

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

March 25, 2016

1:01 p.m.

MEMBERS PRESENT

Representative David Talerico, Co-Chair
Representative Bob Herron
Representative Craig Johnson
Representative Paul Seaton
Representative Andy Josephson
Representative Geran Tarr

MEMBERS ABSENT

Representative Benjamin Nageak, Co-Chair
Representative Mike Hawker, Vice Chair
Representative Kurt Olson
Representative Mike Chenault (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 213

"An Act requiring the commissioner of natural resources to make specific, detailed written findings before restricting or prohibiting a traditional means of access to state land, water, or land and water for a traditional outdoor activity; and requiring certain public notice of a proposed restriction or prohibition of a traditional means of access to state land, water, or land and water for a traditional outdoor activity."

- HEARD & HELD

HOUSE BILL NO. 247

"An Act relating to confidential information status and public record status of information in the possession of the Department of Revenue; relating to interest applicable to delinquent tax; relating to disclosure of oil and gas production tax credit information; relating to refunds for the gas storage facility tax credit, the liquefied natural gas storage facility tax credit, and the qualified in-state oil refinery infrastructure expenditures tax credit; relating to the minimum tax for certain oil and gas production; relating to the minimum tax calculation for monthly installment payments of estimated tax; relating to interest on monthly installment payments of estimated tax; relating to limitations for the application of tax credits;

relating to oil and gas production tax credits for certain losses and expenditures; relating to limitations for nontransferable oil and gas production tax credits based on oil production and the alternative tax credit for oil and gas exploration; relating to purchase of tax credit certificates from the oil and gas tax credit fund; relating to a minimum for gross value at the point of production; relating to lease expenditures and tax credits for municipal entities; adding a definition for "qualified capital expenditure"; adding a definition for "outstanding liability to the state"; repealing oil and gas exploration incentive credits; repealing the limitation on the application of credits against tax liability for lease expenditures incurred before January 1, 2011; repealing provisions related to the monthly installment payments for estimated tax for oil and gas produced before January 1, 2014; repealing the oil and gas production tax credit for qualified capital expenditures and certain well expenditures; repealing the calculation for certain lease expenditures applicable before January 1, 2011; making conforming amendments; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 213

SHORT TITLE: RESTRICT ACCESS ST. LAND; FINDINGS; NOTICE

SPONSOR(S): REPRESENTATIVE(S) TILTON

01/19/16	(H)	PREFILE RELEASED 1/8/16
01/19/16	(H)	READ THE FIRST TIME - REFERRALS
01/19/16	(H)	RES
02/10/16	(H)	RES AT 1:00 PM BARNES 124
02/10/16	(H)	<Bill Hearing Canceled>
03/25/16	(H)	RES AT 1:00 PM BARNES 124

WITNESS REGISTER

REPRESENTATIVE CATHY TILTON

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 213, presented the bill as prime sponsor.

HEATH HILYARD, Staff

Representative Cathy Tilton

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: During the presentation of HB 213, answered questions on behalf of the prime sponsor, Representative Tilton.

ED FOGELS, Deputy Commissioner
Office of the Commissioner
Department of Natural Resources (DNR)
Juneau, Alaska

POSITION STATEMENT: Answered questions related to HB 213.

WARREN OLSON
Anchorage, Alaska

POSITION STATEMENT: Testified regarding HB 213.

MELVIN GROVE
Alaska Outdoor Access Alliance (AOAA)
Matanuska-Susitna

POSITION STATEMENT: Testified regarding HB 213.

ROBERT CAYWOOD
Chugiak, Alaska

POSITION STATEMENT: Testified regarding HB 213.

PATTI BARBER
Palmer, Alaska

POSITION STATEMENT: Testified regarding HB 213.

KENNY BARBER
Butte, Alaska

POSITION STATEMENT: Testified in support of HB 213.

ANDREW ZAJAC
Eagle River, Alaska

POSITION STATEMENT: Testified in support of HB 213.

RANDY BJORGAN
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 213.

ACTION NARRATIVE

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CO-CHAIR DAVID TALERICO called the House Resources Standing Committee meeting to order at 1:01 p.m. Representatives Seaton,

Josephson, Johnson, Herron, Tarr, and Talerico were present at the call to order.

HB 213-RESTRICT ACCESS ST. LAND; FINDINGS; NOTICE

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CO-CHAIR TALERICO announced that the only order of business is HOUSE BILL NO. 213, "An Act requiring the commissioner of natural resources to make specific, detailed written findings before restricting or prohibiting a traditional means of access to state land, water, or land and water for a traditional outdoor activity; and requiring certain public notice of a proposed restriction or prohibition of a traditional means of access to state land, water, or land and water for a traditional outdoor activity."

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The committee took a brief at-ease.

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REPRESENTATIVE HERRON moved to adopt the proposed committee substitute (CS) for HB 213, Version 29-LS0710\E, Bullard, 3/16/16, as the working document.

REPRESENTATIVE JOHNSON objected for discussion purposes and noted he would like to see a summary of the changes.

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REPRESENTATIVE CATHY TILTON, Alaska State Legislature, as the prime sponsor offered to provide testimony or go straight to the changes in the bill.

REPRESENTATIVE JOHNSON said he would like to hear the changes.

CO-CHAIR TALERICO requested Representative Tilton to describe what the bill does and then offer a summary of the changes.

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REPRESENTATIVE TILTON asserted that access to state land is a fundamental precept of the state's constitution within Article VIII, Sections 2-4, and perhaps the most relevant to this bill is Section 4 which states:

§ 4. Sustained Yield

Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

REPRESENTATIVE TILTON read her testimony as follows:

Members of the committee, this has been a tremendous week for Alaskans with the affirmation that we have the right to access our lands. First, the Supreme Court of the United States unanimously agreed with John Sturgeon's interpretation of ANILCA, and only two days ago, your own bill, Mr. Chairman, HB 216 passed the House unanimously, as well.

While not as broad as HB 216, HB 213 is another bill intended to confirm and clarify Alaskan's right to access Alaska's public land through traditional means. For nearly a decade, user groups have been in disagreement with the Department of Natural Resources over the management of the Rex Trail, up to and including a lawsuit that ultimately was decided by the Supreme Court. House Bill 213 was drafted to be specifically responsive to the points of law ruled in that case, which you have a copy in your packets. Mr. Chairman and members of the committee it is clearly the court's responsibility to interpret Alaska statutes, but it is our right, responsibility, and privilege to change the law when we observe it being used in a way that the legislature did not originally intend or envision.

Plainly stated, HB 21[3] requires the commissioner of Natural Resources to provide detailed written findings addressing specific points when restricting or prohibiting traditional means of access to state land. And it further requires the Department of Natural Resources to provide adequate public notice when such restrictions or prohibitions are adopted.

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REPRESENTATIVE JOSEPHSON asked whether Version E omits one key part of this bill and referred to AS 38.04.200(a)(1)(C)(ii), page 2, lines 12-15, which state:

(ii) a reasonable alternative for the traditional means of access across the land, water, or land and water for traditional outdoor activities on other land, water, or land and water is available and approved by the commissioner; or

REPRESENTATIVE JOSEPHSON noted that it appears to tell the commissioner that if he/she is blocking an entrance along a right-of-way due to a safety consideration, the commissioner had better find another means of access. In other words, this access will happen period. He asked whether his interpretation is incorrect.

REPRESENTATIVE TILTON deferred to her staff.

HEATH HILYARD, Staff, Representative Cathy Tilton, Alaska State Legislature, replied that the aforementioned interpretation of that provision is correct.

REPRESENTATIVE JOSEPHSON posited that if he is correct the bill should have something other than a zero fiscal note because it necessitates the building of trails.

MR. HILYARD responded that the fiscal note was prepared by the Department of Natural Resources (DNR), and apparently at this juncture DNR believes a fiscal note with a dollar appropriation is not needed.

CO-CHAIR TALERICO noted that in his district, DNR does not build a trail but does offer an alternate route.

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REPRESENTATIVE JOSEPHSON commented that clearly the design of this bill is to remove some power from DNR, which it has had for a long time, and give it to the legislature. He asked Mr. Fogels why DNR concluded there was a zero fiscal note.

ED FOGELS, Deputy Commissioner, Office of the Commissioner, Department of Natural Resources (DNR), answered that the Department of Natural Resources did not interpret this section to say the department had to build new trails, but rather the

department could not restrict for aesthetic values unless some conditions are met or that alternative access was already there. He reiterated that the department did not see a fiscal impact to itself on this because it typically does not restrict access for aesthetic values in any case on general state lands.

REPRESENTATIVE JOSEPHSON said his interpretation of sub-subparagraph (C)(ii) and subparagraph (D), page 2, lines 12-19, of the bill is that the department must participate in making another reasonable alternative available. He asked what Mr. Fogels interprets these provisions to mean.

MR. FOGELS responded that if DNR is embarking on restricting traditional means of access for aesthetic values then DNR must ensure that alternative access is available before making the restriction. In the event there isn't, the department may be prohibited under the statute from making that restriction. The department is certainly not in a position to build new trails without a capital appropriation from the legislature or a specific funding source, he pointed out.

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REPRESENTATIVE HERRON asked whether the fiscal note is on Version E or the original Version W.

MR. FOGELS believed it is on Version W, but held it would be the same for Version E because the department's fundamental assumption is that the bill restricts the department from restricting traditional means of access in protecting aesthetic values. He reiterated that the department normally does not do that on general state land and, if it did, it certainly would seek public involvement and perform some sort of finding.

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REPRESENTATIVE SEATON referred to AS 38.04.200(a)(1), page 2, lines 1-2, of the bill, which states:

(1) commissioner makes specific, detailed written findings that the restriction or prohibition is

REPRESENTATIVE SEATON referred to AS 38.04.200(a)(1)(C), and (C)(i), page 2, lines 8-11, of the bill which state:

(C) necessary [(3)] for the protection of public safety and public or private property and

(i) affects only a traditional means of access on or across a state-improved or state-maintained way or easement; and

REPRESENTATIVE SEATON asked whether the department has full legal authority to restrict access for the protection of public safety and private property exclusive of this segment of the [proposed] statute.

MR. FOGELS responded that he believes so. The bill would restrict the department's ability to restrict access for aesthetic values. Therefore, in the event there was a trail where the department believed there were public safety concerns it would not be covered by this bill, in the department's interpretation, he said.

REPRESENTATIVE SEATON referred to the legal case and the Rex Trail, and noted it was not considered for aesthetic values but rather for public safety concerns determined by the court. Therefore, he pointed out, the department has perfect authority to restrict access to the Rex Trail which is one of the specific causes for this bill. He asked whether he was correct that the department could still close off access to that trail whether this bill is in place or not.

MR. FOGELS replied yes, that is DNR's interpretation in that it would be able to manage access on a trail, such as the Rex Trail, if it believed there was a public safety concern. He reiterated that the department's interpretation of this bill is that it only restricts the department from restricting access for protecting aesthetic values.

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REPRESENTATIVE SEATON asked whether DNR needs to make a different detailed finding if the department is restricting access for aesthetic values and public safety concerns, or whether it is one finding for both issues.

MR. FOGELS responded that the department performed public outreach and public notice before proposing a management regime for the Rex Trail, and there were findings involved in that. He offered to read the definition of aesthetic values under Title

38, which is specific and clearly different from the definitions of public safety or protection of resources.

MR. FOGELS referred to AS 38.04.200(b)(1), which states:

(1) "aesthetic values" means those values that exist as an expression of the social or cultural viewpoint held by a portion of the population;

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REPRESENTATIVE TARR distributed photographs to the committee, and referred to AS 38.04.200(b)(2), page 2, lines 23-27, of the bill, which state:

(2) "traditional means of access" means those types of transportation on, to, or in the state land, water, or land and water, for which a popular pattern of use has developed; the term includes flying, ballooning, boating, using snow vehicles, operation of registered and unregistered all-terrain vehicles up to 10,000 pounds, horseback riding, mushing, skiing, snowshoeing, and walking.

REPRESENTATIVE TARR related that she is trying to understand how Mr. Fogels was defining "all-terrain vehicles." In reading the articles about the Rex Trail, she said it appeared, initially, that the reason some of these vehicles were limited was due to causing significant damage from their size and causing deep ruts; another criticism was that the trail repair work hadn't taken place. She referred to the photographs she passed out and noted that a 10,000 pound vehicle is more like off-road vehicles with gigantic tires. She expressed her concern about the significant kind of damage that this size vehicle could do. She requested Mr. Fogels to explain, without the "up to 10,000 pounds" language, how he would define all-terrain vehicles and how adding that language would change his definition.

MR. FOGELS replied he is unsure he has the expertise in managing off-road vehicles to answer the question, and will check with his staff who do this work day-to-day and get back to the committee or have his staff go through it with the committee during the next hearing.

REPRESENTATIVE TARR said she would appreciate that and added that possibly she could email the photos in order to get a better understanding of the current status, how it is defined,

the [proposed] new definition, and what that might mean in terms of what is allowed so she could have a level of comfort that salmon streams would not be damaged or cause other damages.

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REPRESENTATIVE JOHNSON removed his objection, and advised that he googled a Jeep CJ7 and found it weighs approximately 4,900 pounds, so the discussion is about a vehicle twice that size.

REPRESENTATIVE TARR said it is unclear how that is being defined and she is trying to understand whether the 10,000 pounds becomes an issue.

MR. HILYARD offered that there are members of the user groups online who asked for the 10,000 pound provision. He opined that they were referring to larger snow track vehicles that will be much heavier, but actually have a lower displacement in terms of the width of the track.

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REPRESENTATIVE JOSEPHSON related that the more he looks at the bill the more he is put at ease that this is about aesthetics and the department doesn't regulate based on that. Although, he noted, in the event the committee adopts a new definition of traditional means of access, then the starting point without any other emergency regulations for all of these R.S. 2477 trails would be 10,000 pounds. In other words, the department would now have to intervene in the manner it did on the Rex Trail multiples of times if it found that 10,000 pounds created four-foot ditches, he said.

MR. FOGELS clarified that DNR has regulations that specify what are generally allowed uses on state lands. He read from the regulation that specifies what the generally allowed uses are anywhere on state lands regardless of what kind of trail or for what purposes: "Using a highway vehicle with a curb weight of up to 10,000 pounds, including a four-wheel drive vehicle and pickup truck using a recreational type vehicle off-road, or all-terrain vehicle with a curb weight of up to 1,500 pounds, including a snowmobile or other tracked vehicle, motorcycle, or ATV on or off an established road, easements," He explained that the regulation goes on and so he will provide the committee with a copy of the department's factsheet for generally allowed uses on state land.

REPRESENTATIVE JOSEPHSON confirmed the committee already has a copy of the regulations. He posited that in the Robert Caywood decision there is a more limiting regulation, 11 AAC 51.100(a), that applies to R.S. 2477 rights-of-way and which states:

(a) The commissioner has management authority over the use of any R.S. 2477 right-of-way that is not on the Alaska highway system. Certain land use actions on R.S. 2477 rights-of-way, including road construction, may require a permit under 11 AAC 96.010, or other authorization by the department. Based on a written determination by the commissioner, the commissioner will, in the commissioner's discretion, close or restrict the use of an R.S. 2477 right-of-way over which the commissioner has management authority in order to

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REPRESENTATIVE JOSEPHSON referred to the R.S. 2477 rights-of-way and asked whether the 11 AAC 51.100(a) regulation would have to be amended in the event the committee amended this statute.

MR. FOGELS replied he could not answer the question with any level of certainty. He reiterated that this statute only applies to restricting uses for aesthetic values, which the department does not generally do on general state land anyway.

REPRESENTATIVE JOSEPHSON advised that the aesthetic statute is AS 38.04.200, the changed definition is AS 38.05.945, so it appears that it falls under a broader definition that is used for traditional ... [Representative Josephson stopped talking and then told someone "You're right" and his testimony ended.]

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REPRESENTATIVE SEATON drew attention to AS 38.05.945(a)(7), page 3, lines 17-20, of the bill, which states:

(7) a restriction or prohibition of a traditional means of access to state land, water, or land and water for traditional outdoor activities for the purpose of protecting aesthetic values of the land, water, or land and water under AS 38.04.200.

REPRESENTATIVE SEATON said he is trying to put together AS 38.05.945(a)(7) and AS 38.04.200 because .200 is the new

definition before the committee and is applied throughout. He inquired whether he is correct in his understanding of the proposed language in [paragraph (7)] on page 3 of the bill.

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MR. FOGELS advised he was looking at Section 3, page 3, line 17-20, "the addition of restriction or prohibition of a traditional means of access," and was unsure what Representative Seaton meant by [paragraph] 11.

REPRESENTATIVE SEATON, responding to Mr. Fogels, clarified he is referring to AS 38.05.945(a), [paragraph] (7). He understood this paragraph to be referring back to the definition and changing the definition in .945 of the definition that is being changed in .200(b)(2).

MR. FOGELS agreed.

REPRESENTATIVE SEATON referred to the definition change in AS 38.04.200 and AS 38.05.945 being specific to utilizing that definition, asked whether that definition then applies throughout the sections as to what would be considered a traditional means of access and therefore the department's current regulations of 1,500 pounds would no longer apply in anything that deals with AS 38.05.945.

MR. FOGELS responded that Representative Seaton is correct because Section 2, [AS 38.04.200(b)(2)] would amend the definition of traditional means of access throughout Title 38. He said he does not think the department has determined that that would impact its generally allowed uses regulation, but added that he will get back to the committee.

REPRESENTATIVE SEATON said he would appreciate Mr. Fogels getting back to the committee because the proposed new definition would apply throughout Title 38 and could affect the regulations for generally allowed uses because the regulations may not be consistent with the statute as amended.

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MR. HILYARD explained that AS 38.04.200 deals with the specific and detailed written findings that the commissioner must issue in order to make such a closure, and AS 38.05.945 has to do with the public notice. So, AS 38.05.945 stipulates that if there is a closure pertaining to aesthetic values there has to be

adequate public notice; therefore, [paragraph] (7) is only adding that restriction pursuant to AS 38.04.200 into the list of notices required. He further explained that the first section has to do with the substantive component of the detailed written findings the commissioner must issue, and AS 38.05.945 deals with the subsequent public notification. Mr. Hilyard continued that the sponsor is basically adding this restriction or prohibition as a list of required public notices pursuant to protecting aesthetic values of land, water, or land and water under AS 38.04.200. He stated he is not saying Representative Seaton is incorrect, but that they do deal with fundamentally different portions of Title 38.

REPRESENTATIVE SEATON said he would like the department's official answer given that Mr. Fogels indicated it might apply throughout Title 38.

CO-CHAIR TALERICO agreed that Section 3 is specifically about public notice and not usage.

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REPRESENTATIVE JOSEPHSON recalled Mr. Hilyard as saying that the notice in AS 38.05.945 is about situations of aesthetic concern. He questioned whether that is correct because his understanding is that it is about any kind of notice.

MR. HILYARD clarified his point was that the proposed new language, AS 38.05.945(a)(7), on page 3, lines 17-20, deals specifically and only with the aesthetic values. He confirmed AS 38.05.945 deals with all public notices, but pointed out that .945(a)(7) would add the restriction for aesthetic purposes.

CO-CHAIR TALERICO asked Representative Johnson whether he would like to go through the summary of changes.

REPRESENTATIVE JOHNSON replied he is clear on the bill now.

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REPRESENTATIVE SEATON remarked that he would like to determine whether a small Caterpillar tractor would be allowed under this bill, because it may or may not be at winter and may or may not be confined. He said he is aware that this is access to state lands, but pointed out that the new definition of water passed by the committee is any pond or estuary or anything that has water in it at any time of the year. Unless the commissioner

makes a specific designation for a specific area, he posited that the committee may be causing unintentional harm so he would like to see the parameters of the bill and what it could affect.

CO-CHAIR TALERICO said there are many perplexing issues. He noted there are few track-type push dozers that can be purchased weighing less than 10,000 pounds. A 17 horsepower rubber tired tractor weighs somewhere between 7,600 and 9,400 pounds, he advised, and most of that "yellow iron" easily cracks 10,000 pounds and a D3 probably weighs 17,800 pounds at least.

MR. HILYARD stated that the key with regard to the 10,000 pounds is that it is preceded by all-terrain vehicles. He said he is unfamiliar with the definition and will work with the department and get back to the committee at its next meeting.

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REPRESENTATIVE SEATON asked how often the commissioner restricts usage for aesthetic reasons.

MR. FOGELS responded that outside of state park units, DNR does not restrict traditional access for aesthetic values, the restriction is for public safety or resource damage reasons.

REPRESENTATIVE SEATON referred to his earlier question regarding a finding and that the findings generally are not done in combination. He said it would just be a single finding for public safety or management reasons and not necessarily include a determination for aesthetic values.

MR. FOGELS confirmed Representative Seaton is correct, and reiterated that in the event there was a situation where the department believes there are public safety issues it would perform a finding for that particular trail, such as with the Rex Trail. The department would explain its reasoning, what the problems were, what its proposed restriction would be, and then go to public notice with that.

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CO-CHAIR TALERICO inquired where the photos were taken that Representative Tarr distributed.

REPRESENTATIVE TARR advised that she did a Google search because she was trying to understand what 10,000 pounds means. She said she will send the links to the committee.

CO-CHAIR TALERICO commented that one of the photographs could potentially be from the Rex Trail and another could be from the Stampede Trail established by the Alaska Road Commission in 1963. He noted that the Alaska Road Commission put it in the wrong spot, although it was built in the winter and things are completely different when built in the summer.

CO-CHAIR TALERICO opened public testimony.

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WARREN OLSON said he has lived in Alaska since 1958, run track machines and vehicles over trails for 50-plus years, and the phenomena of four-wheelers has expanded tremendously. He said the state should go in the direction of equipment with a lighter footprint, and this lighter footprint comes from pounds per square inch (psi); for example track rigs up to 10,000 pounds can have a lighter footprint than a person weighing 150 pounds. He said he does not see the purpose of people just going out and ripping up a trail with no interest in harvesting food, catching fish, or traveling on these trails, which is a recent phenomenon that is becoming a huge problem. Historically, folks would run trails that could be run during winter or early spring and then in late summer or fall folks would be on another trail for the same location, but it would be a summertime trail. So, historically, folks were running bulldozers and heavy equipment but they took care of the trails in those days. He said it was an absolute travesty to turn down the Rex Trail and then let it sit there for four or five years, be bantered back and forth, and closed. He posited that the public will have to go to track rigs and said the state should work harder on keeping more trails open because it spreads people out. Conflicts take place when people are concentrated on the few remaining trails. He reminded the committee that Mother Nature in the form of earthquakes, floods, beavers, 10,000 caribou walking around, and other things wipes out trails. Sometimes people must clear the trails or make their own trails with shovels and chainsaws. With some common sense the state can get through this, he said.

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REPRESENTATIVE TARR surmised that track vehicles are similar to the extended belt type vehicle so that it spreads out the overall psi impact of that vehicle. She noted that Version E doesn't specify it has to be that type of vehicle and only indicates the pound limit, so to her this indicates it could be

the other type of vehicle, such as the off-road vehicle with large tires. She opined that Mr. Olson was offering support for something a bit more defined, and that the committee should be moving toward the low psi-type track vehicles which is why the pound limit wasn't a concern.

MR. OLSON responded that the purpose of the phenomena advertised on television is of going out and tearing up the trail, and it is not to use the trail to get from one point to another. That problem can be solved, he opined, and the state needs to go there. With regard to closing down a trail for safety reasons, he commented that in 50 years he has seen only one landslide closing down a trail along a railroad and everyone had enough brains to stay off that slide.

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MELVIN GROVE, Alaska Outdoor Access Alliance (AOAA), said he became involved due to what happened on the Rex Trail. He described access as a huge issue, and not only on the Rex Trail, to allow some Alaskans to feed their families and make a living. On the hierarchy of need, access is right there with food and water. Restricting access moves down a slippery slope, and the Sturgeon v. Frost, Alaska Regional Director of the National Park Service, 577 U.S. ___ (2016), was a tremendous victory for Alaskans because that issue was about access. He offered concern that the Department of Natural Resources (DNR) commissioner closed it at the whim of discretionary authority, and that what is considered a safety issue or damage to public property is in the eyes of the beholder and that the commissioner cannot be allowed to have that broad discretionary authority in this case. The discussion is about general state lands wherein Alaskans can hunt, fish, gather berries, or gold mine. There has been a lot of talk about damage and what a 10,000 pound vehicle could cause. But what is the standard that is going to be set as damage? Logging and mining is performed across the state. He pointed out that on the Rex Trail a person can go to Gold King Creek where the mining has completely resurfaced the face of the earth and an entire valley destroyed, yet DNR closes a trail due to a few ruts. He maintained that the trail was closed to longtime Alaskans who have used that trail for years because property was sold to locals who didn't like the added pressure they were seeing around their private little strip of land with a large population of moose, and they complained about the added ruts on the trail.

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MR. GROVE pointed out that in 2002, DNR changed the generally allowed uses and added a weight restriction to the definition of an ATV without a single public notice. He held that generally allowed uses already says that a highway vehicle up to 10,000 pound can use state land. He asked the difference between a 10,000 pound highway vehicle and an 8,000 pound modified Jeep without a license plate on it, saying that just because a vehicle is registered doesn't mean it will not create some damage. He said a certain amount of damage must be accepted. Walking on the terrain causes damage and there has to be a determination of an acceptable amount of damage and whether it is permanent damage. He has been going down the Rex Trail for years on a track rig that exerts less ground pressure than a person does standing, and he safely uses the trail and Mother Nature will take the trail over if it stops being used and the only way to sustain a trail is to use it.

MR. GROVE addressed the provision that the commissioner must offer a reasonable alternative and said his organization does not need or expect the commissioner to develop another trail around a safety hazard on a portion of a trail. The public will make a route around that portion if it is given access and the ability to create it. The trails were created by public resources not by state or private resources, so he does not expect the state to create trails. He reiterated the 10,000 pound restriction is already in generally allowed uses for a registered vehicle and said it makes no sense that just an ATV should be restricted to 1,500 pounds because it just gives someone something to complain about.

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REPRESENTATIVE SEATON recalled Mr. Fogels testifying that the only time DNR uses aesthetic values to make a closure is in state parks. He asked whether Mr. Grove thinks this would be dealing with state park land, or is thinking that the definition of public safety would be challenged and other closures outside of parks would be for aesthetic values. Otherwise, he continued, he does not see how this bill applies to the Rex Trail or pretty much anything else other than in state parks if the only place DNR applies that standard is within state parks.

MR. GROVE replied he does not see HB 213 as applying to state parks, but rather as applying to general state land. He acknowledged Mr. Fogels testified that this would not change what happened on the Rex Trail. He turned to Section 1 and

stated that one of the reasons for putting in "notwithstanding any other provisions of law," is the hope that the legislature would be certain DNR was not closing down a trail simply for discretionary protection of what it considers damage to public property, public safety, and public hazard. This [proposed] statute would make it extremely hard for DNR to close down any trails. He opined that whether or not this [bill] would have that effect would be determined in another lawsuit in the event DNR will not change its current management scheme in restricting Alaskans from valuable resources on the Rex Trail.

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REPRESENTATIVE JOSEPHSON noted Mr. Grove is part of the class that sued the state. He asked whether it was Mr. Grove's view that the trial court's finding and the Alaska Supreme Court affirmation regarding damage safety considerations, was just phony. He asked whether it was his position that this was all just a ruse and that it was really just an aesthetics concern.

MR. GROVE responded yes, it really was [a ruse]. There was never an actual report of any damage by any vehicles per se, reports of accidents or anyone getting hurt on the Rex Trail. He acknowledged that the trail had seen significant use but to say there was permanent public damage that would never heal was a total ruse. Where does it stop? A picture can be taken of a four-foot rut or anything and say it was damage or is now a safety concern because the next commissioner may say it might be a one-foot rut. The definition of a safety issue and what is damage needs to be defined, and he cannot see how the department can legitimately consider the Rex Trail permanently damaged or damaged to the point it will harm the state or Alaskans. The only thing it did was it gave limited access to others who had to move to a different area and put pressure on other areas, and it gave those living along the trail more freedom with less pressure in their backyard. He said he could pay the \$100 fee if he wants to go down the Rex Trail with a rubber track rigged vehicle and that if he agrees to pay the permit they want to say he can't go any farther than 100 feet from the trail because they are protecting the area of the 1,000 square miles alongside the trail that is open to motorized access, and he can't use that area. Two years ago he received a criminal citation for trespass because he was off the trail more than 100 feet and has been fighting these guys for years. He could go along with DNR and hunt out there with fewer people out there and his success rate has been a lot better, but what kind of person would that make him if he is just out for himself? This issue needs to be

fixed, the reins need to be pulled in on DNR, and if this doesn't fix it maybe the bill needs to be stronger.

[1:58:58 PM](#)

ROBERT CAYWOOD identified himself as one of the original plaintiffs in the Rex Trail lawsuit. He said he has hunted for 35 years all over Alaska, on foot and on various vehicles. In 2002 the state changed allowable uses and it caused tens of thousands of Alaskans to illegally go out to obtain their moose meat or fish. He related that he hopes this bill will change it back to what it was before it was illegally changed.

REPRESENTATIVE JOSEPHSON asked whether Mr. Caywood still has a business where he leases these large recreational vehicles.

MR. CAYWOOD responded that he never did.

REPRESENTATIVE JOSEPHSON questioned whether he was ever an owner of C.M.M. General Contractors.

MR. CAYWOOD replied that he is.

REPRESENTATIVE JOSEPHSON asked whether C.M.M. General Contractors leased snow cats and fully tracked vehicles.

MR. CAYWOOD answered that he has some snow cats for sale, but they are not used for moose hunting, they are working machines that can pull 30,000 pounds and they weigh over 10,000 pounds.

[2:01:03 PM](#)

PATTI BARBER said she would like to see a first person history of anyone having an accident with personal injuries on the Rex Trail caused by a large vehicle rut. She described the large vehicles as the traditionally used vehicles on the Rex Trail and other similar trails within the state. In the event a permit is necessary to access these trails, she suggested that the state re-adopt the [sale of] an occasional use license plate. She offered support for the psi rating on trails because even a bicycle and a human foot create a deep rut, and asked whether this use will have to be permitted.

[2:02:06 PM](#)

KENNY BARBER said he pretty much supports the bill as written, and related that he has spent almost 40 years swamp buggy

hunting and trapping. Referring to Mr. Olson's testimony regarding psi, he said there is a large difference between the way the rubber tires are made for the rigs and in the old days wherein his airplane tires he used tore up a lot of country going through. Subsequently, farm implement tires came out to run on the buggies which made a big difference because a person could hardly see where they crossed the river. Regarding the under 10,000 pounds issue and licensed trucks, he said anyone can go out there and rip up a trail with a vehicle or a bicycle and that the state should create an area for them where the habitat won't be hurt or any other forms of land issues. The Knik River is probably one of the most off-road used places in the state. As for salmon stream problems, he advised that for 41 years he and a couple of hundred people have crossed the creeks in the same spot and yet the salmon still spawn in the places they cross. He opined that the people riding up and down in the creeks parallel hurts salmon spawning, it's not the crossing of the creeks.

[2:05:02 PM](#)

ANDREW ZAJAC said he has lived in Alaska since 1969 and over the years he has seen the state becoming more restricted, whether state, federal, or private lands. He related that he cannot add to the previous testimonies, he supports the bill, and believes trails need to be open because the value of the land is not necessarily blueberries and miniature birch trees, the value of the land is simply an access route.

[2:06:35 PM](#)

RANDY BJORGAN advised that in the 1980s his family arrived in Alaska and they were able to go just about anywhere they wanted and were young enough to do it in any method they wanted, and usually by foot 10-15 miles. Now that he is older he has to rely on mechanical means of getting to some places, and it is bad when access to areas where his family wants to recreate, hunt, fish, pick berries, or enjoy Alaska wildlife are more and more restricted by personal whims of governmental agencies based to close and restrict areas and access routes. Due to the Sturgeon decision, Alaska saw that government overreach had gone a step too far and this bill will help to stop some of that within this state. He held that opponents to the bill are basically saying that Alaskans should have no access to the lands they have enjoyed over the years.

CO-CHAIR TALERICO closed public testimony after ascertaining no one else wished to testify.

[2:08:29 PM](#)

REPRESENTATIVE SEATON asked Mr. Fogels to address the testimony offered by those who believe that Section 1, AS 38.04.200(a), page 1, line 9, "(a) **Notwithstanding any other provision of law**" means that this definition would be applied not just in state parks but applied to prevent DNR from closing any trail.

MR. FOGELS replied that the bill reads: "Restricted activities, restricted or prohibited for the purpose of protecting aesthetic values of the land," within Title 38. The department's read is that it should not affect its ability to manage state parks, but is just focused on cases where DNR would choose to try and restrict access to protect aesthetic values.

REPRESENTATIVE SEATON advised that the person testifying in regard to Version E, page 1, line 9, "**Notwithstanding any other provision of law**," stated that the purpose was so DNR would not be able to close down other trails, not state parks, but other trails for public safety reasons. He requested DNR to put on the record whether it believes that "Notwithstanding any other provision of law," does or does not extend the usage of this to public safety.

MR. FOGELS replied that DNR's interpretation at this point is that it does not extend this to public safety, it is strictly referring to protecting the aesthetic values. The department does not have a formal attorney general's opinion on this, and has had brief conversations with some of its attorneys.

[2:11:24 PM](#)

REPRESENTATIVE JOSEPHSON recalled Mr. Fogels as stating that in regard to the aesthetic values caveat, that state parks wouldn't be implicated. He said he is unsure where this is seen, but added that this is not tearing up the state parks statutes. He noted there are other land designations besides parks, such as the Caines Head State Recreation Area [near Seward]. There was a dispute in Gustavus when the previous administration wanted to change the way in which the state regulates and manages other designated areas, such as Round Island that are not parks per se. He inquired whether Mr. Fogels has asked the attorney general's office to look at the bill.

MR. FOGELS answered that there have been discussions with the attorney general's office, but not in great detail and DNR has not had a chance for the attorney general's office to tuck into this in as much detail as is probably necessary. The committee may want someone from the Department of Law to be available at a future hearing. This is all within the Title 38 statute and how it would apply to Title 38 lands, whereas there are separate statutes for state park management and regulation of access.

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CO-CHAIR TALERICO requested clarification because he assumed that land legislatively designated is not only covered under other statutes but has its own set aside management plans, which actually supersede anything else that would be in statute since they are designated that way.

MR. FOGELS agreed, and he said that is DNR's interpretation -- all of the state park units are created by their own statutes and have their own management direction within the statute.

REPRESENTATIVE SEATON reminded the committee that Mr. Fogels testified that the only place DNR closes trails is for aesthetic values in state parks, and he commented that since this is not done outside of state parks what is the nexus of the bill to these trails. He then noted testimonies that interpreted "Notwithstanding any other provision of law" to extend to trails across the state. He reiterated he needs some definition from DNR as to the full parameters of the bill.

[2:15:02 PM](#)

REPRESENTATIVE TARR referred to the testifiers who stated that no injuries had occurred on the trail, and she opined, from a management perspective, the department would want to be more conservative and actually prevent an injury from happening because had someone been hurt and it was proven to be due to improper management, that person could sue the state. She surmised that when considering public safety concerns, DNR would error on the side of prevention rather than after.

MR. FOGELS replied that ideally if DNR sees a situation developing and believes it would be a serious safety concern to the public, it would try to address the situation before an accident happened. He agreed with Representative Tarr's statement, but added it is sometimes easier said than done and is difficult to second guess.

REPRESENTATIVE TARR opined that all of the actions were found, by the court, to be proper in that the department could substantiate there was enough damage to be a safety concern. The department needs to be as preventative as possible, she concluded, even though that cannot always happen.

[2:17:05 PM](#)

REPRESENTATIVE JOSEPHSON recalled Mr. Fogels stating that DNR is not particularly concerned because a caveat on all of this is the aesthetic issue. He said he sees under AS 38.05.035, Powers and duties of the director of lands, and under AS 44.37.020, Duties of the department with respect to natural resources, that, clearly, the legislature has a role in all of this. However, he continued, HB 213 says that if in the future DNR wants a designation based on aesthetics, the legislature must sign off. Given that is currently not the law, he asked whether Mr. Fogels is okay with relinquishing that power.

MR. FOGELS responded that that is a difficult question to answer because DNR really hasn't managed general state land for aesthetic values because that is not what the department does on general state lands. He opined there is a pathway here if the committee wants to do that in the future, and if this bill were to pass it would still allow DNR to have a management pathway to do that.

[2:18:42 PM](#)

REPRESENTATIVE JOHNSON questioned whether all of DNR's power flows from the legislature.

MR. FOGELS answered yes.

REPRESENTATIVE JOHNSON clarified that the power is through statute and law, so he anticipates that the department would be comfortable with the laws the legislature sends it.

MR. FOGELS responded yes, the department abides by the laws.

REPRESENTATIVE JOHNSON said he expected that answer and thanked Mr. Fogels.

[2:19:25 PM](#)

REPRESENTATIVE JOSEPHSON related that he has read the Caywood decision thoroughly and that DNR put a tremendous amount of time into studying the Rex Trail issue, preparing a report, performing long term studies, sending men and women into the field, taking complaints, defending the lawsuit in trial court, and defending it before the Alaska Supreme Court. He asked whether Mr. Fogels is proud of the department.

MR. FOGELS confirmed he is always proud of the department and noted that the Rex Trail has been a difficult issue and at least four commissioners have grappled with the Rex Trail. The department realizes that it is a problem, it realizes there are a huge number of people out there very upset with the way the department has managed that trail. He said the department has done its best to try to work through it, has received money to do some work to get some information on what the damage is, and what types of uses cause more damage or less damage; additionally, DNR has received a lot of money to try to fix parts of the trail. He reported that just today the department learned that \$720,000 in Pittman-Robertson funds was approved for fixing another section of the trail. He said DNR can leverage that with some capital funds it already has and will start this summer working on fixing and re-establishing portions of that trail so it can withstand heavier use. He remarked that the department realizes this problem and has been working on it, and so far the solutions have not been perfect for everyone.

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REPRESENTATIVE SEATON observed that the restriction or closure must be for an area of 640 contiguous acres or less [page 2, lines 3-4], may not be in effect for more than three years and cannot be in effect for more than eight months, cumulatively, during that time [page 2, lines 5-7], and must be deemed "necessary" for public safety purposes [page 2, lines 8-9]. He referred to adding the word "necessary," such that, "Must be deemed 'necessary' for public safety purposes," and since it is the protection of public safety "and" public or private property it appears to be correct that this limitation is now not only for the protection of public safety and public or private property, but it is deemed necessary to do that. He asked whether the restriction that the department must prove that this action is necessary for the terminations to move forward in the department's findings.

MR. FOGELS replied that the addition there is the word "necessary". He said it seems that the way the original statute

is written, DNR still must show it was necessary. He suggested Representative Seaton speak to someone from the Department of Law, but said he would interpret that DNR's finding would have to address the protection of public safety and public or private property regardless of this change.

[2:23:38 PM](#)

CO-CHAIR TALERICO stated he has been on the Rex trail more than two dozen times, as it is not far from his home. He said that dependent on the weather and conditions of the summer he has driven to the Two Rivers area with a two-wheel drive Ford pickup that had a positive traction rear-end. Sometimes it is dusty and sometimes muddy. He offered concern about someone in the administration making a safety determination, saying it opens the possibility of closing the Iditarod one year, or closing the Iron Dog, and or the Artic Man because, traditionally, Alaskans like to go to the edge to some degree and if they didn't, those marvelous events would not exist. He advised there are things to be done here, he will stay connected with the sponsor, and that the bill may require a deeper legal opinion, and he will therefore hold over the bill.

REPRESENTATIVE SEATON acknowledged he has never has been on the Rex Trail, but said that to him this is a simply a law of statewide application to all state land. He noted he is unsure whether the discussion is only about R.S. 2477 trails, and is trying to get a clear handle on the application of this and whether the change to 10,000 pound vehicles everywhere is what is truly being discussed. The said the only reason he is talking about the Rex Trail is because the committee packet held those documents. He then pointed out that he did not hear suggestion for what the psi should be, and asked whether that is something that would give the committee a clear definition of what makes sense to be allowed to give people greater access throughout Alaska without damaging habitat.

[2:27:15 PM](#)

CO-CHAIR TALERICO pointed out that psi is subjective to the conditions of the trail and the material being used because some trails go across bridge lines with solid gravel and are probably harder than the asphalt roads. The trails are all in different climate zones, at different elevations, and different weather patterns so it is not an easy question to answer. He opined that the Rex Trail was involved because it was an emotional issue to deal with and noted that he was a municipal official at

the time some of these things came down. Even though the department did its best to hold its own, it probably went beyond what it felt its original finding was with some of the things it stated in a public meeting, and, being fully aware it was emotional, he would have defended himself as well. The folks in the area of the Rex Trail take their outdoor recreation seriously as do the people that travel to that area. There probably wasn't an easy answer there and said he appreciates the sponsor trying to work on something that will get the state to some result at some point.

REPRESENTATIVE TARR thanked the sponsor and said the provision requiring that the commissioner communicate the findings could be productive to make sure communications increase. For her, she noted, the issue is understanding the vehicle limit.

[2:29:20 PM](#)

CO-CHAIR TALERICO said he appreciates the written findings in the notice because no one likes a decision to suddenly appear, and advised he will try to get the information gathered up and put it back on the hearing agenda as soon as possible.

REPRESENTATIVE TILTON advised she is available to work with anyone to help answer the questions.

[HB 213 was held over.]

[2:30:15 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 2:30 p.m.