

H B

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78

(HJR 66)

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IN SESSION:  
POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4963

# Alaska State Legislature



Representative Mitch Abood  
CHAIRMAN

## House Committee on State Affairs

### MEMO

To: Representative Mitch Abood, Chairman  
House State Affairs Committee

From: Representative Ron Larson, Member *R.L.*  
House State Affairs Committee, and Chairman  
Subcommittee for drafting CSSSHB 678

Date: March 19, 1984

Subject: Subcommittee report for CSSSHB 678

On Wednesday, March 7, 1984, you appointed me to Chair a subcommittee to develop a committee substitute for House Bill 678. Attached is the proposed Committee substitute.

The Subcommittee decided that the intent of the sponsor and the Committee could best be met by writing a CS for the SS rather than for the original bill. This was done by deleting in the SS the phrase "instruments used to wage any war and," thus limiting the bill's intent to just WW II and not other wars, while also removing potentially abrasive language.

By placing the CS in the same place as the SS under AS 41.35 (The Alaskan Historic Preservation Act) rather than with the original bill under a miscellaneous section of the criminal code in 11.76, we make the bill more than just a punitive one. The Alaska Historic Preservation Act not only provides stiffer penalties than the 11.76 section, but also includes language that would provide penalties for destruction of artifacts as well as for their removal. Further, the Act also speaks to preservation, and has enforcement procedures for removal, destruction, and preservation of artifacts already in place.

I respectfully submit to you as Chairman the attached CS for SSHB 678.

# Alaska State Legislature

## COMMITTEES

Vice Chairman — Judiciary  
Vice Chairman — Legislative  
Regulations Review  
Resources  
Finance Sub Committee on Labor



While in Session  
Pouch V  
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## House of Representatives

John J. Liska

A handwritten signature in dark ink, appearing to be "J. Liska".

March 5, 1984

### MEMORANDUM

FROM: Representative John J. Liska

REFERENCE: HJR 66, relating to removal of WW II artifacts from the State.

The purpose of this Joint Resolution to request the Federal Government not to remove World War II artifacts from the State of Alaska, unless the removal is authorized by the Federal or State Government or if the Federal or State Government determines the artifacts to be hazardous to human or animal life.

The problem of removal of World War II artifacts has been and is an ongoing problem in our State.

Your packets contain:

- A. Pages 30, 31 and 32 from a publication entitled "The Historical "Battle of Alaska" remains". These pages refer to various types of aircraft that crashed in Alaska and where they have been removed to:
1. Douglas - O - 38F - removed to Air Force Base Museum in Dayton Ohio in 1968.
  2. Stinson - A Trimotor - to Wisconsin in 1972 by J.D. Berry.
  3. P - 51H and P - 40 - Steve Myers, Washington
  4. U.S. Navy Vought OS 2U King Fisher - removed to the Smithsonian Institute.
  5. P - 39 Airacobras, on display in Seattle.

Additionally, page 73 shows Japanese artifacts from World War II.

Page two  
HJR 66

In addition in your packets, but not nearly as interesting, are letters from CAVPAC supporting HJR 66 and HB 678 and a copy of a letter from General Talley who was involved in the Alutian Campaign.

Another piece of back up material has been submitted by the North Star Chapter Pearl Harbor Survivors Association. I have made copies of the first three pages - which may or may not be the same artifacts as previously submitted in your packet.

JJL/tm

Besides the public museums such as the Smithsonian Institute and the Anchorage Historical and Fine Arts Museums, there are many small or private collections which display items of Alaskan history. Unfortunately, in many cases, Alaskans have no say in how the collections are handled.

History is repeating itself in the area of aviation history. It is seen in many examples of aircraft downed during World War II which are leaving the state.

A Douglas O-38F had engine problems and crashed in 1941. It was removed to the Air Force Museum in Dayton, Ohio in 1968.

In 1972 a Stinson 'A' Trimotor which crashed in 1947 was removed to Wisconsin by J.D. Berry. Berry wrote to Wien Air Alaska and followed it up with a phone call to try and get the airline to purchase the plane for the cost of its removal, but there was no interest, so it was sent Outside in order to pay the costs for its removal.

Two P-51H's were pulled out near Stevens Village. Two more were found near Kotzebue, and three were removed from across Cook Inlet. One P-40 was removed from Amchitka Island in the Aleutians. All of these aircraft were removed by Steve Myers of Washington.

Another P-40 was removed from a site near Fairbanks in 1977 and was sold to a buyer at an unknown Lower 48 destination.

A United States Navy Vought OS2U Kingfisher which crashed during WW II on one of the small islands near Kodiak, was removed in the early summer months of 1979 for removal to the Smithsonian.

There have been numerous other cases. An ad in Flying Magazine's June '80 issue states that sale of "P-39 Airacobras. Recently recovered from a fresh water lake in the Alaskan Peninsula. Russian armament, 117 hour totals hours each. Make offer, would like aviation museum or same to purchase...Yakima, Washington..." A call from the United States Historical Aircraft Preservation Museum in Anchorage brought no response.

Three B-25 Mitchell bombers have left the state in the past two years, in flyable condition, headed for the Outside.

The United States Historical Aircraft Preservation Museum has been trying for several years to open a museum facility located at Merrill Field, but has been blocked from doing so because it has no planes to put into the facility. At the same time, the Planes of Fame Museum from Chino, California has been soliciting donations of Alaska aircraft on a promise of opening an Alaskan branch museum at some undetermined later date.

It has successfully acquired an A-26 from Dr. Donald Rogers, an H-21 helicopter from Bill Swift to help in removing aircraft downed in Alaska, a B-25 from Fairbanks. A wing insignia was donated to the Air Force Museum by Ted Spencer - the insignia coming from the wing on an

aircraft downed at Nome which was to have been used in reconstructing a P-63 Airacobra.

The Committee contends that Planes of Fame has an established reputation for flying, crashing and destroying one-of-a-kind aircraft, and of selling aircraft and aircraft parts in the Lower 48 and abroad in order to keep itself solvent.

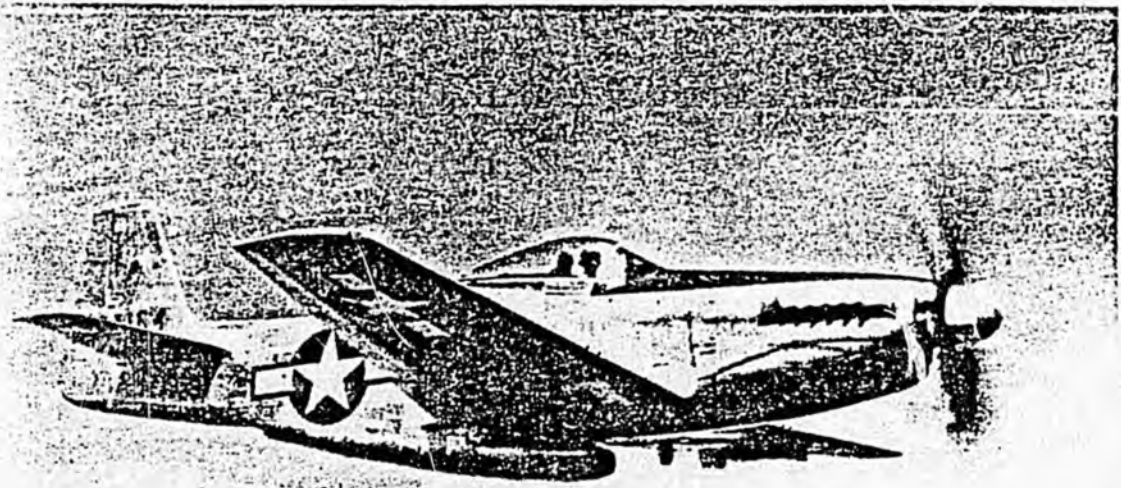
Flying in races and demonstrations for trophies and prize money has taken its toll on the vintage military aircraft.

The Committee feels that if it can adhere to those goals, Alaska will have one of the finest aviation museums in the U.S., preserving that part of Alaskan history.

The United States Historical Aircraft Preservation Museum is currently conducting negotiations for several planes of significant historical value, as well as parts and planes to be retrieved from bush areas.

Access to battlefields in the Aleutians is difficult because of the expense and weather conditions involved, but the area promises to be a fertile area to search.

If the museum has had a difficult time collecting actual aircraft for its displays, there has been no shortage of donations of other treasures. Photographs, blue prints from the Bell Factory which

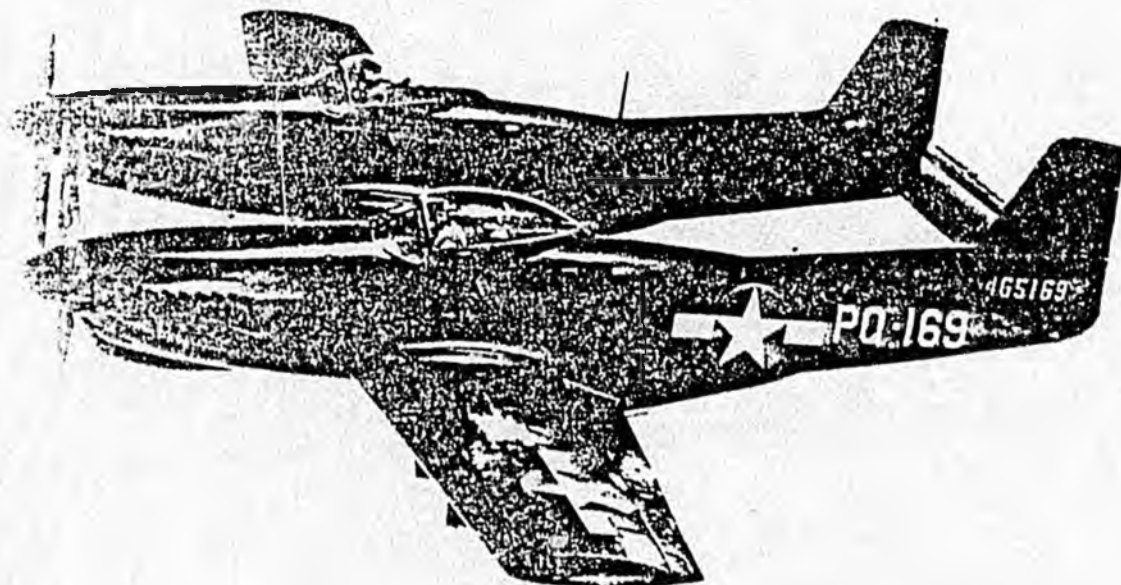


These fighters, P-51's Mustang, were used toward the end of WW II in Alaska. They did not see combat in the Aleutian Campaign. Three downed P-51's were located.

AAHS

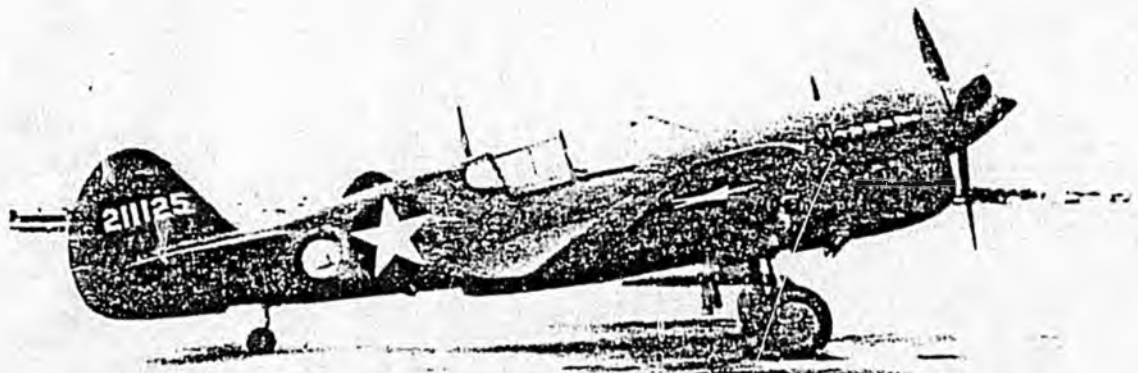
The P-82 Twin Mustang was based in Alaska after WW II. One was located that bellied in and is intact in the Interior.

USAF



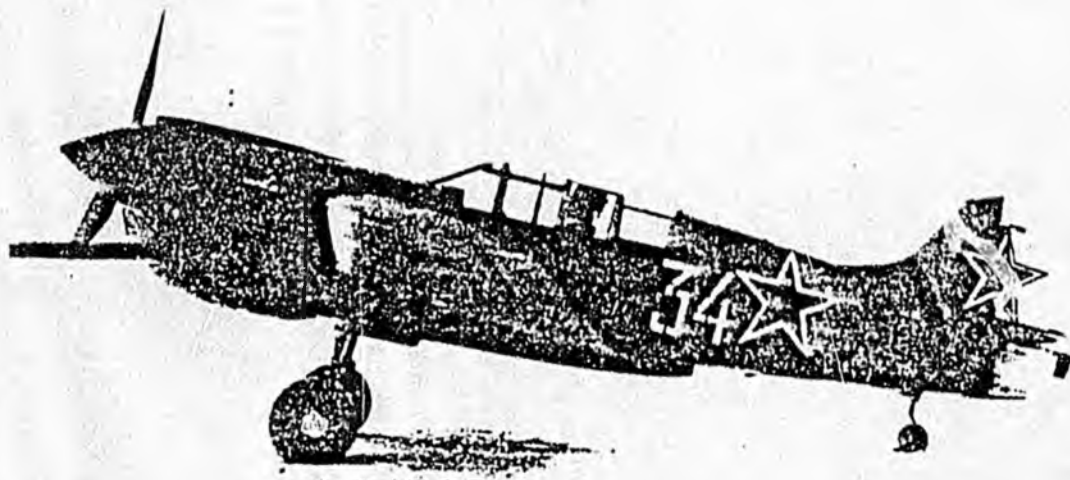
Curtiss P-40 was used by the USAF during the Aleutian Campaign. Eight P-40's were located: Five of them were abandoned, two were downed, and one is in the bottom of a fresh water lake. Also several brand new P-40's were buried in crates in the Aleutians.

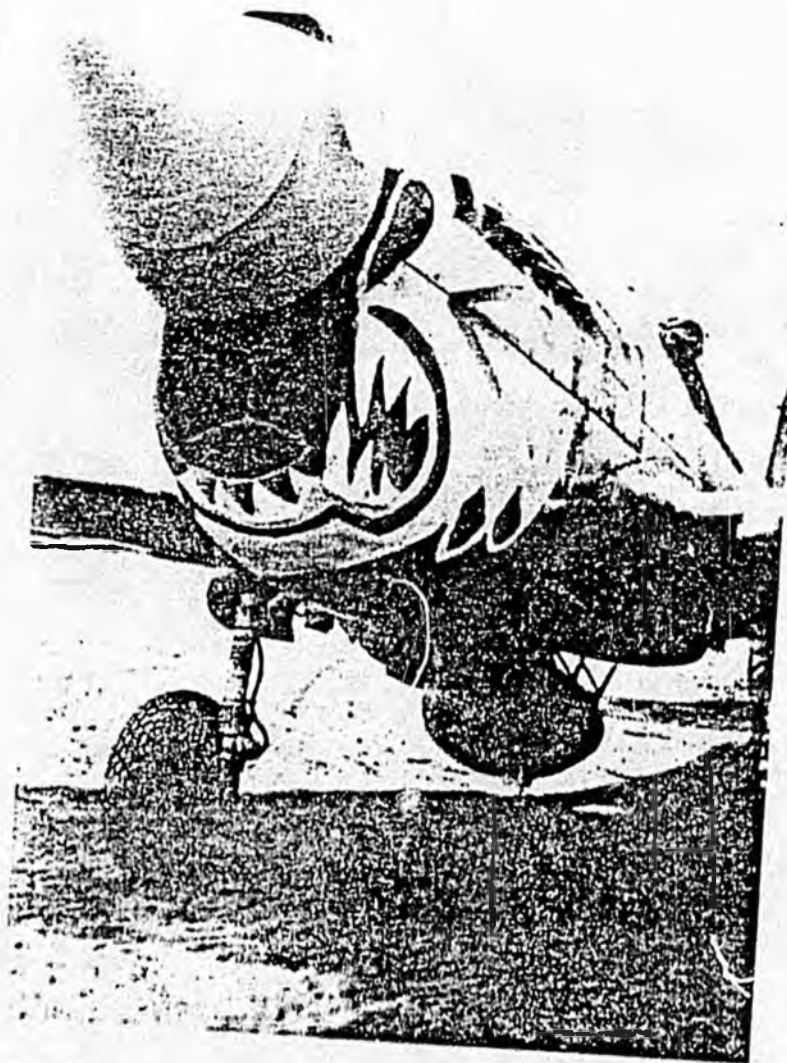
RWT



Approximately 48 Lend Lease P-40's came through Alaska on their way to Siberia. At present Moscow is the only place in the world that has one of the Lend Lease P-40's. Two more were located in the Interior.

GFP





This is a Curtiss P-40 called the "Aleutian Tiger." It was used in combat by the United States during the Aleutian Campaign. Four of them were located.

USAF

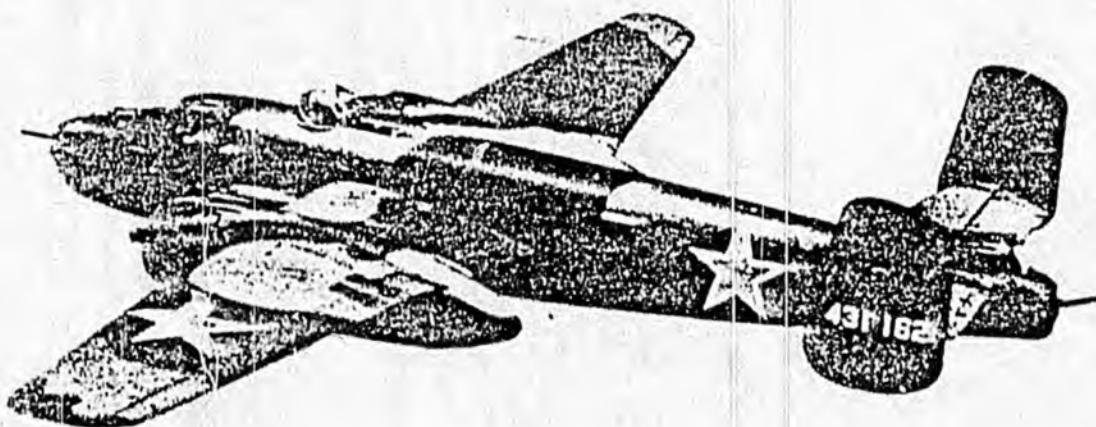


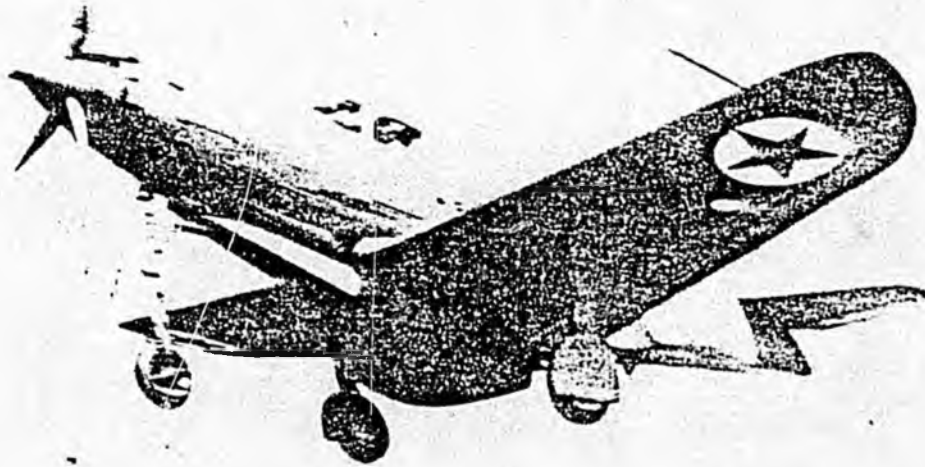
Two of these B-25 Medium Bombers went down in the Aleutians during the Aleutian Campaign.

USAF

Approximately 732 of these Lend Lease B-25 Mitchell Bombers were ferried from Great Falls, Montana, Whitehorse to Fairbanks to Siberia, Russia to be used against the Germans during WW II. Three of these aircraft went down in the Interior Alaska.

NAA

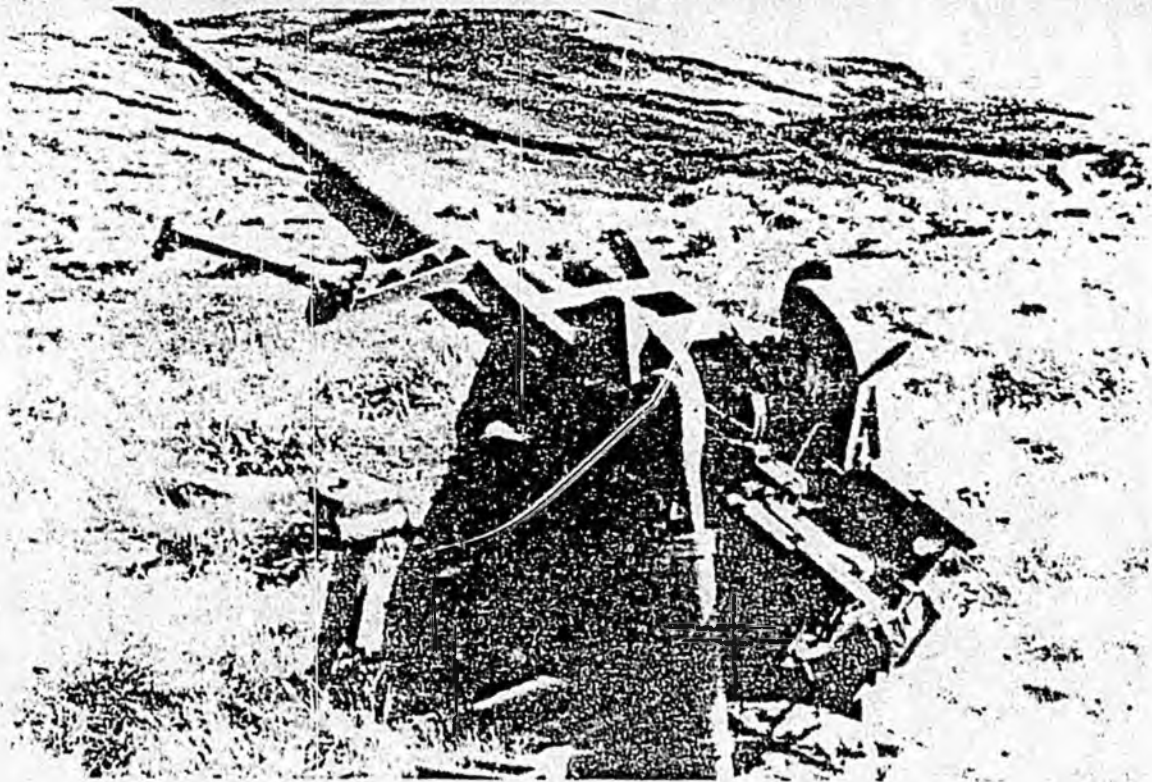




Approximately 2,618 P-39 Airacobra came through Alaska on their way to Siberia under the Lend Lease Program. Eleven of the P-39's went down in the Interior, and six of these are in fresh water lakes.

USAF

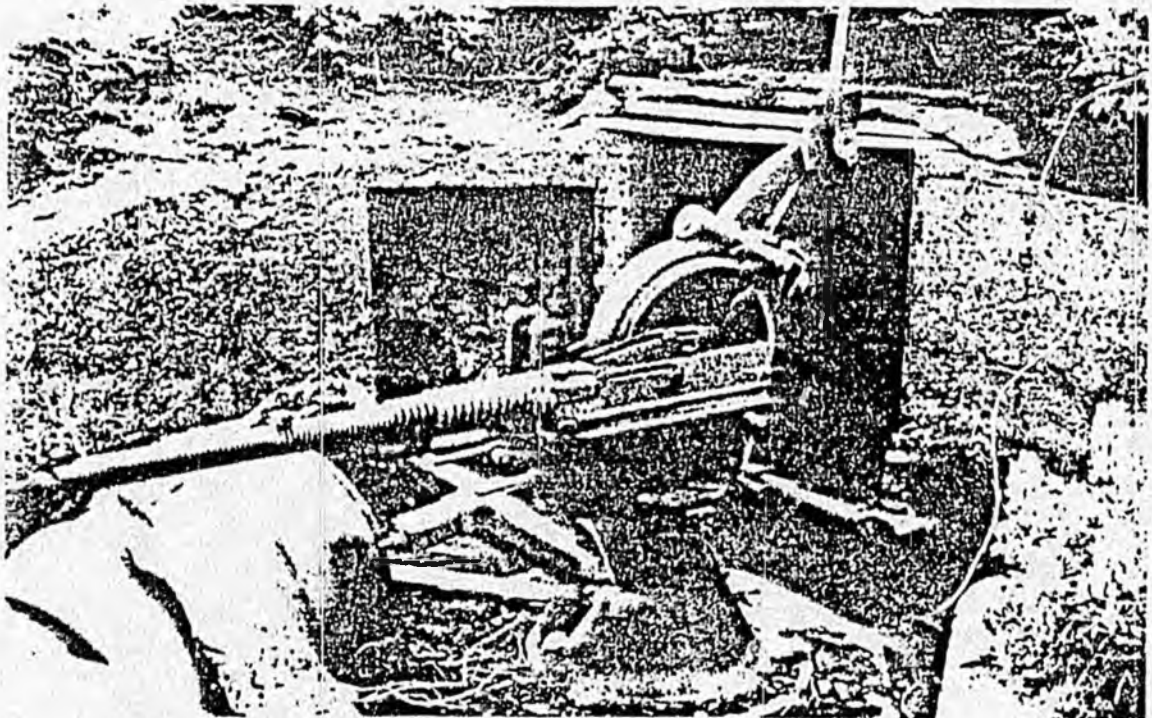




Japanese Model 96 (1936), Type 2, 25 mm Anti-aircraft Gun and Mount. This gun is very rare and was not extensively used by the Japanese.

COE

Japanese Model 93 Heavy Machine Gun, 13.3 mm on an Anti-Aircraft Mount. USFWS



CAVPAC, P.O. Box 8-901

Anchorage, Alaska 99508



HJR66 and HB678 BACKUP INFORMATION

The Alaska Historical and Transportation Museum and other interested non-government organizations are focusing on long range planning, development, and preservation of pioneer, transportation and military history throughout the State and especially on the Aleutian Island Chain.

The projects of the organizing committees are to: (1) Survey and inventory significant relics, artifacts, and related historical material pertaining to transportation (surface, maritime, and with major emphasis on aviation); (2) Develop plans for the historic preservation and interpretation of these artifacts; (3) Recommend an appropriate museum site(s); (4) Coordinate with other public and private sector museums to insure that all groups interested in aircraft recovery can participate in recovery and restoration of aircraft, and that the restored aircraft will remain in Alaska; and (5) Prepare a presentation for submittal to the Governor and the Legislature in 1985 on a statewide program of cultural and historical preservation, including programs on pioneer, transportation, military, and the historically related areas, which are either not currently included in existing museum services or are inadequate in scope.

These projects and assessments will supplement the existing Statewide Museum Plan and will include recommendations for future museum development in the State of Alaska.

There has been no comprehensive statewide assessment or inventory of Alaska's historical artifacts that are constantly being removed from the State. Although many agencies have worked with each other on various aspects of preservation, an overall coordinated appraisal of the most critical needs in this area has never been possible.

Alaska's military history covers a wide range of topics: the Alaska Purchase to World War II era, aviation, maritime, World War II Aleutian campaign, DEW Line, and post-WW II history, etc. A number of agencies have shown an interest and have done limited statewide planning to locate historical Alaskan artifacts, but have discovered that big money in the lower 48 is stealing many of our WW II aircraft from federal and state land without any interference and are selling them to museums and making a fortune. It's big business. Many of these U.S. and Japanese aircraft have been salvaged almost intact.

It is hoped that HJ166 and HB678 will assist, when implemented, to retain valuable artifacts in Alaska and in 1985 some funds can be made available to improve our historical museums. The Army, Air Force, and National Guard have already assisted in salvaging and restoring some of these artifacts.

CAV Needs You And You Need CAV  
(or

VETERAN POWER

Army Navy Air Force Marines Coast Guard National Guard Reserves

Paid for by CAVPAC, P.O. Box 8 901, Anchorage, Alaska 99508

The historically significant relics, artifacts and other materials are part of Alaska's history and should be preserved before it is too late. Many WWII aircraft, both friendly and enemy, have been literally stolen from the Aleutian Chain and are now in museums in the States of Ohio, Tennessee, Washington and California that we know of. They are a part of Alaska's wartime history and should remain here. They will also be of tourist interest.

Draft prepared by B. B. Talley  
with contribution by  
Col. Evan J. Griffith, USAF

BACKGROUND MATERIAL IN SUPPORT OF HB  
APPROPRIATING FUNDS FOR A COMPREHENSIVE DOCUMENTARY FILM  
OF WWII IN ALASKA

There exist several books and papers, some official, which purport to document the history of WWII in Alaska. In addition, the military services have extensive motion pictures of their operations in Alaska. In recent years there has been a rebirth of interest on the part of individuals and organizations, particularly veterans organizations, in this part of Alaska's history. These individuals and groups have many important visual records which can be obtained for a comprehensive documentary film of WWII in Alaska.

In 1980, on the 40th anniversary of its arrival in Alaska, the veterans of the 11th US AF held a reunion in Alaska. It included a visit to the Aleutians as far out as Shemya. Weather prohibited their going to Attu. Extensive motion pictures and video tapes were made of this celebration, including interviews and oral history from many of the veterans present.

In 1982 extensive motion pictures and video tapes were made by individuals, organizations and by TV stations of the ceremony in dedication of a memorial on Unalaska Island to all those who lost their lives in the Aleutians during WWII. This included the Armed Forces of the United States and Canada, the Aleuts, and the Japanese Armed Forces. The two Japanese officers, now retired, who led the first and second waves of bombers in the attack on Dutch Harbor on 4 June 1942 participated in this dedication. The dedication was preceded by a flight from Unalaska Island to the Umnak Air Base, and to the position of the Japanese carrier from which the attack was launched, thence following the course of the planes to the rendezvous point and returning to Dutch Harbor. The plane was piloted by the Japanese officer who led the attack, flying

in reverse the course flown in the attack. From the rendezvous point, the plane flew the course at the same altitude flown in the actual attack. In the plane were Admiral James S. Russell, USN-Ret. who commanded the US Navy Catalinas in Alaska during WWII, BG B. B. Talley, Corps of Engineers, retired, who was responsible for building the secret air base on Umnak Island from which the US AF P-40s broke up the Japanese aerial attack on Dutch Harbor, and Admiral Hiroichi Samejima, JMSDF (Ret.) who led the first wave of Japanese bombers, and Colonel Zenji Abe, JMSDF (Ret.) who led the second wave which consisted of dive bombers. (Then Lieutenant Commander Abe later transferred to the army, as the reconstituted Naval defense force did not have dive bombers.) Also in the plane were Mr. Ted Spencer who arranged the dedication ceremony and the aerial flight here described. There was also a motion picture camera crew aboard who recorded the flight on film.

In view of the advancing age of the still living participants in WWII in Alaska, delay in the production of this visual history might preclude their participation in this important chapter in Alaska's history.

Inasmuch as the State of Alaska would be the primary beneficiary, the State should be the primary sponsor of the project. Such a project is within the purview of the Alaska Historical Commission of the Department of Education.

The project would include, but not necessarily be limited to, bringing together into a single compilation the best of the existing film, editing it into a single comprehensive historical document. There should be included in this compilation such additional footage as may be appropriate, with commentary by selected veterans who took part in the action.

Upon being instructed to carry out this project and being provided with the necessary funds for its accomplishment, the Alaska Historical Commission formed by AS Title 44, Article 3,

would have power to prepare or to authorize and coordinate the preparation and production by others of a documentary film covering this important portion of Alaska's history. Such a history should include but not be limited to the stills and motion pictures already in existence, but should include additional visual components as may be appropriate. Such a project should be completed by June 30, 1986.

A conceptual organization structure for executing this project is shown in Figure 1.

## C O N T E N T S

### Part I. Facts of Aircraft and Aircraft Parts, Flyable and Non-Flyable, that Left the State of Alaska.

- Page 1. Douglas O-38F Aircraft that left the state of Alaska in 1968.
- Page 2. Flying Magazine add in June 1980 regarding the removal of two P-39 Airacobras from Alaska. Six years ago two P-39 Airacobras were located at Minchumina Lake. In 1982 approximately \$10,000 were spent by a company to retrieve these aircraft. The group found out these were no longer there. We suspected that the aircraft mentioned in the Flying Magazine add are the same ones that were in Minchumina Lake.
- Page 3. A letter to Mr. Aldrich in California who sells vintage airplane parts. He sent to the USHAPM the original letter of Mr. Steve Matthews of Fairbanks who illegally removed airplane parts from state land and was attempting to sell them. The present whereabouts of the parts are unknown.
- Page 4. Photographs of two P-39 Airacobras on state land near Fairbanks. For the past four years illegal salvagings had been done to these.
- Page 5. Alaska Magazine Jan. 1981 two articles about a Stinson aircraft that was removed from the dump at Merrill Field, Anchorage and which is now on display at Seattle. The man who removed the aircraft, J. Berry, also removed in the early 1970's a P-40 aircraft from the Alaskan bush which was later transported to the Lower 48.
- Page 6 and 7. An article from a vintage/WW II aircraft book regarding the removal of a P-40 from the Aleutians.
- Page 8 thru 12. A Flying Magazine article regarding the removal of one P-40, four P-51 Mustangs, and three other P-50 Mustangs that were just removed for parts out of the state of Alaska.
- Page 13. Photographs of the P-40 that was removed from the Aleutians.
- Page 14. Oct. 1978 Alaska Magazine article on donation of a P-39 Airacobra's wing portion to the Lower 48.
- Page 15. Air Classics Magazine 1979 article with photographs of mutilation of a Lend Lease Russian aircraft's wing which is now in Ohio.
- Page 16. A letter from Dept. of Interior regarding the unlawful removal of aircraft parts from Amchitka Island. The two individuals who were involved in this unlawful act were fined \$500 each.
- Page 17 and 18. A letter from the Smithsonian Institution about the removal of a Navy OS2U Kingfisher from Afognak Island. The aircraft is now on loan from Smithsonian to Bradley Museum in Connecticut.

## C O N T E N T S

### Part I. Continued

- Page 19. A Douglas SBD-5 Dauntless wing which was in the Aleutian but is now in California.
- Page 20. Four photographs of helicopter parts and aircraft parts being shipped by Sealand from Anchorage to California.
- Page 21. B-25 aircraft engines that were donated to an aviation group in Alaska and are now in California.
- Page 22. A letter to Paul Caulkett regarding two B-25 aircraft that were to be used as static display within the state of Alaska.
- Page 23 and 24. A letter from the Alaska Department of Transportation in Fairbanks showing that one of the B-25 aircraft (paragraph 4) was sold to Mr. John C. Morgan by one of the aviation societies in Anchorage.
- Page 25. Two photographs of the B-25 that one of them was sold to Calif.
- Page 26. Alaska Magazine Dec. 1960 article on a Stearman that was in Alaska and is now in the Lower 48. (If interested, a copy of the article can be provided.)
- Page 27. Three photographs of P-38 Lightning which was removed from Alaska and is now in California.
- Page 28. A letter from State of Alaska, Dept. of Natural Resources regarding the attempts of Castle AFB in California to remove the remains of a P-38 from the Aleutians.
- Page 29. Air Classics Magazine April 1961 article on A-26 Invader that was given to California as a donation.
- Page 30. Two photos of the A-26 flyable aircraft that <sup>was</sup> donated to Calif.
- Page 31. Top - photo of the three B-25's which two of them left the state of Alaska. Destination unknown. Bottom - another photo of the A-26 that was donated to California.
- Page 32. Picture of a B-25 flyable aircraft that is now in California.
- Page 33. A Lockheed Constellation that was donated to City of Kenai, later was sold for \$30,000 and is now in Florida.

Part II. Aircraft and artifacts that had left the state of Alaska which cannot be stated as illegally been salvaged. Records at the Air Force Rescue Coordination Center at Elmendorf AFB show these WW II aircraft are no longer in their crash sites, there are no indication of their present whereabouts, or who retrieved them. Reports from bush pilots, who spotted the aircraft earlier, show that the same aircraft are no longer in their crash sites.

## C O N T E N T S

### Part II. Continued

1. Buldir Island in the Aleutians: The crashed P-38 Lightning's complete booms (two) and vertical stabilizer were removed two years ago. Can be verified thru Dept. of Fish and Wildlife.
2. A Lend Lease P-40, which crashed in 1944 in Nome area, was found in 1978. The aircraft was no longer there in 1982. Verified through bush pilots.
3. A Canadian P-40 that was located in 1960 was not there in 1976. The aircraft was completely removed. Only a few remaining parts are there. Verified through bush pilots.
4. P-51 Mustang, which crashed in 1944 at Broad Pass, was removed in early 1970's by an Anchorage resident couple and was shipped to the Lower 48. Also the husband removed P-40 parts of four aircraft that are on Unalaska in the Aleutians. This can be verified through U.S. Hist. Aircraft Preservation Museum.
5. WW II aircraft parts from Nome, Fairbanks and Northway that were removed three years ago and are now in Lower 48. Can be verified through USHAFM.
6. A vintage aircraft that crashed in Ketchikan: Its parts were removed for souvenir and are still in Alaska. Can be verified through USHAFM.
7. There are numerous stories told by state agencies, the local military, bush pilots and individuals that know, had seen, and have been involved in the removal of WW II aircraft, aircraft parts, and artifacts out of the state of Alaska.

If at the present time there were laws protecting the WW II aircraft and artifacts, these individuals and groups of people in the state of Alaska can be checked out and their residences be searched to prove the statements. The USHAFM knows several of these people.

It is difficult to prove that there is illegal salvaging of WW II aircraft, aircraft parts, and artifacts because the individuals who are involved are never caught. The only way we can prove that such a thing is happening is when these aircraft and aircraft parts come to surface in private hands and/or in the Lower 48 when the serial numbers and tail numbers can be verified that they came out of the state of Alaska. This takes time of hours and years. Alaska is slowly being stripped of its WW II aircraft, aircraft parts and materials that the average persons do not realize it till they are actually involved in the research of the WW II artifacts and materials in the state and in the Aleutians.

7, and 11.30.070. Repayment to general fund. All money made  
(4); to the fund from the general fund or a special fund is a loan  
under general fund or the special fund. All surplus at the end of a  
fiscal year over amounts made available to the fund from the general  
fund until the loan is repaid in full. Repayments need not begin  
for the first five complete fiscal years after the fund is created.  
(3 SLA 1964)

chase 11.30.080. Transfer of funds upon discontinuance of  
proj program of area redevelopment assistance. If the federal  
app of area redevelopment assistance is discontinued for any  
ment or if this chapter is repealed, the money within the area  
development revolving loan fund shall revert to any special fund  
to which money was made available, in the amount that was made  
available, and the remainder to the general fund. (§ 1 ch 83 SLA 1964)

Chapter 35. Alaska Historic Preservation Act.

	Section
Statement of policy	prehistoric or archeological remains on private land
Declaration of policy to historic, prehistoric and archeological resources; local	110. Historic sites advisory committee
Establishment of monuments and historic sites	120. Composition of committee
Administration and financial support of monuments and historic sites	130. Appointment of members
Provisions to acquire historic, prehistoric and archeological properties	140. Term of membership
Provision of historic, prehistoric and archeological resources damaged by public construction	150. Compensation
Provisions required of private persons	160. Officers
Provision and removal of historic	170. Meetings and quorum
	180. Duties of committee
	190. Powers of chairman
	200. Unlawful acts
	210. Penalties
	220. Enforcement authority
	230. Definitions
	240. Title of chapter

General references. — 72 Am. Jur. Territories and Dependencies, § 46.  
U.S. States, §§ 138, 145 — 148.  
Validity and construction of statute or ordinance protecting historical landmarks, 18 ALR4th 990.

11.35.010. Declaration of policy. It is the policy of the state to preserve and protect the historic, prehistoric and archeological resources of Alaska from loss, desecration and destruction so that the historic and cultural heritage embodied in these resources be not diminished to future generations. To this end, the legislature declares that the historic, prehistoric and archeological

of experts and other persons who may be needed. (§ 1 ch 130 SLA 1971)

§ 41.35.200. Unlawful acts. (a) A person may not appropriate, remove, injure, or destroy, without a permit from the commissioner, any historic, prehistoric or archeological resources of the state.

(b) A person may not possess, sell, buy or transport within the state, or offer to sell, buy or transport within the state, historic, prehistoric or archeological resources taken or acquired in violation of this section 16 U.S.C. 433.

(c) A person may not unlawfully destroy, mutilate, deface, injure, remove or excavate a gravesite or a tomb, monument, gravestone or other structure or object at a gravesite, even though the gravesite appears to be abandoned, lost or neglected.

(d) An historic, prehistoric or archeological resource which is taken in violation of this section shall be seized by any person designated in § 41.35.220 wherever found and at any time. Objects seized may be disposed of as the commissioner determines by deposit in the proper public depository. (§ 1 ch 130 SLA 1971; am § 8 ch 112 SLA 1974)

§ 41.35.210. Penalties. A person who violates a provision of this chapter is guilty of a misdemeanor, and upon conviction is punishable by a fine of \$1,000, or by imprisonment for not more than six months, or by both. (§ 1 ch 130 SLA 1971)

§ 41.35.220. Enforcement authority. The following persons are peace officers of the state and shall enforce this chapter:

- (1) an employee of the department authorized by the commissioner;
- (2) a peace officer in the state;
- (3) any other person authorized by the commissioner. (§ 1 ch 130 SLA 1971)

Cross references. — For definition of "peace officer," see AS 01.10.060(6).

§ 41.35.230. Definitions. In this chapter, unless the context otherwise requires,

- (1) "commissioner" means the commissioner of natural resources;
- (2) "committee" means the Historic Sites Advisory Committee;
- (3) "department" means the Department of Natural Resources;
- (4) "historic, prehistoric and archeological resources" includes deposits, structures, ruins, sites, buildings, graves, artifacts, fossils, or other objects of antiquity which provide information pertaining to the historical or prehistorical culture of people in the state as well as to the natural history of the state. (§ 1 ch 130 SLA 1971)

# Alaska State Legislature

## COMMITTEES

Vice Chairman — Judiciary  
Vice Chairman — Legislative  
Regulations Review  
Resources  
Finance Sub Committee on Labor



While in Session  
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## House of Representatives

John J. Liska

February 23, 1984

### MEMORANDUM

FROM: Representative John J. Liska

REFERENCE: HJR 66, relating to removal of WW II artifacts from the State.

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2. Stinson - A Trimotor - to Wisconsin in 1972 by J.D. Berry.
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JJL/tm

Besides the public museums such as the Smithsonian Institute and the Anchorage Historical and Fine Arts Museums, there are many small or private collections which display items of Alaskan history. Unfortunately, in many cases, Alaskans have no say in how the collections are handled.

History is repeating itself in the area of aviation history. It is seen in many examples of aircraft downed during World War II which are leaving the state.

A Douglas O-38F had engine problems and crashed in 1941. It was removed to the Air Force Museum in Dayton, Ohio in 1968.

In 1972 a Stinson 'A' Trimotor which crashed in 1947 was removed to Wisconsin by J.D. Berry. Berry wrote to Wien Air Alaska and followed it up with a phone call to try and get the airline to purchase the plane for the cost of its removal, but there was no interest, so it was sent Outside in order to pay the costs for its removal.

Two P-51H's were pulled out near Stevens Village. Two more were found near Kotzebue, and three were removed from across Cook Inlet. One P-40 was removed from Amchitka Island in the Aleutians. All of these aircraft were removed by Steve Myers of Washington.

Another P-40 was removed from a site near Fairbanks in 1977 and was sold to a buyer at an unknown Lower 48 destination.

A United States Navy Vought OS2U Kingfisher which crashed during WWII on one of the small islands near Kodiak, was removed in the early summer months of 1979 for removal to the Smithsonian.

There have been numerous other cases. An ad in Flying Magazine's June '80 issue states that sale of "P-39 Airacobras. Recently recovered from a fresh water lake in the Alaskan Peninsula. Russian armament, 117 hour totals hours each. Make offer, would like aviation museum or same to purchase...Yakima, Washington..." A call from the United States Historical Aircraft Preservation Museum in Anchorage brought no response.

Three B-25 Mitchell bombers have left the state in the past two years, in flyable condition, headed for the Outside.

The United States Historical Aircraft Preservation Museum has been trying for several years to open a museum facility located at Merrill Field, but has been blocked from doing so because it has no planes to put into the facility. At the same time, the Planes of Fame Museum from Chino, California has been soliciting donations of Alaska aircraft on a promise of opening an Alaskan branch museum at some undetermined later date.

It has successfully acquired an A-26 from Dr. Donald Rogers, an H-21 helicopter from Bill Swift to help in removing aircraft downed in Alaska, a B-25 from Fairbanks. A wing insignia was donated to the Air Force Museum by Ted Spencer - the insignia coming from the wing on an

aircraft downed at Nome which was to have been used in reconstructing a P-63 Airacobra.

The Committee contends that Planes of Fame has an established reputation for flying, crashing and destroying one-of-a-kind aircraft, and of selling aircraft and aircraft parts in the Lower 48 and abroad in order to keep itself solvent.

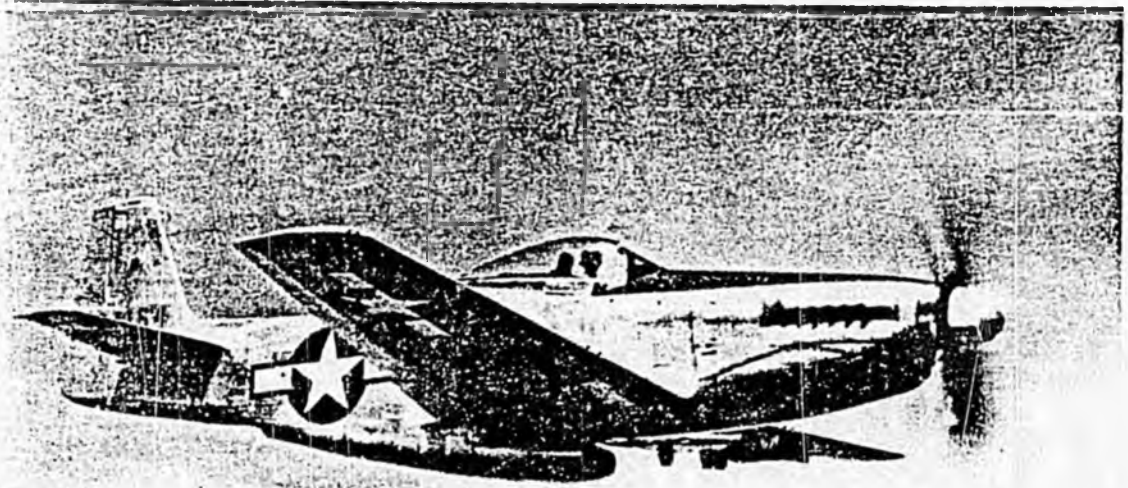
Flying in races and demonstrations for trophies and prize money has taken its toll on the vintage military aircraft.

The Committee feels that if it can adhere to those goals, Alaska will have one of the finest aviation museums in the U.S., preserving that part of Alaskan history.

The United States Historical Aircraft Preservation Museum is currently conducting negotiations for several planes of significant historical value, as well as parts and planes to be retrieved from bush areas.

Access to battlefields in the Aleutians is difficult because of the expense and weather conditions involved, but the area promises to be a fertile area to search.

If the museum has had a difficult time collecting actual aircraft for its displays, there has been no shortage of donations of other treasures. Photographs, blue prints from the Bell Factory which

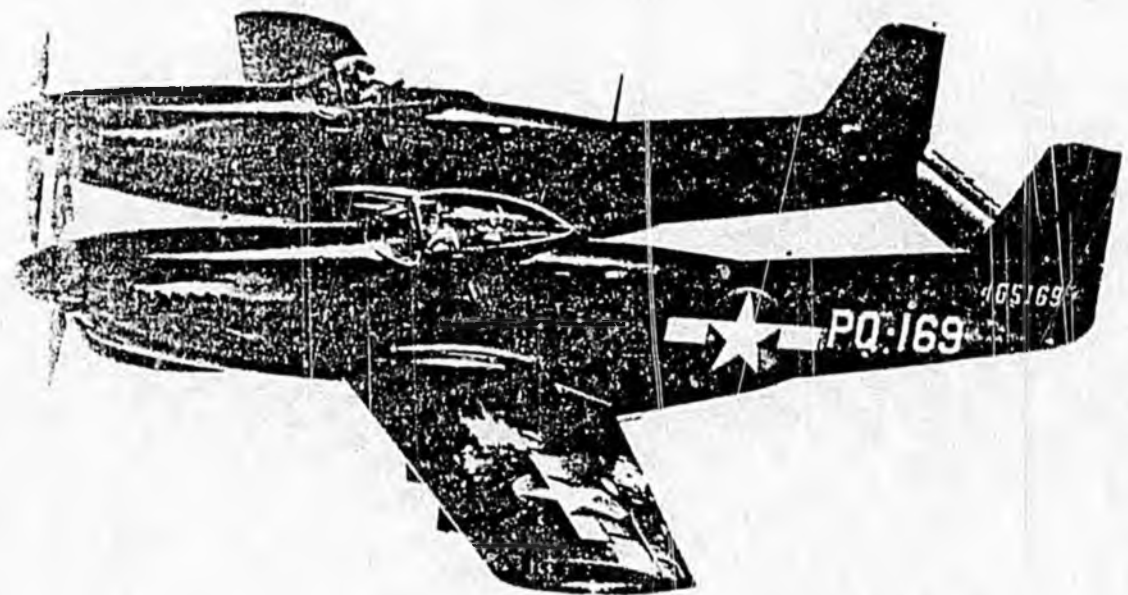


These fighters, P-51's Mustang, were used toward the end of WW II in Alaska. They did not see combat in the Aleutian Campaign. Three downed P-51's were located.

AAHS

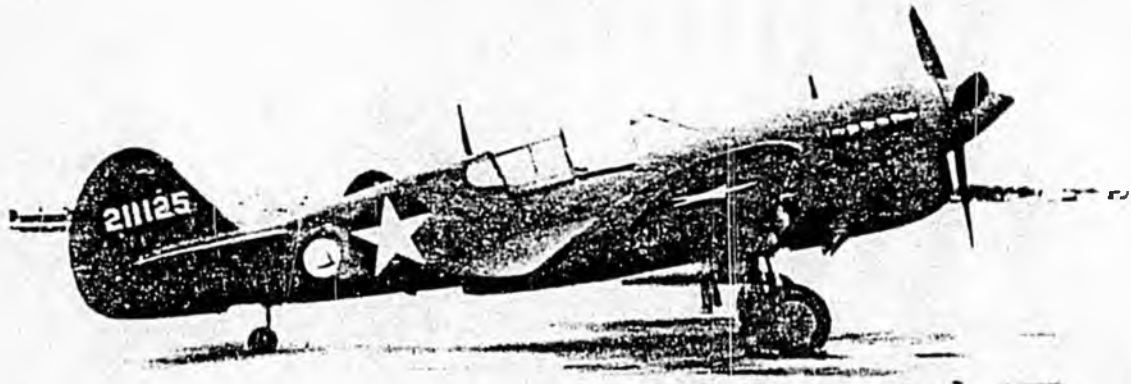
The P-82 Twin Mustang was based in Alaska after WW II. One was located that bellied in and is intact in the Interior.

USAF



Curtiss P-40 was used by the USAF during the Aleutian Campaign. Eight P-40's were located: Five of them were abandoned, two were downed, and one is in the bottom of a fresh water lake. Also several brand new P-40's were buried in crates in the Aleutians.

RWT



Approximately 48 Lend Lease P-40's came through Alaska on their way to Siberia. At present Moscow is the only place in the world that has one of the Lend Lease P-40's. Two more were located in the Interior.

GFP





This is a Curtiss P-40 called the "Aleutian Tiger." It was used in combat by the United States during the Aleutian Campaign. Four of them were located.

USAF

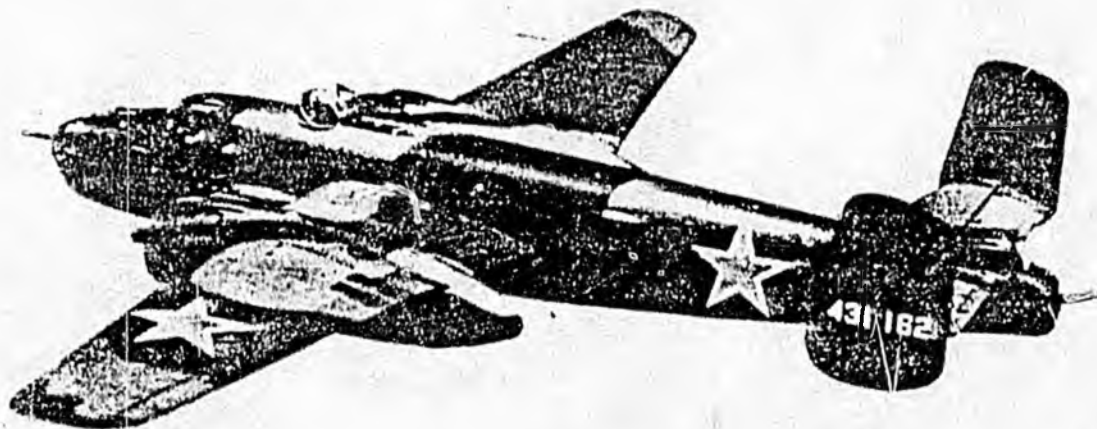


Two of these B-25 Medium Bombers went down in the Aleutians during the Aleutian Campaign.

USAF

Approximately 732 of these Lend Lease B-25 Mitchell Bombers were ferried from Great Falls, Montana, Whitehorse to Fairbanks to Siberia, Russia to be used against the Germans during WW II. Three of these aircraft went down in the Interior Alaska.

NAA





Approximately 2,618 P-39 Airacobra came through Alaska on their way to Siberia under the Lend Lease Program. Eleven of the P-39's went down in the Interior, and six of these are in fresh water lakes.

USAF



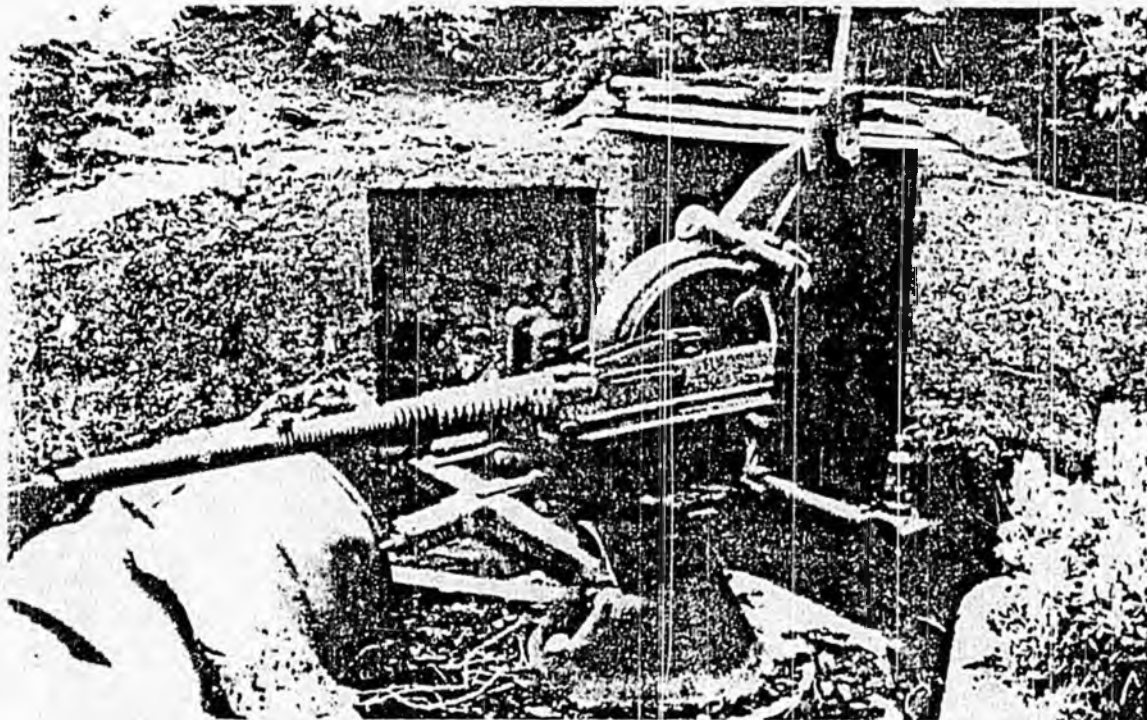


Japanese Model 96 (1936), Type 2, 25 mm Anti-aircraft Gun and Mount. This gun is very rare and was not extensively used by the Japanese.

COE

Japanese Model 93 Heavy Machine Gun, 13.3 mm on an Anti-Aircraft Mount.

USFWS





### HJR66 and HB678 BACKUP INFORMATION

The Alaska Historical and Transportation Museum and other interested non-government organizations are focusing on long range planning, development, and preservation of pioneer, transportation and military history throughout the State and especially on the Aleutian Island Chain.

The projects of the organizing committees are to: (1) Survey and inventory significant relics, artifacts, and related historical material pertaining to transportation (surface, maritime, and with major emphasis on aviation); (2) Develop plans for the historic preservation and interpretation of these artifacts; (3) Recommend an appropriate museum site(s); (4) Coordinate with other public and private sector museums to insure that all groups interested in aircraft recovery can participate in recovery and restoration of aircraft, and that the restored aircraft will remain in Alaska; and (5) Prepare a presentation for submittal to the Governor and the Legislature in 1985 on a statewide program of cultural and historical preservation, including programs on pioneer, transportation, military, and the historically related areas, which are either not currently included in existing museum services or are inadequate in scope.

These projects and assessments will supplement the existing Statewide Museum Plan and will include recommendations for future museum development in the State of Alaska.

There has been no comprehensive statewide assessment or inventory of Alaska's historical artifacts that are constantly being removed from the State. Although many agencies have worked with each other on various aspects of preservation, an overall coordinated appraisal of the most critical needs in this area has never been possible.

Alaska's military history covers a wide range of topics: the Alaska Purchase to World War II era, aviation, maritime, World War II Aleutian campaign, DEW Line, and post-WW II history, etc. A number of agencies have shown an interest and have done limited statewide planning to locate historical Alaskan artifacts, but have discovered that big money in the lower 48 is stealing many of our WW II aircraft from federal and state land without any interference and are selling them to museums and making a fortune. It's big business. Many of these U.S. and Japanese aircraft have been salvaged almost intact.

It is hoped that HJR66 and HB678 will assist, when implemented, to retain valuable artifacts in Alaska and in 1985 some funds can be made available to improve our historical museums. The Army, Air Force, and National Guard have already assisted in salvaging and restoring some of these artifacts.

CAV Needs You And You Need CAV  
for

VETERAN POWER

Army Navy Air Force Marines Coast Guard National Guard Reserves

The historically significant relics, artifacts and other materials are part of Alaska's history and should be preserved before it is too late. Many WWII aircraft, both friendly and enemy, have been literally stolen from the Aleutian Chain and are now in museums in the States of Ohio, Tennessee, Washington and California that we know of. They are a part of Alaska's wartime history and should remain here. They will also be of tourist interest.

Draft prepared by B. B. Talley  
with contribution by  
Col. Evan J. Griffith, USAF

BACKGROUND MATERIAL IN SUPPORT OF HB  
APPROPRIATING FUNDS FOR A COMPREHENSIVE DOCUMENTARY FILM  
OF WWII IN ALASKA

There exist several books and papers, some official, which purport to document the history of WWII in Alaska. In addition, the military services have extensive motion pictures of their operations in Alaska. In recent years there has been a rebirth of interest on the part of individuals and organizations, particularly veterans organizations, in this part of Alaska's history. These individuals and groups have many important visual records which can be obtained for a comprehensive documentary film of WWII in Alaska.

In 1980, on the 40th anniversary of its arrival in Alaska, the veterans of the 11th US AF held a reunion in Alaska. It included a visit to the Aleutians as far out as Shemya. Weather prohibited their going to Attu. Extensive motion pictures and video tapes were made of this celebration, including interviews and oral history from many of the veterans present.

In 1982 extensive motion pictures and video tapes were made by individuals, organizations and by TV stations of the ceremony in dedication of a memorial on Unalaska Island to all those who lost their lives in the Aleutians during WWII. This included the Armed Forces of the United States and Canada, the Aleuts, and the Japanese Armed Forces. The two Japanese officers, now retired, who led the first and second waves of bombers in the attack on Dutch Harbor on 4 June 1942 participated in this dedication. The dedication was preceded by a flight from Unalaska Island to the Umnak Air Base, and to the position of the Japanese carrier from which the attack was launched, thence following the course of the planes to the rendezvous point and returning to Dutch Harbor. The plane was piloted by the Japanese officer who led the attack, flying

in reverse the course flown in the attack. From the rendezvous point, the plane flew the course at the same altitude flown in the actual attack. In the plane were Admiral James S. Russell, USN-Ret. who commanded the US Navy Catalinas in Alaska during WWII, BG B. B. Talley, Corps of Engineers, retired, who was responsible for building the secret air base on Umnak Island from which the US AF P-40s broke up the Japanese aerial attack on Dutch Harbor, and Admiral Hiroichi Samejima, JMSDF (Ret.) who led the first wave of Japanese bombers, and Colonel Zenji Abe, JMSDF (Ret.) who led the second wave which consisted of dive bombers. (Then Lieutenant Commander Abe later transferred to the army, as the reconstituted Naval defense force did not have dive bombers.) Also in the plane were Mr. Ted Spencer who arranged the dedication ceremony and the aerial flight here described. There was also a motion picture camera crew aboard who recorded the flight on film.

In view of the advancing age of the still living participants in WWII in Alaska, delay in the production of this visual history might preclude their participation in this important chapter in Alaska's history.

Inasmuch as the State of Alaska would be the primary beneficiary, the State should be the primary sponsor of the project. Such a project is within the purview of the Alaska Historical Commission of the Department of Education.

The project would include, but not necessarily be limited to, bringing together into a single compilation the best of the existing film, editing it into a single comprehensive historical document. There should be included in this compilation such additional footage as may be appropriate, with commentary by selected veterans who took part in the action.

Upon being instructed to carry out this project and being provided with the necessary funds for its accomplishment, the Alaska Historical Commission formed by AS Title 44, Article 3,

would have power to prepare or to authorize and coordinate the preparation and production by others of a documentary film covering this important portion of Alaska's history. Such a history should include but not be limited to the stills and motion pictures already in existence, but should include additional visual components as may be appropriate. Such a project should be completed by June 30, 1986.

A conceptual organization structure for executing this project is shown in Figure 1.

## C O N T E N T S

### Part I. Facts of Aircraft and Aircraft Parts, Flyable and Non-Flyable, that Left the State of Alaska.

- Page 1. Douglas C-38F Aircraft that left the state of Alaska in 1968.
- Page 2. Flying Magazine add in June 1980 regarding the removal of two P-39 Airacobras from Alaska. Six years ago two P-39 Airacobras were located at Minchumina Lake. In 1982 approximately \$10,000 were spent by a company to retrieve these aircraft. The group found out these were no longer there. We suspected that the aircraft mentioned in the Flying Magazine add are the same ones that were in Minchumina Lake.
- Page 3. A letter to Mr. Aldrich in California who sells vintage airplane parts. He sent to the USHAPM the original letter of Mr. Steve Matthews of Fairbanks who illegally removed airplane parts from state land and was attempting to sell them. The present whereabouts of the parts are unknown.
- Page 4. Photographs of two P-39 Airacobras on state land near Fairbanks. For the past four years illegal salvagings had been done to these.
- Page 5. Alaska Magazine Jan. 1981 two articles about a Stinson aircraft that was removed from the dump at Merrill Field, Anchorage and which is now on display at Seattle. The man who removed the aircraft, J. Berry, also removed in the early 1970's a P-40 aircraft from the Alaskan bush which was later transported to the Lower 48.
- Page 6 and 7. An article from a vintage/WW II aircraft book regarding the removal of a P-40 from the Aleutians.
- Page 8 thru 12. A Flying Magazine article regarding the removal of one P-40, four P-51 Mustangs, and three other P-50 Mustangs that were just removed for parts out of the state of Alaska.
- Page 13. Photographs of the P-40 that was removed from the Aleutians.
- Page 14. Oct. 1978 Alaska Magazine article on donation of a P-39 Airacobra's wing portion to the Lower 48.
- Page 15. Air Classics Magazine 1979 article with photographs of mutilation of a Lend Lease Russian aircraft's wing which is now in Ohio.
- Page 16. A letter from Dept. of Interior regarding the unlawful removal of aircraft parts from Amchitka Island. The two individuals who were involved in this unlawful act were fined \$500 each.
- Page 17 and 18. A letter from the Smithsonian Institution about the removal of a Navy OS2U Kingfisher from Afognak Island. The aircraft is now on loan from Smithsonian to Bradley Museum in Connecticut.

## C O N T E N T S

### Part I. Continued

- Page 19. A Douglas SBD-5 Dauntless wing which wa. in the Aleutian but is now in California.
- Page 20. Four photographs of helicopter parts and aircraft parts being shipped by Sealand from Anchorage to California.
- Page 21. B-25 aircraft engines that were donated to an aviation group in Alaska and are now in California.
- Page 22. A letter to Paul Caulkett regarding two B-25 aircraft that were to be used as static display within the state of Alaska.
- Page 23 and 24. A letter from the Alaska Department of Transportation in Fairbanks showing that one of the B-25 aircraft (paragraph 4) was sold to Mr. John C. Morgan by one of the aviation societies in Anchorage.
- Page 25. Two photographs of the B-25 that one of them was sold to Calif.
- Page 26. Alaska Magazine Dec. 1980 article on a Stearman that was in Alaska and is now in the Lower 48. (If interested, a copy of the article can be provided.)"
- Page 27. Three photographs of P-38 Lightning which was removed from Alaska and is now in California.
- Page 28. A letter from State of Alaska, Dept. of Natural Resources regarding the attempts of Castle AFB in California to remove the remains of a P-38 from the Aleutians.
- Page 29. Air Classics Magazine April 1981 article on A-26 Invader that was given to California as a donation.
- Page 30. Two photos of the A-26 flyable aircraft that <sup>was</sup> donated to Calif.
- Page 31. Top - photo of the three B-25's which two of them left the state of Alaska. Destination unknown. Bottom - another photo of the A-26 that was donated to California.
- Page 32. Picture of a B-25 flyable aircraft that is now in California.
- Page 33. A Lockheed Constellation that was donated to City of Kenai, later was sold for \$30,000 and is now in Florida.

Part II. Aircraft and artifacts that had left the state of Alaska which cannot be stated as illegally been salvaged. Records at the Air Force Rescue Coordination Center at Elmendorf AFB show these WW II aircraft are no longer in their crash sites, there are no indication of their present whereabouts, or who retrieved them. Reports from bush pilots, who spotted the aircraft earlier, show that the same aircraft are no longer in their crash sites.

## C O N T E N T S

### Part II. Continued

1. Buldir Island in the Aleutians: The crashed P-38 Lightning's complete booms (two) and vertical stabilizer were removed two years ago. Can be verified thru Dept. of Fish and Wildlife.
2. A Lend Lease P-40, which crashed in 1944 in Nome area, was found in 1978. The aircraft was no longer there in 1982. Verified through bush pilots.
3. A Canadian P-40 that was located in 1968 was not there in 1976. The aircraft was completely removed. Only a few remaining parts are there. Verified through bush pilots.
4. P-51 Mustang, which crashed in 1944 at Broad Pass, was removed in early 1970's by an Anchorage resident couple and was shipped to the Lower 48. Also the husband removed P-40 parts of four aircraft that are on Unalaska in the Aleutians. This can be verified through U.S. Hist. Aircraft Preservation Museum.
5. WW II aircraft parts from Nome, Fairbanks and Northway that were removed three years ago and are now in Lower 48. Can be verified through USHAFM.
6. A vintage aircraft that crashed in Ketchikan: Its parts were removed for souvenir and are still in Alaska. Can be verified through USHAFM.
7. There are numerous stories told by state agencies, the local military, bush pilots and individuals that know, had seen, and have been involved in the removal of WW II aircraft, aircraft parts, and artifacts out of the state of Alaska.

If at the present time there were laws protecting the WW II aircraft and artifacts, these individuals and groups of people in the state of Alaska can be checked out and their residences be searched to prove the statements. The USHAFM knows several of these people.

It is difficult to prove that there is illegal salvaging of WW II aircraft, aircraft parts, and artifacts because the individuals who are involved are never caught. The only way we can prove that such a thing is happening is when these aircraft and aircraft parts come to surface in private hands and/or in the Lower 48 when the serial numbers and tail numbers can be verified that they came out of the state of Alaska. This takes time of hours and years. Alaska is slowly being stripped of its WW II aircraft, aircraft parts and materials that the average persons do not realize it till they are actually involved in the research of the WW II artifacts and materials in the state and in the Aleutians.

DRAFT

Preservation of Alaska's Historic Aircraft

Conference Summary

Introduction

Aviation has been essential to the development of Alaska. As a result, aviation is a fundamental and important part of Alaska's history.

Preservation of the state's aviation heritage is carried out by a number of organizations and agencies.

There are numerous non-profit organizations dedicated to preservation of aviation history, (see Attachment "A" for a list of participants and organizations). These organizations are active in recovery and/or restoration of historical aircraft, aviation history research and collection of aviation oral history and archival materials.

The Alaska State Museum in Juneau (Division of Libraries and Museums, Department of Education) and the Office of History and Archaeology (Alaska State Parks, Department of Natural Resources) are also involved in aviation history. The Alaska State Museum (ASM) has met with representatives of most historic aircraft preservation needs. The Office of History and Archaeology (OHA) has (1) listed a number of historic aircraft on the Alaska Heritage Resources Survey, (2) encouraged the nomination of historic aircraft to the National Register of Historic Places, and (3) provided protection under federal and state preservation acts for several downed historic aircraft.

expected to continue through the review process to the hoped-for legislative consideration and implementation.

### The Conference

Individuals and members of organizations actively concerned with the issues of preservation, ownership and protection of historic aircraft were invited to participate in the two day conference. A total of 25 invitations were sent, with 17 acceptances being received. Fifteen individuals attended as participants and one person came as an observer. Many participants belonged to several historic aircraft organizations and nearly all of them knew each other. Also at the conference were representatives from the Office of the Governor, Division of State Libraries and Museums, the Alaska Department of Law, the National Park Service, and staff from the co-sponsoring agencies. (See attachment "A") for a list of participants and attendees.)

A proposed agenda had been sent with letters of invitation to the participants for comment. When the conference opened an agenda was ready as follows:

#### AGENDA

1. Welcoming remarks by Mr. Skip Harding, Deputy Director, Alaska State Parks.
2. General introduction of participants: state and federal officials, historic aircraft organization representatives, and facilitator.

Early discussions regarding the planning of the conference established the practicality of using the services of a professional conference mediator. Such a facilitator would (a) be neutral to issues on the agenda, (b) keep the group working together, and (c) keep discussion focused on the agenda. The facilitator's skills were also invaluable for implementing a proven evaluation and planning process which led to the Action Plan.

Because much of the work would be done in small work groups, facilitators for each group were selected from OHA and ASM staff and counseled beforehand by the facilitator. During the conference, group spokespersons would report the work of the small work groups to the entire gathering. These spokespersons would be selected from the participants of the small work groups, would change with each assignment, and would in no case be the work groups' facilitator.

Credit must be given for part of the success of this conference to Ms. Lisa O'Brien from the Growth Company for her unflagging enthusiasm and fine professional moderation of discussions over the two days.

Mr. Allen Blume, in addressing the group, spoke of the Governor's interest in historic aircraft and aviation history and his desire to work with historic aircraft groups. Blume also pointed out that declining state revenues are a reality that has to be taken into account during the coming years. He indicated that this was an opportunity for state and private interests to work cooperatively in the development of a new program which the Governor would be pleased to review.

Group "A":

- 1) Selecting historic aircraft for preservation.  
Ownership of historic aircraft on state, federal and private lands.
- 2) Liabilities attendant to restoring historic aircraft to an airworthy state.

Group "B":

- 1) Deteriorating historic aircraft: methods of on-site preservation.
- 2) Moving downed and endangered aircraft for conservation: resources and permits.
- 3) Conserving and displaying historic aircraft.

Ms. O'Brien led each group through a series of exercises directed at clarifying the shared interests and purposes of the entire group.

Because nearly a full day had been spent with introductions, discussions and preliminary exercises, the conference organizers decided that each work group would concentrate, in the time remaining, on one of the three issues selected for their attention. This would allow a realistic amount of time for the work groups to select and develop an action plan for an issue of their choice.

Although the two work groups chose to begin by working on the first issue on their list, an action plan was, in fact, developed for five of the six issues.

Preservation of Alaska's Historic Aircraft

DRAFT ACTION PLAN

Anchorage, October 6-7, 1983

Issue: I. SELECTING HISTORIC AIRCRAFT FOR PRESERVATION

In order to have a central source of information about downed historic aircraft, it is recommended that an Ad Hoc Aviation Advisory Committee be established with membership consisting of representatives from legally established non-profit organizations. The membership, frequency of meetings, possible assessment of membership fees, and geographical and expertise determination for representation would be resolved at a later date. This committee (AHAAC) will be organized by the participants of this conference. The AHAAC will be mandated to fulfill four primary functions:

- (a) It will establish evaluation criteria and selection guidelines for Alaskan historic aircraft.
- (b) It will formulate priorities for preservation and interpretation of historic aircraft. Included in this category are downed and restored aircraft, as well as related artifacts.

Issue      III. LIABILITIES ATTENDANT TO RESTORING HISTORIC AIRCRAFT TO AN  
AIRWORTHY STATE

There was not enough time to address this issue.

Issue      IV. DETERIORATING HISTORIC AIRCRAFT: METHODS OF ON-SITE PRESERVATION

In order to effectively deal with this issue, recommendations are made for OHA and the AHAAC to develop and refine the data base showing all known downed Alaskan aircraft. This work should begin immediately. Upon completion, it will be possible to describe not only the nature of the resource but the scope of the problem as well.

A condition survey should be done as the list is generated. It is recommended that the AHAAC do this survey because it will have access to aircraft, expertise and the ability to reach remote locations.

Federal agencies are mandated to survey and nominate eligible, significant historic structures and objects to the National Register of Historic Places when these resources are on land managed by these agencies. The recommendation is made that federal and state employees doing fieldwork photograph downed aircraft when they are found in the course of their assigned duties. This may be accomplished through an interagency agreement between OHA, the Alaska Division of Geological and Geo-

Interior aviation. These variations were shaped by differences in equipment, flying conditions, pilots and the needs they served. Finally, the concept of regional museums furthers development of local history. Local facilities also provide attractions for tourists who wish to travel outside Anchorage.

This is not a new or an untried concept. The Gold Dome, in Fairbanks, is being developed as an aviation museum as this report is being written. Palmer has a museum with a strong aviation component. A museum dedicated to the bush pilot McKinley has recently been opened and there is a proposal for an aviation museum in Anchorage.

#### Recommendations for an Anchorage Regional Museum

Application will be made to the state for donations of land at the southeast corner of the Anchorage International Airport. This location is recommended because it is already under state ownership, there is excellent access from a major urban setting, and existing municipal utilities are already in place. The airport facility had the added advantage of good security and a small lake for float plane exhibits. The southeast corner, moreover, is not scheduled for development.

A building will be needed for this facility. Possible funding sources for construction include state grants, donations and combinations thereof. The building should have adequate space for the following uses:

DRAFT

A new site in Palmer has been secured for the museum. Landscaping and site preparation are being considered. A program has been developed for the first phase of construction at the new site, to include both heated and unheated facilities. Plans are being made to move the museum's collections via volunteer and commercial means. Additional construction over the next six years will be done as needed.

The facility will incorporate heated exhibit areas, restoration shops, public areas, offices, a museum store, and unheated exhibit and public participation shelters. The open areas will be park-like in concept and designed around outdoor exhibits.

The museum has an active education program (to include public outreach involving exhibits), offers assistance to other historical groups, has an active recovery and restoration program, and a library and archive. The staff is striving to create a facility with maximum public function and benefit.

#### Continuing Work at Fairbanks

The Interior Alaska Arctic Aviation Foundation has secured the Gold Dome in Alaskaland for operation of a museum facility in Fairbanks. In addition, efforts are underway to obtain land and buildings at the Fairbanks International Airport.

ATTACHMENT "A"  
PRESERVING ALASKA'S HISTORIC AIRCRAFT CONFERENCE  
OCTOBER 6-7 - ANCHORAGE

List of Participants: The following individuals participated in the conference and made the recommendations in the Draft Action Plan.

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Revised  
December 1983

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(3) how it collects or compromises obligations under AS 41.30.020(3).

(b) The board of directors shall adopt substantive regulations implementing the conditions in AS 41.30.040 and 41.30.050. (§ 1 ch 83 SLA 1964)

**Sec. 41.30.040. Loans.** The board of directors may purchase evidence of indebtedness and make loans to aid in financing a project in a redevelopment area for industrial or commercial usage approved under federal law and qualifying for federal area redevelopment assistance. (§ 1 ch 83 SLA 1964)

**Sec. 41.30.050. Limitations on loans.** (a) The board of directors may not purchase evidences of indebtedness or make loans to assist establishments to relocate from one area of the state to another.

(b) The board of directors may purchase evidences of indebtedness and make loans only if

(1) redevelopment projects for which assistance is requested have been approved by the board of directors;

(2) the project for which assistance is sought is reasonably calculated to provide more than a temporary alleviation of unemployment or under-employment within the redevelopment area;

(3) the board of directors receives reasonable assurance of repayment.

(c) The board of directors shall not provide assistance in an amount that is more than 10 per cent of the aggregate cost, or more than \$50,000, to the applicant for the particular project.

(d) The board of directors may not make loans at an interest rate less than four per cent.

(e) Assistance extended by the state under this chapter shall in no event exceed the total aggregate of \$2,000,000. (§ 1 ch 83 SLA 1964)

**Sec. 41.30.055. Area redevelopment revolving fund.** There is established an area redevelopment revolving fund which shall be administered by the board of directors exclusively for the purposes of this chapter. The fund is composed of money appropriated by the legislature to it and any other money made available for the purposes of this chapter. (§ 1 ch 83 SLA 1964)

**Sec. 41.30.060. Accounts and deposit.** The commissioner of revenue is ex officio the treasurer and custodian of the fund and shall administer it as directed by the board of directors. The commissioner of revenue may make prudent investments of money in the fund which the board of directors decides is not immediately needed for the purposes of this chapter. (§ 1 ch 83 SLA 1964)

year over amount...  
from any special fund shall be repaid to the general fund...  
fund until the loan is repaid in full. Repayments need not begin...  
after the first five complete fiscal years after the fund is created.  
(ch 83 SLA 1964)

**Sec. 41.30.080. Transfer of funds upon discontinuance of federal program of area redevelopment assistance.** If the federal program of area redevelopment assistance is discontinued for any reason, or if this chapter is repealed, the money within the area redevelopment revolving loan fund shall revert to any special fund in which money was made available, in the amount that was made available, and the remainder to the general fund. (§ 1 ch 83 SLA 1964)

## Chapter 35. Alaska Historic Preservation Act.

	Section
Declaration of policy	prehistoric or archeological remains on private land
Title to historic, prehistoric and archeological resources; local display	110. Historic sites advisory committee
Designation of monuments and historic sites	120. Composition of committee
Administration and financial support of monuments and historic sites	130. Appointment of members
Regulations	140. Term of membership
Power to acquire historic, prehistoric or archeological properties	150. Compensation
Preservation of historic, prehistoric and archeological resources threatened by public construction permits	160. Officers
Notice required of private persons	170. Meetings and quorum
Excavation and removal of historic, prehistoric or archeological resources	180. Duties of committee
	190. Powers of chairman
	200. Unlawful acts
	210. Penalties
	220. Enforcement authority
	230. Definitions
	240. Title of chapter

Statutory references. — 72 Am. Jur. 2d 47, 66.  
States, Territories and Dependencies, 18 A.L.R.4th 990.  
A.C.J.S., States, §§ 138, 145 — 148.

Validity and construction of statute or ordinance protecting historical landmarks, 18 A.L.R.4th 990.

**Sec. 41.35.010. Declaration of policy.** It is the policy of the state to preserve and protect the historic, prehistoric and archeological resources of Alaska from loss, desecration and destruction so that the scientific, historic and cultural heritage embodied in these resources may pass undiminished to future generations. To this end, the legislature finds and declares that the historic, prehistoric and archeological

Sec. 41.35.020. Title to historic, prehistoric and archeological resources; local display. (a) The state reserves to itself title to all historic, prehistoric and archeological resources situated on land owned or controlled by the state, including tideland and submerged land, and reserves to itself the exclusive right of field archeology on state-owned or controlled land. However, nothing in this chapter diminishes the cultural rights and responsibilities of persons of aboriginal descent or infringes upon their right of possession and use of those resources which may be considered of historic, prehistoric or archeological value.

(b) Although title to historic, prehistoric and archeological resources is in the state, local cultural groups may obtain from the state, or retain, for study or display, artifacts and other items of these resources from their respective cultures or areas if the committee created in AS 41.35.110 finds that (1) the group has a durable building with weatherproof and fireproof construction and humidity control and other factors necessary to serve as a museum which will assure safe preservation of the items, (2) the item sought to be obtained is not one for which there is an undue risk of damage during transportation, and (3) the item sought to be obtained or retained is not one requiring special treatment or care beyond the ability or means of the group requesting it. A group retaining such an item or obtaining one from the state shall house it in the museum building and shall make every reasonable effort to assure its safe preservation. If the committee finds that a local cultural group is not properly taking care of an item the group shall return it to the department. (§ 1 ch 130 SLA 1971)

Sec. 41.35.030. Designation of monuments and historic sites. Upon the recommendation of the committee, the governor may declare by public order any particular historic, prehistoric or archeological structure, deposit, site or other object of scientific or historic interest that is situated on land owned or controlled by the state to be a state monument or historic site and the governor may designate as a part of the monument or site as much land as is considered necessary for the proper access, care and management of the object or site to be protected. When an object or site is situated on land held in private ownership it may be declared a state monument or historic site in the same manner, with the written consent of the owner. (§ 1 ch 130 SLA 1971)

Sec. 41.35.040. Administration and financial support of monuments and historic sites. State-owned monuments, sites and other historic, prehistoric or archeological properties owned or purchased by the state are under the control of the department and the

and they are kept accessible to the general public and application for support is made in conformity with regulations adopted by the commissioner. (§ 1 ch 130 SLA 1971)

Sec. 41.35.050. Regulations. The commissioner shall adopt regulations to carry out the purposes of this chapter. (§ 1 ch 130 SLA 1971)

Sec. 41.35.060. Power to acquire historic, prehistoric or archeological properties. (a) The department, with the recommendation of the committee, may acquire real and personal properties that have statewide historic, prehistoric or archeological significance by gift, purchase, devise or bequest. The department shall preserve and administer property so acquired. The department may acquire property adjacent to the property having historic, prehistoric or archeological significance when it is determined to be necessary for the proper use and administration of the significant property.

(b) If an historic, prehistoric or archeological property which has been found by the department, upon the recommendation of the committee, to be important for state ownership is in danger of being sold or used so that its historic, prehistoric or archeological value will be destroyed or seriously impaired, or is otherwise in danger of destruction or serious impairment, the department may establish the use of the property in a manner necessary to preserve its historic, prehistoric or archeological character or value. If the owner of the property does not wish to follow the restrictions of the department, the department may acquire the property by eminent domain under AS 09.55.249 — 250.60. (§ 1 ch 130 SLA 1971)

Sec. 41.35.070. Preservation of historic, prehistoric and archeological resources threatened by public construction. (a) The department shall locate, identify and preserve in suitable records information regarding historic, prehistoric and archeological sites, locations and remains. The information shall be submitted to the heads of the executive departments of the state.

(b) Before public construction or public improvement of any nature is undertaken by the state, or by a governmental agency of the state or by a private person under contract with or licensed by the state or governmental agency of the state, the department may survey the affected area to determine if the area contains historic, prehistoric or archeological values.

(c) If the department determines that historic, prehistoric or archeological sites, locations or remains will be adversely affected by public construction or improvement, the proposed public construction or improvement may not be commenced until the department has performed the necessary investigation, recording and salvage of

(d) If in the course of performing public construction or improvements, historic, prehistoric or archeological sites, locations, remains or objects are discovered, the department shall be notified and its concurrence shall be requested in continuing the construction or improvement. Upon receipt of this notice, the department shall survey the area to determine whether the area contains historic, prehistoric or archeological data which should be preserved in the public interest. The survey shall be conducted as expeditiously as possible. If, as a result of the survey, it is determined that (1) this data exists in the area, (2) the data has exceptional historic, prehistoric or archeological significance, and should be collected and preserved in the public interest, and (3) it is feasible to collect and preserve the data, the department shall perform the necessary work to collect and preserve the data. This work shall be performed as expeditiously as possible.

(e) If the concurrence of the department, required under (b) and (c) of this section, is not obtained after 90 days from the filing of a request for its concurrence to proceed with the project, the agency or person performing the construction or improvement may apply to the governor for permission to proceed without that concurrence and the governor may take the action the governor considers best in overruling or sustaining the department.

(f) The costs of investigation, recording and salvage of the site shall be reimbursed by the agency sponsoring the construction project.

(g) Notwithstanding (a) — (f) of this section, all actions to stop any project must first be approved in writing by the commissioner. (§ 1 ch 130 SLA 1971; am § 1 ch 112 SLA 1974)

Revisor's notes. — In ch. 130, SLA 1971, subsection (g) referred to "(a) and (f)." However, the floor amendment adding

(g) read "(a) — (f)," and the text has been corrected here. (See 1971 House Journal, p. 1251).

**Sec. 41.35.080. Permits.** The commissioner may issue a permit for the investigation, excavation, gathering or removal from the natural state, of any historic, prehistoric or archeological resources of the state. A permit may be issued only to persons or organizations qualified to make the investigations, excavations, gatherings or removals and only if the results of these authorized activities will be made available to the general public through institutions and museums interested in disseminating knowledge on the subjects involved. If the historic, prehistoric or archeological resource involved is one which is, or is located on a site which is, sacred, holy or of religious significance to a cultural group, the consent of that cultural group must be obtained before a permit may be issued under this section. (§ 1 ch 130 SLA 1971; am § 2 ch 112 SLA 1974)

privately owned, officially designated state monument or historic site by any person, the person shall give the department three months notice of intention to construct on, alter or improve it. Before the expiration of the three-month notification period, the department shall either begin eminent domain proceedings under AS 41.35.060(b) or undertake or permit the recording and salvaging of any historic, prehistoric or archeological information considered necessary. (§ 1 ch 130 SLA 1971; am § 3 ch 112 SLA 1974)

**Sec. 41.35.100. Excavation and removal of historic, prehistoric or archeological remains on private land.** Before any historic, prehistoric or archeological remains are excavated or removed from private land by the department, the written approval of the owner shall first be secured. When the value of the private land is diminished by the excavation or removal, the owner of the land shall be compensated for the loss at a monetary sum mutually agreed on by the department and the owner or at a monetary sum set by the court. (§ 1 ch 130 SLA 1971; am § 4 ch 112 SLA 1974)

**Sec. 41.35.110. Historic sites advisory committee.** There is created in the Department of Natural Resources the Historic Sites Advisory Committee. (§ 1 ch 130 SLA 1971)

**Sec. 41.35.120. Composition of committee.** The committee consists of the following persons:

- 1. the director of the Alaska State Museum;
- 2. the state liaison officer appointed under 16 U.S.C. 470-470n (P.L. 89-665, National Historic Preservation Act of 1966);
- 3. three persons with professionally relevant backgrounds selected from each of the following fields: history, architecture and geology; and
- 4. two persons appointed to represent indigenous ethnic groups. (§ 1 ch 130 SLA 1971; am §§ 5, 6 ch 112 SLA 1974)

**Sec. 41.35.130. Appointment of members.** Members of the committee are appointed by the governor and confirmed by the legislature meeting in joint session. The members of the committee shall serve at the pleasure of the governor. (§ 1 ch 130 SLA 1971)

**Sec. 41.35.140. Term of membership.** The term of office for a member of the committee is three years, except for those who are members by virtue of their positions with the state. They serve for as long as they remain in the position by virtue of which they are members of the committee. A member appointed to fill a vacancy serves for an unexpired term of the member succeeded. Of those members listed under AS 41.35.120(3) and (4), upon initial appointment, one shall serve for one year, two for two years, and two for three years. (§ 1 ch 130 SLA 1971)

**Cross references.**— For transportation boards, commissions, etc., see AS 39.20.180.

**Sec. 41.35.160. Officers.** At the first meeting of each year, the committee shall elect a chairman from among its members. (§ 1 ch 130 SLA 1971)

**Sec. 41.35.170. Meetings and quorum.** The committee shall meet at least twice a year. Additional meetings may be called by the chairman or by petition of at least five members. Five members of the committee constitutes a quorum. (§ 1 ch 130 SLA 1971)

**Sec. 41.35.180. Duties of committee.** The committee shall

(1) develop criteria for the evaluation of state monuments and historic sites and all real and personal property which may be considered to be of historic, prehistoric or archeological significance as would justify their acquisition and ownership by the state;

(2) cooperate with the department in formulating and administering a statewide historic sites survey under 16 U.S.C. 470-470n (P.L. 89-665, National Historic Preservation Act of 1966);

(3) review those surveys and historic preservation plans that may be required, and approve properties for nomination to the National Register as provided for in 16 U.S.C. 470-470n (P.L. 89-665, National Historic Preservation Act of 1966);

(4) provide necessary assistance to the governor and the legislature for achieving balanced and coordinated state policies and programs for the preservation of the state's historic, prehistoric and archeological resources;

(5) consult with local historical district commissions regarding the establishment of historical districts under AS 29.48.108 and 29.48.110 and the approval of project alterations under AS 45.98.040; recommend, if appropriate, the formulation of additional criteria for the designation of historical districts under AS 29.48.110(b); approve plans for and evaluate the suitability of specific structures for purposes of loan eligibility and continuance under the historical district revolving loan fund (AS 45.98); and consult with the Department of Commerce and Economic Development relative to the adoption of regulations for historical district loans under AS 45.98. (§ 1 ch 30 SLA 1971; am § 7 ch 112 SLA 1974; am § 4 ch 139 SLA 1977)

**Sec. 41.35.190. Powers of chairman.** Subject to available appropriations the chairman may, with the concurrence of a majority of the committee, employ necessary personnel and may contract for the ser-

**Sec. 41.35.200. Unlawful acts.** (a) A person may not appropriate, remove, injure, or destroy, without a permit from the commissioner, any historic, prehistoric or archeological resources of the state.

(b) A person may not possess, sell, buy or transport within the state, or offer to sell, buy or transport within the state, historic, prehistoric or archeological resources taken or acquired in violation of this section 41.35.200. 16 U.S.C. 433.

(c) A person may not unlawfully destroy, mutilate, deface, injure, remove or excavate a gravesite or a tomb, monument, gravestone or other structure or object at a gravesite, even though the gravesite appears to be abandoned, lost or neglected.

(d) An historic, prehistoric or archeological resource which is taken in violation of this section shall be seized by any person designated in 41.35.220 wherever found and at any time. Objects seized may be disposed of as the commissioner determines by deposit in the proper public depository. (§ 1 ch 130 SLA 1971; am § 8 ch 112 SLA 1974)

**Sec. 41.35.210. Penalties.** A person who violates a provision of this chapter is guilty of a misdemeanor, and upon conviction is punishable by a fine of \$1,000, or by imprisonment for not more than six months, or by both. (§ 1 ch 130 SLA 1971)

**Sec. 41.35.220. Enforcement authority.** The following persons are peace officers of the state and shall enforce this chapter:

- 1) an employee of the department authorized by the commissioner;
- 2) a peace officer in the state;
- 3) any other person authorized by the commissioner. (§ 1 ch 130 SLA 1971)

**Cross references.** — For definition of "peace officer," see AS 01.10.060(6).

**Sec. 41.35.230. Definitions.** In this chapter, unless the context otherwise requires,

- 1) "commissioner" means the commissioner of natural resources;
- 2) "committee" means the Historic Sites Advisory Committee;
- 3) "department" means the Department of Natural Resources;
- 4) "historic, prehistoric and archeological resources" includes deposits, structures, ruins, sites, buildings, graves, artifacts, fossils, or other objects of antiquity which provide information pertaining to the historical or prehistorical culture of people in the state as well as to the natural history of the state. (§ 1 ch 130 SLA 1971)

## Chapter 37. Citizens' Advisory Commission on Federal Areas in Alaska.

Section	Section
10. Citizens' Advisory Commission on Federal Areas in Alaska	65. Expenses and per diem
20. Membership and officers	70. Staff of the commission
30. Qualifications of members	80. Duties of the commission
40. Term of members of the commission	90. Advisory groups of the commission
50. Removal of a member	100. Suit
60. No loss of compensation	110. Agency cooperation
	150. Definition

Chapter repealed effective June 30, 1988. — Section 3, ch. 81, SLA 1981, repeals this chapter, effective June 30, 1988.

Collateral references. — 72 Am. Jur. 2d, States, Territories and Dependences, §§ 16 -- 18.  
81A C.J.S., States, §§ 20 -- 28.

**Sec. 41.37.010. Citizens' Advisory Commission on Federal Areas in Alaska.** (a) The Citizens' Advisory Commission on Federal Areas in Alaska is established.

(b) The commission is a temporary advisory agency of the executive branch of the state but is not allocated to a principal department of the executive branch. In the exercise of its responsibilities, the commission shall consider the views of the citizens of the state and officials of the state. (§ 1 ch 81 SLA 1981)

**Sec. 41.37.020. Membership and officers.** (a) The commission is composed of 16 members appointed in accordance with this section.

(b) The membership of the commission shall represent each judicial district in the state.

(c) The governor shall appoint eight members of the commission

(d) The speaker of the house of representatives shall appoint two members of the commission from the membership of the state house of representatives and two members who are residents of the state.

(e) The president of the senate shall appoint two members of the commission from the membership of the state senate and two members who are residents of the state.

(f) The commission shall select a presiding officer of the commission from its membership. The commission may elect other officers. (§ 1 ch 81 SLA 1981)

**Sec. 41.37.030. Qualifications of members.** The members of the commission appointed by the governor under AS 41.37.020(c) and members appointed under AS 41.37.020(d) and (e) who are not mem-

**Sec. 41.37.040. Term of members of the commission.** (a) A member of the commission appointed by the governor serves for a term of two years and until a successor is appointed and qualifies.

(b) A member of the commission appointed from the legislature serves for the member's term of office as a legislator.

(c) A public member of the commission appointed by a member of the legislature serves for two years and until a successor is appointed and qualifies. (§ 1 ch 81 SLA 1981)

**Cross references.** — For terms of office of governor's initial appointees, see section 41.37.010, SLA 1981.

**Sec. 41.37.050. Removal of a member.** (a) A member of the commission may be removed by the appointing authority for cause after notice and hearing or after missing three consecutive meetings of the commission. The presiding officer of the commission shall inform the appointing authority if a member misses three consecutive meetings.

(b) After a member of the commission misses two consecutive meetings and before the third meeting, the secretary of the commission shall notify the member in writing that failure to attend the next meeting may result in the removal of the member. The failure of the secretary of the commission to notify a member under this subsection does not prevent the appointing authority from removing a member under (a) of this section. (§ 1 ch 81 SLA 1981)

**Sec. 41.37.060. No loss of compensation.** A member of the commission who is a legislator or a full-time employee of the state or of a municipality of the state shall suffer no loss of compensation from the state or a municipality of the state as a result of service to the commission. (§ 1 ch 81 SLA 1981)

**Revisor's notes.** — As enacted, this section contained a subsection (b) which was numbered as AS 41.37.065 in 1981.

**Sec. 41.37.065. Expenses and per diem.** A member of the commission is entitled to travel expenses and per diem prescribed for state funds and commissions. (§ 1 ch 81 SLA 1981)

**Revisor's notes.** — Enacted as AS 41.37.060(b). Renumbered in 1981.

**Sec. 41.37.070. Staff of the commission.** The commission may employ staff and contract for services relating to matters within its

of controlled substances;

(D) evasive tactics or actions used by the owner or person in control of the substance to avoid detection by law enforcement authorities;

(E) the storage, packaging, presentation, display of or reference to a controlled substance with, near, or in connection with the activity involving the imitation controlled substance.

(4) "manufacture" means the production, preparation, compounding, processing, encapsulating, packaging or repackaging, labeling or relabeling, of an imitation controlled substance. (§ 1 ch 11 SLA 1983)

### Chapter 75. General Provisions.

*[Repealed, § 21, ch. 166, SLA 1978. For present provisions on classification of offenses, see AS 11.81.250; for definitions, see AS 11.81.900; for sentencing, see AS 12.55.]*

### Chapter 76. Miscellaneous Offenses.

Section	Section
110 Selling or giving tobacco to a minor	120. Opening or publishing contents of sealed letters
110 Interference with constitutional rights	

**Sec. 11.76.100. Selling or giving tobacco to a minor.** (a) A person being 19 years of age or older, commits the offense of selling or giving tobacco to a minor if the person knowingly sells, exchanges, or gives cigarettes, cigars, or tobacco to a person under 16 years of age.

(b) Selling or giving tobacco to a minor is a violation. (§ 9 ch 166 SLA 1978)

**Sec. 11.76.110. Interference with constitutional rights.** (a) A person commits the crime of interference with constitutional rights if

(1) the person injures, oppresses, threatens, or intimidates another person with intent to deprive that person of a right, privilege, or immunity in fact granted by the constitution or laws of this state;

(2) the person intentionally injures, oppresses, threatens, or intimidates another person because that person has exercised or enjoyed a right, privilege, or immunity in fact granted by the constitution or laws of this state; or

(3) under color of law, ordinance, or regulation of this state or a municipality or other political subdivision of this state, the person intentionally deprives another of a right, privilege, or immunity in fact granted by the constitution or laws of this state.

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Procedure

Title 13  
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(b) In a prosecution under this section, whether the injury, oppression, threat, intimidation, or deprivation concerns a right, privilege, or immunity granted by the constitution or laws of this state is a question of law.

(c) Interference with constitutional rights is a class A misdemeanor. (§ 9 ch 166 SLA 1978)

**Sec. 11.76.120. Opening or publishing contents of sealed letters.** A person who wilfully opens or reads, or has opened and read, a sealed letter not addressed to the person, without authority to do so by the writer or by the person to whom it is addressed, or who wilfully, without the same authority, publishes a letter or portion of it, knowing it to have been opened without the authority of the writer or addressee, upon conviction, is punishable by imprisonment in jail not less than one month nor more than one year, or by a fine of not less than \$50 nor more than \$500. This section does not extend to or include an act made punishable by a law of the federal government. (§ 65-5-115 ACLA 1949; am § 22 ch 166 SLA 1978)

Revisor's notes. — Formerly AS 11.20.660. Renumbered in 1978.

## Chapter 81. General Provisions.

### Article

1. General Purposes (§ 11.81.100)
2. Applicability of Criminal Statutes (§§ 11.81.200 — 11.81.220)
3. Classification of Offenses (§ 11.81.250)
4. General Principles of Justification (§§ 11.81.300 — 11.81.450)
5. General Principles of Criminal Liability (§§ 11.81.600 — 11.81.640)
6. Definitions (§ 11.81.500)

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Collateral references. — 21 Am. Jur. 22 C.J.S., Criminal Law, § 29-72; 40 2d, Criminal Law, §§ 19-128; 40 Am. Jur. 2d C.J.S., Homicide, §§ 97-138. 2d, Homicide, §§ 139-182.

### Article 1. General Purposes.

#### Section

100. General purposes

**Sec. 11.81.100. General purposes.** The general purposes of this title are to

(1) proscribe conduct that unjustifiably and inexcusably causes or threatens substantial harm to individual or public interests;

ptive terms set out in this intended as appropriate in most cases, without significant downward adjustment. Ct. App. Op. No. 72 (File P.2d 823 (1982), modified on rehearing, Ct. App. Op. No. 259 (File No. 5606).

tion which is necessary sent offense. — Subsection, when read in connection with § 12.55.145(a)(1) and AS 12.55.145(a)(1) makes no exception for cases where conviction relied upon for presumptive sentencing is an element of the present offense. Ct. App. Op. No. 197 (File P.2d 789 (1983)).

does not purport to deal with the applicability of subsection under this section include the use of a prior conviction to invoke presumptive sentencing under this section when that is a necessary element of the offense. Fry v. State, Ct. App. Op. No. 6810, 655 P.2d 789 (1983).

or escape in the second offense to sentence appellant as a second felony offender and to impose sentence on ground of confinement on prior conviction used to prove an element, i.e., that appellant was in "a correctional or official detention." Ct. App. Op. No. 216 (File No. 5606) (1983).

must precede the plain terms of AS 12.55.185(6) (7), and must precede the next sentence which can apply. Ct. App. Op. No. 228 (File P.2d 1583).

three separate crimes were entered after all had been committed, he should be a second felony offender under this section and AS 12.55.185(6), Ct. App. Op. No. 3295, P.2d 1583.

the holding in State v. No. 1383 (File Nos. 26 (1977) only to the extent specifically required offense to be entered of the next offense separately considered

as prior convictions in any subsequent case.

**Conviction being appealed.** — A conviction with the attendant constitutional safeguards is sufficient for purposes of presumptive sentencing even though on appeal. Wright v. State, Ct. App. Op. No. 204 (File No. 6569), 656 P.2d 1226 (1983).

Where total sentence received by first offender exceeds presumptive sentence for second offender but period of actual imprisonment is substantially less, such sentence meets requirement of Austin v. State, Ct. App. Op. No. 18 (File No. 5341), 627 P.2d 657 (1981), of a substantially more favorable sentence for first offender, where, however, actual period of imprisonment equals or exceeds presumptive term for second offender, aggravating factors or extraordinary circumstances are required to justify additional time even if it is suspended. Brezenoff v. State, Ct. App. Op. No. 226 (File No. 7117), 658 P.2d 1359 (1983).

In prosecution for burglary and attempted sexual assault, where defendant had long record of misdemeanor offenses consisting of approximately 32 convictions in the last nine years, including three convictions for assault, numerous convictions for disorderly conduct, and numerous theft-related offenses, the case was an exceptional one where a first felony offender could be given a sentence in excess of presumptive sentence for second offender, but did not justify imposition of consecutive sentences totalling in excess of 10 years. Hansen v. State, Ct. App. Op. No. 218 (File No. 6965), 657 P.2d 862 (1983).

Normally a first offender should receive a more favorable sentence than the presumptive sentence for a second offender. Austin v. State, Ct. App. Op. No. 18 (File No. 5341), 627 P.2d 657 (1981).

**Sentence for first-time offender in excess of presumptive sentence for second offender.** — Usually a sentence for a first felony offender which is in excess of the presumptive sentence for a second felony offender must be justified either by specific aggravating factors under the criminal code, or else by aggravating factors which would qualify as extraordinary circumstances under AS 12.55.165 and would justify a repeat offender receiving an enhanced sentence by a three judge panel. Neakok v. State, Ct. App. Op. No. 163 (File No. 6418), P.2d 1583 (1982).

Imposition of a sentence for first-time

presumptive sentence for second offenders is permissible only in exceptional circumstances, which may be determined by consideration of the aggravating factors specified in AS 12.55.155 or consideration of any additional, unspecified aggravating factors that would constitute extraordinary circumstances under AS 12.55.165. Peetook v. State, Ct. App. Op. No. 178 (File No. 6630), P.2d 1583 (1982).

If a suspended portion of a sentence for a first felony offender is later imposed, thus causing the period of incarceration to exceed the presumptive sentence for a second felony offender, the first offender would be entitled to bring a sentence appeal upon the imposition of the suspended portion of the sentence. Tazruk v. State, Ct. App. Op. No. 195 (File No. 6954), P.2d 1583 (1982).

In evaluating whether a partially suspended sentence for a first felony offender is in excess of the presumptive sentence which a second felony offender would receive, the reviewing court should consider only that portion of the sentence which imposes a period of incarceration. Tazruk v. State, Ct. App. Op. No. 195 (File No. 6954), P.2d 1583 (1982).

**Deviation from presumptive sentences.** — In sentencing proceedings involving allegations of aggravating and mitigating circumstances, the provisions of AS 12.55.155(f) require the party seeking to establish a factor to bear a dual burden of proving to the court by clear and convincing evidence the existence of the alleged factor, and providing the court with sufficient reasons to justify a conclusion, by clear and convincing evidence, that the factor warrants deviation from the statutorily prescribed presumptive sentence. Juneby v. State, Ct. App. Op. No. 72 (File No. 5606), 641 P.2d 823 (1982), modified on other grounds and aff'd on rehearing, Ct. App. Op. No. 259 (File No. 5606), P.2d 1583 (1983).

**Nature of crime charged is factor.** — In order to determine the realistic impact that proof of an aggravating or mitigating circumstance should have on adjustment of a presumptive sentence in any given case, it is essential to consider not only the specific conduct constituting the aggravating or mitigating factor, but also the nature of the crime charged. Juneby v.

State, Ct. App. Op. No. 72 (File No. 5606), 641 P.2d 823 (1982), modified on other grounds and aff'd on rehearing, Ct. App. Op. No. 259 (File No. 5606), P.2d 1583 (1983).

**Finding required for consecutive sentence exceeding presumptive term for single count.** — An affirmative finding by the sentencing court that confinement of the defendant for the aggregate period of a consecutive sentence is necessary to protect the public is required in all cases where imposition of consecutive presumptive terms would result in an aggregate sentence that exceeds the presumptive term for a single count. Lacquement v. State, Ct. App. Op. No. 85 (File No. 5741), 644 P.2d 856 (1982). See also Friedberg v. State, Ct. App. Op. No. 258 (File No. 7015), 663 P.2d 558 (1983).

**Scope of review.** — See notes under heading "Review of presumptively imposed sentences," AS 12.55.120, Juneby v. State, Ct. App. Op. No. 72 (File No. 5606), 641 P.2d 823 (1982), modified on other grounds and aff'd on rehearing, Ct. App. Op. No. 5606, P.2d 1583 (1983).

Where AS 12.55.145(a)(1) prohibited consideration of prior convictions for purposes of rendering defendant a second offender or third offender under this section, and where defendant was not otherwise subject to a presumptive sentence under this section, the prior criminal acts may nevertheless be considered as constituting an "exceptional case" justifying imposition of sentence in excess of the presumptive sentence for a second offender. Koganaluk v. State, Ct. App. Op. No. 176 (File No. 6531), P.2d 1583 (1982).

**Failure to prove prior convictions.** — When a party has had insufficient time to comply with the notice requirements relating to proof of prior convictions or aggravating and mitigating factors, the appropriate remedy should normally be a continuance of the sentencing proceedings; and failure to consider prior crimes for presumptive sentencing purposes can be condoned only in those cases where the state, after exercising due diligence, is unable to meet the statutory requirements for proof of a prior conviction. Kelly v. State, Ct. App. Op. No. 251 (File No. 6311), P.2d 1583 (1983).

**Sec. 12.55.135. Sentences of imprisonment for misdemeanors.**  
(a) A defendant convicted of a class A misdemeanor may be sentenced to a definite term of imprisonment of not more than one year

(b) A defendant convicted of a class B misdemeanor may be sentenced to a definite term of imprisonment of not more than 90 days unless otherwise specified in the provision of law defining the offense.

(c) A defendant convicted of assault in the fourth degree committed in violation of the provisions of an order issued under AS 25.35.010 or 25.35.020 shall be sentenced to a minimum term of imprisonment of 20 days.

(d) A defendant convicted of assault in the fourth degree upon a uniformed or otherwise clearly identified peace officer, fire fighter, correctional officer, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the assault shall be sentenced to a minimum term of imprisonment of 30 days.

(e) The execution of a sentence under (c) or (d) of this section may not be suspended and probation or parole may not be granted until the minimum term of imprisonment has been served. Imposition of a sentence under (c) or (d) of this section may not be suspended, except upon condition that the defendant be imprisoned for no less than the minimum term of imprisonment provided in (c) or (d) of this section, and the minimum sentence provided for in (c) or (d) of this section may not be otherwise reduced. (§ 12 ch 166 SLA 1978; am § 2 ch 139 SLA 1980, am § 22 ch 59 SLA 1982; am § 13 ch 61 S. A 1982, am § 31 ch 143 SLA 1982; am §§ 4, 5 ch 92 SLA 1983)

#### Revisor's notes.

Internal references in subsection (e) were revised in 1983.

**Effect of amendments.** — The first 1982 amendment substituted "fourth degree" for "third degree" in the first sentence of subsection (c).

The second 1982 amendment made the same change as the first 1982 amendment.

The third 1982 amendment, in subsec-

tion (c), substituted "fourth degree" for "third degree" and "20 days" for "10 days" in the first sentence and substituted "be imprisoned" for "by imprisoned" in the last sentence.

The 1983 amendment deleted the second and third sentences of subsection (c), concerning suspension of the execution or imposition of a sentence, and added subsections (d) and (e).

#### NOTES TO DECISIONS

**Constitutionality of presumptive sentencing provisions.** — See notes under same heading, AS 12.55.125, *Nell v. State*, Ct. App. Op. No. 77 (File No. 5565), 642 P.2d 1361 (1982).

Cited in *Law v. State*, Sup. Ct. Op. No. 2301 (File No. 4552), 624 P.2d 284 (1981); *Kelly v. State*, Ct. App. Op. No. 251 (File No. 6311), P.2d (1983).

*Sec. 12.55.140. Sentences for violations. [Repealed, § 23 ch 59 SLA 1982.]*

**Sec. 12.55.145. Prior convictions.** (a) For purposes of considering prior convictions in imposing sentence under AS 12.55.125(c), (d)(1),

(1) a prior conviction may not be considered if a period of 10 or more years has elapsed between the date of the defendant's unconditional discharge on the immediately preceding offense and commission of the present offense unless the prior conviction was for an unclassified or class A felony;

(2) a conviction in this or another jurisdiction of an offense having elements similar to those of a felony defined as such under Alaska law at the time the offense was committed is considered a prior felony conviction;

(3) two or more convictions arising out of a single, continuous criminal episode during which there was no substantial change in the nature of the criminal objective are considered a single conviction unless the defendant was sentenced to consecutive sentences for the crimes; offenses committed while attempting to escape or avoid detection or apprehension after the commission of another offense are not part of the same criminal episode or objective.

(b) When sentence is imposed under this chapter, prior convictions not expressly admitted by the defendant must be proved by authenticated copies of court records served on the defendant or the defendant's counsel at least 20 days before the date set for imposition of sentence.

(c) If the defendant denies the authenticity of a prior judgment of conviction, that the defendant is the person named in the judgment, that the elements of a prior offense committed in another jurisdiction are substantially identical to those of a felony defined as such under Alaska law, or that a prior conviction occurred within the period specified in (a)(1) of this section or if the defendant alleges that two or more purportedly separate prior convictions should be considered a single conviction under (a)(3) of this section, the defendant shall file with the court and serve on the prosecuting attorney notice of denial no later than 10 days before the date set for imposition of sentence. The notice of denial shall include a concise statement of the grounds relied upon and may be supported by affidavit or other documentary evidence.

(d) Matters alleged in a notice of denial shall be heard by the court sitting without a jury. If the defendant introduces substantial evidence that he is not the person named in a prior judgment of conviction, that the judgment is not authentic, that the conviction did not occur within the period specified in (a)(1) of this section, or that a conviction should not be considered a prior felony conviction under (a)(2) of this section, then the burden is on the state to prove the contrary beyond a reasonable doubt. The burden of proof that two or more convictions should be considered a single conviction under (a)(3) of this section is on the defendant by clear and convincing evidence.

(e) The authenticated judgments of courts of record of the United States, the District of Columbia, or of any state, territory, or political subdivision of the United States are prima facie evidence of conviction.