

**ALASKA STATE LEGISLATURE  
HOUSE COMMUNITY AND REGIONAL AFFAIRS  
STANDING COMMITTEE**

March 5, 2002  
8:10 a.m.

**MEMBERS PRESENT**

Representative Kevin Meyer, Co-Chair  
Representative Carl Morgan, Co-Chair  
Representative Andrew Halcro  
Representative Drew Scalzi  
Representative Lisa Murkowski  
Representative Gretchen Guess  
Representative Beth Kerttula

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 474

"An Act relating to public rights-of-way and easements for surface transportation affecting the Anchorage Coastal Wildlife Refuge."

- HEARD AND HELD

**PREVIOUS ACTION**

BILL: HB 474

SHORT TITLE: ANCHORAGE COASTAL WILDLIFE REFUGE

SPONSOR(S): REPRESENTATIVE(S) GREEN

Jrn-Date	Jrn-Page		Action
02/19/02	2315	(H)	READ THE FIRST TIME - REFERRALS
02/19/02	2315	(H)	CRA, RES
03/05/02		(H)	CRA AT 8:00 AM CAPITOL 124

**WITNESS REGISTER**

REPRESENTATIVE JOE GREEN  
Alaska State Legislature  
Capitol Building, Room 404  
Juneau, Alaska 99801

POSITION STATEMENT: Testified as the sponsor of HB 474.

LAURA ACHEE, Staff  
to Representative Joe Green  
Alaska State Legislature  
Capitol Building, Room 404  
Juneau, Alaska 99801

POSITION STATEMENT: Testified on behalf of the sponsor of HB 474, Representative Green.

MARGARET KLATT  
530 Oceanview Drive  
Anchorage, Alaska 99515

POSITION STATEMENT: Urged the committee to support HB 474.

[LORVEL] SHIELDS  
2140 Shore Drive  
Anchorage, Alaska 99515

POSITION STATEMENT: Urged the committee to pass HB 474.

WAYNE PICHON, Secretary  
Bayshore/Klatt Community Council  
2726 Diligence  
Anchorage, Alaska 99515

POSITION STATEMENT: Urged the committee to get [ACWR] under legislative oversight.

PHIL WRIGHT  
2710 Diligence Circle  
Anchorage, Alaska 99515

POSITION STATEMENT: Testified in support of HB 474.

MIKE DOWNING, Director/Chief Engineer  
Division of Statewide Design & Engineering Services  
Department of Transportation & Public Facilities  
3132 Channel Drive  
Juneau, Alaska 99801-7898

POSITION STATEMENT: Testified on HB 474.

CHIP DENNERLIN, Director  
Juneau Office  
Division of Habitat and Restoration  
Alaska Department of Fish & Game  
333 Raspberry Road  
Anchorage, Alaska 99518-1579

POSITION STATEMENT: Testified on HB 474.

**ACTION NARRATIVE**

TAPE 02-12, SIDE A  
Number 0001

CO-CHAIR KEVIN MEYER called the House Community and Regional Affairs Standing Committee meeting to order at 8:10 a.m. Representatives Meyer, Scalzi, Murkowski, and Guess were present at the call to order. Representatives Morgan, Halcro, and Kerttula arrived as the meeting was in progress. [Minutes pertaining to the overview from the Alaska Department of Environmental Conservation low-sulfur diesel sulfur fuel requirements can be found under the 9:08 a.m. minutes for the same date.]

HB 474-ANCHORAGE COASTAL WILDLIFE REFUGE

CO-CHAIR MEYER announced that the first order of business before the committee would be HOUSE BILL NO. 474, "An Act relating to public rights-of-way and easements for surface transportation affecting the Anchorage Coastal Wildlife Refuge."

REPRESENTATIVE JOE GREEN, Alaska State Legislature, testified as the sponsor of HB 474. Representative Green began by informing the committee that [the Anchorage Coastal Wildlife Refuge (ACWR)] is an area located on the southwest side of Anchorage in an area that is shielded by Fire Island. In the triangle between Fire Island and the coast from about Point Woronzof to the rifle range is a shielded area that represents a unique salt water environment that the state put aside as a wildlife refuge. This legislation, HB 474, deals with that small portion, about six miles, of coastline.

Number 0221

LAURA ACHEE, Staff to Representative Joe Green, Alaska State Legislature, testified on behalf of the sponsor, Representative Green. She reiterated that this area is a unique area, which is why the legislature chose to make it into a refuge. This legislation, HB 474, requests that final authority over any easements or transportation rights-of-way be granted to the body that created ACWR, the legislature.

Number 0293

REPRESENTATIVE MURKOWSKI referred to the January 3, 2001, minutes of the Bayshore/Klatt Community Council meeting, which

indicates that there will be a draft environmental impact study (EIS) that should be ready May 1, 2002. She inquired as to the status on that EIS; the minutes indicate that the final route will be included in the final EIS.

REPRESENTATIVE GREEN said, in regard to when the EIS would be ready, that the EIS would probably be done in May.

REPRESENTATIVE MURKOWSKI asked whether HB 474 is premature, if the routing will be determined in the EIS.

REPRESENTATIVE GREEN explained that there is a proposal to put a bike path through ACWR and thus the desire is to have the legislature, the group that created the refuge, [consider that proposal]. The EIS merely determines which of the three best [routes] would be the most expeditious to construct with the least environmental damage. Representative Green related his belief that coming in later and exercising authority would be a mistake. In further response to Representative Murkowski, he confirmed that the routes highlighted by gold, orange, and red on the map in the committee packet are the three routes being considered in the EIS.

Number 0555

REPRESENTATIVE GUESS related her understanding that there is also a "fuchsia" route that is a compromise route. Some believe that the fuchsia route is one that will go through and this process [HB 474] has a chance of not helping the aforementioned compromise. She explained that she garnered this understanding from an e-mail from someone in the area. Representative Guess inquired as to how many coastal wildlife refuges there are, and why is only ACWR returning to the legislature for easement review.

REPRESENTATIVE GREEN reiterated that ACWR is in a unique salt water environment as are the species that inhabit the area.

REPRESENTATIVE GUESS commented, "Isn't that uniqueness maybe even a better reason for us to stay out of it." She expressed her concern with this decision becoming political and not going through the process.

REPRESENTATIVE GREEN acknowledged that Representative Guess had a good point. He remarked, "Maybe it's better to keep everybody out of it, and that's why the legislature who created the ... refuge in the first place, should have final authority to see

if, in fact, that's really ... the best for that very unique area."

REPRESENTATIVE GUESS respectfully disagreed, and expressed the need to know why special legislation is necessary for this area.

Number 0791

REPRESENTATIVE HALCRO informed the committee that HB 474 is sort of a rebirth of HB 131. This is a contentious issue that began back in 1998. At that time, there was tremendous concern by Rick Sinnott, Wildlife Biologist, Alaska Department of Fish & Game (ADF&G), regarding the impacts of any formal incursions in this area. Representative Halcro informed the committee that Mr. Sinnott was quieted on this issue. Representative Halcro commented that this has already become a political issue, especially when Governor Knowles announced where he wanted the trail. He said he feels that shifting this issue from the local responsibility to ADF&G, makes it political. Representative Halcro turned to Representative Guess' questions and echoed earlier comments that ACWR is a sensitive area that is abutted by many homes and private property.

REPRESENTATIVE GREEN recalled that during the period when the municipality determined that it might want a bike trail through the area, the governor said that it was a municipal issue. However, later the governor decided that the issue is a state issue over which he has control.

CO-CHAIR MEYER asked whether the representatives from Anchorage are still involved or is this a state issue now.

MS. ACHEE answered that it's completely a state issue.

REPRESENTATIVE GUESS disagreed, and said she believes that is what the committee is here to decide. If HB 474 is passed, it will become a state issue.

MS. ACHEE informed the committee that the Anchorage Daily News ran an article that said that in December 2000 the governor directed three state agencies to take over planning and direction of the trail and then removed the Municipality of Anchorage from the planning segment. Therefore, this issue has completely become a state issue at this point.

Number 1077

REPRESENTATIVE KERTTULA inquired as to whether an opinion from the Legislative Legal Services Division has been obtained in regard to having these approvals return to the legislature. Representative Kerttula noted that she wondered whether there are any separation of powers issues with rights-of-way issues. She said, "Maybe we can bar them altogether, but what I'm not sure of -- I know you can't do it with regulation because of the A.L.I.V.E. Voluntary case, but what I don't know is whether you know by statute we can do it."

REPRESENTATIVE GREEN reiterated that HB 474 is a rewrite of HB 131, which passed both bodies and was vetoed by the governor. Therefore, he related his belief that the legal review has occurred, and that legislative review can occur.

REPRESENTATIVE KERTTULA inquired as to whether the veto letter mentioned that.

MS. ACHEE recalled that it wasn't mentioned in the veto letter.

REPRESENTATIVE KERTTULA expressed her belief that it is an issue worth reviewing.

Number 1277

MARGARET KLATT testified via teleconference. She said that the proposed extension of the ACWR is a demonstration of Alaskan politics at its worst. She said:

It appears that a group of municipal and state officials with a consultant from the private sector has misdirected an entire process so that results would benefit its own special interest. This offensive process has created extreme polarization in our community, has ... raised state and federal expenditures to exorbitant amounts, and has destroyed trust and faith in governmental processes.

MS. KLATT remarked that during her three years of involvement with public meetings regarding ACWR extension, the municipality, the Alaska Department of Transportation & Public Facilities, and HDR [Alaska, Inc.] have focused on the promotion of a route located below the coastal bluff. This is occurring, even when the guidelines indicate that all routes are to be considered, including no route. However, the other options were dismissed. Additionally, a new route was recently submitted by Chip Dennerlin, Alaska Department of Fish & Game. This route was

submitted after public comment was no longer allowed. This new route is the latest route that is supported by the municipality. Ms. Klatt informed the committee that members of the community who didn't agree with the municipality's chosen route were poorly treated.

MS. KLATT noted that she has contacted people in the municipality, the Federal Highway Administration, the [Anchorage] Assembly members, and the legislature. She said, "As of today, I have received no explanation for what appears to be a costly, unethical, and perhaps illegal process which gives lip service to public testimony and federal project guidelines." She pointed out that the cost of this project has increased from \$300,000 to \$2.2 million and still no design or solid plan exists. Clearly, this is a faulty process that needs to be stopped. Therefore, Ms. Klatt urged the committee to support HB 474 because it requires legislative oversight.

Number 1412

[LORVEL] SHIELDS testified via teleconference. Mr. Shields informed the committee that he has a doctorate in biology, with expertise in ecology and animal behavior. He also informed the committee that he has lived on the on the bluff overlooking ACWR for about 13 years and has spent innumerable hours leading field trips in the refuge. Furthermore, Mr. Shields noted that he is a hard core bicyclists and thus makes extensive use of the Anchorage trail system. Mr. Shields highlighted the fact that for the last five years he has served as the elected representative for the Bayshore/Klatt Community Council on coastal wildlife refuge issues and thus has attended hundreds of hours of public meetings concerning the route of the proposed southern extension of the Anchorage trail system. Mr. Shields said, "What I saw was a cabal compromised of engineering firms, the City of Anchorage, ADOT [Alaska Department of Transportation & Public Facilities], and other representatives of the executive branch of the Alaska State government." He was sure that each entity had its own agenda. For example, the engineering companies wanted the contracts. Furthermore, the City of Anchorage wanted the trail in spite of the fact that it can't maintain its current trails. "The end product of this grouping was, and continues to be a concerted, collective effort to get the trail built with virtually no regard to the biological worth of this rare salt marsh ecosystem or the cost of this project," he charged.

MR. SHIELDS said that although he doesn't know the outcome, he does know that ACWR is a state refuge that doesn't belong to engineering firms, the City of Anchorage, ADOT, or even the governor. The ACWR belongs to the citizens of the state. "And what happens at any state refuge is important to all Alaskans," he stated. For example, a few years ago spring arrived late and a fly-over census by ADF&G found that approximately 1,500 snow geese, 10,000 Canadian geese, and too many ducks to count were waiting in the ACWR. These animals sustained themselves in the refuge for about ten days because ACWR is an intact and thriving ecosystem. Mr. Shields urged the committee to pass HB 474.

Number 1572

WAYNE PICHON, Secretary, Bayshore/Klatt Community Council, testified via teleconference. He informed the committee that he has advanced degrees in wetlands ecology, and is co-author of the original Anchorage wetlands plan as well as co-author of wetlands of Potter Marsh. Mr. Pichon announced that the Bayshore/Klatt Community Council endorses HB 474. However, he questioned why "we" are here. He explained that two years ago the legislature passed HB 131, which was similar to HB 474. The governor vetoed HB 131 saying he felt that the legislature had no business interfering with a local public process. "Our belief is that we want your legislative oversight into a process that has been anything but public, and, in our view, has been flawed from the inception," he emphasized. He noted that the project team was repeatedly advised that it was facing a collision course with the wishes of the residents. Even in the face of obvious federal law, [the project team] persisted. He pointed out that the costs for the preliminary planning has skyrocketed by 633 percent, and still the project team persists.

MR. PICHON noted that some would want you to believe that this is an Anchorage-only issue, while others would claim that the legislature has no business being involved in a local decision. "Why, then, did the state [take] control of the project from the municipality," he asked. He highlighted the point that the refuge is a state refuge not a municipal refuge. "Could it be that those who want to build in the refuge do not want to expose the soft underbelly of an out-of-control process," he asked. He also questioned why it was necessary for three community councils in the effected area to have to come forward with a route they preferred over the routes submitted by the project team and consultant. Mr. Pichon urged the committee to get [ACWR] under legislative oversight.

REPRESENTATIVE MURKOWSKI returned to the timing of the draft EIS and inquired as to whether Mr. Pichon had an update on that.

MR. PICHON noted that in talking with Mr. Childress, Alaska Department of Transportation & Public Facilities, he understood that the draft EIS is still on track for May.

Number 1809

PHIL WRIGHT testified via teleconference in support of HB 474. Mr. Wright recommended that the committee consider the cost to build and maintain a trail located below the bluff, especially in light of the aforementioned seven-fold increase in the amount to study the trail. He informed the committee that ADF&G has recommended a screened board walk raised on ten foot pilings with camouflage. Furthermore, this board walk would be closed April through August in order to protect nesting. "Is there a reason to believe this won't take the cost to a proportionate seven-fold increase," he questioned. He relayed his recent understanding that maintenance on the existing coastal trail for an area at or around the marsh is estimated at \$500,000 to maintain one-third of a mile of trail. Therefore, extension of that to 13 miles of trail would result in a \$6.5 million maintenance bill not provided for under any DOT&PF funds he was aware of. Mr. Wright felt that the cost of the trail on pilings could easily grow proportionately to a total of \$144 million of which \$14.4 [million] would have to come from Alaskans. In these times of budget constraints, Mr. Wright didn't believe such spending for a trail would be well-received by taxpayers.

MR. WRIGHT, in response to Representative Murkowski, confirmed that one of the studies from ADF&G recommended that the trail be closed from April to August.

Number 1991

MR. PICHON turned to the fuchsia route, which some have characterized as a compromise. He stressed that the fuchsia route is a compromise in the view of one or two individuals. From discussions with the individual biologists involved and the others who would review and do the permitting, the fuchsia route isn't all that some would lead you to believe. Individual biologists have said that the minimum acceptable [trail] would be elevated and would be closed during the peak periods of nesting and brooding. "The concern, though, is not just whether the trail is closed or not. The whole concern is how do you even build it down there, without severely impacting the

hydrology of that area," he asked. He noted that studies he performed in the early 1970s, which were [supported] by studies done in the 1990s, indicate that any surface construction in the area would disrupt the vegetation pattern. Therefore, the animals that people want to view will be driven out.

Number 2127

MIKE DOWNING, Director/Chief Engineer, Division of Statewide Design & Engineering Services, Department of Transportation & Public Facilities, related his belief that there seems to be a substantial degree of misunderstanding of the facts. Mr. Downing informed the committee that his division performs project development. Two considerations of this project is that this project began five-and-a-half years ago and \$2.1 million has been spent. That illustrates the difficulty of such a project, and the amount of public input and analysis that goes into an EIS. This [EIS] is under [the department's] merged process that is an agreement with DOT&PF, the state and federal resource agencies, and the Federal Highway Administration. Under this agreement, the environmental process/document is combined with permitting. It is referred to as the NEPA [National Environmental Policy Act of 1969] 404 merger agreement. That agreement includes steps for concurrence. Although one of the first steps of concurrence has been achieved, there isn't concurrence on the range of alternatives. Alternatives are still being developed. After the development of those alternatives there will be another round of public comment. Public comment will also be received on the U.S. Corps of Engineers' 404 permit, as well as the final environmental document. Therefore, much more public comment will be heard.

MR. DOWNING explained that this process began as a locally sponsored project under the Anchorage Metropolitan Area Transportation Study (AMATS), to which the department responded. He noted that the department will continue to respond whether HB 474 passes or not. The schedule is to put out a draft EIS for public comment in mid-April with a final EIS projected for mid-September.

Number 2312

REPRESENTATIVE MURKOWSKI related her understanding that Mr. Downing is suggesting that there are more alternative routes than shown on the map included in the committee packet. And those other alternative routes will be included in the EIS that is produced in mid-April. She said she also understood that the

final route won't be chosen until after all the public comment is completed in September.

MR. DOWNING replied yes. The draft EIS will come out in April, following concurrence by the resource agencies in regard to the range of alternatives. In further response to Representative Murkowski, Mr. Downing acknowledged that the department is working with ADF&G to develop the fuchsia route, which is different than the red route.

REPRESENTATIVE MURKOWSKI expressed her curiosity in regard to where the fuchsia route would go.

MR. DOWNING noted that the [fuchsia route] is designed to minimize the impact on habitat, while creating the best experience for the trail user. Much of [the choice of route] is driven by the habitat issues. Therefore, Mr. Downing deferred to Mr. Dennerlin.

Number 2442

CHIP DENNERLIN, Director, Juneau Office, Division of Habitat and Restoration, Alaska Department of Fish & Game, noted that he didn't design the fuchsia route, nor does he work for the municipality. However, he informed the committee of his long-time association with the trail and the refuge due to living on the bluff in the past. Furthermore, he noted that he was the State Parks Director and helped put the land agreement together to protect the rifle range during the Hammond Administration. Mr. Dennerlin also noted that he is a hunter and has harvested 12 species off of the ACWR, and is an avid bird watcher, and has walked and skied nearly all of the trail. He agreed that ACWR is a gem.

MR. DENNERLIN turned to the time when he took his position, and mentioned the frustration with the deadlock over the trail. However, he acknowledged that there are many legitimate issues from all perspectives. Mr. Dennerlin recalled past discussions over boundaries, and related his belief that people didn't really listen to each other. Furthermore, he said he didn't believe that a clear set of principles had been established. Therefore, he had DOT&PF, the consultants, ADF&G, and the municipality come together to outline a clear set of principles for the trail. He indicated that those principles were to connect people to the coast and provide people with a sense of place that is consistent with the adopted plans of the refuge. He explained that a trail can be placed in a refuge if it

doesn't damage sensitive populations. The desire is to provide people with the opportunity to experience the area while protecting wildlife corridors and movement. There was also the desire to determine whether existing infrastructure could be utilized rather than impacting neighborhoods. Also, the users were defined, and it was realized that the users aren't one group.

Number 2734

MR. DENNERLIN turned to the new alternative route that was developed. He explained that the [working group team] is recommending a more coastal plan in order that it be placed on the list of viable alternatives in substitution of the orange route. Mr. Dennerlin announced, "Somebody else might permit the orange route, but it won't be me." There are sections of the orange route that aren't acceptable. He then turned to the "4-F" issue, which is a test regarding whether a transportation facility can be built inside the boundaries of protected lands. To that Mr. Dennerlin said such could be built, "for a purpose," he stressed. Therefore, legislatively protected land can't be used as the convenient venue for a transportation project that isn't integral to the place, or where the character of the place isn't part of the experience that is trying to be conveyed. The 4-F is designed to prevent convenient misuse. Mr. Dennerlin related his belief that the [fuchsia] route is one that the 4-F is designed to direct people to focus on.

TAPE 02-12, SIDE B

MR. DENNERLIN mentioned connecting green belt easements and existing infrastructure. He also mentioned that [the fuchsia route] would direct people out of the most sensitive coastal sections. There is also the possibility of creating spurs for lookouts on the trail. "We think we can do a route that is much more sensitive to the refuge. There will be ... specific design issues to work out ..., but I think this new board walk will be able to be engineered without many bells and whistles, making it much more reasonable," he explained. Mr. Dennerlin expressed his hope that [the fuchsia route] will receive much public support. In closing, Mr. Dennerlin thanked the committee for its concern regarding any intrusion into state critical habitat areas and refuges.

CO-CHAIR MEYER asked if Mr. Dennerlin and Mr. Downing would be available to return for further testimony on HB 474.

MR. DENNERLIN said he would be able to return. He acknowledged the frustration in the testimony and noted that it is trying to be addressed.

MR. DOWNING informed the committee that there is design funding and environmental document funding for this project; however, there is no construction funding. In order to obtain construction funding, the AMATS policy council will have to choose this project as something it wants to fund. Then the project would move on to the Anchorage Assembly for approval of the Transportation Improvement Plan (TIP), after which it would go to the legislature for funding for the construction appropriation. Under the NEPA process, the selection of alternatives takes place in the public arena. During that public process, the legislature can determine it's not going to do it but the public process can't be directed and [can't] use federal funds to build.

Number 2771

MR. DENNERLIN remarked that the change in direction of this process is not a political football. There were some on the TRAAK [Trails and Recreation Access for Alaska] board that believed that the fundamental issues of this trail were going to be issues regarding users, such as hunting and wildlife management. However, hunting and wildlife management aren't included in the Anchorage charter. Therefore, the municipality is unsuited to address several of the fundamental issues and thus the TRAAK board recommended that the state departments come together in a team approach.

CO-CHAIR MEYER announced that HB 474 would be held.

#### **ADJOURNMENT**

There being no further business before the committee, the House Community and Regional Affairs Standing Committee took an at-ease at 9:06 a.m. in order to hear an overview from the Department of Environmental Conservation regarding low sulfur diesel fuel requirements. [The minutes pertaining to the aforementioned overview can be found under the 9:08 a.m. minutes for the same date.]