forest Service could expropriate land without compensation. It is this possibility that a right-of-way could be taken, and not the likelihood that it will, which creates the cloud on the title and the resulting hardship to the owner.

A second important inequity which results from this reservation is the inability of the Federal Highway Administration to provide participating Federal Funds for the acquisition by the State of rights-of-way that could have been acquired at no cost to the State if it chose to exercise its rights under the reservation. To date, this has cost the State an additional \$1.2 million in lost matching funds.

Alaska therefore finds itself in the paradoxical situation of having acted to correct an inequity to some of its citizens only to create an even greater inequity for the State as a whole.

The late Senator Bartlett and former Senator Gruening introduced a measure in the 90th Congress to eliminate this reservation. An unfortunate series of events, including two assassinations, prevented consideration of their measures by this committee. Because of the importance of this measure to the orderly development of my State, I am continuing their efforts to get this legislation passed.

Mr. Chairman, S. 933 will do no more than place my State in the same position as the other 49 States. It will place my State's highway department in the same position as those of the other States regarding the obtaining of rights-of-way. It will place Federal aid for rights-of-way on the same basis as in other States.

I hope the committee will consider the equities of the property owners and of the State carefully, and will act favorably on S. 933.

Thank you.

Senator STEVENS. Mr. Chairman, this is a bill that has been before the subcommittee before. I am informed that there were incidents that occurred that compelled the cancellation of hearings that were scheduled in prior Congresses. I have mentioned those already.

This is a bill which really is designed to bring about equity for the State of Alaska by eliminating a very harsh provision of the law that existed during territorial days. It is a very simple matter, really. It was an easement in gross, you might say, across all homesteads for any rights-of-way without compensation.

As I pointed out, the State of Alaska determined that it would not take rights-of-way without paying compensation. So, in effect, what we are asking the Congress to do is to recognize the policy that has been set by the State of Alaska to compensate private landowners for the rights-of-way that are taken for public purposes.

I might suggest, Mr. Chairman, before Mr. Beardsley and Mr. Chitty testify, that they have suggested to me that, on line 7, in place of the words "the date of enactment hereof," if the committee would substitute "April 14, 1966," it would in effect recognize the policy of the State of Alaska established on that date by the enactment of legislation which required compensation for the taking of these rights-of-way.

I believe Mr. Beardsley and Mr. Chitty will be able to answer any technical questions. I would be pleased to answer any questions the subcommittee might have of me.

Senator GRAVEL. I have none.

Senator Jordan?

Senator JORDAN. Thank you, Senator.

Would backdating affect the retroactive payment feature of this legislation?

Senator STEVENS. I am informed that the Federal Department of Highways has, in fact, reserved matching funds from the State's allocation for payment of the Federal portion of the rights-of-way that had been compensated by the State.

So, it would have the effect of freeing this money that has been reserved by the Federal Department of Highways for this purpose. It would cause no additional appropriations, or expenditure of money since these funds are part of the State's entitlement of

highway funds. And these funds have, as I understand it, already been set aside. Mr. Beardsley can tell you about that. It would have the effect of recognizing that the rights-of-way that had been acquired and paid for by the State since that date are eligible for the allocation of Federal matching funds, and it would release these funds.

Senator JORDAN. In other words, this would reimburse the State of Alaska for money that they have already paid out? Is it correct that Alaska paid the whole cost of the acquisition of this right-of-way?

Senator STEVENS. That is correct.

Senator JORDAN. And you are entitled to 50 percent of its cost from Federal highway funds?

Mr. BEARDSLEY. These are actually ABC funds and the matching ratio that has been established for the State of Alaska would prevail.

Senator JORDAN. What is that rate?

Mr. BEARDSLEY. 92.75 percent Federal, the balance State.

This would, Senator Jordan, place the State on a comparable basis with the other States where they do not have this special reservation clouding titles of land to Federal ownership.

Senator JORDAN. Do any other States have that?

Mr. BEARDSLEY. Not to my knowledge, sir.

Senator JORDAN. Thank you. I am just curious about that retroactive section in that bill.

Senator STEVENS. As I understand it, Senator, it would not increase the allocation. The entitlement is there, and we have not used up our entitlement: so it would mean that it would come out of the funds that have been reserved for the State anyway.

Senator JORDAN. I have no objection to that.

Senator GRAVEL. Senator Baker?

Senator BAKER. Mr. Chairman, I have no questions.

I would simply say that I commend the witness and commend the chairman for dedication and devotion to this program.

Senator STEVENS. If I may be excused, the gentlemen can continue.

Thank You.

Senator GRAVEL. Mr. Beardsley, would you have a statement you would care to make?

**STATEMENT OF ROBERT L. BEARDSLEY, COMMISSIONER, ALASKA
DEPARTMENT OF HIGHWAYS: ACCOMPANIED BY DICK CHITTY,
DIRECTOR, RIGHT-OF-WAY DIVISION**

Mr. BEARDSLEY. Yes, Mr. Chairman I am Robert L. Beardsley, commissioner of the Alaska State Highway Department. I consider it a privilege to appear before you today and testify in behalf of Senator Stevens' bill S. 933, which will vacate and relinquish the reservation of rights-of-way pursuant to section 321(d) of title 48, United States Code, or more commonly referred to as the 1947 Act Reservation.

I will preface my remarks with a brief history of the 1947 Act Reservation, and how the reservation was exercised by the State of Alaska.

Prior to the years of World War II, the Territory of Alaska experienced little road construction work. Much of the activity of the Alaska Road Commission and its predecessors was conducted across the public domain and required minimal right-of-way acquisition. A marked increase in population in the years following the war and a related increase in activities designed to reduce public lands to private ownership increased the frequency with which right-of-way was necessitated over lands to which title had passed from the United States.

In recognition of this trend and in an attempt to reduce the expenditure of governmental funds, Congress passed the 1947 act effective July 24, 1947.

The effect of this act was to reserve to the Government a right-of-way across lands subsequently passing into private ownership and to thus avoid the necessity of reacquiring lands for future road construction.

The 1947 act was prospective in application only. It applied only to lands which were taken up, entered, or located, or otherwise passed into private ownership after the effective date. Lands entered or patented before July 24, 1947, could not be subjected to the 1947 act unless, perhaps, they were returned to Government ownership during the time it was in effect.

The 1947 act was repealed by Congress effective July 1, 1959. Thus, lands entered or patented after that date are not subject to the act. Title of lands entered or patented from July 24, 1947, to July 1, 1959, continued to remain clouded with the prospect of future road construction causing arbitrary transfers of unspecified portions of said land to the government, without due process or compensation, until April 14, 1966.

In recognition of the continued inequities, the fourth session of the Alaska State Legislature passed legislation, effective April 14, 1966, which provided that no State agency could take land for public purposes without payment of just compensation. While the State of Alaska thus removed the inequities for owners of said land, the State has itself continued to receive inequitable treatment with respect to Federal participation in the acquisition of portions of said lands for highway purposes because of the remaining legal deficiency which Senator Steven's bill, S. 933, seeks to correct.

The repeal of the 1947 act merely eliminated the statutory directive that such a reservation be inserted into the patents of lands thereafter taken up. Lands which were patented subject to the 1947 act before its repeal were in no way affected. The act created an interest in real property which would remain in the Government when the remaining interests constituting the fee title conveyed away. Repeal merely prevented further similar interests from being created, leaving existing interests unchanged.

A reservation is an interest in real property. It is created by the grantor retaining to himself some element of the fee when the

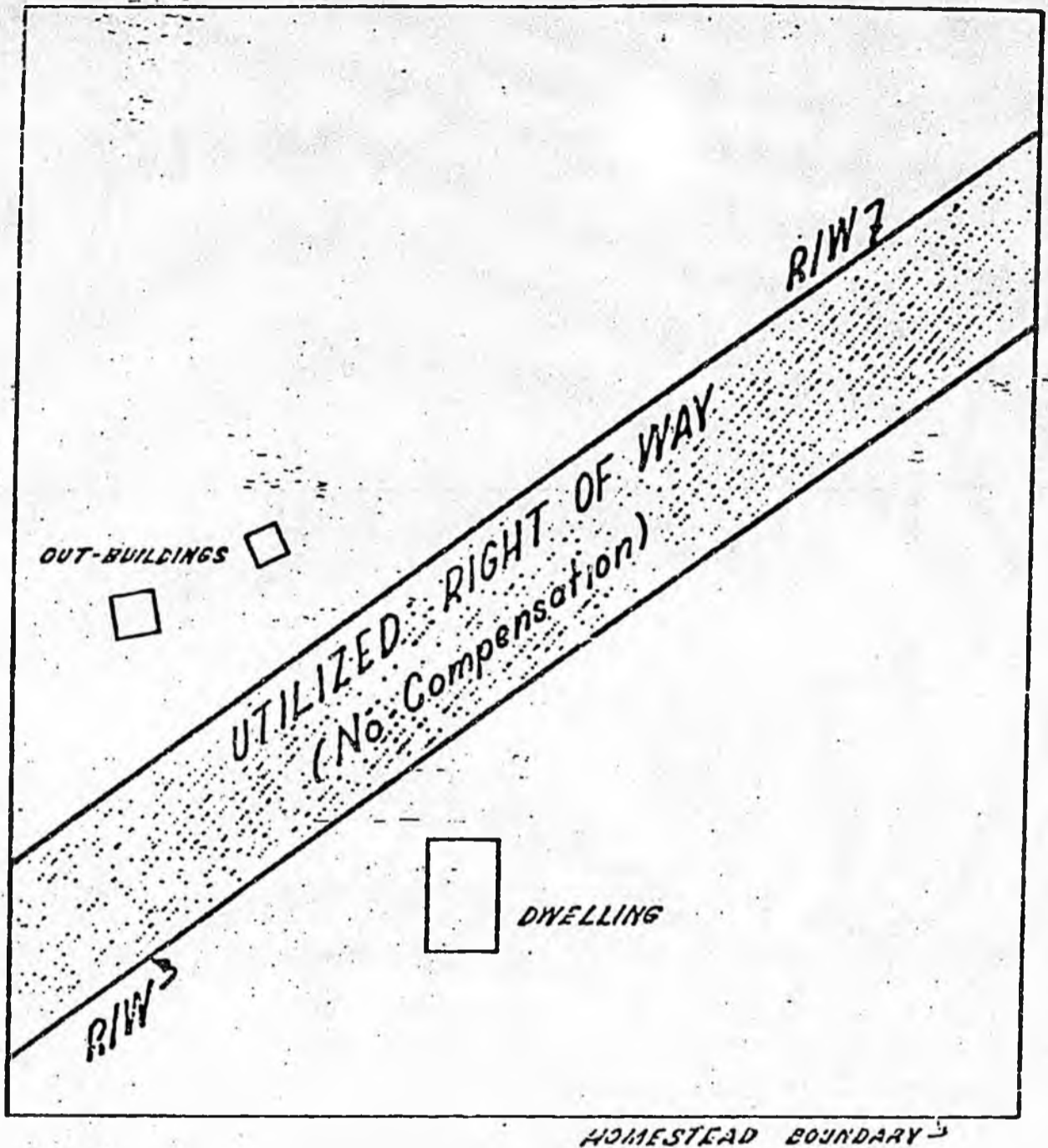
remaining elements are conveyed away. Since this interest never passed to the patentee and was never owned by him it follows that at the time of utilization of the reservation nothing is taken from him for which payment becomes due under the constitutional requirement of compensation for the taking of property.

The precise location and extent of the right-of-way reservation is not indicated in the 1947 act or in the patents issued thereunder. By utilization of the 1947 act reservation, the Government describes and locates on the ground the right-of-way created by the authority of the act. Since the interest utilized has at all times remained in the Government, no real property is taken from the patentee—or his grantee—which necessitates payment of compensation under the law.

The fact that the ownership of the right-of-way has remained in the Government leads to the further conclusion that no compensation is due the patentee by way of severance damages or proximity damages. If, after utilization of the right-of-way, the patentee holds two parcels which are separated by the roadway, he is viewed as having held two separate parcels from the time the patent issued as illustrated in exhibit 1.

(Exhibit I follows:)

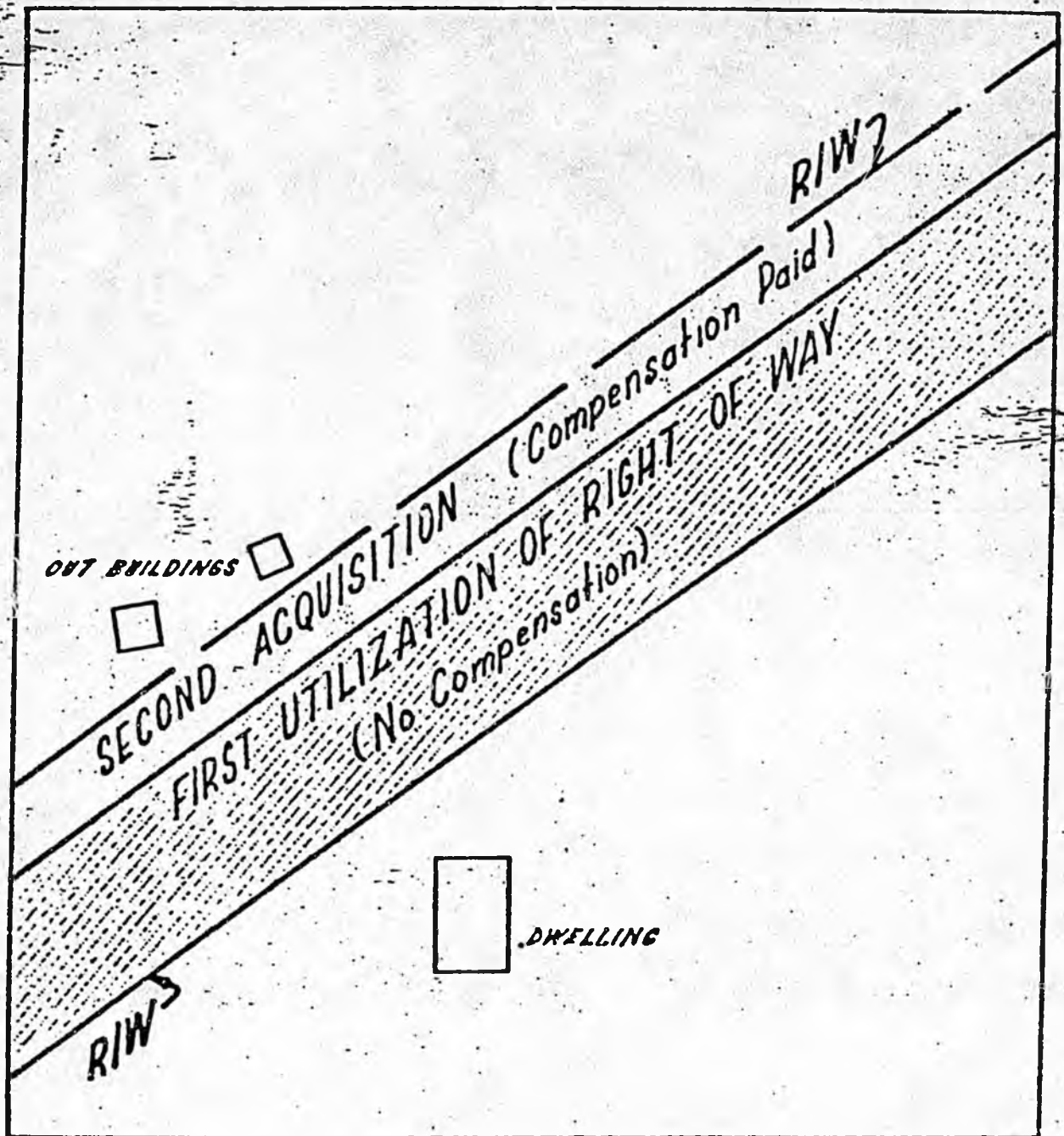
EXHIBIT I



The 1947 act has been interpreted to grant authorization only for the "first utilization." Once the reservation has been utilized in respect to any given patent, the right of way becomes established and located and the State must compensate the owner for any subsequent taking for change of road location, widening of the original right-of-way width, etc., as shown in exhibit II.

(Exhibit II follows:)

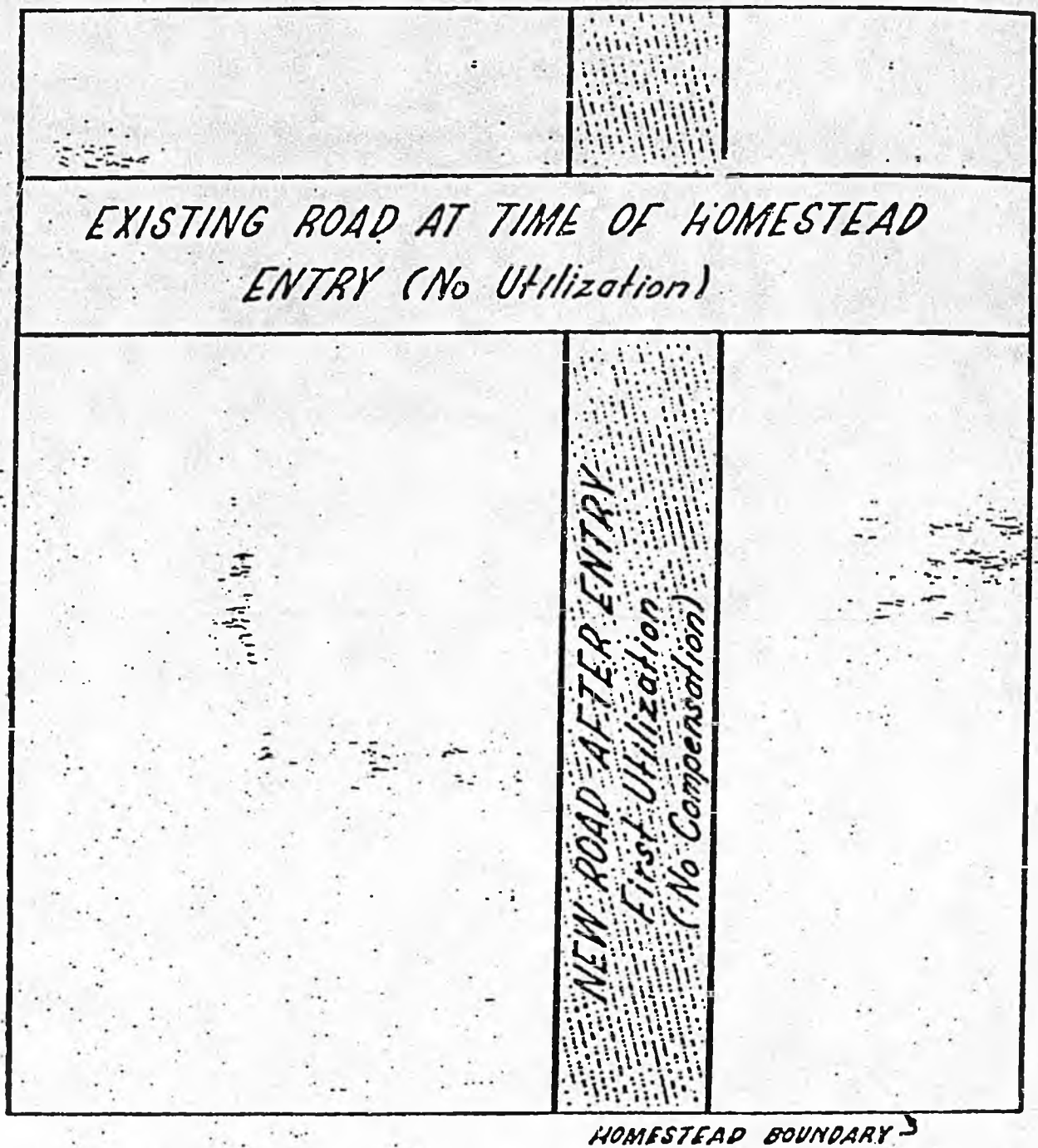
EXHIBIT II



HOMEESTEAD BOUNDARY

The existence of a road over a parcel prior to entry and patent was not considered a utilization of the reservation. The patentee is considered as having acquired the property subject to the existing road and the reservation of the 1947 act survives. The construction of a road across a parcel subsequent to issuance of patent would constitute a utilization even if no notice of utilization was served. Exhibit III outlines this possibility.

(Exhibit III follows:)

EXHIBIT III

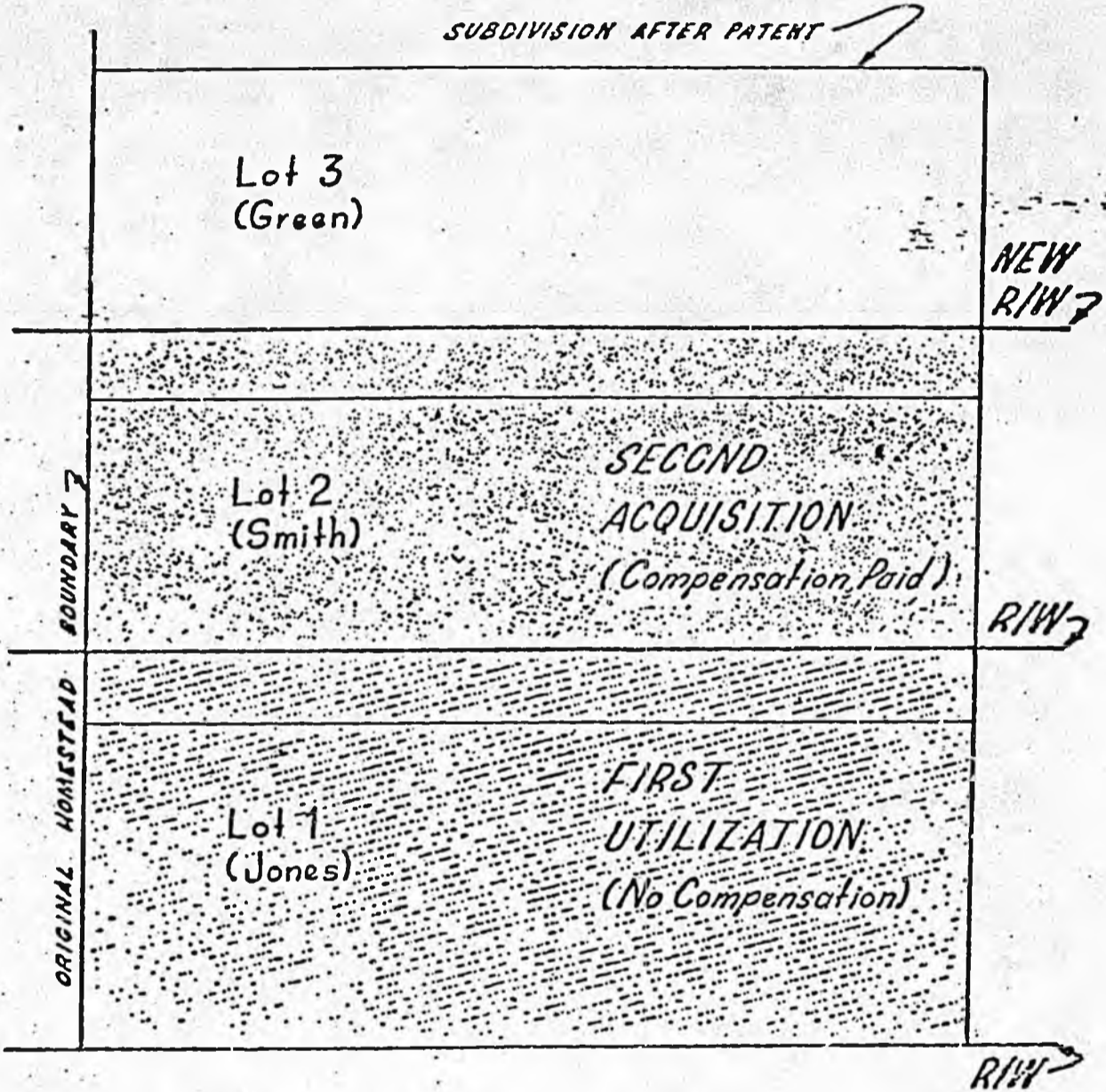
The presence of a utilization may be negated in any case where some agreed consideration was given to the owner at the time a right-of-way was acquired. That is, if the owner accepted any cash or other valuable compensation in return for granting a right-of-way to the Government, the transaction is viewed as a purchase and sale and not as an exercise of the reservation. The 1947 act reservation may be utilized later.

An additional "first utilization" problem is encountered where a tract conveyed by a single patent has since been subdivided and is now held by two or more owners. In this situation, the reservation remains in effect and may be utilized over any portion of the area subject to the original patent even though it may affect two or more of the present lot owners. Location of a right-of-way over one or more of the subdivided tracts constitutes a "first utiliza-

tion" as to the entire area of the original patent. The 1947 act authorized a single free utilization. This reservation is utilized and expended if a right-of-way is located over any part of the land conveyed by a given patent. Such a utilization may be from several owners if the land has been subdivided, but it also may be from only one of the subdivided tracts. Once the reservation has been utilized, the entire tract issued under a given patent is free from the 1947 act reservation. Exhibit IV illustrates this situation.

(Exhibit IV follows:)

EXHIBIT IV



FIRST UTILIZATION - JONES & SMITH RECEIVE NO COMPENSATION
SECOND ACQUISITION - SMITH & GREEN RECEIVE COMPENSATION

The fourth session of the Alaska State Legislature, recognizing the inequities of the 1947 act, passed legislation effective April 14, 1966, commonly called the Alaska Right of Way Act of 1966, providing that no agency of the State may take privately owned

property by the exercise of the 1947 act reservation. The legislature's stated purpose was as follows, and I quote:

This act is intended to alleviate the 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. This practice has resulted in financial difficulties and the deprivation of peace of mind regarding the security of one's possessions to many citizens of the State of Alaska, and which, if not curtailed by law, will continue to adversely affect citizens of this State. Those persons who hold title to land under a deed or patent which contains a reservation to the State by virtue of the act of June 30, 1932, ch. 326, sec. 5, as added July 24, 1937, ch. 313, 61 Stat. 418, are subject to the hazard of having the State of Alaska take their property without compensation because all patents or deeds containing the reservation required by that federal act reserve to the United States, or the State created out of the Territory of Alaska, a right-of-way for roads, roadways, tramways, trails, bridges, and appurtenant structures either constructed or to be constructed. Except for this reservation the State of Alaska, under the Alaska constitution and the Constitution of the United States, would be required to pay just compensation for any land taken for a right of way. It is declared to be the purpose of this act to place persons with land so encumbered on a basis of equality with all other property holders in the State of Alaska, thereby preventing the taking of property without payment of just compensation as provided by law, and in the manner provided by law.

Subsequent to the enactment of the Alaska Right-of-Way Act of 1966 the Bureau of Public Roads advised us "that there can be no Federal reimbursement for funds expended by the State of Alaska for the acquisition of right-of-way from land subject to the reservation contained in the 1947 act." They also stated it would take Federal legislation to effectively repeal the reservation.

In response to that statement, the late Senator E. L. Bartlett introduced—for himself and Senator Gruening—2483 on September 28, 1967. Senator Bartlett's introductory remarks outlined the position of Alaskans affected by the 1947 act and I quote his remarks from the Congressional Record of the Senate for September 28, 1967:

In 1947 Congress enacted a law—48, United States Code, 321d—which reserved an undefined highway right-of-way in all patents for Federal public lands in Alaska. This law, commonly referred to as the 1947 Act, has become notorious in Alaska. While seemingly innocuous, the 1947 act has worked inequities beyond belief as homesteads and other patented lands fall in the paths of urban development and highway improvement projects.

"Although the 1947 act was repealed in 1959, all of those persons who received patent to Federal lands between 1947 and 1959 still live under the threat that a portion of their land might be taken for highway right-of-way purposes at any time without compensation. As a matter of fact, a substantial number of rights-of-way have already been acquired under the 1947 act without compensation to the landowners and many rights-of-way over such lands will undoubtedly be acquired in the foreseeable future.

The State of Alaska has found a way to compensate patentees for takings under the right-of-way provision but the Federal Highway Administration refuses on legal grounds to pay the Federal share of such compensation.

Mr. President, it is my firm belief that no one could have foreseen the inequities inherent in passage of the 1947 act. It is also my belief that corrective action is overdue. Therefore, I introduce today for appropriate reference a bill which would vacate and relinquish the reservation of rights of way authorized by the 1947 act.

Hearings, scheduled on Senator Bartlett's bill were canceled first because of the assassination of Dr. Martin Luther King, Jr.,

and second because of the assassination of Senator Robert F. Kennedy.

Senator Bartlett's untimely death and Senator Gruening's unsuccessful bid for reelection made it necessary to reintroduce S. 248. Senator Stevens graciously did this on February 7, 1959.

Between April 14, 1966, and the present time the State of Alaska has expended approximately \$1.2 million of State funds for the acquisition of lands subject to the 1947 act. We are acquiring lands subject to the 1947 act daily so the total amount will continue to increase until Federal legislation is passed.

Senator Stevens' bill would distinguish this inequitable and unjust reservation forever, and the State of Alaska supports its passage. We also believe it to be only just and equitable that the effective date of the bill should relate back to April 14, 1966, so the State of Alaska will be clearly eligible for reimbursement for funds expended from that date until the effective date of this legislation.

Thank you again for this opportunity to appear before you. I will be happy to answer any questions you may have or to furnish the committee any additional information desired.

We would answer any questions, but the questions that have been asked pretty well cover it.

This is really just a minor legal technicality that as long as that particular Federal statute is on the books, the Bureau of Public Roads is not entitled to participate because of this reservation.

It applies only to those lands for which patents were granted during the period of 1947 until statehood.

Senator JORDAN. Mr. Chairman, may I ask the witness a question?

Senator GRAVEL. Yes, sir.

Senator JORDAN. Has any of this fund got anything to do with the Alaskan Highway or is any portion of this money involved in that particular highway? There is only one road that I know about, that is the road that crosses Canada and then goes on through Alaska. Is that a part of this? Is that involved in this?

Mr. BEARDSLEY. Mr. Chitty, my right-of-way director, informs me that portions of the extension of the Alaskan Highway in the State of Alaska itself that were realigned were involved in this particular situation.

Senator JORDAN. That is a very difficult road. I have been told, and very expensive to build and to maintain, due to upheaval of the land caused by the heavy frost. Is that a fact?

Mr. BEARDSLEY. Sir, the portion within the State of Alaska is all reconstructed and it is paved, and our maintenance problems, aside from routine maintenance, are not that difficult on this particular section of the highway.

Senator JORDAN. It is the Canadian section that is so bad?

Mr. BEARDSLEY. Yes, sir: in the Canadian section, substantial portion of that highway is just gravel-surface highway, and I am informed that their maintenance cost exceeds \$4,500 a mile.

Senator JORDAN. I have been informed that it takes about that much in tires to get across it, too.

Exhibit E

LAW OFFICES OF
GROH, EGGERS & PRICE
550 WEST SEVENTH AVENUE, SUITE 1250
ANCHORAGE, ALASKA 99501

CLIFFORD J. GROH
KENNETH P. EGGERS, P. C.
MICHAEL W. PRICE
LANCE E. GIDCUMB
SALLY KUCKO

MICHAEL P. CONDON
SEMA E. LEDERMAN
ROBERT T. PRICE
ROBERT P. OWENS

TELEPHONES
(907) 272-6474
(907) 274-9547

MAR 14 1985

March 8, 1985

Commissioner Richard J. Knapp
Department of Transportation
and Public Facilities
Pouch Z
Juneau, Alaska 99811

Re: Senate Bill 141

Dear Commissioner Knapp:

As you are aware, this firm represents the Alaska Land Title Association, which is a proponent of Committee Substitute for Senate Bill 141.

Senate Bill 141 endeavors to resolve the inequities resulting from certain "floating" easements created by the Federal Government in pre-statehood days. The inequities to the landowner exist because those "floating" easements were never defined in the patents when issued to the homesteaders.

As we have testified, many landowners were allowed to plat and subdivide their properties and neither the federal, nor the State, nor the City governments asserted ownership over these easements. The landowners, since the time of their patents, have paid taxes on the land included in the easements as if they didn't exist. These same landowners were allowed to place structures and improve the land claimed by the State Government, and in some instances, have constructed multi-million dollar buildings within the easements. The landowners NEVER knew of the existence of the easements and many of them don't know today. Patents were issued to homesteaders showing a 33' easement from centerline when, in fact, there were outstanding Public Land Orders which purported to establish 50' and 100' easements from the centerline of certain roads. In the case of local roads, those roads were not even identified by name.

We appreciate the fact that you and this current administration did not cause the problems which are facing the land owners at the current time. As you know, the primary failure was the inability of the local BLM offices in 1949 and later to comply

with the initial withdrawals established by the Washington office of the BLM. These withdrawals were never surveyed and resultingly patentees settled the property never knowing the rights-of-way existed.

Committee Substitute

Let us take this opportunity to explain the rationale of the Committee Substitute for Senate Bill 141 and why we believe it has a minimal annual fiscal impact upon the State budget. First, the Committee Substitute does not relinquish the easements but accepts their continued existence. Consequently, any condemnation proceedings will be shortened to consider only the question of value. The Committee Substitute requires the State to pay compensation for the value of ONLY that portion of the easement which it utilizes in extensions or widenings of existing roads.

We therefore feel that the fiscal note should not be the value of the easements throughout the State, but should be limited to the actual acquisition cost for only those roads which will be expanded in 1986 through 1990.

As you have been advised, the Supreme Court in ALTA v. State, 667 P.2d 714 (Alaska 1983) decided that if the homesteader entered the property before August, 1949, the State must pay compensation for any taking because the PLO right-of-way does not exist as to that land. Therefore, the acquisition cost of that land must be excluded from the fiscal note. Under the circumstances, since Juneau and Fairbanks were settled long before 1949, the State will already be required to pay compensation for most of the highway expansion in those locations. Under present Court decisions, we estimate that one-half of the entries in Kenai and Anchorage occurred before 1949. It is our belief, under the circumstances, that the fiscal note for the Committee Substitute for Senate Bill 141 will be extremely small.

There has been some discussion that the Committee Substitute for Senate Bill 141 will assist only the title companies. That allegation is not true because many landowners do not even have title insurance. Additionally, where there is title insurance the title policy issued on a piece of property goes back a number of years and the value of the policy was calculated at the time of issuance. The properties have substantially appreciated in value and the amount of a claim is directly proportional between the amount of land covered by the policy. Consequently, the bulk of the losses suffered will probably be by individual landowners.

Once again, we wish to reiterate our desire to work with the Administration in its concern to seek some equitable solution to this problem. It does not seem to be in anyone's best interest to publicize the fact that the State will take property without compensation. It does seem, however, in everyone's best interest to come to some solution of this matter legislatively to avoid case-by-case hardship such as that suffered in the early 60's by Otto Schnieder. The time has come for this type of solution. We would be more than willing to meet with you to discuss whatever equitable solution can be devised.

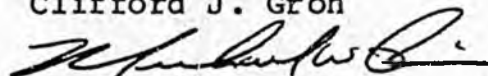
With the reduced fiscal note of Senate Bill 141 it is possible that the distance between our positions is now surprisingly narrowed. Of course, we have already been in contact with Senator Stevens and the entire Congressional Delegation who assure us of their cooperation in attempting either administratively or legislatively to require federal matching funds to acquire the properties under Committee Substitute SB 141.

We are more than willing to meet with you at your earliest convenience in Anchorage or Juneau, to reach any settlement for the citizens of the State of Alaska. We will call you on Monday, March 11, to arrange a meeting.

Sincerely,

GROH, EGGERS & PRICE


Clifford J. Groh


Michael W. Price

:hf

cc: Gov. William Sheffield
Senator Don Bennett
Senator Jan Faiks
✓ Senator Jack Coghill
Senator Rick Halford
Senator Tim Kelly
Senator Vic Fischer

Version #2
14-1108
Moen
4/19/85 ✓

1
2 IN THE SENATE

BY COGHILL

3 SENATE JOINT RESOLUTION NO.

4 IN THE LEGISLATURE OF THE STATE OF ALASKA
5 FOURTEENTH LEGISLATURE - FIRST SESSION

6 Relating to the payment of just compen-
7 sation to landowners for certain rights-
8 of-way across land in Alaska.

9 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 WHEREAS the Federal Government created certain rights-of-way for
11 highway purposes across land in the state under Public Land Order 601,
12 Public Land Order 757, Department Order 2665, and Public Land Order 1613;
13 and

14 WHEREAS the rights-of-way created by the Federal Government were not
15 identified in the patents issued to Alaska homesteaders nor were the
16 original homesteaders informed as to the location or true width of the
17 rights-of-way claimed for highway purposes by the Federal Government across
18 their land; and

19 WHEREAS the original homesteaders and their successors in interest
20 have had no knowledge of the claim of the Federal Government to the rights-
21 of-way along or across their properties and have often utilized and im-
22 proved the portion of the right-of-way claimed by the Federal Government;
23 and

24 WHEREAS the enforcement of the rights-of-way would be unfair to home-
25 steads who entered their property between August 1949 and Alaska state-
26 hood in 1959; and

27 WHEREAS the rights-of-way created by the Federal Government were not
28 recorded in any territorial or state recording office for the purpose of
29 public notice; and

WHEREAS the right to utilize the rights-of-way for highway purposes

1 was conveyed to the state in 1959; and

2
3 WHEREAS the United States Department of Transportation has declined to
4 pay federal highway funds to the state to allow the state to pay just
5 compensation to the landowners whose properties are affected by the rights-
6 of-way; and

7 WHEREAS U.S. Senator Ted Stevens has attempted in the Federal Aid
8 Highway Act of 1970, sec. 138, to require the United States Department of
9 Transportation to compensate the State of Alaska for money paid as just
10 compensation for the taking and utilization of the rights-of-way;

11 BE IT RESOLVED by the Alaska State Legislature that the Alaska delega-
12 tion to U.S. Congress is urged to introduce and support legislation to
13 require reimbursement by the United States Department of Transportation to
14 the State of Alaska for money paid by the state as just compensation for
15 the use of any right-of-way created, established, or claimed under Public
16 Land Order 601, Public Land Order 757, Department Order 2665, and Public
17 Land Order 1613.

18 COPIES of this resolution shall be sent to the Honorable Ted Stevens
19 and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don
20 Young, U.S. Representative, members of the Alaska delegation in Congress.

History on 1966 act

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 ~~the title~~ ^{therefore} insurers, ~~rather than the State,~~ are liable for any claims by the insured for takings for which the State has declined to compensate the property-owner. In the many instances where ~~the~~ ^{owner has} no title insurance, of course, he or she is simply out of luck, ~~or will be in the future if the state decides to expand its road,~~ ^{sometimes} and ~~no legislative action has been taken~~ ^{and loses the land with no recourse to compensation.}

The background material will more ~~fully~~ ^{completely} explain the ~~genesis~~ ^{history} of this problem. ^{however} A brief caveat regarding the enormous ~~impact~~ fiscal note may be in order. We are not sure how DOT/PF generated this much fiscal impact, but assume they ~~ought to~~ ^{ought to} have figured the repurchase price, at top market ~~value,~~ ^{value,} of an entire right-of-way width (the whole 300 feet, for example, not just the portion they actually will need).

Introduced: 2/8/85
Referred: Transportation
and Resources

1 IN THE SENATE

BY COGHILL

2

SENATE BILL NO. 141

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

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

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

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

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

1 structure.

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

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

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

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

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

1 * Sec. 7. RETROACTIVE APPLICATION. This Act does not relieve, alter,
2 or void a voluntary conveyance of an easement including an easement dedi-
3 cated by plat.

4 * Sec. 8. EFFECTIVE DATE. This Act takes effect immediately in accor-
5 dance with AS 01.10.070(c).

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 17, 1984

SUBJECT: An Act releasing claims of the state within
certain rights-of-way
(Work Order No. 13-2222)

TO: Representative Charlie Bussell
Chairman
House Judiciary Committee

FROM: Richard A. Bradley 
Legislative Counsel

You have requested the enclosed bill in final; because the draft does not address certain aspects that seem naturally raised by the bill, I have prepared the bill in draft for your consideration.

The bill seems to be a response to State v. Alaska Land Title Ass'n. 667 P.2d 714 (Alaska 1983), cert. den. 52 U.S.L.W. 3509 (January 9, 1984). While I have reviewed the case briefly preparatory to putting the bill into form for your introduction, I confess I have not sought to become altogether familiar with the law of that case.

But certain observations may be made regarding the bill.

(1) The bill deals exclusively with the use by the state of the benefits of the cited Acts of Congress and orders of the Department of the Interior.

However, as the Alaska Supreme Court's opinion indicates in passing, municipalities of the state may avail themselves of the benefits of the Acts and orders. I have not sought to extinguish the ability of these municipalities to use the Acts and orders.

(2) The rights-of-way are presently used by the state (or municipalities) to straighten the right-of-way or to widen or improve the roadbed. Those benefits will cease if the bill passes.

Representative Charlie Bussell
Page 2
April 17, 1984

But the rights-of-way are also used by utilities (of both a public and private nature) for sewer and water lines, natural gas lines, electric power lines, and so forth. The bill does not indicate whether these rights continue though it seems clear that they are put in some jeopardy by the extinguishment of the estate on which they rely. Do you wish to deal with these issues? See, for example, AS 19.25.010 which provides:

Sec. 19.25.010. USE OF RIGHTS-OF-WAY FOR UTILITIES. A utility facility may be constructed, placed, or maintained across, along, over, under or within a state right-of-way only in accordance with regulations prescribed by the department and if authorized by a written permit issued by the department.

(3) While I do not have an answer to suggest, I think it is patently clear that the outer edge of the ditching, if any, along the roadway is not clean demarcation on which to base title to land; whether the existing property line reflects good public policy, or not, at least the line is clearly established. I make this point only because the provisions of the Acts of Congress, orders of the Interior Department, and the efforts of the highway department have already been a goldmine for lawyers and a source of anxiety to property owners, title insurance companies and a newly added uncertainty seems undesirable. In this connection, you may wish to consider the concepts implied in AS 19.25.070.

(4) Finally, note that I have followed the draft provided to us in drafting this bill. But subsecs. (b) - (e) are altogether contained within (a) of the bill and are unnecessary.

If I may be of further assistance, please advise.

RAB:ojb
J6/054 Enclosure

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 26, 1984

SUBJECT: Release of claims of the state
(Work Order No. 13-2222)

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM: Richard A. Bradley
Legislative Counsel

The above described bill was provided to you earlier today at Joe Brewer's request. At that time I advised Mr. Brewer that I would be providing the committee with comments on the bill.

(1) In my memorandum of April 17, I noted that not only the state but also certain municipalities of the state may avail themselves of the benefits of the Acts of Congress and public land orders in question. I stated that the rights of the municipalities were not extinguished by the bill. I think that I was wrong in part but I believe that if the typical phrase "by the state" is deleted (for example, in the title and at line 28, page 1 of the bill), this possible ambiguity is removed. I believe that it is also desirable to acknowledge that neither the state nor municipalities may avail themselves of the benefits of the easements and subsections (c) and (d) should be conformed to that effect.

(2) The committee asked that the phrase "the subservient estate" be deleted from subsection (b) and that it be replaced with "the adjoining property owners on the effective date of this Act". I have included the phrase as requested.

But I note that it is possible that the substituted phrase has a different substantive meaning from that suggested by "the subservient estate".

If I am correct that the bill is a response to State v. Alaska Land Title Ass'n., 667 P.2d 714 (Alaska 1983), cert.

Representative Charlie Bussell
Page 2
April 26, 1984

den., 52 U.S.L.W. 3509 (January 9, 1984), the bill addresses the exercise by the state and municipalities of the state of rights determined by the Alaska Supreme Court to have been created by easements established under certain Acts of Congress and certain public land orders of the U.S. Department of the Interior.

In an easement, two estates (separate ownership interests) in the same land are created. In an easement, a right of use is created in the property of another. As Black's Law Dictionary indicates, a "servient estate" (or a "subservient estate") is one that is burdened with a servitude (benefit) in favor of someone else. And the dominant estate is the right to a particular use that results from the easement.

In the situations described in the bill, the state or the municipality of the state is the owner of the dominant estate in the easement; the owner of the land adjoining the easement who also owns the land under and subject to the easement is the owner of the servient (subservient) estate.

It is the person who owns the servient estate who should receive the released and relinquished easement; that person will usually be the person whose property "adjoins" the land subject to the dominant easement but the bill confuses this distinction because there will frequently, perhaps typically be two property owners whose land "adjoins" the easement.

If I may be of further assistance, please advise.

RAB:ojb
J6/077

Introduced: 4/26/84
Referred: Judiciary

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 HOUSE BILL NO. 718

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

10 * Section 1. LEGISLATIVE PURPOSE AND FINDING. (a) The purpose of
11 sec. 2 of this Act is to release and relinquish certain rights-of-way
12 claimed by the Alaska Department of Transportation and Public Facilities.

13 (b) The legislature finds that sec. 2 of this Act is needed to alle-
14 viate economic hardship and physical and mental distress caused by the
15 taking of land by the state without just compensation.

16 * Sec. 2. AS 19.25 is amended by adding a new section to read:

17 Sec. 19.25.260. RELINQUISHMENT OF RIGHT-OF-WAY. (a) The right-
18 of-way for a road, roadway, highway, tramway, trail, bridge, or appur-
19 tenant structure created, withdrawn, or reserved under the Act of
20 January 27, 1905, 33 Stat. 616, the Act of June 30, 1932, 47 Stat.
21 446, the Act of July 24, 1947, 61 Stat. 418, Public Land Orders 601,
22 757, and 1613, and Department of the Interior Order 2665, as amended,
23 that is not on the effective date of this Act physically occupied by
24 the roadway, shoulder, or ditching of a road, roadway, highway, tram-
25 way, trail, bridge, or appurtenant structure is vacated and relin-
26 quished and the vacated and relinquished right-of-way may not be
27 taken, claimed, asserted, or used by the state without the payment of
28 just compensation.

29 (b) The provisions of (a) of this section relinquish and release

1 to the adjoining property owners on the effective date of this Act
2 that portion of the right-of-way claimed, asserted, or used by the
3 state that is not physically occupied by the roadway, shoulder, or
4 ditching of the roadway before the effective date of this Act.

5 (c) The provisions of (a) of this section do not divest the
6 state of title to land or require compensation by the state for land
7 physically occupied on the effective date of this Act by the roadway,
8 shoulder, or ditching of a road, roadway, highway, tramway, trail,
9 bridge, or appurtenant structure then constructed within the right-
10 of-way created, withdrawn, or reserved under the Acts of Congress and
11 the orders described in (a) of this section.

12 (d) Any expansion beyond the existing roadway, shoulders, or
13 ditching of a road, roadway, highway, tramway, trail, bridge, or
14 appurtenant structure requires the payment of just compensation to the
15 owner of the land and no other acts or actions by the state constitute
16 a physical occupation by a roadway, shoulder, or ditching within the
17 meaning of this section. The state has the burden of proof to show by
18 clear and convincing evidence that the physical occupation by a road-
19 way, shoulders, or ditching occurred before the effective date of this
20 Act.

21 (e) As used in this section, "physically occupied by the road-
22 way, shoulder, or ditching" means the construction of the actual
23 roadway, shoulders, or ditching before the effective date of this Act.

24 (f) This section does not relieve a person from an act for which
25 the person may be responsible regarding a past transfer of a right-of-
26 way or an interest in a right-of-way.

27 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
28 10.070(c).



LAWS OF ALASKA

1966

Source:

HB 415 am

Chapter No:

92

AN ACT

Relating to the disposition of certain legal interests in land by the State of Alaska; and providing for an effective date.

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

* Section 1. PURPOSE. This Act is intended to alleviate the 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 persons holding title to the land. This practice has resulted in financial difficulties and the deprivation of peace of mind regarding the security of one's possessions to many citizens of the State of Alaska, and which, if not curtailed by law, will continue to adversely affect citizens of this state. Those persons who hold title to land under a deed or patent which contains a reservation to the state by virtue of the Act of June 30, 1932, ch. 320, sec. 5, as added July 24, 1947, ch. 313, 61 Stat. 418, are subject to the hazard of having the State of Alaska take their property without compensation because all patents or deeds containing the reservation required by that federal Act reserve to the United States, or the state created out of the Territory of Alaska, a right-of-way for

roads, roadways, tramways, trails, bridges, and appurtenant structures either constructed or to be constructed. Except for this reservation the State of Alaska, under the Alaska constitution and the constitution of the United States, would be required to pay just compensation for any land taken for a right-of-way. It is declared to be the purpose of this Act to place persons with land so encumbered on a basis of equality with all other property holders in the State of Alaska, thereby preventing the taking of property without payment of just compensation as provided by law, and in the manner provided by law.

* Sec. 2. TAKING OF PROPERTY UNDER RESERVATION VOID. After the effective date of this Act, no agency of the state may take privately-owned property by the election or exercise of a reservation to the state acquired under the Act of June 30, 1932, ch. 320, sec. 5, as added July 24, 1947, ch. 313, 61 Stat. 418, and taking of property after the effective date of this Act by the election or exercise of a reservation to the state under that federal Act is void.

* Sec. 3. PROSPECTIVE APPLICATION. This Act shall not be construed to divest the state of, or to require compensation by the state for, any right-of-way or other interest in real property which was taken by the state, before the effective date of this Act, by the election or exercise of its right to take property through a reservation acquired under the Act of June 30, 1932, ch. 320, sec. 5, as added July 24, 1947, ch. 313, 61 Stat. 418.

* Sec. 4. SHORT TITLE. This Act may be cited as the Right-of-Way Act of 1966.

• Sec. 5. EFFECTIVE DATE. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.

1. Prospective vs. retroactive application.
2. State vs. private interests
3. Description of extent of easement
4. 1966 act - same provisions
5. Effect of Sup Ct case on 1966 act

Sup Ct interpreted 66 act to apply only to 1947 Fed act -- PLO orders apply to the 1932 Act.

→ Add provisions of Proposed Bill would be sure that these included.

Validity of quitclaim deed — being challenged in remand of case.

State law cannot affect if not a valid.

AG may hold 1966 act as unconstitutional.

Utility easements in r-of-way.

IN THE SENATE

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 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 FINDINGS.

(a) The purpose of this Act is to release and relinquish certain highway rights-of-way claimed by the Alaska Department of Transportation and Public Facilities.

(b) The legislature finds that section 2 of this Act is needed to alleviate economic hardship and physical and mental distress occasioned by the taking of the land by the State of Alaska without just compensation being paid to the person holding title to the land.

*Sec. 2. AS 19.25 is amended by adding a new section to read:

Sec. 19.25.260 RELINQUISHMENT OF RIGHTS-OF-WAY.

(a) Any right-of-way for roads, roadways, highways, tramways, trails, bridges and appurtenant structures created, withdrawn, or reserved by the United States Government under the Act of January 27, 1905, 33 Stat. 616, the Act of June 30, 1932, 47 Stat. 446, the Act of

July 24, 1947, 61 Stat. 418, Public Land Orders 601, 757 and 1613, and Department of Interior Order 2665, as amended, which the State may now or in the future claim or assert and which is not claimed, asserted or utilized by occupation with physical improvements shall be and hereby are vacated, released and relinquished and shall not be taken, claimed, asserted or utilized by the State or its successors in interest without payment of just compensation.

(b) The provisions of (a) of this section relinquish and release to the adjoining property owner, on the effective date of this Act, the balance of the right-of-way claimed, asserted or utilized by the State which is not physically occupied by roadway, shoulder or ditching actually constructed prior to the effective date of this section.

(c) The provisions of (a) of this section do not divest the State of its interest in the right-of-way or require compensation by the State for land physically occupied on the effective date of this Act by the roadway, shoulder, or ditches of a road, highway, trail, bridges or appurtenant structure constructed with the right-of-way created, withdrawn, or reserved under the Acts of Congress and the orders described in subsection (a) of this section.

(d) The provisions of (a) of this section do not divest the State of its interest in a right-of-way which effects land in which fee title is, on the effective date of this Act, vested in the United States of America.

(e) As used in this section, occupation with physical improvements shall mean the actual construction of the roadway, shoulders and ditching prior to the effective date of this Act.

(f) Roadway, shoulders and ditching which is constructed after the effective date of this section or any expansion of existing roadway, shoulders and ditching which requires additional property to construct shall require the payment of just compensation to the landowner. No other acts or actions by the State shall constitute an occupation with physical improvements within the meaning of this section. The State shall have the burden of proof to show by clear and convincing evidence that the occupation by physical improvements by the construction of roadway, shoulders and ditching occurred prior to the effective date of this section.

(g) Nothing in (a) of this section alters or voids any voluntary prior conveyance of the rights-of-way or an interest in the rights-of-way described in (a) of this section to the state or any other individual or organization.

*Sec. 3. This Act takes effect immediately in accordance with AS 01.10.070(c).

Mike Price -
Oil Grob - Representing Title Companies
30s, 40s, 50s

Interior Public Land Orders creating
Easements for roads

Alaska Road Commission

Bureau of Public Roads (later)

(81)

Public Land Orders - 380' major highways

200' feeder ~~to~~ roads

100' local roads -

Farm/MPF

Secondary

Primary

Amestead patents said 33',
Federal register gave actual easements!

: Local roads never designated

Supreme Court - Hahn case 1976 - said the
title companies should have looked in Federal
Register, not just recording company

State now expanding highways w/o compensation -
that's not making anybody tear down buildings

Title Companies are facing bankruptcy; litigating
with state for past 5-6 years -

> State giving easements for bike trails and utilities on
outside of edge of easements

1966 - Right of Way Act - SLA 1966 Ch. 92
Re-enact to require state to pay for easements
Supreme court claims technical glitch, that
1966 act did not solve problem

DOT/PF ~~is~~ claims they don't know which roads
until they go to widen

1979 - DOT/PF claimed \$500 million if 1966 act was
re-enacted

Which roads expanding now, and fiscal impact, not
year 2000

Federal Gov't not interested in paying for R.O.W. in 1966
→ 1970 Congress agreed that Federal Gov't would match.
Get copy of Act.

- Native easements another problem entirely.
- Valid section lines easements (33' ea. side centerline)

Federal Gov't recognized by late 50s that easements were
too wide -

IN THE SENATE

BY COGHILL

PROPOSED
COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 141

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act requiring just compensation for the utilization of 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 provide just compensation to land owners in Alaska who are suffering economic hardship and physical and mental distress by virtue of the state utilizing certain rights-of-way 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. sec. 321(d) (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 2605, 16 Fed. Reg. 10, 752 (1951).

* Sec. 2. TAKING OF PROPERTY WITHOUT COMPENSATION IS BARRED. After the effective date of this Act, no agency of the State may take, utilize, or occupy any right-of-way for a road, roadway, highway, tramway, trail, bridge, or appurtenant struc-

ture 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(d) (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) beyond that portion physically occupied by a road, roadway, highway, tramway, trail, bridge, or appurtenant structure on the effective date of this Act, without payment of just compensation.

* Sec. 3. PHYSICAL OCCUPATION OF RIGHT-OF-WAY. (a) The provisions of this Act do not require the State to pay compensation for land physically occupied on the effective date of this act by a road, roadway, highway, tramway, trail, bridge, or appurtenant structure 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 require the payment of compensation by the state for taking, utilizing or occupying an interest in an easement of specific width set out in the original patent from the state or federal government, whether or not physically occupied on the effective date of this Act.

(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 only to the extent that the state actually takes, utilizes or occupies beyond

the physical occupation as of the effective date of this Act. The state has the burden of proof to show by clear and convincing evidence the extent of the physical occupation which occurred before the effective date of this act.

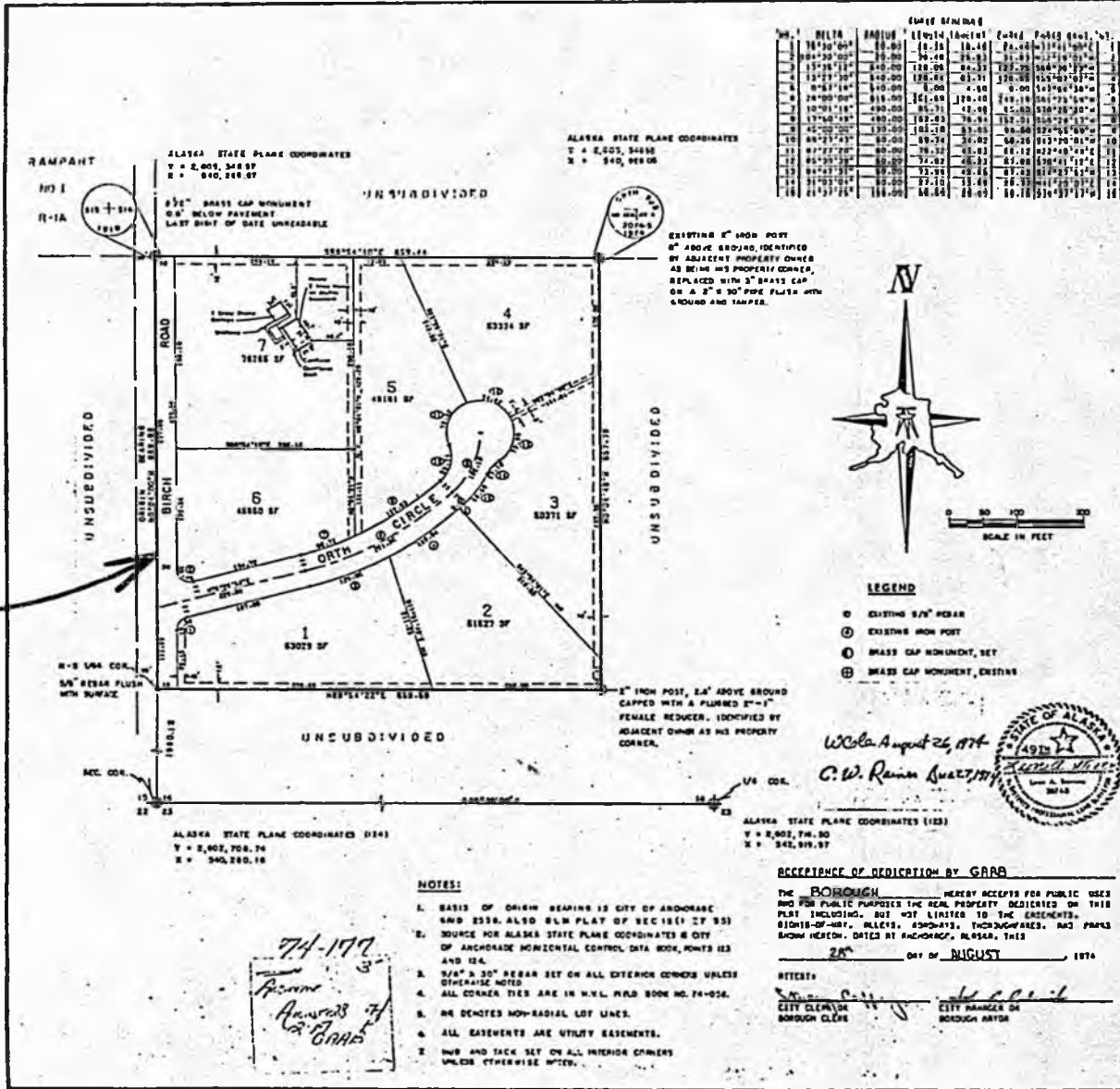
* Sec. 4. APPLICATION TO FEDERAL LAND. The provisions of this Act do not require that the state pay compensation for taking, utilizing or occupying a right-of-way that affects land in which fee title is, on the date of the taking, utilization or occupation, vested in the United States of America.

* Sec. 5. 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. 6. RETROACTIVE APPLICATION. This Act does not relieve, alter, or void a voluntary conveyance of an easement including an easement dedicated by plat.

* Sec. 7. EFFECTIVE DATE. This Act takes effect immediately in accordance with AS 01.10.070(c).

CHRIS WYATT HOME - LOT 6



CERTIFICATE OF DOMESTIC AND DEDICATION

WE HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE PROPERTY SHOWN AND DESCRIBED HEREON. WE HEREBY REQUEST APPROVAL OF THIS PLAN, SHOWING SUCH EASEMENTS FOR PUBLIC UTILITIES, HIGHWAYS 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 CONTRAIN CUT AND FILL SLOPES OF 1 1/2 FEET HORIZONTALLY FOR EACH FOOT VERTICALLY IS 1/2 TO 11 OF CUT OR FILL, FOR THE PURPOSE OF PROVIDING AND MAINTAINING LATERN SUPPORT OF THE CONSTRUCTED STREET, AND THERE IS RESERVED TO THE GRANTEE, THEIR HEIRS, SUCCESSORS AND ASSIGNS, THE RIGHT TO REMOVE SAID SLOPES AT ANY TIME UPON PROVIDING AND MAINTAINING OTHER ADEQUATE LATERN SUPPORT, AS APPROVED BY THE CITY OF BOROUGH.

DATE: Aug 20, 1974
Henry D. Orth Katherine Orth
 HENRY ORTH KATHERINE ORTH
 BOX 1016 SAME
 RAILROAD STATION
 ANCHORAGE, ALASKA 99500

MAYOR'S ACKNOWLEDGMENT
 SUBSCRIBER AND SIGNER TO BEFORE ME THIS 20th DAY OF AUGUST 1974
Carl W. Raman Mayor
 MAYOR FOR BOROUGH BY COMMISSION EXPIRES

PLAT APPROVAL
 PLAT APPROVED BY THE BOROUGH PLANNING AUTHORITY THIS 16th DAY OF AUGUST 1974
Richard J. ... AUTHORIZED OFFICIAL

SURVEYOR'S CERTIFICATE
 I, Leon A. Stevens PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THIS PLAN 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 ASSUMED BY SUBDIVISION AGREEMENT, THEY WILL BE SET AS SPECIFIED IN SAID SUBDIVISION AGREEMENT.

Leon A. Stevens
 SIGNATURE OF LAND SURVEYOR

PLAT OF
ORTH SUBDIVISION
 A SUBDIVISION OF THE
 NW 1/4, NW 1/4, SW 1/4, SECTION 14
 T12N. R34W. S.14., ALASKA
 CONTAINING 9.976 ACRES AND 7 LOTS
HENRY V. LOUNSBURY & ASSOCIATES
 ENGINEERS - PLANNERS - SURVEYORS
 ANCHORAGE, ALASKA

DATE: <u>AUGUST 1974</u>	SCALE: <u>1" = 100'</u>
DRAWN: <u>EDM. TICH</u>	SHEET: <u>1 OF 1</u>
CHECKED: <u>A.S. ...</u>	CAD: <u>...</u>

S-3397

197 376

110005

Form 6-1919
1947, 1954

Anchorage 023311

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: Independent 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, 13 U. S. C. sec. 305) 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 21, 1917 (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 10, 1930, (41 Stat. 1965) and subject to the conditions and limitations of Section 21 of said Act, as amended by the Act of August 26, 1935 (49 Stat. 516).

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, Patent Section

Patent Number 1151700

ALLEGHANY DISTRICT, ANCHORAGE, ALASKA

4/5 5 29
JAN 1 4 1950
FILED FOR RECORD
DISTRICT CLERK
Mr. [Signature]

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

SI 22326

RECEIVED
BUREAU OF LAND MANAGEMENT

RECEIVED
BUREAU OF LAND MANAGEMENT

The United States of America, vs. 10 vs 21

So all to whom these presents shall come, greeting:

WHEREAS, a certificate of the Land Office of Alaska, in the Bureau of Land Management, whereby it appears that patent is the act of Congress of May 20, 1862, "TO SECURE HOMESTEADS TO Actual Settlers on the Public Domain," and the acts supplementary thereto, has been established

and that the requirements of the pertaining to the claim have been met, for the following-described land Situated in the Territory of Alaska, to-wit:

Section 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

The area described contains 150 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 to the said claimant, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature, thenceforth belonging unto the said claimant, and to the heirs of the said claimant, unto the said claimant, his heirs and assigns forever, subject to the following conditions, to-wit: (1) any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights in ditches and reservoirs used in connection with such water rights, so far as they may be recognized and acknowledged by the local customs, laws, and decrees of the Territory of Alaska; (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 20, 1890 (26 Stat., 231), 43 U. S. C. sec. 945), and (3) the reservation of a right-of-way for roads, roads, bridges, viaducts, ways, trails, bridges, and apartment structures constructed or to be constructed by or under authority of the United States or by any State, Territory, or the Territory of Alaska, in accordance with the act of July 25, 1947 (61 Stat., 415, 416 U. S. C. sec. 221(a)). There is also reserved to the United States a right-of-way for the construction of railroad, telegraph and telephone lines, in accordance with section 1 of the act of March 12, 1914 (33 Stat., 205, 48 U. S. C. sec. 205); accepting and retaining also, in the United States pursuant to section 9 of the act of March 1, 1946 (60 Stat., 766, 42 U. S. C. sec. 1905), all claims, interests, or any other material which in or may be determined to be property appurtenant to the production of flammable 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

PAID BY ADDRESSEE
OCT 16 1952
BY *Alfred F. ...* Mail to: *BSP/653*
AL *Good.* DISTRICT RECORDER

IN TESTIMONY WHEREOF, the undersigned officer of the Bureau of Land Management, in accordance with section 1 of the act of May 20, 1862 (12 Stat., 478, 43 U. S. C. sec. 15), and the acts supplementary thereto, caused these presents to be made Public and to be recorded in the Bureau of Land Management.

GIVEN under my hand, in the District of Columbia, this 15th day of October, 1952.
[Signature]
Special Agent in Charge

For the Director, Bureau of Land Management
[Signature]

RECORD OF PATENTS, Patent Number 1136355

1952 BIRCH ROAD PATENT

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. Abbett Road	k. North Park Boundary-Kantishna Road
b. Taylor Highway	l. Nome-Council Road
c. Palmer-Matanuska-Wasilla-Knik Road	m. Seward Peninsula-Tram Road
d. Glenn Highway Junction-Fishhook Junction-Wasilla-Knik Road	n. Northway Junction-Airport Road
e. Slana-Nebsana Road	o. Palmer-Finger Lake-Wasilla Road
f. University-Ester Road	p. Central-Circle Hot Springs-Portage Creek Road
g. Kenai Junction-Kenai Road	q. Sterling Landing-Ophir Road
h. Manley Hot Springs-Eureka Road	r. Dillingham-Wood River Road
i. Paxon-McKinley Park Road	s. Nome-Bessie Road
j. Iditarod-Flat Road	
- IV. Local Roads (unidentified by name; 50 feet either side of center line right-of-way)

LIST OF
THROUGH & FEEDER ROADS

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
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

Mr. Blake Call, Secretary
Senate Transportation Committee
Alaska State Legislature
366-380-85

March 5, 1985
Page 2

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."

Mr. Blake Call, Secretary
Senate Transportation Committee
Alaska State Legislature
366-380-85

March 5, 1985
Page 3

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

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.

Mr. Blake Call, Secretary
Senate Transportation Committee
Alaska State Legislature
366-380-85

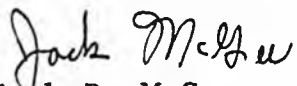
March 5, 1985
Page 4

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 B. McGee
Assistant Attorney General

JBM:ebc:prm

Moen
3/5/85 ✓

Original sponsor: Coghill

1 IN THE SENATE

BY THE TRANSPORTATION COMMITTEE

2 CS FOR SENATE BILL NO. 141 (Transportation)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act requiring just compensation for the
7 utilization of certain rights-of-way; and providing
8 for an effective date."

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

10 * Section 1. LEGISLATIVE PURPOSE AND FINDING. The purpose of this Act
11 is to provide just compensation to landowners in the state who are suffer-
12 ing economic hardship and physical and mental distress by virtue of the
13 state utilizing certain rights-of-way created, withdrawn, or reserved under
14 33 Stat. 616 (Act of January 27, 1905); 47 Stat. 446 (Act of June 30,
15 1932); 48 U.S.C. secs. 321(a) - 327 (Act of July 24, 1947); Public Land
16 Order 601, 14 Fed. Reg. 5048 (1949); Public Land Order 757, 16 Fed. Reg.
17 10, 749 (1951); Public Land Order 1613, 23 Fed. Reg. 2376, 2378 (1958); or
18 Departmental Order 2665, 16 Fed. Reg. 10, 752 (1951).

19 * Sec. 2. TAKING OF PROPERTY WITHOUT COMPENSATION IS BARRED. The state
20 may not take, utilize, or occupy a right-of-way for a road, roadway, high-
21 way, tramway, trail, bridge, or appurtenant structure created, withdrawn or
22 reserved under 33 Stat. 616 (Act of January 27, 1905); 47 Stat. 446 (Act of
23 June 30, 1932); 48 U.S.C. secs. 321(a) - 327 (Act of July 24, 1947); Public
24 Land Order 601, 14 Fed. Reg. 5048 (1949); Public Land Order 757, 16 Fed.
25 Reg. 10, 749 (1951); Public Land Order 1613, 23 Fed. Reg. 2376, 2378
26 (1958); or Departmental Order 2665, 16 Fed. Reg. 10, 752 (1951) without
27 payment of just compensation if the right-of-way on the effective date of
28 this Act is not physically occupied by a road, roadway, highway, tramway,
29 trail, bridge, or appurtenant structure.

1 * Sec. 3. PHYSICAL OCCUPATION OF RIGHT-OF-WAY. (a) The provisions of
2 this Act do not require compensation by the state for land physically
3 occupied on the effective date of this Act by a road, roadway, highway,
4 tramway, trail, bridge, or appurtenant structure then constructed within
5 the right-of-way created, withdrawn, or reserved under the Acts of Congress
6 and the orders described in sec. 2 of this Act; nor do the provisions of
7 this Act require compensation by the state for taking, utilizing, or occu-
8 pying an interest in an easement of specific width set out in the original
9 patent from the state or federal government whether or not physically
10 occupied on the effective date of this Act.

11 (b) Expansion beyond an existing road, roadway, highway, tramway,
12 trail, bridge, or appurtenant structure requires the payment of just com-
13 pensation to the owner of the land only to the extent that the state
14 actually takes, utilizes, or occupies beyond the physical occupation within
15 the meaning of this section. The state has the burden of proof to show by
16 clear and convincing evidence that the physical occupation occurred before
17 the effective date of this Act.

18 * Sec. 4. APPLICATION TO FEDERAL LAND. The provisions of this Act do
19 not require the state to pay compensation for taking, utilizing, or occupy-
20 ing a right-of-way that affects land in which fee title is, on the date of
21 the taking, utilization or occupation, vested in the United States of
22 America.

23 * Sec. 5. DEFINITION. As used in this Act, "physically occupied" means
24 the construction of the actual roadway, including its shoulders and ditch-
25 ing, highway, tramway, trail, bridge, or appurtenant structures, before the
26 effective date of this Act.

27 * Sec. 6. RETROACTIVE APPLICATION. This Act does not relieve, alter,
28 or void a voluntary conveyance of an easement including an easement dedi-
29 cated by plat.

1 * Sec. 7. EFFECTIVE DATE. This Act takes effect immediately in accor-
2 dance with AS 01.10.070(c).
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

RAMPART

ALASKA STATE PLANE COORDINATES
Y = 2,605,348.57
X = 540,248.87

ALASKA STATE PLANE COORDINATES
Y = 2,605,348.57
X = 540,248.87

UNSUBDIVIDED

NO. 1
R-1A

272" BRASS CAP MONUMENT
0.8' BELOW PAVEMENT
LAST DIGIT OF DATE UNREACHABLE

ORTH AUG 1974
NO. 1074-S
2074-S
1974

EXISTING 2" IRON POST
8" ABOVE GROUND, IDENTIFIED
BY ADJACENT PROPERTY OWNER
AS BEING HIS PROPERTY CORNER,
REPLACED WITH 3" BRASS CAP
ON A 2" X 30" PIPE FLUSH WITH
GROUND AND TAMPED.



LEGEND

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

ALASKA STATE PLANE COORDINATES (123)
Y = 2,602,746.50
X = 542,919.97

NOTES:

1. BASIS OF ORIGIN BEARING IS CITY OF ANCHORAGE GRID 2558. ALSO BLM PLAY OF SEC 15 (1 27 89)
2. SOURCE FOR ALASKA STATE PLANE COORDINATES IS CITY OF ANCHORAGE HORIZONTAL CONTROL DATA BOOK, POINTS 123 AND 124.
3. 5/8" X 3" REBAR SET ON ALL EXTERIOR CORNERS UNLESS OTHERWISE NOTED.
4. ALL CORNER TIES ARE IN M.V.L. PLD BOOK NO. 74-056.
5. RR DENOTES NON-RADIAL LOT LINES.
6. ALL EASEMENTS ARE UTILITY EASEMENTS.
7. HUD AND TACK SET ON ALL INTERIOR CORNERS UNLESS OTHERWISE NOTED.

74-177
Approved
August 28 74
C. W. RAIN

ACCEPTANCE OF DEDICATION BY GARB

THE BOROUGH _____ HEREBY ACCEPTS FOR PUBLIC USES AND FOR PUBLIC PURPOSES THE REAL PROPERTY DEDICATED ON THIS PLAY INCLUDING, BUT NOT LIMITED TO THE EASEMENTS, RIGHTS-OF-WAY, ALLEYS, ROADWAYS, THROUGHFRAMES, AND PARKS SHOWN HEREON, DATED AT ANCHORAGE, ALASKA, THIS

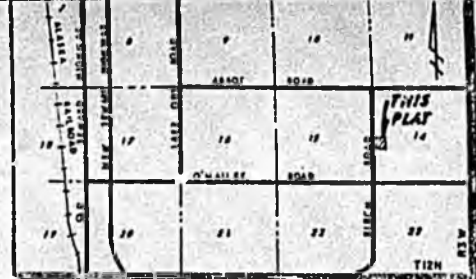
28th DAY OF AUGUST, 1974

ATTEST:

William Collins CITY CLERK OR BOROUGH CLERK
John A. Rain CITY MANAGER OR BOROUGH MAYOR

CURVE SCHEDULE

NO.	DELTA	RADIUS	LENGTH	TANGENT	CHORD	CHORD BEING	NO.
1	78°56'00"	20.00	21.28	15.18	74.49	37°41'00"E	1
2	104°38'00"	20.00	36.48	25.83	31.83	25°19'01"W	2
3	15°38'12"	640.00	128.06	84.71	127.78	88°18'23"W	3
4	15°27'30"	640.00	128.84	83.71	126.55	355°07'02"W	4
5	0°52'18"	640.00	9.00	4.50	9.00	347°54'26"W	5
6	28°00'00"	618.00	261.68	128.40	249.18	361°25'59"W	6
7	10°01'18"	480.00	85.71	47.98	85.80	370°25'20"W	7
8	17°50'48"	480.00	152.83	76.94	152.01	358°29'17"W	8
9	45°00'00"	130.00	102.10	52.85	99.50	324°55'59"W	9
10	68°27'43"	50.00	69.74	34.02	58.25	313°20'01"W	10
11	11°27'20"	60.00	76.32	47.83	69.12	322°49'49"E	11
12	10°30'38"	60.00	74.62	46.23	67.88	370°41'12"E	12
13	84°1'31"	60.00	75.99	45.65	67.43	314°27'53"W	13
14	31°02'04"	60.00	27.10	13.69	28.77	341°20'07"E	14
15	21°37'25"	155.00	56.50	29.80	58.15	332°37'17"W	15
16							16



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 PLAY, SHOWING SUCH EASEMENTS FOR PUBLIC UTILITIES, ROADWAYS AND ALLEYS DEDICATED TO 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: August 20, 1974

Henry J. Orth KATHERINE ORTH
HENRY J. ORTH KATHERINE ORTH
BOX 10108 SANE
KLATY STATION
ANCHORAGE, ALASKA 99500

NOTARY'S ACKNOWLEDGEMENT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DAY OF August, 1974
Barbara J. Smith Mayor 9, 1978
NOTARY FOR ALASKA BY COMMISSION EXPIRES

PLAT APPROVAL

PLAT APPROVED BY THE BOROUGH PLATTING AUTHORITY THIS 28th DAY OF AUGUST, 1974
John A. Rain
AUTHORIZED OFFICIAL

SURVEYOR'S CERTIFICATE

I, *Leon A. Stevens*, PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THIS PLAY 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 BUNKED, 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

PLAT OF
ORTH SUBDIVISION

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

CONTAINING 9.976 ACRES AND 7 LOTS
HEWITT V. LOUNSBURY & ASSOCIATES
DRAFTER - PLANNER - SURVEYOR

ANCHORAGE	ALASKA
DATE: AUGUST 1974	SCALE: 1" = 100'
DRAWN: COMP. TECH	SHEET: 1 OF 1
CHECKED: A.S. FO. 84.1 N-058	GRID: 2558

S-3397

14-0464
Moen
2/1/85 ✓

1 IN THE SENATE

BY COGHILL

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

* Sec. 7. RETROACTIVE APPLICATION. This ^{Act}~~section~~ 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).

1 IN THE SENATE

BY COGHILL

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

10 * Section 1. LEGISLATIVE PURPOSE AND FINDING. The purpose of this Act
11 is to release certain highway rights-of-way claimed by the state that are
12 causing economic hardship and physical and mental distress to persons who
13 hold title to land under a patent ^{Excludes successors?} containing a reservation ^{no reservation in patents} to the state by
14 virtue of 33 Stat. 616 (Act of January 27, 1905); 47 Stat. 446 (Act of
15 June 30, 1932); 48 U.S.C. secs. 321(a) - 327 (Act of July 24, 1947); Public
16 Land Order 601, 14 Fed. Reg. 5048 (1949); Public Land Order 757, 16 Fed.
17 Reg. 10, 749 (1951); Public Land Order 1613, 23 Fed. Reg. 2376, 2378
18 (1958); and Departmental Order 2665, 16 Fed. Reg. 10, 752 (1951).

19 * Sec. 2. RELINQUISHMENT OF RIGHT-OF-WAY. (a) The commissioner of the
20 Department of Transportation and Public Facilities shall ^{on the behalf of St. of AK} vacate and
21 ~~any~~ ^{any and all} relinquish ^{the} the rights-of-way for a road, roadway, highway, tramway, trail,
22 bridge, or appurtenant structure created, withdrawn or reserved under 33
23 Stat. 616 (Act of January 27, 1905); 47 Stat. 446 (Act of June 30, 1932);
24 48 U.S.C. secs. 321(a) - 327 (Act of July 24, 1947); Public Land Order 601,
25 14 Fed. Reg. 5048 (1949); Public Land Order 757, 16 Fed. Reg. 10, 749
26 (1951); Public Land Order 1613, 23 Fed. Reg. 2376, 2378 (1958); ^{or} and Depart-
27 mental Order 2665, 16 Fed. Reg. 10, 752 (1951) if the right-of-way on the
28 effective date of this Act is not physically occupied by, ~~the roadway,~~
29 ~~shoulder, or ditching of a road,~~ roadway, highway, tramway, trail, bridge,

1 or appurtenant structure.

2 (b) ~~The provisions of (a) of this section relinquish and release to~~
3 ~~(the adjoining property owners on the effective date) of this Act) that per-~~
4 ~~tion of the right-of-way claimed, asserted or used by the state that is not~~
5 ~~physically occupied by the roadway, shoulder, or ditching of the roadway~~
6 ~~before the effective date of this Act.~~

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

11 * Sec. 4. PHYSICAL OCCUPATION OF RIGHT-OF-WAY. (a) The provisions of
12 this Act do not divest the state of ^{its interest in ~~a~~ right-of-way} ~~title~~ to land or require compensation
13 by the state for land physically occupied on the effective date of this Act
14 by ~~the roadway, shoulder, or ditching of~~ a road, roadway, highway, tramway,
15 trail, bridge, or appurtenant structure then constructed within the right-
16 of-way created, withdrawn, or reserved under the Acts of Congress and the
17 orders described in sec. 2 of this Act. ^{Nor do the provisions of this Act divest the state of}
18 ^{any interest in an easement of specific width}
^{set forth in the original patent from the state or}
^{federal government}

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

27 * Sec. 5. DEFINITION. As used in this Act, "physically occupied" ~~by the~~
28 ~~roadway, shoulder, or ditching~~ means the construction of the actual road-
29 ~~way, shoulders, or ditching~~ ^{(including its shoulders and ditching), highway, tramway, trail, bridge, or appurtenant structure}
before the effective date of this Act.

* Sec. 6. RETROACTIVE APPLICATION. This section does not relieve ~~a~~

alter or void any voluntary conveyance of any easement
including easements dedicated by plat

1 person from an act for which the person may be responsible regarding a past
2 transfer of a right-of-way or an interest in a right-of-way.

3 * Sec. 7. EFFECTIVE DATE. This Act takes effect immediately in accor-
4 dance with AS 01.10.070(c).

5
6 Federal Lands
7 2(d)
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

M E M O R A N D U M

To: Senator Coghill
From: John Manly
Date: February 20, 1985
Re: People for today's hearing

For the hearing this afternoon on SB 141, relenquishing certain State highway rights-of-way, we are expecting participation by the following individuals:

Clif Groh, Counsel for the Alaska Land Title Association
Commissioner Dick Knapp, DOT/PF
Barry Moorehead, Federal Highway Administration
~~Oscar Beasley, Counsel for First American Title~~
Eric Everbach, Counsel for Tycor
Michael Condon, an associate of Clif Groh
Michael Price, an associate of Clif Groh
Jack McGee, of the Attorney General's office
Ned Fahrquar, Department of Natural Resources
Ted Moore, Security Title in Anchorage
Tom Leighow, Alaska Title Guaranty in Anchorage

(a) Notwithstanding any other provision of law, a ^e person who holds title to land conveyed in a patent issued by the United States which is or may be effected by a right-of-way or easement authorized by

[INSERT PLOs, etc]

may, before January 1, 1990, apply to the department of transportation and public facilities for relinquishment of all or a portion of the right-of-way or easement.

(b) A person who applies for relinquishment of a right-of-way or easement or a portion of a right-of-way or easement, ^{under (a) of this section} shall apply on a form approved by the department, and shall submit a copy of the patent that conveyed the land ^{effected by the} adjacent to the right-of-way or easement, and a plat of the land showing the right-of-way or easement and indicating that portion of the right-of-way or easement the person is requesting the State to relinquish.

(c) ^{Within 120 days of} ~~Upon~~ receipt of an application for relinquishment of a right-of-way or easement, ^{under (a) of this section,} the commissioner of transportation and public facilities shall decide ~~within 120 days~~ whether or not the right-of-way or easement or a portion of it shall be relinquished. The commissioner shall consider the provisions of the patent; the federal laws, public land orders and departmental orders effecting the patent; the existence of improvements within the right-of-way or easement before the effective date of this Act; projected or anticipated public use of the right-of-way or easement; and any other information pertinent to the public or private usage of the land.

(d) If the commissioner determines that a public need does not exist, he shall convey the right-of-way or easement or a portion thereof to the applicant if the applicant is the rightful holder of title to the adjoining property.

(e) If the commissioner determines that a public need for the right-of-way or easement continues to exist and that the State will therefore not relinquish its rights, the commissioner shall notify the applicant of the decision by mail and shall state the reasons supporting the denial. A person whose application has been denied under this section may reapply after a period of two years has elapsed after the date of denial.

(f) If the commissioner fails to make a determination on an application under (a) of this section before 120 days has elapsed, the applicant may record a claim of _____ at the ~~appropriate~~ recorder's office ^{serving the} in which the patented land is located. ^{district}

THE FOLLOWING DOCUMENT HAS
NOT BEEN FILMED BUT IS
AVAILABLE IN THE ORIGINAL
FILE

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman



POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senator Jan Faiks - Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

Senate Committee on Transportation

MEMORANDUM

To: Committee Members
From: Committee Staff *jm*
Date: March 6, 1985
Re: Background material for SB 141

This afternoon at 3:30 the committee will consider SB 141, relinquishing certain rights-of-way of the State. As you will recall, this bill was scheduled for a hearing two weeks ago, and was removed from the committee's calendar at the request of its proponents.

Included with SB 141 in today's packet are the following materials, some of which are duplicative of information you received last time:

- A proposed committee substitute, which takes the approach of, rather than relinquishing all the rights-of-way, requiring instead that the State compensate for the portions of right-of-way they use, as if they had been relinquished.
- The proponents' summary of the issue, and committee staff synopsis of the problem.
- Relevant Federal Acts of 1947 and 1970.
- Two federal patents, dated 1952 and 1955, and a subdivision plat of land patented by the 1952 patent.
- A list of the identified highways effected by this issue.
- DOT/PF fiscal note and bill analysis that the cost to the State would be \$227 million annually, and that DOT/PF would rather settle the cases on an individual basis.
- Federal Highway Administration bill analysis that the federal government could not participate in repurchasing the relinquished rights of way.
- Attorney General's opinion that the bill would violate several provisions of the Alaska Constitution.

MEMORANDUM RE HOUSE BILL
TO RELINQUISH RIGHTS-OF-WAY

Alaska achieved statehood twenty-five years ago. Before statehood the Department of Interior, through certain Public 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.