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May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

SENATE RESOURCES COMMITTEE,

" " 2/22/85, 1:35

3/1/85, 1:40



United States Department of the Interior

OFFICE OF THE SOLICITOR  
ANCHORAGE REGION  
510 L Street, Suite 408  
Anchorage, Alaska 99501

IN REPLY REFER TO  
MAY 21 1980  
ANCHORAGE AK

MEMORANDUM

To: Acting Area Director  
Bureau of Indian Affairs  
Juneau

From: David S. Case  
Attorney/Advisor

Subject: Rights of Way on Allotments --  
R.S. 2477 and Other Access Questions

I. INTRODUCTION

A. Your Requests

Over the last twelve months you have directed three opinion requests to this office regarding access to and across Native allotments. Your first request (dated May 22, 1979) asked about the effect of Native occupancy on the establishment of section line road easements under R.S. 2477. Your second request (dated July 6, 1979) was for general guidance about the method for assuring access to landlocked Native allotments you had advertised for sale. You also asked if you have to disclose any access problems in your sale advertisement. With respect to R.S. 2477 easements, you asked whether a section line easement for public access would suffice for private access to an otherwise landlocked

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The request was entitled "Effect of Statutory Reservations on Native Allotments" and was answered in a memorandum by Dennis Hopewell of this office, dated September 4, 1979. The section line easement question was specifically excluded from that response pending this reply.

allotment. Your final request (dated April 4, 1980) reduced to its essentials, asked whether the Indian right of way laws and regulations apply when the right of way on or through a certified allotment coincides with a surveyed section line easement arguably granted under R.S. 2477.

B. R.S. 2477 in Brief

R.S. 2477 is an 1866 Act "granting" highway rights of way over public lands in the following deceptively simple terms:

The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted. Act of July 26, 1866, c. 262, sec. 8, 14 Stat. 253.

This act was initially codified as Revised Statute (R.S.) 2477 and later as 43 U.S.C. 932. It was repealed by Section 706(a) of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976, PL 94-576, 90 Stat. 2743, 43 U.S.C. 1701, et seq.

Your questions focus on the section line easements appropriated by the Territory and State of Alaska under this federal authorizing legislation. The State statute appropriating the section line easements is codified as Alaska Statute (AS) 19.10.010. However, the the R.S. 2477 grant includes other kinds of rights of way other than those appropriated under this statute. On the other hand, you should note that the R.S. 2477 grant is specifically limited to rights of way over "public lands." The latter point is significant, because it is our opinion that Alaska Native use and occupancy sufficient to qualify for a certificate of allotment is also sufficient to withdraw the land occupied from "public land" status.

Finally, the State's acceptance of the R.S. 2477 grant along section lines has had an on-again, off-again history that must be taken into account when determining whether the easements granted under R.S. 2477 have ever been accepted by the State. Thus, the answers to your questions require some background in the meaning of the term "public lands" and in the history of the application of R.S. 2477 in Alaska. In order to give some direction to that discussion, however, we have provided short answers to each of the questions posed in your opinion requests.

## II. SHORT ANSWERS

### A. May 22, 1979 Request

We agree with the conclusion expressed at page 2 of your opinion request about the effect of Native use and occupancy on the establishment of a section line easement. However, we would state your conclusion more definitely: ~~If~~ use and occupancy were initiated ~~after survey of the section line~~ then the section line easement is superior to the allottee's rights and a right-of-way across the allotment does not require the consent of the allottee or a grant from the United States. If use and occupancy began any time before the survey, then the easement can only be granted with the consent of the allottee and according to the applicable Indian right of way laws.

### B. July 6, 1979 Request

We know of no principle requiring you to disclose whether or not there is access to advertised parcels; furthermore, otherwise valid section line easements can be used to provide private access, but they are also open to the public. Under some circumstances, however, easements by necessity can be implied across otherwise unencumbered lands to afford private access to landlocked parcels.

### C. April 4, 1980 Request

Whether the Indian right of way laws apply to a Native allotment depends on whether the allottee commenced use and occupancy before or after a section line right of way was appropriated by survey.

## III. DISCUSSION

### A. R.S. 2477

#### 1. History and Purpose of R.S. 2477

U.S. Supreme Court and Ninth Circuit cases have cast some doubt on whether R.S. 2477 applies in Alaska. A narrow reading of the U.S. Supreme Court's opinion in Central Pacific Railway Co. v. Alameda County, 284 U.S. 463 (1931), and the Ninth Circuit's later decision in U.S. v. Dunn, 478 F.2d 433, 445 (9th Cir. 1973) would indicate that R.S. 2477

was only a recognition of pre-existing rights rather than a grant of new rights. Strictly construed, this interpretation could mean that R.S. 2477 was never applicable to Alaska, since it was enacted in 1866, one year prior to the purchase of the Territory.

The Territorial and State cases, on the other hand, consistently characterize R.S. 2477 as "in effect, a standing offer from the federal government" for the grant of a right of way, Girves v. Kenai Peninsula Borough, 536 P.2d 1221, 1226 (Alaska 1975). Under this interpretation, the right of way has been held to come into existence upon the "acceptance" of the standing offer. See Berger v. Ohlson, 9 Alaska 389 (D. Alaska 1938); Clark v. Taylor, 9 Alaska 298 (D. Alaska 1938); United States v. Rogge, 10 Alaska 130 (D. Alaska 1941); State v. Fowler, 1 Alas. L.J. 7 (April 1963); Hammerly v. Denton, 359 P.2d 121 (Alas. 1961). Given the weight or authority in this jurisdiction and the historical reliance placed upon R.S. 2477 in Alaska as a source of rights of way across the public domain, we are unwilling to conclude that the statute has no applicability to Alaska. We suspect that if the question were squarely presented to the Ninth Circuit Court of Appeals it would agree.

It has been held that R.S. 2477 first became applicable in Alaska by the Organic Act of May 17, 1884, 23 Stat. 254, whereby Alaska first became an organized territory. ~~Section~~ 9 of that Act, among other things, provided that the laws of the United States be extended to the Territory of Alaska, U.S. v. Rogge, 10 Alaska, supra at 147. As noted previously, R.S. 2477 is construed as a standing offer from the federal government for the creation of a right of way, Girves v. Kenai Peninsula Borough, 536 P.2d, supra at 1226. Under this construction, it has been held that the offer can be accepted (and the right of way created) either (1) by a positive act of the state or territory clearly manifesting an intent to accept the offer, Hammerly v. Denton, 359 P.2d, supra at 123.<sup>2/</sup>

<sup>2/</sup> Accord: Wilderness Society v. Morton, 479 F.2d 842, 882 (D.C. Cir. 1973), cert. den'd. 411 U.S. 917.

or (2) by public use of the right of way for such a period of time and under such conditions as to prove that the offer has been accepted, id.

Statutory acceptance of the grant, formal expression on the part of public officials of an intention to construct a highway or actual public construction of a highway may all constitute acceptance of the R.S. 2477 grant by the "positive act" of the appropriate public authorities. Thus, in Girves, supra, the Alaska Supreme Court held that AS 17.10.010 (establishing a highway easement along all section lines in the State) was sufficient to establish a right of way along the boundary of plaintiff's homestead coinciding with a surveyed section line. In Wilderness Society v. Morton, 479 F.2d 842 (D.C. Cir., 1973) - it was held that the State's application to the Bureau of Land Management to construct a "public highway" from the Yukon River to Prudhoe Bay, along with enabling State legislation, was sufficient to establish an acceptance of the federal grant. In addition, the actual construction or public maintenance of a highway may constitute acceptance. See Moulton v. Irish, 218 P.2d 1053 (Montana 1923), construction of highways; Streeter v. Stalnaker, 35 NW 47 (Nebraska 1901), public maintenance and improvement of highways.

Public use (sometimes called "public user") may also constitute acceptance of the grant in the absence of any positive official act. Whether any claimed use constitutes acceptance of the grant, however, is a question of fact to be decided by the court. It appears that continued and consistent use of a right of way across the public lands by even one person with an interest in the lands to which the road gives access may be sufficient to establish public user, State v. Fowler, 1 Alas. L.J., supra at 8 (April 1963). See also Hamerly v. Denton, supra at 125. However, the Alaska Supreme Court has held that mere desultory or occasional use of a road or trail does not create a public highway, id.<sup>3/</sup>

<sup>3/</sup> Of course, it is no longer possible to accept the R.S. 2477 grant by any of these methods, because R.S. 2477 was repealed by FLPMA, supra, in 1976. •

## 2. Allotments As "Public Lands"

By its terms, R.S. 2477 is only an offer for a right of way across "public lands." In discussing this term in the context of R.S. 2477, the Alaska Supreme Court has noted:

The term "public lands" means lands which are open to settlement or other disposition under the land laws of the United States. It does not encompass lands in which the rights of the public have passed and which have become subject to individual rights of a settler. Hammerly v. Denton, supra at 123.

Beginning with the 1884 Organic Act, previously discussed, Congress has specifically provided for the protection of lands used or occupied by Alaska Natives. Section 8 of the Organic Act provided in part:

That the Indians or other persons in [Alaska] shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress.<sup>4/</sup>

Federal decisions have long recognized the statutory protection afforded Alaska Native use and occupancy. See, e.g., U.S. v. Berrigan, 2 Alaska 442 (D. Alas. 1904); U.S. v. Cadzow, 5 Alaska 125 (D. Alas. 1914). Departmental regulations and policy reinforce the statutes. See, e.g., 43 CFR §§ 2091.1(e), 2091.2-1, 2091.5, 2091.6-3; see also Government Appropriation of Rights-of-Way in Alaska, Opinion of the Associate Solicitor, Public Lands (M-36595, March 15, 1960, copy attached).

In analogous circumstances, the U.S. Supreme Court has consistently recognized that railroad land grants are not to be construed in derogation of Native use and occupancy

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<sup>4/</sup> Similar provisions appear in the following acts: Act of March 3, 1891, c. 561, 26 Stat. 1095, § 14; Homestead Act of May 14, 1898, c. 299, 30 Stat. 412, § 7; Act of June 6, 1900, c. 786, 31 Stat. 330, § 27.

rights. That is particularly true where those rights have been protected by treaty, Leavenworth L & GR Co. v. United States, 92 U.S. 733 (1875), or specific statutory exceptions, Buttz v. Northern Pacific Railway Co., 119 U.S. 55 (1886). See generally, Bardon v. Northern Pacific Railway Co., 145 U.S. 535, 540-543 (1892). Most significantly, the U.S. Supreme Court has specifically protected rights of individual Native occupancy against competing federal grants even in the absence of any statutory or treaty protections where those rights flow "from a settled government policy." Cramer v. United States, 261 U.S. 219, 229 (1923). Whether from the statutory protection afforded in the 1884 Organic Act and the other legislation specifically noted or from the settled government policy of protecting Alaska Native use and occupancy, we think it is clear that lands used and occupied by individual Alaska Natives are not "public lands" within the meaning of R.S. 2477 and that the R.S. 2477 grant cannot attach during any period of such occupancy.

### 3. Acts Accepting the R.S. 2477 Grant

(A) Section Line Easements. You have noted that AS 19.10.010 establishes rights of way of varying widths along the section lines in the State. As noted earlier, the Alaska Supreme Court has concluded this statute is a positive official act constituting acceptance of the R.S. 2477 grant, Girves, supra. The Territorial statute accepting the grant was originally enacted on April 6, 1923 (19 SLA 1923), but was subsequently repealed (perhaps inadvertently) on January 18, 1949. Op. Ak. Atty. Gen. No. 7 at 3 (December 18, 1969). The statute was subsequently reenacted in substantially its present form by the 1953 Territorial legislature (Act of March 21, 1953, 35 SLA 1953). Id. Thus, whether a section line easement has attached to Native occupied land must be viewed against the backdrop of the dates of Native occupancy and the dates during which Alaska's acceptance of the grant was in effect. The section line easements could only attach to lands not occupied by Natives between the dates of April 6, 1923, and January 18, 1949, and from March 21, 1953, forward.

Additionally, by the terms of the State statute, the acceptance is dependent on the existence of a "section line." In the Opinion previously noted, the State Attorney General also concluded that for the R.S. 2477 grant to attach under the statute, the "public lands must be surveyed and section lines ascertained," id. at 7. We agree with this conclusion; therefore, you must also determine whether

the lands in question were subject to individual Native use and occupancy on the date the section line was actually surveyed.<sup>5/</sup>

(B) Other Official Acts of Acceptance. As noted earlier, other official actions (i.e., construction, repair, dedications, etc.) can constitute official acceptance of the R.S. 2477 grant. Whether such official action has created an R.S. 2477 right of way will have to be determined on a case-by-case basis.

(C) Public User. Rights of way claimed to have been created by public use must also be determined on a case-by-case basis. On the one extreme, an obvious public road established prior to Native use and occupancy would certainly be sufficient to constitute acceptance of the R.S. 2477 grant; see State v. Fowler, 1 Alas. L.J. 7, supra. On the other extreme, it is equally clear that desultory or occasional use of a road or trail by individuals having no interest in the land to which they obtain access is not sufficient to create an R.S. 2477 right of way, Hamerly v. Denton, supra. Whether a given use is sufficient to constitute acceptance of the R.S. 2477 grant, may have to be determined judicially in all but the most obvious cases.

#### 4. Widths

By State statute, section line easements on "public lands" are four rods (66 feet) wide with the section line as a center of the dedicated right of way.<sup>6/</sup> Other official

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<sup>5/</sup> The Attorney General also concluded that the R.S. 2477 grant attaches on the date the "protracted surveys" were published in the Federal Register. We do not agree with this position; as a practical matter, the protraction diagrams are not a reliable means of ascertaining the correct position of the surveyed section line.

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<sup>6/</sup> A right of way 100 feet wide is granted between sections of land owned by or acquired from the State. Since Native occupied lands could not fall within this category, section line easements on Native allotments will be confined to the 66 foot width.

acts could conceivably establish larger rights of way. Rights of way established by public user appear to be confined to the width actually used, State v. Fowler, supra.

## B. Other Access Questions

### 1. Obligations To Provide Access

We do not believe either the allottee or the United States is obligated to provide a warranty of access to the purchaser of an allotment. By statute (AS 34.15.030) Alaska has incorporated the common law covenants for title into any deed which by its terms "conveys and warrants" real property to another. Thus, a deed substantially in the statutory form includes implied warranties that at the time of the conveyance the grantor: (1) is lawfully seized of the estate in fee simple and has the right and power to convey the premises; (2) that the premises are free from encumbrances and (3) that he warrants quiet enjoyment of the premises and to defend the title against all persons claiming the premises.

You have advised that you use a special warranty deed to convey restricted Indian lands. As you know, a special warranty deed limits the grantor's obligation to defend only against claims arising through him. It does not require the grantor to defend against claims arising through other persons, 21 CJS "Covenants" § 49. Except as so limited, we believe the deed form you used includes all of the statutory covenants implied by AS 34.15.030. None of these, however, include a covenant of access to the land granted. See generally, Powell on Real Property, ¶ 904, et seq. (1968 edition). Furthermore, AS 34.15.030 specifically provides: "No covenant is implied in a conveyance of real estate, whether the conveyance contains special covenants or not." We interpret this to mean that unless there is a specific covenant of access, the grantor is not obligated to provide it.

### 2. Easements By Conveyance Or Covenant

In spite of the protection this doctrine affords both the United States and the allottee, we recommend that as a prudent land manager you advise the allottee to provide whatever access it is within his power to provide incident to the sale of an allotment. That is especially true if, as in one case you described to us, the allottee is selling a

portion of the allotment which would be landlocked by the remaining lands of the allottee or others. In these circumstances, we advise you to insure that appropriate access is guaranteed through the allottee's other lands either by covenant or specific grant of easement. See generally, Powell on Real Property, ¶ 407 and 408. See also, 28 CJS Easements, § 23, et seq. Conversely, if the allottee's other lands will be landlocked by conveyance of a portion of the allotment to a third party, the allottee should insure that he is reserved an easement in the lands granted. See 28 CJS Easements, § 29. Under these circumstances, failure to provide or obtain access at the time of conveyance could result in later litigation to establish an easement by necessity.

### 3. Easements By Necessity

Easements by necessity are implied easements across otherwise unencumbered tracts where necessary to afford access to an otherwise landlocked parcel. See generally, Powell on Real Property, supra, ¶ 410. This doctrine comes into play only where there is a unity of ownership between the dominant and servient parcels at the time the landlocked (i.e., dominant) parcel was severed from the rest of the estate. The doctrine would apply to both examples discussed above where the grantor conveys a portion of the allotment thereby isolating either the land conveyed or the grantor's retained lands. In these circumstances, the courts have construed the intention of the parties to create an easement of necessity across the servient estate to provide access to the landlocked (i.e., dominant) estate.

As applied in this jurisdiction, the doctrine only requires proof of reasonable (as opposed to absolute) necessity in order to imply an easement. U.S. v. Dunn, 476 F.2d 443, 446 (9th Cir. 1973). Although the easement must be something more than a mere "convenience," it is not necessary to show that it is the only means of access to the property. In any event, the determination of whether the easement is a "reasonable necessity" is a fact question which involves considerations of public policy as well as the intent of the parties and the reasonable utilization to be made of the landlocked parcel. See generally, Powell on Real Property, supra, ¶ 410.

The doctrine has also been applied to Indian lands in this jurisdiction, cf. Superior Oil Co. v. United States, 353 F.2d 34 (9th Cir. 1965). The oil company in this case

sought to obtain an easement to move heavy oil drilling equipment across Indian reservation lands in order to drill on lands owned by a mission society and leased to the oil company. The mission society had previously been granted the land by the United States under a statute permitting such grants to religious organizations engaged in mission or school work on Indian reservations. The court concluded that although the mission society had an easement by necessity for mission purposes, the scope of that easement could not be expanded to accommodate the purposes of the oil company. We know of no principle which would preclude an easement of necessity from attaching to lands merely because they are Indian trust or restricted lands where the easement of necessity doctrine is otherwise applicable. See also, U.S. v. Clarke, 529 F.2d 984 (9th Cir. 1976), aff'd, U.S. \_\_\_\_\_, (No. 78-1693, March 18, 1980).

#### IV. SUMMARY

This, of necessity, has been a rather wide-ranging opinion dealing with the several general concerns you raised regarding easements across Indian allotments. We will summarize some of our conclusions below for ease of reference.

##### A. R.S. 2477 Easements

R.S. 2477 easements can be created either by the positive acts of authorized authorities or public user of a right of way across the "public lands." Native used and occupied lands, however, are not "public lands." Therefore, a right of way under R.S. 2477 can only be obtained if, at the time the R.S. 2477 grant is accepted, the lands were not subject to the individual use and occupancy rights of an Alaska Native who has applied for an allotment.

##### B. Section Line Easements

Whether a section line easement supersedes Native use and occupancy depends on whether the Native use and occupancy preceded either the statutory acceptance or actual survey of the section line easement. If Native use and occupancy began prior to April 6, 1923, or between January 13, 1949, and March 21, 1953, then the easement could not be imposed on those lands by subsequent survey of a section line. If unoccupied lands were surveyed either between April 6, 1923,

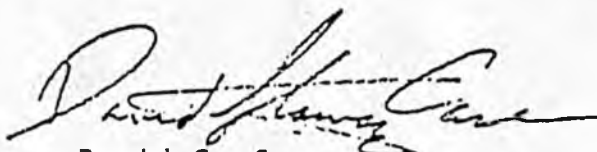
and January 18, 1949, or after March 21, 1953, then the section line easement supersedes Native occupancy rights.

C. Guarantees of Access

Although there is no legal requirement to guarantee access to otherwise landlocked allotments, you would be well advised to counsel the allottees to provide access if it is within their power to do so. It is especially important to provide access where there is an initial unity of title in the allottee. Under these circumstances an easement of necessity can be imposed to benefit a landlocked parcel. Providing access at the time of the grant will avoid later confusion and possible litigation.

D. Public or Private Access

You should also be aware that any R.S. 2477 right of access (whether by section line easement or otherwise) predating Native use and occupancy is a right of public access. While it may also permit private individuals to have access to otherwise landlocked parcels, it also permits the public at large to use the right of way. Of course, that does not permit the public to trespass on the allottee's or anybody else's private property.



David S. Case  
Attorney/Advisor

Enclosure

cc: Scott Keep, Div. of Indian Affairs, Washington, D.C.  
Area Realty Officer, Bureau of Indian Affairs, Juneau

# MEMORANDUM


# State of Alaska

TO: Department of Interior  
Bureau of Land Management

DATE: April 8, 1974

FILE NO: 00-2528

TELEPHONE NO: 364-2121 Ext. 111

FROM:  B. A. Campbell  
Commissioner of Highways

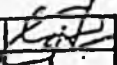
SUBJECT: Existing Trail System

The Alaska Department of Highways has researched and compiled a detailed Existing Trail System for the State of Alaska. We are transmitting one set of blueline prints and one bound set of IEM listings for your records.

The State of Alaska maintains ownership of these trails. The information on these trails is available to the public through the Alaska Department of Highways, and upon request will furnish at cost, approximately \$120.00, a combined set of the plans with the IEM run.

Attachments: as stated.

BAC/JOA/jal

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MEMORANDUM OF UNDERSTANDING  
BETWEEN ALASKA DEPARTMENT OF NATURAL RESOURCES AND  
ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES  
AND  
BUREAU OF LAND MANAGEMENT

PURPOSE

1. The purpose of this agreement is to establish the procedures for the assertion of RS 2477 rights-of-way by the Alaska Department of Natural Resources (DNR) and the Alaska Department of Transportation and Public Facilities (DOT&PF) to the Bureau of Land Management (BLM). Federal, state, and local officials need to know locations of RS 2477 public right-of-way assertions in order to assist such officials in their land and resource management decisions. The public needs to know the location of RS 2477 public right of way assertions to avoid unauthorized uses on private lands. This Memorandum of Understanding (MOU) will establish procedures that will enable RS 2477 rights-of-way assertions to be placed on land status plats.

BACKGROUND

2. RS 2477, formally codified as 43 U.S.C 932 (repealed by P.L. 94-579, Federal Land Policy and Management Act of October 21, 1976), provides:

The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.

3. By regulation found in 43 C.F.R. 2602.5 (b), the Bureau of Land Management has provided:

In order to facilitate management of the public lands, any person or state or local government which has constructed public highways under the authority of RS 2477 (43 U.S.C. 932, repealed October 21, 1976) may file a map showing the location of such public highways with the authorized officer.

4. In Hamerly v. Denton, 359 P. 2d 121, 123 (Alaska 1961), the Alaska Supreme Court stated that the general rule regarding acceptance of the RS 2477 federal grant:

Before a highway may be created, there must be either positive act on the part of appropriate public authorities of the state, clearly manifesting an intention to accept the grant, or there must be public use for such a period of time and under such conditions as to prove that the grant has been accepted.

5. The United States Department of the Interior, Office of the Solicitor, stated in a memorandum dated July 7, 1983:

"[(T)he Department of the] Interior has long recognized that State law controls what constitutes a (R.S. 2477) highway within each state;" and

6. Alaska Statute 19.45.001(8) states:

"Highways includes a highway (whether included in the primary or secondary systems), road, street, trail, walk, bridge, tunnel, drainage structure and other similar or related structure or facility, and right-of-way thereof, and further includes a ferry system, whether operated solely inside the state or to connect with a Canadian highway, and any such related facility;" and

7. WHEREAS by statute, AS 19 SLA 1923; 123 SLA 1951; 35 SLA 1953; AS 19.10.010, the State of Alaska has accepted the RS 2477 grant.

8. The RS 2477 grant has also been accepted in many cases by actual public use or expenditure of public monies on unreserved public lands for highway purposes.

#### POLICIES AND PROCEDURES

9. DOT&PF shall have responsibility for asserting and for identifying and submitting maps to BLM of all RS 2477 rights-of-way established before October 21, 1976, identified on the list of state maintained highways. DOT&PF's responsibility under this paragraph includes both state and non state lands.

10. DNR or DOT&PF may identify, assert, and submit maps and evidence of use to BLM for all other RS 2477 rights-of-way established before October 21, 1976, situated upon any land within the State of Alaska.

11. DNR or DOT&PF shall accept evidence of use on any right-of-way established before October 21, 1976, from other state agencies, local governments, and members of the public. For all claims of RS 2477 rights-of-way which involve state land or provide access to state land or public water an ADL/LAS case file will be established.

12. DNR or DOT&PF may maintain duplicate sets of all files regarding RS 2477 rights-of-way. All newly created RS 2477 files, or any documents to be added to an existing file, will be duplicated and forwarded from one agency to the other.

Increments of maintenance over several years may equal construction. When public funds have been spent on the road it may be a public road. When the history of a road is unknown or questionable, its mere existence in a condition adequate for public use may be evidence that construction has taken place.

b. A highway is freely open to everyone. Roads that have had access restricted to the public by locked gates or other means may not be public highways.

c. The construction of a public highway on unreserved public land must have occurred prior to October 21, 1976.

d. A State has to have a procedure to confirm the R.S. 2477 public highway right-of-way permit.

18. This MOU establishes the state's procedure to confirm the RS 2477 and thereby fulfills item d in paragraph 17 above.

19. DNR shall plot each RS 2477 right-of-way asserted on their land status plats.

20. Nothing in this Memorandum of Understanding shall obligate any party in the expenditure of funds, or for future payments of money, in excess of appropriations authorized by law.

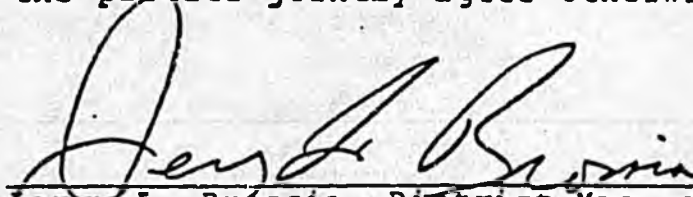
21. Each party agrees that it will be responsible for its own acts and the results thereof and each party shall not be responsible for the acts of the other parties; and each party agrees it will assume to itself risk and liability resulting in any manner under this agreement.

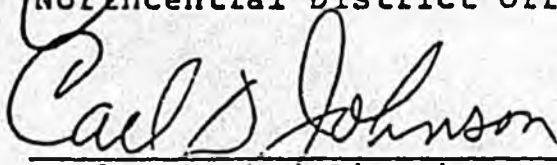
22. Nothing in this MOU is intended to limit agency or individual rights to normal administrative or judicial appeal processes.

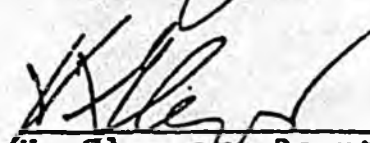
23. Nothing herein is intended to conflict with Federal, State or local laws or regulations. If there are conflicts, this agreement will be amended as soon as practical to bring it into conformance with conflicting laws or regulations.

24. It is understood by all parties that individual citizens may be entitled to assert rights-of-way under RS 2477 notwithstanding this agreement. Nothing in this Agreement shall affect the right of private citizens to assert rights-of-way under RS 2477 in conformance with applicable law.

25. The effective date of this agreement shall be from the date of final signature. The agreement shall remain in effect until the parties jointly agree otherwise.

  
 \_\_\_\_\_ Date 9-28, 1984  
 Jerry L. Brossia, District Manager,  
 Northcentral District Office, Alaska Department of Natural Resources

  
 \_\_\_\_\_ Date 9/28/, 1984  
 Carl Johnson, District Manager,  
 Fairbanks District Office, Bureau of Land Management

  
 \_\_\_\_\_ Date 28 sept, 1984  
 H. Glenzer, Deputy Commissioner,  
 Northern Region, Alaska Department of Transportation & Public  
 Facilities

13. All maps showing the location of RS 2477 rights-of-way established before October 21, 1976, submitted to BLM shall be the best maps possible but not of lesser detail than standard USGS maps at a scale 1:63,360. Maps and supporting documentation shall be submitted by both agencies concurrently. The submission of such maps showing the location of RS 2477 rights-of-way on public lands shall not be conclusive evidence as to their existence. Similarly, a failure to show the location of RS 2477 rights-of-way on any map shall not preclude a later finding as to their existence.

14. There shall be established an RS 2477 coordinating committee in the Northern Region of Alaska composed of DNR, DOT&PF and BLM. The purposes for this committee are as follows:

(a) coordination of agency priorities for identifying, locating, and asserting RS 2477 rights-of-way;

(b) coordination of RS 2477 processing procedures for identifying, locating, establishing case files, making assertions, and platting claims on both federal and state land status plats; and

(c) coordination of requests made to and by the agencies.

15. Each assertion of the existence of an RS 2477 right-of-way made pursuant to this agreement and the submissions to BLM will be reviewed by BLM to ensure the land was unreserved public land as of the date claimed and was established prior to the repeal of the law on October 21, 1976. BLM will not adjudicate the validity of RS 2477 assertions.

16. BLM, DNR, and DOT&PF shall each issue a serial number and establish a case file for each claim made pursuant to this agreement. All correspondence shall reference all agencies' file numbers.

17. BLM shall plot each RS 2477 right-of-way asserted on their Master Title Plats when the following criteria are met (BLM Manual 2801.24 B.1, Rel. 2-152, 9/10/82):

1. Criteria for identification of R.S. 2477 Public Highways, include four elements:

a. In order for a valid right-of-way to come into existence, there must have been the actual building (construction) of a highway. Mere use, planning, or surveying, does not equal construction. However, construction may not have occurred all at once. Road maintenance often equals improvement, or even construction.

CITIZENS' ADVISORY COMMISSION ON FEDERAL AREAS  
515 Seventh Avenue, Suite 310  
Fairbanks, Alaska 99701  
(907) 456-2012

Memorandum

TO: Commission Members  
FROM: Nancy Albrittain-Jackson  
RE: Federal Right-of-Way Grants, RS 2477  
DATE: May 2, 1983

Since settlement began in Alaska, the majority of the roads and trails were constructed out of necessity by the users of public lands. Construction was carried out under a number of statutes including the 1866 mining law, the applicable part of which is commonly referred to as RS 2477.

RS 2477 granted to the states and territories, free rights-of-way over unreserved public land for highway purposes. The object of the grant was to enable citizens to construct roads across public domain. There were no conditions except that the road had to be constructed and used by the public on what was at the time unreserved public land. RS 2477s were used for postal routes, freight hauling and access to mining claims, as well as other commercial travel and general public rights-of-way.

As settlement expanded and lands passed into private ownership or single use management areas, the issue of public use of existing roads and trails intensified into conflicts. At present, the Bureau of Land Management does not involve itself in RS 2477s, therefore conflicts must be resolved in court and the decision is usually based on a less than full understanding of the rights granted under Federal law and a less than complete record of the construction, use and land ownership at the time public use was initiated. Such documentation is essential in proving that a road is a RS 2477. Documentation of use is not always readily apparent, but can often be found in a number of historical sources such as old maps, Alaska Road Commission reports, Territorial Governor's reports, and affidavits of old-timers who used the roads and trails. Thus the private citizen is left to his own resources to defend these Federal access grants. Litigation is costly; the average citizen cannot afford it.

At stake are many roads, trails and access routes throughout the State which have been lawfully used and maintained. These rights will be lost forever if they are not secured. However, State policy has been inconsistent on the subject of RS 2477s. The State could establish a board composed of



# Citizens' Advisory Commission on Federal Areas

515 Seventh Avenue  
Suite 310  
Fairbanks, Alaska 99701  
(907) 456-2012

August 16, 1984

**RECEIVED**

**AUG 2 1984**

**Alaska Land Use Council  
Anchorage, AK**

Governor Bill Sheffield, State Cochairman  
Vern Wiggins, Federal Cochairman  
Alaska Land Use Council  
P.O. Box 100120  
Anchorage, Alaska 99510

Dear Governor Sheffield and Mr. Wiggins,

Members of the Citizens' Advisory Commission on Federal Areas at their August 3 meeting passed a motion to request the Alaska Land Use Council to provide time for a report to the Council by the Commission chairman, Mr. Phil Holdsworth, at each of the Council meetings, beginning with the meeting of September 13.

The purpose of this report would be to coordinate information and ideas of common interest in an effort to work more closely on federal land management issues and concerns. Ten minutes should generally suffice for this brief exchange.

For the September meeting, the Commission wishes to make a presentation on the issue of RS 2477s, which will be submitted as a separate agenda item, and also discuss a proposal for enhancing the local hire program created by Section 1308 of the Alaska National Lands Conservation Act.

Sincerely,

  
Stan Leaphart  
Executive Director

RS 2477  
May 2, 1983  
Page 2

members of each of the interested State agencies. This board could study the State's interest and make recommendations for a state-wide policy regarding RS 2477s. Legislation that would establish a clear specific State policy on access grants received from the Federal government would be binding on all State agencies has also been suggested.

In researching "traditional use" and RS 2477s, the implications of their significance becomes apparent. In order to resolve the problems associated with RS 2477s, the Department of Natural Resources would need to address RS 2477s within their land disposal program; the Department of Transportation and Public Facilities would be concerned about their responsibility to maintain a RS 2477; federal land management agencies would have to find a way to accommodate valid existing right-of-way grants within conservation system units; the issue will also have to be resolved on Alaska Native Claims Settlement lands.



# *Citizens' Advisory Commission on Federal Areas*

515 Seventh Avenue  
Suite 310  
Fairbanks, Alaska 99701  
(907) 456-2012

August 17, 1984

**RECEIVED**

Governor Bill Sheffield, State Co-Chairman  
Vernon R. Wiggins, Federal Co-Chairmen  
Alaska Land Use Council  
P.O. Box 100120  
Anchorage, Alaska 99510-0120

**AUG 20 1984**

**Alaska Land Use Council  
Anchorage, AK**

Dear Governor Sheffield and Mr. Wiggins:

In response to the Alaska Land Use Council's (ALUC) call for agenda items, the Citizens' Advisory Commission on Federal Areas wishes to submit the following item for consideration.

The Commission is concerned that inadequate attention is being given to the issue of R.S. 2477 Rights of Way in the planning efforts being undertaken for the Conservation System Units (CSU's). It is noted that the Department of Transportation is the State agency vested with the authority to manage R.S. 2477 public highway grants on non-State lands. An absence of a clear policy and/or political will in previous State and Federal administrations has made it impossible for DOT to assert this authority.

The Commission proposes that the ALUC move to form a task force to formulate and execute a procedure to identify and manage these public highway easements on the ANILCA CSU's. We suggest that the task force include the Department of Transportation and Department of Natural Resources as the lead State agencies. The lead Federal agency should be the Bureau of Land Management. An important element of such an undertaking would be adequate funding for the necessary research.

Congress has recognized the undeveloped nature of Alaska's transportation and utility system in Title XI of ANILCA and called for a systematic and orderly process by which the transportation needs of the state are met. While ANILCA does not specifically address the question of R.S. 2477's in Title XI, valid existing rights are protected by Section 1109 as well as the Federal Land Management and Policy Act. This would include rights of way accepted by the Territory and State of Alaska through AS 19.10.010 or public user prior to 1974.

This issue has been ignored to the detriment of both the State and the Federal governments as well as the valid existing rights of the citizens of the State of Alaska. The recent arrest of a miner on the Bulenberg Trail inside the boundaries


Governor Bill Sheffield and Mr. Vernon Wiggins  
August 17, 1984  
page 2

of the Yukon-Charley National Park and Preserve is a dramatic example of the confusion inevitable when public issues of such import are neglected.

The Citizens' Advisory Commission on Federal Areas realizes this is a difficult and sensitive issue, especially with regard to access across ANILCA lands. Reluctance to deal with the issue is understandable. However, to continue to ignore the problem will not solve it. The Commission believes its proposal for the Alaska Land Use Council to form a task force is the best way to approach this issue, which may become more of a problem the longer it is ignored.

The Commission would like to extend an offer of assistance to the ALUC in the formation and operation of such a task force. We hope that you will give this matter your most serious consideration.

Sincerely,

  
for Phil Holdsworth  
Chairman

DRAFT



*Citizens' Advisory Commission  
on Federal Areas*

515 Seventh Avenue  
Suite 310  
Fairbanks, Alaska 99701  
(907) 456-2012

TO: ALASKA LAND USE COUNCIL MEMBERS  
FROM: CITIZENS' ADVISORY COMMISSION ON FEDERAL AREAS  
RE: RS 2477 RIGHTS OF WAY  
DATE: SEPTEMBER 13, 1984

In 1866 the U.S. Congress passed a law entitled "An Act granting the right of way to Ditch and Canal Owners over the Public Lands, and for other Purposes." Section 8 of this act, which generally dealt with mining activities on the public lands, read as follows: "And be it further enacted, That the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted."

This grant, more commonly known as Revised Statute (RS) 2477 (43 USC §932), was a standing offer by the Federal government until it was repealed with the passage of the Federal Land Policy and Management Act (FLPMA) of 1976. While RS 2477 is no longer the legal basis for the construction of new public highways, valid existing rights granted to the Territory, State and public of Alaska during the period of the act's efficacy are protected by FLPMA Section 701 and reaffirmed by ANILCA Section 1109.

There are perhaps 150 or more RS 2477 rights of way in Alaska, concentrated primarily in the interior, which were accepted directly by the public of the State and the Territory through actual construction and use. This is exclusive of the Section-line right of way dedicated by the State in AS 19.10.010. which legislation acts as formal acceptance of the grant offered. Informal acceptance, that which is accepted directly by the public through actual use, is an equally valid right recognized in case law on the subject.

On State owned lands, authority for the management of these public rights of way is vested in the Department of Natural Resources (DNR). On Federal and private lands, the Alaska Department of Transportation and Public Facilities (DOT/PF) is the managing agency. This authority would extend to those ANILCA lands which were vacant and unreserved public lands during the period of time when the grant was in effect in the Territory and State. The Alaska Organic Act of 1884 was the legislation which brought United States law to Alaska, including RS 2477, and can be regarded as the date at which the grant became effective in the Territory.

In 1923 the Territorial legislature formally accepted the grant by dedicating all Section lines to be public highways with an

DRAFT



# *Citizens' Advisory Commission on Federal Areas*

515 Seventh Avenue  
Suite 310  
Fairbanks, Alaska 99701  
(907) 456-2012

August 31, 1984

**RECEIVED**

SEP 04 1984

Alaska Land Use Council  
Anchorage, AK

Dear Alaska Land Use Council Member:

Enclosed please find a copy of a draft memo outlining the Citizens' Advisory Commission on Federal Areas position on Revised Statute (RS) 2477 Rights of Way. The Commission sees a need for and is proposing the formation of a task force which will establish a procedure to confirm the State's RS 2477 claims.

Please consider this proposal as it will be one of the topics of discussion at the upcoming Sept. 13 meeting of the Council.

Sincerely,

*for* *Michael Welsh*  
Stan Leaphart  
Executive Director

DRAFT

easement of either 66 feet or 100 feet depending on the land status at the time of the dedication. Informal acceptance of the grant has occurred every time men cut their way through the wilderness during the gold rush in effect constructing public highways for all to use. Many years of use by succeeding fortune seekers, trappers, traders, subsistence users and recreationists along those routes has reinforced this legacy. Once granted and accepted, the vacant, unreserved public lands over which the right of way lies are severed from ownership by the federal government and pass to the Territory, the State or the public of those political entities.

The Alaska National Interest Lands Conservation Act (ANILCA) mandated the preparation of management plans for the lands added to the Conservation System Units (CSU's) created by that act. Unfortunately, the Federal agencies have neglected for the most part to consider these public highways in the planning efforts now underway. Ignoring the issue of RS 2477 has and will continue to do harm to the interests of the State, the Federal government and the Alaskan public.

Recently, a miner was arrested by Park Service personnel within the bounds of the Yukon-Charley National Preserve while moving a bulldozer along the Bulenberg Trail which both he and State officials claim is a valid RS 2477 right of way. The miner has patented and unpatented mining claims in the National Preserve to which he is guaranteed access by Section 1110 of ANILCA. These "guarantees" are honored by making miners and other traditional users of the lands in question contend with excessive amounts of paperwork to get permits providing access to these lands. This Commission believes that this system of permitting is contrary to the spirit and the letter of the law where legitimate RS 2477's are involved. No one should be obligated to request permission for the use of public rights of way that have been part of a transportation system that has been in use for over eighty years. Valid rights of way belonging to the State of Alaska are not subject to the issuance of permits by Federal land managers.

This is clearly the intent of the Congress as evidenced by the report of the Senate Energy and Natural Resources Committee (Report #96-413; November 14, 1979; page 303): "Those private lands, and those lands owned by the State of Alaska or a subordinate political entity, are not to be construed as subject to the management regulations which may be adopted to manage and administer any national conservation system unit which is adjacent to, or surrounds, the private or non-federal public lands. Federal laws and regulations of general applicability to both private and public lands, such as the Clean Air Act, the Water Pollution Control Act, U.S. Army Corps of Engineers wetlands regulations, and other Federal statutes and regulations of general applicability would be applicable to private or non-federal public land inholdings within the conservation system units, and to such lands adjacent to conservation system units, and are thus unaffected by the passage of this bill."

DRAFT

The State officials responsible for asserting the State's claims and managing these rights of way on behalf of the Alaskan public have been reluctant to do so. Perhaps this is due to a desire to de-polemicize the relations between the State and Federal governments since the passage of ANILCA. However, an absence of both a clear policy and the political will to follow through on such a policy is tantamount to a "de facto" abandonment of these rights of way. This Commission is implacable in its opposition to such an abandonment.

The Yukon-Charley National Preserve case involves more than access by RS 2477 and will be settled in a court of law. One thing is clear however, the trail used in this instance is a valid, documented RS 2477 according to personnel in both the Alaska Department of Transportation and the Department of Natural Resources.

The Citizens' Advisory Commission on Federal Areas proposes the formation of a work group or task force which will establish a procedure to confirm the State's RS 2477 claims. The Commission requests that the member agencies of the ALUC cooperate fully in the implementation of this proposal. Such cooperation would include agency acknowledgement of identified RS 2477 rights of way in the planning efforts of the CSU's, adequate manpower and funding for the necessary research.

The Commission recommends that the Alaska Department of Transportation and Public Facilities and the Department of Natural Resources act as the co-lead agencies on behalf of the State in the task force. We recommend the Bureau of Land Management as the lead agency for the Federal government.

This matter is in urgent need of attention. Access to legitimate inholdings on the CSU's is not being adequately addressed by the Federal agencies despite the guarantees of ANILCA Section 1110. In the absence of a clear initiative on the part of the State, the land managing agencies of the Federal government are only too willing to maintain a posture of silence on the RS 2477 issue while plans for the CSU's are being prepared. Timely action by the appropriate State agencies is necessary to ensure federal and private recognition of RS 2477 rights of way. These rights have been jeopardized by the bureaucratic inertia of previous administrations.

The Citizens' Advisory Commission on Federal Areas believes the ALUC is the proper instrument through which this problem may be addressed. Formation of an intergovernmental task force will clear up some of the confusion felt by private and public land managers on all levels of responsibility. Perhaps more importantly, this proposal calls for Federal recognition that the State of Alaska is entitled to the same rights granted to all other states.

**DRAFT**

M I N U T E S

OF THE FOURTEENTH REGULAR MEETING OF THE  
ALASKA LAND USE COUNCIL  
September 13, 1984  
Anchorage, Alaska

I. CALL TO ORDER

The meeting was called to order by the State Cochairman Designee, Robert Grogan, at 9:07 A.M., in the Alaska Land Use Council Conference Room, 1689 "C" Street, Anchorage, Alaska, Thursday, September 13, 1984.

II. ESTABLISHMENT OF QUORUM

Council Members Present:

|                   |                                                                                                       |
|-------------------|-------------------------------------------------------------------------------------------------------|
| Vernon R. Wiggins | Federal Cochairman                                                                                    |
| Robert Grogan     | State Cochair Designee,<br>Representing Governor<br>Sheffield, State Cochairman                       |
| Don Nielsen       | Representing Jake Adams,<br>Alaska Native Regional<br>Corporations                                    |
| Roger Contor      | Regional Director, National<br>Park Service                                                           |
| Mike Penfold      | Director, Bureau of Land<br>Management                                                                |
| Dave Haugen       | Representing Richard Knapp,<br>Commissioner, Department of<br>Transportation and Public<br>Facilities |
| Janie Leask       | President, Alaska Federation<br>of Natives                                                            |
| Michael Barton    | Regional Forester, U.S. Forest<br>Service                                                             |
| Robert Putz       | Regional Director, U.S. Fish &<br>Wildlife Service                                                    |
| Denny Kelso       | Representing Don Collinsworth,<br>Department of Fish & Game                                           |
| Esther Wunnicke   | Commissioner, Department of<br>Natural Resources                                                      |
| Frank Cunningham  | Regional Director, Federal<br>Aviation Administration                                                 |
| Jim Brooks        | Representing Robert McVey,<br>Director, National Marine<br>Fisheries Service                          |
| Richard Neve',    | Commissioner, Department of<br>Environmental Conservation                                             |

A quorum was established with all members of the Council present or represented.

Opening Remarks of Cochairman:

MR. WIGGINS welcomed Mr. Michael Barton, Regional Forester, U.S. Forest Service, to the Council succeeding Mr. John Sandor who had retired since the last meeting. Mr. Wiggins praised Mr. Sandor for his 20 years' service in the State of Alaska. A plaque was presented to Mr. Sandor for his service on the council and he was honored following the meeting at a special reception.

Jim Brooks is sitting in for Mr. McVey, Regional Director, N.O.A.A.

Don Nelson works for Bristol Bay Native Corporation and is present on behalf of Jake Adams who has not returned from Caribou hunting.

### III. ADOPTION OF AGENDA

A MOTION WAS MADE BY MS. WUNNICKE THAT THE COUNCIL ADOPT THE AGENDA.

Mr. Contor requested the deletion of one item from the proposed agenda, Action Item 3, Yukon Charley General Management Plan, at the request of the State which needs more time to complete its review, and recommended it appear on the agenda of the next quarterly meeting of the Council. Sally Gibert distributed a memo explaining that the State intends to use the time to complete its review of the plan. Mr. Contor praised the progress being made since the process of planning

development and most review was moved to Alaska, but requested the State make every effort to stay within agreed deadlines.

Mike Penfold of the BLM requested two additional items be added to the discussion and briefing session, 4. New Townsite policies being implemented by the Bureau of Land Management, and 5. Competitive races and similar events crossing multi-jurisdictional lands.

Janie Leask requested the Alaska Land Bank be moved from Discussion to Action Items on the Agenda in order to obtain the Council's endorsement of a 90-day extension to the comment period.

With these modifications, THE MOTION FOR ADOPTION OF THE AGENDA PASSED UNANIMOUSLY.

#### IV. LAND USE ADVISORS COMMITTEE REPORT

DR. DREW reviewed the actions and motions that the advisors committee took on their meeting on August 30, 1984 in Anchorage.

A MOTION was made by Wayne Ross that the Land Use Advisors Committee and the Alaska Land Use Council defer consideration of the Bristol Bay Cooperative Management Plan until its next meeting, after the September 13, 1984 meeting of the Alaska Land Use

Council, and that the full text of the revised plan be submitted to the members of the Land Use Advisors Committee and the Alaska Land Use Council at least 45 days before said meeting. The motion was seconded by Brian Rogers and a voice vote was taken. THE MOTION PASSED UNANIMOUSLY.

DR DREW acknowledged that the Yukon Charlie General Management Plan agenda item had been deleted from the present meeting. However, he read two motions that were passed with regard to the Yukon Charlie area:

A MOTION was made by Brian Rogers that the Land Use Advisors Committee encourage the National Park Service and the State of Alaska to provide greater public access to and through the Yukon Charlie Rivers National Preserve by encouraging construction and operation of a sternwheeler ferry between Dawson and Circle, Alaska, or other appropriate means. The intention was not that the state or the federal government establish the ferry system, but that the establishment of it be encouraged by whatever means seem to be the best. The motion was seconded by Dr. Hugh (Bud) Fate and a voice vote was taken. THE MOTION PASSED UNANIMOUSLY.

A MOTION was made by Steve Silver that the Land Use Advisors Committee recommend that the Alaska Land Use Council not approve the Yukon Charley Rivers Preserve General Management Plan. The Motion was seconded by

Dr. Hugh (Bud) Fate and a voice vote was taken. THE MOTION DID NOT PASS, with six (6) of the Advisors voting affirmative, three (3) of the Advisors voting negative, and two (2) of the advisors abstaining.

I was asked by the Advisory Committee to list the two reasons for the six negative votes with respect to that motion. The reasons for the negative votes: 1) Some of the advisors felt that provisions for the development of public access by ground or water transportation for recreational use within the preserve and park are inadequate. 2) Provisions for fisheries enhancement for recreational or subsistence use are nonexistent in the plan.

A MOTION was made by Steve Silver moving that the Land Use Advisors Committee urge the Alaska Land Use Council, and specifically the Governor, as State Cochairman, to request a State of Alaska Attorney General's opinion on the legality of the use of Section 1302,i) of ANILCA, to add a 971,800-acre parcel of relinquished State selections located adjacent to the Arctic National Wildlife Refuge, in light of the requirements of Section 1326 of ANILCA which requires congressional approval of any addition of acreage exceeding 5,000 acres to a wildlife refuge. This opinion should specifically address the issue of "donation" and whether relinquished State selections can be donated by the State under the provisions of

Section 1302(i) of ANILCA. If the Attorney General's office determines that the use of Section 1302(i) is not legal, the Land Use Advisors Committee urges the Governor to take such action, including legal action, as is necessary, to require the Department of the Interior to comply with the provisions of Section 1326 of ANILCA. The Motion was seconded by Brian Rogers and a voice vote was taken. THE MOTION PASSED UNANIMOUSLY.

In addition, a number of the advisors requested clarification from the federal solicitor on the use of the term "donation" in this particular issue, and it was suggested that the federal Cochairman request such clarification from the federal solicitor.

A MOTION was made by Bob Swetnam that the Alaska Land Use Council, at its November or December meeting, request the Department of Interior withhold finalizing the Proposed Cabin Regulations until the matter has been studied and considered by the Alaska Land Use Council and their recommendations forwarded to the Department of Interior. The Motion was seconded by Wayne Ross and a voice vote was taken. THE MOTION PASSED UNANIMOUSLY.

With reference to the proposed cabin regulations, a MOTION was made by Dr. Hugh (Bud) Fate TO USE A MEDIATION BOARD, COMPOSED OF THE National Park Service, the State of Alaska, and a local peer group, to adjudicate matters between the claimant and Federal

Government. The second preferred alternative would be the use of an administrative law judge and the procedure associated therewith. The Motion was seconded by Wayne Ross and a voice vote was taken. THE MOTION PASSED UNANIMOUSLY.

A MOTION was made by Brian Rogers that the Land Use Advisors Committee request the Alaska Land Use Council extend for 90 days the comment period on Proposed Guidelines for the Alaska Land Bank. The Motion was seconded by Steve Silver and a voice vote was taken. THE MOTION PASSED UNANIMOUSLY.

A MOTION was made by Steve Silver to institutionalize a process wherein all actions taken by the Land Use Advisors will be included under the appropriate topic, in the Alaska Land Use Council's Agenda packets. Said actions to be noted under one of three titles:

1. "Recommendation by Land Use Advisors Committee;"
2. "Item Considered - No recommendation made;"
3. "Item Not Considered - Not sufficient time; allotted to study."

The motion was seconded by Brian Rogers and a voice vote was taken. THE MOTION PASSED UNANIMOUSLY.

The purpose of this motion is that sometimes the Advisors Committee discusses items that may be on a Land Use Council Agenda two or three meetings after the

Advisors Committee has taken place. Sometimes the results of the Advisors actions get lost before the actual Council meeting takes place. The intention here was simply to insert a sheet showing advisors actions before each of the items as they come up on the Council agenda for a specific meeting.

A MOTION was made by Brian Rogers to approve the following Resolution recognizing Mr. Steve Silver for his service, dedication and effective work on the Land Use Council Advisors Committee since the inception of the Committee. Mr. Silver will be leaving Alaska temporarily to pursue his legal career in Washington D.C. The Motion reads as follows:

WHEREAS, Steve Silver has been an active member of the Alaska Land Use Advisors Committee since its inception,  
and

WHEREAS, Steve served as chairman of the Committee during its formative year, and

WHEREAS, Steve's knowledge of Alaska land use issues and his detailed knowledge of the Alaska National Interest Lands Conservation Act has been invaluable to the Committee, and

WHEREAS, Steve's understanding of federal procedures and the needs of state residents has been beneficial to

the Committee in our consideration of recommendations to the Alaska Land Use Council and federal and state agencies, and

WHEREAS, Steve had decided to leave Alaska temporarily to pursue his legal career,

now therefore be it resolved by the Land Use Advisors Committee of the Alaska Land Use Council that we express our

- heartfelt thanks to Steve Silver for his service to the Committee, the State of Alaska, and the people of Alaska;

- sorrow that he is leaving the Committee;

- best wishes for his future endeavors, and

- hopes that he will return to Alaska to continue his involvement in Alaska Land issues.

The motion was seconded and a vote was taken. THE MOTION PASSED UNANIMOUSLY, thus ending the report by Dr. Drew for the Land Use Advisors Committee.

MR. WIGGINS reported that there was a solicitor's opinion dated August 27, 1984 regarding Section 1326. The use of the word "donation" there gives rise to this

concern. In order to satisfy the request of Dr. Drew and others, Mr. Wiggins will ask the Solicitor's office to talk with the State Attorney General's office and clarify the use of the word "donation" in the text of the document.

MR. WIGGINS also indicated he was not aware that the Land Use Advisors Committee had made an identical recommendation to the one Ms. Leask had indicated that AFN would offer requesting an extension of the 90 days on the Land Bank.

Regarding including Advisors Committee comments in the agenda, MR. WIGGINS encouraged members of the Land Use Council to become more than "one day a quarter" participants. He acknowledged that all are very busy doing many other commendable things and there is not a lot of time, but effective participation requires more than one day a quarter on Land Use Council matters.

MR. WIGGINS commended Dr. Drew's detailed report on the reasons that six of the members voted against the Yukon Charlie General Management Plan.

MR. BROOKS requested clarification of the Bristol Bay Motion in relationship to Paragraph 2 (d) which is directed to the Secretary of the Interior to enter into an MOU. He questioned if it ought not also be directed to the Governor.

MS. WUNNICKE said she had no objections.

V. ACTION ITEMS

1. MR. NEVE' MOVED THE ADOPTION OF THE MINUTES OF THE PREVIOUS MEETING, HELD May 23, 1984. MR. BARTON SECONDED THE MOTION, AND IT PASSED UNANIMOUSLY.

2. Bristol Bay Cooperative Management Plan

MS. WUNNICKE identified the report to the Council members with respect to comments received by Bob Putz and herself as designees of the Cochairmen of the Council with respect to the Bristol Bay Cooperative Management Plan; as well as correspondence between the Governor of Alaska and the Secretary of the Interior; a memorandum from Bob Putz which originally was addressed to the Advisory Committee of the Council and has since been furnished to all members of the Council; and a letter from herself outlining the actions contemplated by the State of Alaska. MS. WUNNICKE MOVED THAT THE ALASKA LAND USE COUNCIL ADOPT THE FOLLOWING MOTION IN THREE MAJOR PARTS:

"A. The Alaska Land Use Council recommends to the Secretary of the Interior that the Bristol Bay Cooperative Management Plan be amended to reflect the decision of the State of Alaska to withdraw as co-signer of the plan;

B. That the specific recommendations which have already been presented by the U.S. Fish and Wildlife Service, the Department of Natural Resources and the Alaska Land Use Council Staff Committee be adopted by the Council and included as part of its recommendation to the Secretary. These recommendations are:

(1) That an introduction to the plan (as described in Dr. Putz's memo of August 30, 1984) be included in the document clarifying that all items in the plan relating to non-federal lands and actions are "recommendations" and not binding on the state government, local governments or Native Corporations;

(2) All items relating to federal lands and actions remain as presented in the Proposed Plan;

(3) That changes recommended by the Departments of Natural Resources and Fish and Game and concurred with by the Staff Committee be incorporated in the plan;

(4) That a master memorandum of understanding be entered into by the Secretary of the Interior and the State of Alaska following approval by the state of the Area Plan and the Secretary of the Bristol Bay Regional Management Plan, to address items requiring participation by both parties;

(5) Prior to printing the Bristol Bay Regional Management Plan and Final E.I.S., the plan be edited to reflect these recommendations.

C. That the Alaska Land Use Council approves the Bristol Bay Regional Management Plan (formerly Cooperative Management Plan) with the above revisions and recommends that it be published along with a Final Environmental Impact Statement and, after compliance with the required federal procedures, the plan be signed by the Secretary of the Interior."

THE MOTION WAS SECONDED BY DR. PUTZ.

In the discussion that followed, Janie Leask (AFN) expressed disappointment that the original cooperative land use plan could not be worked out or implemented. She strongly recommended that the memorandum of understanding between the State of Alaska and the Department of the Interior include an annual meeting of federal, state, and local people to see how the different plans are progressing, and in a cooperative effort see that the plans are brought before the Land Use Council to assure communication and cooperation and leave the door open to a future Bristol Bay cooperative management plan. Ms. Wunnicke endorsed the idea of public participation in the final plan. Dr. Putz recommended an annual report to the Council. Mr. Nielsen identified a deviation from the BBRMP that the Alaska Peninsula National Wildlife Refuge Plan has taken already. It does not coincide with the statements made by the Secretary of the Interior.

Dr. Putz said that the Secretary has made no statements. He recognized that the proposed Bristol Bay Regional Management Plan did identify three trans-peninsula transportation corridors: Pilot Point to Wide Bay; Port Heiden to Kujulik/Aniakchak Bay; and Port Moller to Balboa

Bay. The Draft Alaska Peninsula National Wildlife Refuge Comprehensive Conservation Plan states that the Pilot Corridor to Wide Bay and the Port Heiden to Kujulik/Aniak Bay identify routes that are subject to our compatibility test, and that roads on these corridors appear to be incompatible with the purpose of the refuge at this point in the planning process. Although it may appear that the Service is going counter to the Bristol Bay Regional Management Plan it has carefully considered this position before drafting the plan, and offers the reason for its position as follows:

"The Bristol Bay Regional Management Plan simply identifies possible corridors. The Alaska Peninsula National Wildlife Refuge Comprehensive Conservation Plan identified an area within the Refuge where the greatest possibility of oil and gas in commercial quantities were identified, and therefore we developed and identified the route to be used in moving these products to market, and that was Port Moller to Balboa." Putz referred to page 100 of the plan which shows that if at some future time the commercial discovery of oil and gas is made in the region and a pipeline across the peninsula is proposed to facilitate product marketing and distribution, then development of this corridor will be reviewed under Title 11 ANILCA and appropriate regulations. It is not

ruled out totally. We are just saying, wait till the time is there. The bottom line is that this is a draft plan and we would appreciate your comments on it.

MR. NIELSEN drew to the Council's attention that The Bristol Bay Native Corporation does not look at the draft refuge plan favorably now.

MR. KELSO thanked the study group and its technical teams for all their efforts in working on the Bristol Bay plan. A great deal of hard work and commitment of time and resources over the past three and a half years has gone into this Plan. It has resulted in a high quality product and it set a standard for public participation and effective cooperation and coordination among state and federal agencies and the public. He praised the hard work and genuine productivity that has come from the effort.

THE MOTION CARRIED AS PROPOSED BY UNANIMOUS VOTE.

Ms. Wunnicke noted that the Commissioners of Natural Resources, Department of Fish and Game and Department of Environmental Conservation will be co-signing the State's Area Plan today.

Ms. Wunnicke expressed appreciation to Nancy Stromson of the Fish and Wildlife Service for a very fine professional job, above and beyond the call of duty.

3. Yukon Charley General Management Plan

This item was deleted from the agenda. It will be discussed at the next meeting. The State needs more time to finalize its work.

4. Southeast Alaska Visitors Center

MR. BARTON noted that the site for the Center has been recommended by a project group working on its location as at Ketchikan. The City and Borough of Sitka had expressed some concern about that location. A letter dated June 12, 1984 withdraws Sitka's objection. Mr. Barton read an excerpt from the letter: "The purpose of this letter is to withdraw any formal request for review of the group's recommendation, and request that you proceed with the Center in Ketchikan without further delay." Signed by Richard Anderson, Administrator.

The staff committee, the Land Use Advisors, and the Citizens' Advisory Commission on Federal Areas have all endorsed the project group's recommendation.

MR. BARTON MOVED THAT THE LAND USE COUNCIL ENDORSE THE PROJECT GROUP'S RECOMMENDATION FOR THE LOCATION AT KETCHIKAN FOR THE SOUTHEAST ALASKA VISITORS' CENTER THAT WILL REPRESENT ALL OF SOUTHEAST ALASKA. MS. WUNNICKE seconded the motion.

MR. WIGGINS asked if the recommendation is addressed to anyone in particular or just an expression of the Council's concurrence in the selection of Ketchikan as the site. He wanted to know who has responsibility for the action that will implement this.

MR. BARTON indicated that the Forest Service is the lead agency at Ketchikan, but the same process will be followed as was done at the other two centers. The recommendation is addressed to Mr. Barton as a representative of the Secretary of the Agriculture.

Mr. Grogan asked for any objections to the motion, and hearing none, announced that it carries.

5. Long Range Goals and Objectives

WALT SHERIDAN, chairman of the work group that was chartered to look into long range goals and objectives of the Alaska Land Use Council and make recommendations to the Council, reported that the work group has looked at a number of different alternatives that are outlined in the packet, and is recommending that one of the alternatives be adopted by the Council so that the work group can go ahead and proceed. Basically, the recommendation is that the Council Members, Staff Committee and Land Use Advisors be involved in the development of the long range goals and objectives, and that in addition a list of key Alaskans be put together and invited to participate in the process as well.

Mr. Sheridan discussed C.M. #019/84 which reads in part,

"The Staff Committee recommends that the Council authorize the work group to proceed with implementation of Alternative III. Such authorization from the Council will be limited to:

1. Preparation of a key contact list consisting of 20-40 persons representing a broad cross section of

interests and expertise in Alaska resource management.

2. Preparation of a set of questions designed to elicit the views of the key contacts, Council members, Staff Committee members and Land Use Advisors.
3. Preparation of a detailed time line and study plan for completing the project."

MR. WIGGINS expressed his disappointment that the group which was specifically asked for a product had returned instead with a process to get a product, and had taken almost a year developing the process. He asked for a time line in getting a set of written goals if at the November or December meeting the group comes back with recommendations.

MR. CONTOR expressed a preference for Alternative I.

MR. WIGGINS MOVED TO EXPRESS THE COUNCIL'S CONCURRENCE WITH THE RECOMMENDATION FROM THE STAFF COMMITTEE IN THE MEMORANDUM #019/84, i.e. THAT THE STAFF COMMITTEE HAS REVIEWED THE WORK GROUP'S

RECOMMENDED APPROACH WHICH IS ALTERNATIVE III AND CONCURS THEREIN. IF THE COUNCIL CONCURS WITH THIS MOTION, IT IS HIS INTENT THAT THE WORK GROUP BE DIRECTED TO PROCEED WITH DEVELOPING ITEMS 1, 2, AND 3 AS LISTED IN THE MEMORANDUM FOR REVIEW AND APPROVAL OF THE COUNCIL AT THE NOVEMBER/DECEMBER MEETING.

MR. WIGGINS further added to the motion a statement of intent that it is to be clearly understood that the group is expected to return in November/December with the outline, and that it is the expression of the Council that the process be completed and ready for the Council's consideration by the April/May meeting. Mr. Wiggins pointed out that implicit in the motion is the selection of Alternative III that the committee will be back at the November meeting with the items as indicated, and the process will be completed in time for the Council to consider it at the May meeting.

Mr. Barton seconded Mr. Wiggins' motion.

MR. PENFOLD raised a question on the motion. He felt that the Advisors Committee should be involved in this decision.

MR. WIGGINS indicated he feels at least one of the group of 20-40 persons ought to be a representative of the Citizen's Advisory Group.

MR. PENFOLD suggested the Citizens' Advisory Group could give some suggestions as to who should serve.

MR. WIGGINS stated that he did not wish the Council to become involved in a debate on who should serve on that committee because there are many hundreds of interests to be served and someone must deal with melding all those interests somehow. He agreed that the Citizens' Advisory group should be consulted consistently.

Ms. Wunnicke remarked that in the listing under Alternative III they do list the Land Use Advisors for review and comment at each stage of the effort. However, Mr. Wiggins indicated he understood Mr. Penfold had reference to the State Citizens' Advisory Commission. Ms. Wunnicke agreed that they should be involved. Ms. Wunnicke also asked for Mr. Contor to expand on his point with respect to Alternative 1.

MS. WUNNICKE pointed out that what Mr. Contor had to say with respect to Alternative 1 was a point

well taken and she wished to have him expand on it.

MR. CONTOR said that Mr. Wiggins had touched on the problem that the Council could argue forever as to which 30-40 people we ought to have, and he was not sure that the product would benefit enough to justify that amount of energy expenditure. The big question is who is going to pick the 30-40.

MR. WIGGINS said he was content to let the staff already assigned wrestle with that problem. If the composition is not adequately balanced and representative of a sufficiently broad spectrum of interests in Alaska he, for one, would vote to send the staff back to recompose the committee and do it over again. He also voiced another concern with Alternative 1. He said, "There is nothing more jaded than a bureaucrat's view of what a bureaucrat ought to be doing," and "I think the opinions of what we ought to be doing of 20 or 40 Alaskans would be very valuable. I think it might surprise some of us." He expressed his feeling that there is a lot of merit in Alternative III's approach. It is not significantly different from Alternative I except in that one area, but that of itself is a worthwhile difference.

MR. PENFOLD questioned that the 20-40 are not a committee, but rather people with whom discussions will be held. Mr. Wiggins agreed that was his understanding of the recommendation.

MS. WUNNICKE expressed an opinion that the point is well taken that the Council may need an outside view. However, she warned the viewers that the Council is still constrained by the purposes in the establishment of the Council as set out in ANILCA, and that the Council is not formed to advise the world on all matters coming before us. With that caveat, Ms. Wunnicke withdrew her objection.

MR. GROGAN called for objections to the motion. Hearing none, he announced it had carried.

6. Cabin Management Policy

MR. WIGGINS introduced C.M. #020/84. He pointed out that in the last line reference is made to the Council's December meeting and that in order for the Council to stay on schedule, it should take place in November.

MR. WIGGINS further stated that two things should happen: The Project Group should make a

presentation at the Alaska Land Use Council at the September 13, 1984 meeting. The person who was to do that is out of the State. Second, The Alaska Land Use Council is to write a letter to the Director of the National Park Service and the Secretary of the Interior requesting that no action on the Proposed Cabin Regulations be taken until the Council has had the opportunity to forward its comments and recommendations subsequent to the Council's November meeting.

Mr. Wiggins stated that his understanding of the reason behind the recommendations is a strong desire on the part of the Department of Agriculture, the Department of Interior agencies that are dealing in land management, concurred in by the State of Alaska, and he was not aware of an expression from the Alaska Federation of Natives on the subject, that there be an attempt made to have a set of uniform federal government policies, guidelines, and regulations applied to cabins on federal lands for national forests, wildlife refuges, national parks and BLM public lands. The effort is, secondly, guided by the hope that the policy could also have some consistency, to a maximum extent possible, and that is a word I perhaps ought not to use, compatibility, similarity, whatever with the State's developing

regulations and policies on cabins on public lands. From what I read, there seems to be some closeness developing. The staff committee and the work group has requested that we ask for this delay for two purposes:

- A. Some of you still want to submit comments; but more importantly,
  
- B. The request is to ask the Department of Interior to hold up finalization of its National Park Service proposed cabin regulations to permit the Land Use Council's group to develop an expression of intent and identify some common areas on Federal cabin policy so that those can be articulated and hopefully get Agriculture and Interior's three agencies on the same track in the area of cabin policy.

MR. WIGGINS MOVED THAT THE COUNCIL REQUEST THE CABIN POLICY WORK GROUP TO CONTINUE WORKING CLOSELY WITH THE NATIONAL PARK SERVICE; TO UTILIZE THE PUBLIC AND AGENCY COMMENTS RECEIVED BY N.P.S. ON THE DRAFT REGULATIONS; AND TO FURNISH THIS COUNCIL WITH A MEMORANDUM CONTAINING A RECOMMENDED UNIFORM CABIN POLICY STATEMENT FOR CONSIDERATION AT THE COUNCIL'S NOVEMBER MEETING.

MR. WIGGINS FURTHER MOVED THAT THE COUNCIL RESPECTFULLY REQUEST THAT THE SECRETARY OF THE INTERIOR AND THE DIRECTOR OF THE NATIONAL PARK SERVICE DELAY FINALIZING THE NATIONAL PARK SERVICE DRAFT CABIN REGULATIONS PENDING ACTION BY THE COUNCIL ON A RECOMMENDED UNIFORM CABIN POLICY FOR USE BY ALL AGENCIES IN ALASKA.

MR. BARTON seconded the motion.

MS. WUNNICKE questioned if the motion should include the wording "All Federal Agencies."

MR. WIGGINS said he did not object to Ms. Wunnicke's expression of the willingness by the Department of Natural Resources to join in that effort. He expressed the opinion that it would be a good effort, regardless whether it was successful. He pointed out that there may be such differences in the way the governments have to operate that it might not be possible, but it would be worth a try.

MR. CONTOR clarified what he understood the working group recommended. He felt the use of the word "regulation" in describing uniformity is really not possible. He said he felt it is possible to have a broad "policy" that would apply to the federal lands, and be very helpful to the

public in understanding, but the very nature and mandate of the agencies would prohibit the regulations from being identical. In reading ANILCA, cabins in national parks are treated very differently than cabins in non-park lands.

MR. WIGGINS said he agreed with Mr. Contor. He reread from the motion "We have requested the work group to furnish the council with a recommended uniform policy," and then "we are requesting the Secretary of the Interior and Director of National Park Service to delay finalizing the National Park Service draft cabin regulations pending action by the council on a recommended uniform cabin policy." So, while the distinctions may sound subtle, in fact they are not.

MR. PUTZ said he thinks it is important that the work group make that differentiation. The Fish and Wildlife Service would support the motion because at this point in time FWS does not have a good policy, per se, except for general national policy in its Code of Regulations.

MR. WIGGINS pointed out that FWS does have one policy--they don't burn cabins. Mr. Putz pointed out that FWS got that policy the hard way.

MR. PUTZ expressed a desire to participate in developing a generic policy.

MR. WIGGINS indicated that for the Council to engage in a discussion of regulations at this time, on an agency by agency basis would spell disaster.

MR. CONTOR offered an amendment to the motion to provide a time line. Currently the motion is open ended which means that delay could be infinite. Mr. Contor proposed to amend the motion by adding the words, "PROVIDED THAT THE RECOMMENDATIONS OF THE LAND USE COUNCIL ARE SENT FORWARD NO LATER THAN 30 DAYS FOLLOWING THE NEXT MEETING."

MR. PENFOLD seconded Mr. Contor's amendment.

MR. DAVIDGE of the Assistant Secretary's Office for Fish And Wildlife pointed out that last year the Assistant Secretary of Fish and Wildlife and Parks and the Assistant Secretary of Agriculture met to discuss their mutual desire to have common uniform policies across the federal lands in Alaska on cabins as well as a number of other issues, and also look at the policy of more uniform regulations, particularly in the permitting process. There is a strong desire to do that and we are looking towards the

recommendations of the Council on a policy on cabins.

MR. GROGAN called for any objections to the motion. Hearing none, he announced it carried as amended.

AT this point a five-minute recess was taken to present Mr. John Sandor, former Regional Forester, U.S. Forest Service, who recently retired with a memento of appreciation, a little plaque that reads, "John Sandor, in appreciation for outstanding contributions and support to the Alaska Land Use Council, August '81 to July '84."

Mr. Sandor expressed his appreciation of the associations and friendships and the professionalism that really represents the Land Use Council. This is a bridge building group between the feds and the state and the private sector and we wish you every luck in your deliberations. Thank you.

7. Citizen's Advisory Commission on Federal Areas'  
Request for Formation of Task Force Regarding R.S.  
2477 Rights-of-Way

MR. WIGGINS identified Memorandum #021/84 in the packet prepared by the staff committee in response to the presentation by the Citizens' Advisory Commission on Federal Areas to the Staff Committee. Mr. Wiggins stated that his understanding is that the staff committee's recommendation of essentially no action occurred because the staff committee itself did not feel that it had had time to consider the matter and make a meaningful recommendation.

Mr. Frankel expressed the opinion that the reason was that the staff committee did not know whether the Council wanted them to pursue it.

MR. HOLDSWORTH appeared before the Council to present his Staff's comments on the matter. By way of explanation, he advised that he had been a very short time on the Commission and was railroaded into becoming chairman for this year. This issue was under consideration before he came aboard. A lot of research and background had been done on it beginning in 1977. The State Attorney General's office participated in reviews of what

was actually meant and how this applied to the original R.S. 2477 versus ANILCA.

MR. HOLDSWORTH indicated that most of the Council had seen the draft resolution to the Land Use Council members and that was marked clearly a DRAFT, and it was drafted with a lot of research by staff and without the knowledge or opportunity to become acquainted with the northern regional memorandum of understanding which has been in several draft stages. After the Staff Committee saw that and reviewed it with staff, a revised memorandum was drafted which the Council had before it at the meeting. Among the changes, knowing of the memorandum of understanding and realizing that the federal agency, BLM, and the two state agencies were attempting to put in a joint effort on this, the emphasis on using a little pressure to get action in this area should have been switched to both federal and state agencies.

MS. WUNNICKE noted that there has been increasing concern by both federal and state agencies as well as members of the public over the past several months with respect to the identification and management of the R.S. 2477's and because of this concern the Department of Natural Resources together with the Department of Transportation

and Public Facilities and the Bureau of Land Management are forming an R.S. 2477 coordinating committee which would be made up of those three members, and as necessary by any other appropriate people.

MS. WUNNICKE indicated she had a draft memorandum of understanding which she anticipates will be completed by the end of the month but which she would be happy to share with members of the Council. Ms. Wunnicke expressed the feeling that inasmuch as most of the concerns are centered in the interior of Alaska and lie within that area of the state, it seems more appropriate to have a small committee located there. She indicated they have representatives from DNR, as well as Mr. Haugen from DOT/PT and BLM representatives from interior Alaska forming this task force. Since the purpose of the committee is to coordinate the agency priorities for identifying, locating, and asserting the R.S. 2477's or vacating them, as appropriate, it is the belief of those in her office that this is not an appropriate item for the Land Use Council at this time, although Ms. Wunnicke certainly welcomes the oversight of the Council. Ms. Wunnicke proposed that "WE" continue with draft memorandum of understanding as now proposed, the working group now proposed, and if

it becomes necessary for it to become a Council item later, she would certainly welcome that.

MR. PENFOLD was asked to address his memo on the subject. Mr. Penfold said he agrees with Ms. Wunnicke on this matter that a process exists in a fledgling state with good commitment from both state agencies and the Bureau to get moving on this. Mr. Penfold said he agrees that the matter needs some emphasis, and added that he would prefer to keep the Council advised as to what is happening on this and whatever other appropriate oversight people might deem necessary while the Committee takes a shot at it on the ground with an opportunity to make something productive of it. He also expressed a need for provisions for other Department of Interior Agencies to be involved in those issues where they are on Fish and Wildlife and National Park lands, for example.

MR. WIGGINS stated that the R.S. 2477 issue is one that is not going to go away. He acknowledged that Mr. Holdsworth's memorandum accurately states that. No matter how much some might wish it to do so, it will not go away. It has a potential for considerable impact; in the minds of some people, all negative, and in the minds of others, all positive, and shades in between. Mr. Wiggins stated that the federal government and the state

government both have a responsibility in the area, but more importantly, they have a responsibility to address the problem and indicated that the memorandum accurately points out that at several times in the past that has not been done. Mr. Wiggins recalled that when the memorandum and the group's interest in the thing came to his attention, Mr. Wiggins began asking questions and late in that question and answering process learned of BLM and DNR's joint effort. Mr. Wiggins said it appears to him that that effort accomplishes, if not all, at least a vast majority of what the group is trying to do in getting both governments to acknowledge the issue and try to deal with it. Mr. Wiggins reiterated his stand that the Alaska Land Use Council should not get into things it does not have to get into, and things which the agencies can handle themselves. Mr. Wiggins said that with expressions from Mr. Penfold and Ms. Wunnicke he is content personally to allow the process to go forward and see where it goes, and if it does not go anywhere, he hopes someone will be back at a subsequent Council meeting. Mr. Wiggins said if that is not the Council's wishes, he has another proposal of how to deal with it, but at this time he will not bring it up.

MS. WUNNICKE requested Mr. Holdsworth's review of the proposed draft memorandum of understanding among the three agencies. .

MR. HOLDSWORTH said the Advisory Commission proposes to contact private organizations and people who have specific knowledge concerning the rights of way in order to identify them before the land management plans are finalized. It is costly and time consuming to have the federal and state agencies research the information. Identification of these rights of way must precede finalization of the plans, and they will ask the private sector for the information.

MR. GROGAN stated that hearing nothing else, he would assume that the Council wished to go with the existing process. Mr. Penfold agreed saying, "Uncommonly good wisdom of the Council."

MR. WIGGINS requested an information item on the next meeting's agenda to let the Council know what had been done. MS. WUNNICKE stated she would be happy to do so.

8. Citizen's Advisory Commission on Federal Areas'  
Request To Report at Each Council Meeting.

MR. GROGAN said this letter was written to the Council with the understanding that a three-month notice was required to have an item up for consideration on the agenda.

The timing and procedure for placing items on the agenda was discussed. MS. LEASE raised the question as to whether placing this group permanently on the agenda would set a precedent for other groups. She also asked, if the present process allows any group who want to make a report before the Council can get on the agenda, is that sufficient.

MR. WIGGINS noted that when the Citizens' Advisory Commission or any other group holds a meeting on Monday generating a need to report at the Council meeting the following Thursday, if the request is received by the Council by the close of business on Monday the Commission is guaranteed a spot on the Council's agenda. Although the printed agenda sent out in advance will not list that group, it will be added at the time the adoption of the agenda takes place. With 15 days' notice, the request would also appear on the printed agenda. With this information available, the Citizen's Advisory Commission withdrew the request.

9. Alaska Land Bank

MS. WUNNICKE noted that Mr. Grogan and she need to draft a letter to the Secretary of the Interior.

MS. LEASE distributed the comments that the Alaska Federation of Natives submitted for the record.

Ms. Wunnicke noted that the State's comments had also been distributed for the record.

MR. WIGGINS asked Mr. McCoy and Mr. Frankel to draft the letter in a timely manner.

VI. DISCUSSION AND BRIEFING ITEMS

1. Trespass Policy and Enforcement.

MR. GROGAN noted a Status Report from the Staff Committee appeared in the packet and that some members wished to discuss this.

MS. Lease offered a brief oral report. The AFN committee met this week and identified some objectives which included:

To identify trespass problem areas and Native Corporation trespass concern;

To also identify areas where cooperation and joint action between the Federal, State, and the private landowners will be mutually beneficial to prevent and reduce trespass; and

To identify areas where State and/or Federal policies and statutes could be modified to aid reduction of trespass incidents and also to aid enforcement in trespass.

The Committee cited some possible action areas.

These were:

To increase education and public awareness of presence and location of private lands, easements, campsites, or access routes;

To have possible areas for cooperative enforcement, and development of simplified enforcement procedures.

Cooperative permit systems;

To take a look at reasonable posting requirements; and also

To take a look at the possible areas for changes in statutes and/or agency policies to consolidate

and to clarify some of the trespass statutes and procedures.

This was the committee's first meeting. They plan to meet again in late September or early October, and they will have a report for the Council at the November or December meeting.

MS. WUNNICKE brought up a point of information relating to the State of Alaska development of policy for the control of unauthorized use of the public lands of the state. That time frame would allow time for the completion of a Departmental order on policy with respect to trespass abatement on the Public Lands. In the meantime, handling one of the problems presented by those general policy concerns, the Department now has out for comment by the public Proposed Regulations with respect to unauthorized cabins on State lands. Some of those proposals are somewhat unique, but the State of Alaska finds itself in a different position than some Federal agencies because alternatives exist to unauthorized use of the public lands through land disposal and permitting systems. The regulations that address unauthorized cabins allow permits to be granted to use existing cabins for up to six years, and the applicants who wish to use a cabin will have to file a quit claim deed with the State when they

file their application for permit. There will be no commercial use of the cabins and no cabins would be considered undered this program if they are built after August 1, 1984. And it applies statewide, and not just to legislatively designated areas. It is a one-time window to apply if the regulations are adopted on schedule. That period will run December 17 to February 15. If the application is not made to use a cabin, then the department will take legal action to eliminate the unpermitted use of the land. These are renewable permits, but they are not transferable permits, and no new improvements are to be allowed. Ms. Wunnicke expressed her opinion that she feels it is a wise bridge between the old and new Alaska where there are alternatives and ways in which to obtain title to or permitted uses of the public lands, and over the long term should cure a problem that would have existed uncured without this type of action. Ms. Wunnicke requested comments from the Council on those regulations that are now out for public comment. She stated it is only one part of the larger issue which will be addressed through a Departmental Order in November. Ms. Wunnicke expects to be able to report at the next Council meeting on the Departmental Order with Respect to Unauthorized Use in General.

MR. WIGGINS noted that this is moving on three different fronts simultaneously and at different rates of speed. At the last Council meeting the effort was to solicit from each of the land management agencies an articulation of their policy with regard to trespass, and those papers appear in the packet. MS. WUNNICKE stated she had no objections to sharing with the working group the draft of the Department's policies with respect to unauthorized use, recognizing that they are still draft and would not be formal until adopted a Departmental Order. She noted they pretty much order the priority in which these unauthorized uses will be addressed.

MR. FRANKEL noted that he was not aware of an active study group of the Council at the present time.

2. Draft E.I.S. on the Mining Development Phase of Quartz Hill Project

MR. BARTON of the Forest Service noted that the Council had previously heard reports on the development of Quartz Hill in relationship to the U.S. Borax proposal and introduced Dave Morton from Ketchikan who is the USFS coordinator for that project. Mr. Morton addressed the Council

regarding the current status of the project and talked briefly on the issues identified as part of the mine development E.I.S.

MR. MORTON used a flip chart to give a brief overview of the status of the project. The product is the Draft E.I.S. A map was distributed which is a replica of a proposal by U.S. Boarax.

A plant is proposed on the Blossom River Side of Tunnel Creek with a tunnel from the mine location down to the plant site. The ore would be crushed at the open pit mine and then moved to the plant by tunnel. The access roads would be on the Blossom River side. Two additional roads would be constructed up Tunnel Creek about a mile or less and a short road across the Blossom River to the Proposed Wilson well field. Waste stock disposal would be in Beaver Creek, White Creek and Hill Creek. Water supply is proposed from Tunnel Creek by reservoir with a supplemental Wilson Well Field. Marine terminal facilities would be at the existing wharf site at road's end at salt water. U.S. Borax proposes the employees live at Ketchikan and commute to the mine weekly with housing for them at the mine site. A proposed power plant would be located at the mine site.

Nine alternatives were proposed which can be mixed and matched. Two other plant sites might be at Beaver Creek and North Meadow Creek which are close to the open pit mine.

Tailings disposal would be on land in the Wilson Arm or in Boca De Quadra. A tunnel could be used to transport the tailings to Boca De Quadra, and a pipeline along the shoreline as years go by when the inner basin was filled. The middle basin is another option.

There were no options for waste rock, but one option to prevent an inordinate amount of water passing through the waste rock would be to divert a portion of the free-flowing water from Hill Creek instead of going down Keeta to divert it into the Blossom River Drainage.

Water supply alternatives are basically other reservoir sites higher up into the drainage, i.e., Raspberry Creek Reservoir and Upper Hill Creek.

Alternate marine terminal facilities would be in the Wilson Arm.

Additional employee housing options considered included four townsites in the area as well as a

phase-in option requested by the Ketchikan community.

The only other power option not rejected was a transmission line from Kitsault, British Columbia.

The preference differed from U.S. Borax's proposal in the following areas:

Tailings disposal to have a continuous tunnel approximately two miles longer than the one proposed by U.S. Borax from the plant site to the middle basin.

Preference was for off-site power, either a transmission line from British Columbia or from Southeast Alaska.

Also recommended was that the communities, the cities of Saxman, Ketchikan and the Borough join together in a good faith agreement to agree in moving forward to mitigate adverse impacts. That is being done at the present time.

An active bald eagle nest at the Marine Terminal presented a problem. That would have to be resolved for that option to be chosen, otherwise the up-fjord location would be necessary.

This document has been out since July. Public hearings concluded a week ago. U.S. Borax has had workshops to resolve the controversy on tailings disposal.

Three issues remain:

Tailings disposal costs vary on the three choices indicated on the map. The U.S. Borax proposed route would cost an estimated \$60,000,000. The E.I.S. identified preference would be about \$90,000,000 and the NPDES permit would be somewhat larger.

Also investigated was the possibility of disposing of tailings in Wilson Arm. An agreement between past Governor Hammond and the President of U.S. Borax that tailings would not be disposed of in Wilson Arm has since come to light.

The Wilson Well Field proposal has generated questions on the impact of fish during low flow periods in Tunnel Creek.

Socio-economic mitigation involves the community at present.

October 5 is the close of public comment. In early November the ID team is expected to meet to

review the coding of those particular concerns, the draft responses will be drawn. In December the coordinated team process should begin where agencies will communicate on preference. Mike Barton is the deciding officer as the lead agency is the Forest Service. Some time in early 1985 the final E.I.S. will be out and the records of decision from the Forest Service, the Corps of Engineers and EPA.

MS. WUNNICKE asked if the selection of Wilson Arm as marine terminal presupposes that Wilson Arm would not be used for tailings. Mr. Morton indicated there would be no conflict. Both could be done.

MR. PENFOLD confirmed that this completes the Forest Service's decision process, and asked how many other agencies have decisions that must be completed before the project becomes viable. Mr. Morton reviewed other permits which are required: Water rights, presently in process, and others which will come during actual construction, such as Title 16 permits from the Fish and Game Department. The Corps of Engineers and EPA are utilizing this E.I.S. process as their permitting decision process.

MR. BARTON noted that a number of people sitting on this Council have provided staff in getting the project to the present point and expressed appreciation to them.

4. Townsites

MR. PENFOLD introduced Mr. Jerry Johnson who presented an oversight presentation on a new policy the Bureau has developed in relationship to townsites.

In February, 1984 the townsite trustee was changed. One issue looked into was the use of townsite permits which authorized permanent construction of public purposes projects which includes such things as housing projects, public health service projects, sewer, water, community buildings, schools, fire halls, public safety buildings, warm storage buildings, etc. According to the requirements of Federal Regulations, permits are required for rights of ways only, which amounts to utilities, telephone lines, etc. A meeting with the regional solicitor for an opinion confirmed that rights of ways were the only Federal permits required. It was desired that construction not stop in the villages. However, it was not desired that the permittee

construe that he would have some type of right in the land. New policy was developed which is felt to be a short-term solution. The new policy is that in incorporated cities we will deed the requested land to the city once concurrence is obtained from the city and the Village Corporation. The reason for concurrence from the Village Corporation is the existence of pending lawsuits, one of which contends that as of 12/18/71 all unoccupied lands were to go to the Village Corporation. Therefore, permission was obtained from the city and the Village Corporation. In the unincorporated townsites, the land will be deeded to the entity providing funding for the project. The cost of the land which is actually being sold, will be the cost of survey by either the BLM if on subdivided lots, or on unsubdivided tracts, the entity will have to come in and survey it. A private survey will be accepted, and the deed will be made out to that entity. The long range goal is to form a small team and look into other options available. Ultimately, the desire is to develop a plan where management takes place by the State as trustee for land within unincorporated cities. At the present time no mechanism exists for deeding the land in unincorporated cities to the governing entity in that townsite. That policy is to come from the

printer for distribution very shortly. A rough draft is out now.

MS. WUNNICKJ requested further explanation of the last comment. The state trustee is holding the municipal entitlements under the Claims Act for any future municipality that might be formed. Why is there no entity to convey to unincorporated municipalities?

MR. JOHNSON said no vehicle exists to do that. The State was reluctant to go along with this proposal when it was offered a year ago because of the litigation currently in progress. In incorporated cities, the vacant lots can be deeded to the city. In unincorporated cities, there is no one to whom to deed the vacant lots and unsubdivided portions of the townsite. It is desired that these be deeded to the State of Alaska.

5. Competitive Events Crossing Jurisdictional Boundaries

MR. PENFOLD brought up that in the Federal sector and possibly also in the State sector exist some differences in policies with respect to competitive events such as races. When events cross

jurisdictional boundaries there is potential for the public to be confused as well as difficulty in administration. Therefore, Mr. Penfold suggested that the Council should look at just what those policies are. Mr. Penfold suggested that the Council have a staff group prepare a brief analysis of the policies among the Forest Service, the Bureau of Land Management, the U.S. Park Service, the Fish and Wildlife Service, and State Agencies, and present to the Council a comparative analysis of those policies at the next Land Use Council Meeting. He did not propose any specific action other than that at this present time, but he did recommend it should be looked at.

There was no discussion on the suggestion. Inasmuch as the Council was not in the Action Items section of the Agenda, no action was taken and there was no discussion.

#### VII. INFORMATION ITEMS

MR. GROGAN noted that all but one of the Information Items listed have reports included in the packet. MS. WUNNICKE reported that she had prepared for Council members a memo from her to the Co-Chairmen giving the status of the Kenai River Special Management Area Study and a listing of those persons who have been appointed to the Kenai River Special Management Area Advisory

Board, and that Advisory Board does include representatives from U.S. Fish and Wildlife Service, U.S. Forest Service, the Alaska Department of Fish and Game, and Department of Environmental Conservation and the U.S. Corps of Engineers. That information has been distributed at this time.

DR. PUTZ announced that the Fish and Wildlife Service will be looking for Council action on the Kenai National Wildlife Refuge Comprehensive Conservation Plan at the next meeting.

MR. GROGAN announced that a reception for John Sandor in Vern Wiggins' Office for Council members immediately following the meeting, or about 11:30 a.m.

MS. WUNNICKE moved the meeting be adjourned. Mike Penfold seconded the motion and the meeting adjourned at 11:07 a.m.

## Access is critical to development of nation

Access, or the opportunity to enter upon your property, is one of the most important ingredients for the development of a nation.

If a farmer is unable to reach his land, if a forester is unable to reach the timber, or if a miner is unable to reach minerals to mine, then the development of a nation is halted.

Recognizing the importance of adequate access, the Congress of the United States on July 26, 1866, adopted an act providing for it by stating "The right-of-way for the construction of highways over public uses is hereby granted." The act was later codified as U.S.C. 932, Revised Statute 2477, and came to be known as RS 2477. It was repealed in October 1976 by Public Law 94-579, Section 706. However, previously established rights-of-way are considered valid.

Under those grandfather rights, considerable debate has sprung up over location, validity, and rights of us-

ers of RS 2477 highways in Alaska. The Supreme Court of Alaska stated a general rule in a 1961 case (Namerly vs. Denton): "... before a highway may be created there must be some positive act on the part of appropriate public authorities of the state, clearly manifesting an intention to accept a grant, or there must be public use for such period of time and under such conditions as to prove that the grant has been accepted."

Since the 1866 passage of the measure, there have been major changes in land ownership in Alaska. The year following the enactment of RS 2477, Alaska became a territory of the United States. All unreserved public lands in use between 1867 and 1976 are eligible for RS 2477 highway status. The highway need not be well-developed. Alaska statutes and legal decisions permit trails, walks, and other facilities to qualify, even if in a state of disrepair.



*Views expressed here do not necessarily represent those of the Daily News-Miner*

Unfortunately, miners are being harassed by the National Park Service for using RS 2477 highways. The case of Joe Vogler, a miner in the Woodchopper Creek area northwest of Eagle, is an example. Mr. Vogler first used the Bielenburg Trail from the Circle Mining District to the Woodcopper-Coal Creek region in the early 1950s. Other known users of the trail include the Engstrom brothers in the late 1930s, Dr. Ernest Patty, Walter Roman and Heine Carstens.

In July 1984, armed park service agents intercepted Vogler in the process of transporting his mining equipment along the Bielenburg Trail. Vogler now has found himself in court. This important case will establish access ground rules for the citizens of Alaska. The court will state its opinion of the rights of users of RS 2477 highways.

In the meantime, state and federal agencies are planning to establish an RS 2477 coordination committee for Northern Alaska. The committee will recommend procedures for identifying, locating, establishing case files, making assertions, plotting claims on land status maps and coordinating requests for RS 2477 status. Participating agencies are the Bureau of Land Management, Alaska Department of Natural Resources, and Alaska Department of Transportation and Public Facilities. These agencies are to be

commended for their cooperation in helping resolve this very important issue.

It is critically important that the citizens of Alaska retain grandfather rights of access. RS 2477 highways have been used in Alaska for more than 100 years as access to mining claims and for trade routes. In fact, the Elliott, Steese and Taylor highways are just a few of the original RS 2477 highways. Today the RS 2477s are still used by miners as well as hunters, farmers, dogmushers, fishermen, horse riders, cross country skiers, snow machine enthusiasts, and other travelers.

If you know of a trail that should be designated as an RS 2477 access route, your request can be made to any of the agencies in the coordination committee.

*Editor of "The Alaska Miner," Rose Rybachek, with her husband, Stanley, mines gold in the Livengood area.*

**DEPARTMENT OF NATURAL RESOURCES**

DIVISION OF LAND AND WATER MANAGEMENT

NORTHCENTRAL DISTRICT  
4420 AIRPORT WAY  
FAIRBANKS, ALASKA 99701-3896  
19071479-2243

*MSJ*  
*1/16*

December 26, 1984

*JAN 16 1985*  
*LANDS*  
*TRAILS*

Carl Johnson, District Manager  
Bureau of Land Management  
P.O. Box 1150  
Fairbanks, Alaska 99701

Reference: 1974 Department of Highway Assertion

Dear Carl:

In 1974, Commissioner Campbell of the Department of Highways sent BLM a trail inventory for the State of Alaska. This inventory was to reaffirm state ownership of these trails. Many of these trails had been dedicated to the state:

- 1) under the Ombudsman Act
- 2) RS 2477 grant under 43 U.S.C. 932

We assume that since the ownership of these right-of-ways was never questioned by BLM, that BLM recognizes their validity or existence.

In our talks leading to the September 1984 agreement, this previous inventory was discussed. BLM was concerned that this prior assertion was of such a scale as to be difficult to plat on your status plats. While in principle the state agrees the scale submitted to BLM may be difficult to plat, we feel it does represent a positive act on the part of the state to clearly accept the RS 2477 grant.

It was therefore our intention in our September 1984 agreement to further define these right-of-ways by submitting more detailed maps to assist you in platting them on your status plats. This process would also allow us to submit assertions left off the 1974 document.

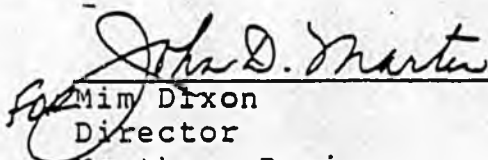
We were also under the impression that since BLM was the record keeper for all federal lands that BLM would plat these right-of-ways on all federal lands.

It is our sincere hope that this letter further defines our intention to protect state right-of-ways in our 1974 transmittal to BLM.

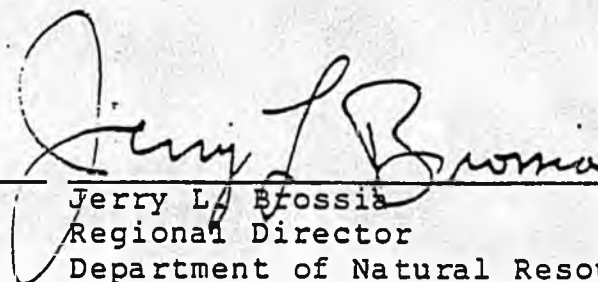
Carl Johnson  
December 26, 1984  
Page Two

We appreciate your support and effort to protect and preserve access right-of-ways and look forward to working with you in the future to resolve the many facets revolving around the RS 2477 issue.

Sincerely,

  
John D. Martin

Mim Dixon  
Director  
Northern Region  
Division of Planning  
Department of Transportation &  
Public Facilities

  
Jerry L. Brossia

Jerry L. Brossia  
Regional Director  
Department of Natural Resources

cc:

H. Glenzer, Jr., Deputy Commissioner, Northern Region, Department  
of Transportation and Public Facilities  
Esther Wunnicke, Commissioner, Department of Natural Resources  
John McDonagh, Assistant Attorney General, Fairbanks

# STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

## DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND AND WATER MANAGEMENT

NORTHERN REGION  
4420 AIRPORT WAY  
FAIRBANKS, ALASKA 99701-3896  
(907) 479-2243

December 26, 1984

Carl Johnson, District Manager  
Bureau of Land Management  
P.O. Box 1150  
Fairbanks, Alaska 99701

Reference: State RS 2477 Assertion of Bielenberg Trail

Dear Carl:

We have received your November 14, 1984 letter stating that BLM cannot plat the Bielenberg RS 2477 on your status plats at this time. The reason you imply is that it may have some legal bearing in the "Vogler case".

The state objects to your decision and feels that you have violated our agreement. We have previously agreed that our assertions could be decided in court. You agreed that if we followed the steps in the September 28, 1984 agreement you would plat our assertions.

At this time, we are not aware that 2477 is a part of Mr. Vogler's case. It was our impression that Mr. Vogler's case has to do with ingress/egress to mining claims. The RS 2477 matter should therefore remain a separate issue.

We hope that you will be able to plat the Bielenberg RS 2477 per our September 28, 1984 agreement. Thank you for your consideration.

Sincerely,

*John D. Martin*

*for* Mim Dixon  
Director  
Northern Region  
Division of Planning  
Department of Transportation &  
Public Facilities

*Jerry L. Brossia*

Jerry L. Brossia  
Regional Director  
Department of Natural Resources

cc:

Esther Wunnicke, Commissioner, Department of Natural Resources  
H. Glenzer, Deputy Commissioner, Department of Transportation and  
Public Facilities



# United States Department of the Interior

IN REPLY REFER TO

2800 (932)

## BUREAU OF LAND MANAGEMENT

Alaska State Office  
701 C Street, Box 13  
Anchorage, Alaska 99513

September 7, 1984

### Memorandum

To: Member of ALUC  
From: State Director, Alaska  
Subject: R.S. 2477 Issue Paper

Transmitted herewith is an issue paper which sets forth BLM's policy on R.S. 2477 rights-of-way. The policy has been altered enough in recent years to allow us to note these claims on our records provided the State takes the initiative and files an application for notation which meets the criteria set out in the issue paper.

In the absence of the State formally asserting its rights under the Statute, BLM has no choice but to consider the lands involved to be vacant public lands without established public access. BLM has had numerous discussions with the State concerning R.S. 2477 and the State is well aware of our policy and procedures.

Enclosed is a draft MOU between our Fairbanks District Office and the State of Alaska which is intended to facilitate the policy set out in the issue paper. Also enclosed is a copy of our BLM Manual section on R.S. 2477 and a copy of a Regional Solicitor's Office memorandum to the Bureau of Indian Affairs dated May 21, 1980.

The Fairbanks District Office and the State of Alaska, Department of Transportation and Public Facilities, Northern Region have been working on this Draft MOU for sometime now and have established a good working document which fits well within the constraints of our regulations.

Our first preference would be to have the cooperative State Federal work on R.S. 2477 started in Fairbanks proceed. However, we would not object to the Council taking this matter under its wing if this is what the State wishes. Under any circumstance, the State must clearly take the leadership role.

Michael J. Penfold  
State Director

Enclosure (1) w/Exhibits I, II, and III

## Issue Paper - R.S. 2477 Roads and Trails

Under DOI existing authority and policy, it is the responsibility of the State of Alaska to officially assert its claimed rights by filing applications for notation of such rights-of-way on our records. Such applications in addition to providing the information required to show the highway meets the four criteria set out below must provide a plottable description of the facility so that BLM's records can be properly noted.

The Act of July 26, 1866, R.S. 2477 (43 U.S.C. 932) provided:

"The right-of-way for the construction of highways over public lands not reserved for public uses, is hereby granted."

This statute, which was repealed by the Federal Land Policy and Management Act (FLPMA) of October 21, 1976, 90 stat. 2743, has been interpreted as granting a right-of-way for public use over public land without limiting the method of establishment of that right-of-way. The grant becomes fixed when a public highway is definitely established in one of the ways authorized by the laws of the State where the land is located.

The Act (R.S. 2477) did not specify the extent of the grant, the width of the right-of-way, or the nature of the right conveyed. Since the Department does not grant such rights-of-way, it has consistently held that it has no authority to adjudicate claims made under this Act. Therefore, acknowledgements of such claims have not been inserted in Federal Land Patents. The courts have held that reservation of an R.S. 2477 right in our patents is not necessary to validate or protect rights-of-way created under the statute.

In order to facilitate proper management of the public land, the Department has to have sound transportation plans. It is, therefore, necessary to identify all public roads in a given area. To facilitate such identification the Bureau of Land Management has recently been given authority to note claimed R.S. 2477 highways (roads, trails, etc.) on its official status plats, provided that requests for notation meet the following criteria:

1. In order for a valid right-of-way to exist, there must have been actual construction of a highway. Mere use, planning, or survey is not considered construction. However, construction of the highway need not have occurred all at once. Road maintenance often equals improvement and even construction. When the history of a road is questionable, its existence in a condition adequate for public use may constitute evidence that construction has taken place.
2. The highway is free and open to the public at large.
3. The construction of the highway on unreserved public land must have occurred prior to repeal of R.S. 2477 on October 21, 1976.
4. The State must have a procedure to confirm the R.S. 2477 public highway right-of-way grant.

Once the State application is received, BLM has the responsibility to assure that the lands covered by the claimed right-of-way were, on the date of establishment of the highway, unreserved public lands. If the information submitted by the State meets the four criteria above, BLM assumes (it does not adjudicate the claim) that the road is a bona fide R.S. 2477 highway. The BLM then acknowledges the State's claim and plots the right-of-way on its records.

Any uses other than for highway purposes within the boundaries of an R.S. 2477 right-of-way must be permitted by BLM by a separate right-of-way grant. It should also be noted that the R.S. 2477 grant extends only to the right-of-way itself, it does not include ancillary facilities such as material sources and stockpile areas.

The Fairbanks District of BLM is currently working on a Memorandum of Understanding with the State of Alaska, Department of Transportation and Public Facilities. This MOU is intended to facilitate notation of the State's claimed R.S. 2477 rights on BLM's official records.

BLM has no objection to elevating this MOU to State level if the Council so desires. However, even if the MOU is elevated to State level, BLM cannot by law or regulation note the State's R.S. 2477 claims to its records until the State DOT/PF files a formal request for notation accompanied by a plottable description and a date of appropriation. The initiative to begin the record notation process rests with the State.

Further, until the State officially identifies its claimed R.S. 2477 rights, so they can be noted on the records, Federal agencies have no recourse but to treat the lands involved as if they were free and clear of encumbrances. As an example, numerous contacts were made with the State of Alaska during the planning process on the Steeze NCA and the White Mountains NRA. At no time has the State of Alaska identified any R.S. 2477 claims within these planning areas.

## MEMORANDUM OF UNDERSTANDING

among

**DRAFT**ALASKA DEPARTMENT OF NATURAL RESOURCES  
NORTHCENTRAL DISTRICT,ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES  
NORTHERN REGION,

and the

U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT  
FAIRBANKS DISTRICT OFFICE

This Memorandum of Understanding is entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 1984, by and among the District Manager, Fairbanks District Office, Bureau of Land Management, hereinafter referred to as BLM; the District Manager, Northcentral District, Alaska Department of Natural Resources, hereinafter referred to as ADNR; and the Deputy Commissioner, Northern Region, Alaska Department of Transportation and Public Facilities, hereinafter referred to as ADOT&PF. The purpose of this Memorandum is to further the cooperation of BLM, ADNR, and ADOT&PF for the common goal of coordinating each agency's Revised Statute (RS) 2477 policies and procedures and for providing a local administrative review forum for disagreements relating to specific RS 2477 rights-of-way.

SECTION I

WHEREAS, Congress by the Act of July 25, 1866 granted the right-of-way for construction of highways over unreserved public lands, now codified as 43 U.S.C. 932, Revised Statute 2477. This Act states:

"The right-of-way for the construction of highways over public lands not reserved for public uses is hereby granted;" and

WHEREAS, the Supreme Court of Alaska, in Hamerly vs. Denton, 359 P. 2d 121, 123 (Alaska 1961), stated the general rule regarding acceptance of this federal grant as follows:

".....before a highway may be created there must be some positive act on the part of the appropriate public authorities of the state, clearly manifesting an intention to accept a grant, or there must be public use for such period of time and under such conditions as to prove that the grant has been accepted;" and

WHEREAS, the Attorney General of the State of Alaska stated, (A66-404-81, September 14, 1931):

"Our territorial legislature accepted the federal grant by designating public highways of a specified width on all section lines within the Territory. [See Ch. 19, SLA 1923; Ch. 123, SLA 1951; Ch. 35, SLA 1953; 1969 Opinion of the Attorney General No. 7]."

Further the Attorney General stated:

"In addition to section line highways created by legislative designation there are numerous highways, not necessarily conforming to section lines, which have been created by public use alone throughout the State of Alaska.

**DRAFT**

Our Supreme Court, along with a majority of courts which have considered the issue, has stated that roads created pursuant to R.S. 2477, whether by public authority, such as section line rights-of-way, or by public user alone, are public highways. (Hamerly, supra at p. 123);" and

WHEREAS, the Superior Court of Alaska, Third Judicial District, in State of Alaska vs. David Carpentier, et. al, (69-2914 D; Anchorage, Alaska, February 17, 1970) stated:

"The mere fact of acceptance [of public rights-of-way] by the public does not of itself impose upon the public authority the duty to maintain."

Further the Court said:

"Taking judicial notice of the climate conditions in the area of the Burma Road (the road between Willow and Big Lake), the mere fact of disrepair does not necessarily imply abandonment.....;" and

WHEREAS, the Bureau of Land Management regulations as 43 CFR 2802.5(b) states:

".....any person or state or local government which has constructed public highways under the authority of R.S. 2477 (43 U.S.C. 932, repealed October 21, 1976) may file a map showing the location of such public highways with the [Bureau of Land Management];" and

WHEREAS, the United States Department of the Interior, Office of the Solicitor stated (July 7, 1983):

".....[the Department of the] Interior has long recognized that State law controls what constitutes a highway within each state;" and

WHEREAS, Alaska Statute 19.45.001(8) states:

"Highway includes a highway (whether included in the primary or secondary systems), road, street, trail, walk, bridge, tunnel, drainage structure and other similar or related structure or facility, and right-of-way thereof, and further includes a ferry system, whether operated solely inside the state or to connect with a Canadian highway, and any such related facility;" and

WHEREAS, the public needs to know the location of public highways to avoid trespassing on private lands and the various Federal, State and local governmental agencies need to know their locations for proper land and resource management and conveyance actions; and

WHEREAS, it is recognized that it is in the public's and agencies' interests to identify RS 2477 rights-of-way claimed by the State of Alaska and these be depicted on BLM's and ADHR's land status plats; and

WHEREAS, it is recognized that there are policy differences among the agencies; and

WHEREAS, it is recognized that an understanding and coordination of processing procedures of each of the agencies would be beneficial to all agencies resulting in time and dollar savings and better service to the public; therefore, the undersigned parties representing their respective agencies enter into this agreement.

**DRAFT**SECTION IIRS 2477 COORDINATION COMMITTEE FOR NORTHERN ALASKA

ESTABLISH the RS 2477 Coordination Committee for Northern Alaska:

1. The purposes for which this committee is established are:
  - a. coordination of agency priorities for asserting RS 2477 trails,
  - b. coordination of RS 2477 processing procedures for identifying, locating, establishing case files, making assertions, and plotting claims on both BLM's and ADNR's land status plats, and
  - c. coordination of requests made to and by the agencies.
2. The membership of this committee is to be limited to one representative from each agency, BLM, ADNR and ADOT&PF.
3. This committee will be chaired by the BLM representative.

SECTION IIIPROCEDURE FOR ASSERTING RS 2477 CLAIMS

WHEREAS, the Bureau of Land Management Manual at 2801 (B)(1)(d) states:

"A State has to have a procedure to confirm the R.S. 2477 highway right-of-way grant;" and

WHEREAS, an RS 2477 highway must have existed prior to October 21, 1976, or the date the land was reserved for public uses, or the date of entry by third-parties which aggregated the land from the public domain; and

WHEREAS, it is recognized that BLM does not adjudicate RS 2477 claims;

NOW THEREFORE, the parties to this MOU agree to establish procedures for asserting RS 2477 claims.

1. The procedure shall include:
  - a. a cover letter signed by DNR and DOT&PF asserting a claim or accepting an RS 2477 grant shall be submitted along with documentation supporting

# DRAFT

the date claimed. The date should preferably be based on expenditure of funds (public or private) or on the earliest known date of public use, as evidenced by affidavits, photographs, historical documents and other evidence,

- b. a map at a scale no smaller than 1:63,360 depicting the route as accurately as possible shall be submitted with the cover letter and supporting documentation,
- c. the trail number and quad map number from the existing Trail Inventory File should be noted (if applicable) for clarification and cross-reference,
- d. each claim will be reviewed by BLM to be sure the land was "unreserved public land" as of the date claimed.
- e. BLM will issue a serial number and establish a case file for each claim, as will ADNR and ADOT&PF. All correspondence shall reference all agencies' file numbers,
- f. BLM will plot each trail claimed on their Master Title Plats, and
- g. ADNR will plot each trail claimed on their land status plats;
- h. all files, including maps, evidence of use, etc. established by one agency shall be duplicated and forwarded to the other agencies.

## SECTION IV

### GENERAL CONDITIONS

Nothing in this Memorandum of Understanding shall obligate any party in the expenditure of funds, or for future payments of money, in excess of appropriations authorized by law.

Each party agrees that it will be responsible for its own acts and the results thereof and each party shall not be responsible for the acts of the other parties; and each party agrees it will assume to itself risk and liability resulting in any manner under this agreement.

Nothing in this MOU is intended to limit agency or individual rights to normal administrative or judicial appeal processes.

Nothing herein is intended to conflict with Federal, State or local laws or regulations. If there are conflicts, this agreement will be amended at the first opportunity to bring it into conformance with conflicting laws or regulations.

The effective date of this agreement shall be from the date of final signature.

\_\_\_\_\_ Date \_\_\_\_\_, 19\_\_

Jerry Brossia, District Manager,  
Northcentral District, Alaska Department of Natural Resources

\_\_\_\_\_ Date \_\_\_\_\_, 19\_\_

Carl Johnson, District Manager,  
Fairbanks District Office, Bureau of Land Management

\_\_\_\_\_ Date \_\_\_\_\_, 19\_\_

H. Glenzer, Deputy Commissioner,  
Northern Region, Alaska Department of Transportation and Public Facilities

**DRAFT**

2801 - MANAGEMENT

B. Revised Statute 2477. The Act of July 26, 1866, R.S. 2477 (43 U.S.C. 932) provided:

"The right-of-way for the construction of highways over public lands not reserved for public uses, is hereby granted."

This statute, which was repealed by FLPMA, has been interpreted as a right-of-way grant for highways over the public land without any limitation as to the manner of the establishment. The grant becomes fixed when a public highway is definitely established in one of the ways authorized by the laws of the State where the land is located. The Act did not specify the extent of the grant, the width of the right-of-way, or the nature of the rights conveyed. To facilitate proper management of the public land, the Bureau has to have a sound transportation plan. Therefore, it is necessary to identify all public roads.

1. Criteria for identification of R.S. 2477 Public Highways, include four elements:

a. In order for a valid right-of-way to come into existence, there must have been the actual building (construction) of a highway. Mere use, planning, or surveying, does not equal construction. However, construction may not have occurred all at once. Road maintenance often equals improvement, or even construction. Increments of maintenance over several years may equal construction. When public funds have been spent on the road it may be a public road. When the history of a road is unknown or questionable, its mere existence in a condition adequate for public use may be evidence that construction has taken place.

b. A highway is freely open to everyone. Roads that have had access restricted to the public by locked gates or other means may not be public highways.

c. The construction of a public highway on unreserved public land must have occurred prior to October 21, 1976.

d. A State has to have a procedure to confirm the R.S. 2477 public highway right-of-way grant.

2801 - MANAGEMENT

2. The regulations (43 CFR 2802.5) have set a goal of identifying all the R.S. 2477 highways. The Bureau should work with each State, county, and municipality to identify all of the existing public highways. The equivalent of an application for this type of public highway is any map that clearly shows the location of the highway on public land. Additional information such as right-of-way width would also be desirable. Compare the map with criteria .24B1a through c. If the roads identified on the map submitted by State agree with the criteria assume that the roads are bona fide R.S. 2477 highways. If differences are found between the map and criteria, further research with the local government may be necessary. A letter of acknowledgement with a map or listing to the appropriate local government that identifies the public highways is sufficient. There is no grant form.

a. Assign a serial number and set up a case file. Minimize the number of serial numbers and files by consolidating roads under each governing body. However, if the State Office already has an existing serialization system with individual numbers, it may be continued.

b. Note the Master Title Plat. Authority to be cited on the serial register page is R.S. 2477 (43 U.S.C. 932).

3. Roads existing on public land, other than public highways are generally Bureau-administered roads. State, local governments, and others may file an application for a right-of-way grant for roads that do not meet the criteria listed in .24B1. R.S. 2477 did not specify the terms and conditions of the rights conveyed. In some instances, it is necessary to know the terms and conditions in order to manage the adjoining public land. As a general rule, terms and conditions can be determined by examining the State laws or practices for similar public highways.

a. Terms - perpetual.

b. Right-of-way width - As specified by State law or commonly used on similar public highways.

c. Extent - public use as a roadway. This would not include material sites, stockpile sites, or other ancillary facilities.

4. Other rights-of-way use within a R.S. 2477 right-of-way after December 9, 1974, must be authorized by a separate right-of-way grant. Separate right-of-way requirements prior to December 9, 1974, were waived by the Bureau. However, when these pre-1974 rights-of-way require a new location or ownership change, they should be updated with a new right-of-way grant.

# DEPARTMENTAL MANUAL

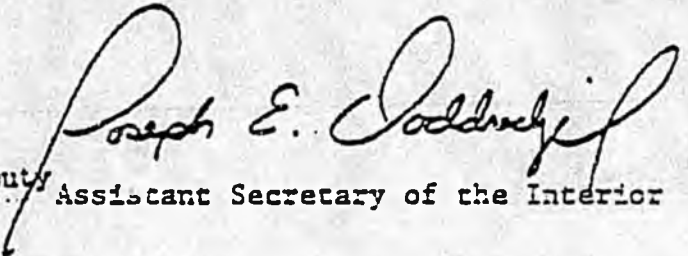


# TRANSMITTAL SHEET

|                                                               |                                         |                        |
|---------------------------------------------------------------|-----------------------------------------|------------------------|
| PART<br>601 DM 4                                              | SUBJECT<br>FEDERAL AREAS WITHIN STATES  | RELEASE NUMBER<br>2586 |
| FOR FURTHER INFORMATION, CONTACT<br>Bureau of Land Management | Administration of ANCSA 17(b) Easements | DATE<br>SEP 11 1984    |

## EXPLANATION OF MATERIAL TRANSMITTED:

This manual release, 601 DM 4, provides Departmental policy and guidance regarding the administration of easements reserved pursuant to Section 17(b) of the Alaska Native Claims Settlement Act of 1971, P.L. 92-203.

  
Deputy Assistant Secretary of the Interior

## FILING INSTRUCTIONS:

Remove:

None

Insert:

601 DM 4  
(2 sheets)

DEPARTMENT OF THE INTERIOR  
DEPARTMENTAL MANUAL

Public Lands

Part 601 Federal Areas Within States

---

Chapter 4 Administration of ANCSA 17(b) Easements

601 DM 4.1

---

4.1 Purpose. This chapter sets out procedures for the administration of easements under the Department of the Interior jurisdiction that have been reserved pursuant to Section 17(b) of the Alaska Native Claims Settlement Act, (43 U.S.C. 1616(b)). Easements serving lands under other Federal agency administration shall be the responsibility of that agency.

4.2 Policy. An easement reserved pursuant to Section 17(b) of the Alaska Native Claims Settlement Act shall be administered by the Interior bureau whose land is accessed by the easement. Site easements which are a necessary and integral part of the access easement shall also be administered by the bureau whose land is accessed by the linear easement. Where that easement accesses or is a part of the access to a conservation system unit, that easement shall become part of that unit and be administered accordingly. When an easement accesses non-Federal lands, the easement shall be administered by the Bureau of Land Management. If an easement connects two conservation system units managed by two different bureaus, the bureau with the larger conservation system unit shall administer the access easement. If the easement connects a conservation system unit with other public lands then the bureau managing the conservation system unit shall administer the easement. Any segment of an easement crossing lands within the exterior boundary of a conservation system unit shall be administered by the bureau managing the conservation system unit in consultation with any other bureau or agency managing the remainder of the easement outside of the conservation system unit. Each bureau is authorized to negotiate with other Federal agencies, the State of Alaska, an Alaska borough or municipal government to transfer the administration of a specific easement, if authorized by law.

4.3 Administration Procedures.

A. The Alaska State Director, Bureau of Land Management, shall notify the appropriate bureau or Federal agency when an easement accessing a conservation system unit or Federal property has been reserved in a conveyance document to a Native corporation. Where that easement is external to the boundary of a conservation system unit, that easement shall be made part of that unit by authority in Section 102(b) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3103). The notice shall include the easement identification number, Federal unit accessed, the servient landowner's name and mailing address, the size, length and acreage of the easement, authorized uses and a map depicting the easement.

DEPARTMENT OF THE INTERIOR  
DEPARTMENTAL MANUAL

Public Lands

Part 601 Federal Areas Within States

Chapter 4 Administration of ANCSA 17(b) Easements

601 DM 4.3B

B. Each Alaska Regional Director or State Director shall maintain necessary maps or other appropriate reference materials which display the location of, and authorized uses for each easement under its administration. This information shall be available in the bureau's office which has direct administration of the lands which are accessed by the easement. The Alaska State Office, Bureau of Land Management, shall also maintain records of all easements. Each bureau is responsible for making necessary supplemental use information available to the Bureau of Land Management.

C. Each bureau has the right to remove and use vegetal materials and common varieties of soil, sand, gravel, and stone within the easement, at no cost, to the extent necessary for the development or management of the particular easement, except as limited by specific negotiated agreements with the servient owner(s). Vegetal materials and common varieties of soil, sand, gravel, and stone not necessary for the development or management of the particular easement remain the property of the servient owner. However, nothing in this manual gives or shall be considered to give an easement user the right to appropriate vegetal or mineral materials.

D. Any use authorization granted for an activity on publicly owned land may include the necessary authorization for the appropriate use of the accessing public easements. The authorization shall not allow uses which are not provided for in the easement reservation. If authorization is required to construct and use a reserved easement, the administering bureau may grant such authority.

E. When funds are available, the bureaus may contract with private entities, including, but not limited to, Native corporations to perform functions which may be needed as part of the administration of the easement, including, but not limited to, the installation of signs, construction and maintenance of trails and sites and litter control.

F. Prior to on-the-ground activities such as locating, marking or developing an easement by an administering bureau, the servient owner(s) should be consulted.

G. The physical location of an easement may be adjusted to rectify a usability problem, or to accommodate the servient owner's development of the lands and shall be made only after the bureau and the servient owner agree to the adjustment. Such adjustments shall be reduced to writing and recorded.

DEPARTMENT OF THE INTERIOR  
DEPARTMENTAL MANUAL

Public Lands

Part 601 Federal Areas Within States

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Chapter 4 Administration of ANCSA 17(b) Easements

601 DM 4.3H

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H. An easement is a property interest which may be exchanged. An easement may be exchanged if an acceptable alternate easement or benefit is offered by the servient landowner(s).

4.4 Transfer of Administration. Administration of an easement may be transferred to the State of Alaska, an Alaska Borough or municipal government if the Secretary determines that it is in the best interest of the United States or public and is otherwise authorized by law.

A. Each bureau may, under appropriate authority, negotiate the transfer of its administration of any easement to any appropriate unit of Federal or State government. Upon successful transfer, the bureau transferring administration shall notify the BLM State Director of the action and provide BLM with a signed copy of the agreement. The transferring bureau shall continue to maintain a record of the easement and make the information available to the public.

B. Prior to transferring administration of an easement to the State of Alaska, a borough or municipal government, the bureau shall make the transfer document available to the servient owner(s) for inspection and comment for a period of not less than 30 days prior to execution of the transfer. All comments submitted by the servient owner(s) should be considered prior to the final transfer.

C. When a bureau determines that an easement is no longer necessary for the purpose for which it is reserved, the Regional Director of that bureau shall request that the BLM State Director either assume administration of the easement or initiate proceedings to relinquish the easement to the servient land owner. The request shall be supported with documentation that:

1. An alternate easement has been offered by the landowner; or
2. Termination is required by law.



## *Citizens' Advisory Commission on Federal Areas*

515 Seventh Avenue  
Suite 310  
Fairbanks, Alaska 99701  
(907) 456-2012

TO: ALASKA LAND USE COUNCIL MEMBERS

FROM: CITIZENS' ADVISORY COMMISSION ON FEDERAL AREAS

RE: RS:2477 RIGHTS OF WAY

DATE: SEPTEMBER 13, 1984

In 1866 the U.S. Congress passed a law entitled "An Act granting the right of way to Ditch and Canal Owners over the Public Lands, and for other Purposes." Section 8 of this act, which generally dealt with mining activities on the public lands, read as follows: "And be it further enacted, That the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted."

This grant, more commonly known as Revised Statute (RS) 2477 (43 USC §932), was a standing offer by the Federal government until it was repealed with the passage of the Federal Land Policy and Management Act (FLPMA) of 1976. While RS 2477 is no longer the legal basis for the construction of new public highways, valid existing rights granted to the Territory, State and public of Alaska during the period of the act's efficacy are protected by FLPMA Section 701 and reaffirmed by ANILCA Section 1109.

There are perhaps 150 or more RS 2477 rights of way in Alaska, concentrated primarily in the interior, which were accepted directly by the public of the State and the Territory through actual construction and use. This is exclusive of the Section-line right of way dedicated by the State in AS 19.10.010. which legislation acts as formal acceptance of the grant offered. Informal acceptance, that which is accepted directly by the public through actual use, is an equally valid right recognized in case law on the subject.

On State owned lands, authority for the management of these public rights of way is vested in both the Department of Natural Resources (DNR) and the Department of Transportation and Public Facilities (DOT/PF). On Federal and private lands, DOT/PF has primary authority as the managing agency. This authority would extend to those ANILCA lands which were vacant and unreserved public lands during the period of time when the grant was in effect in the Territory and State. The Alaska Organic Act of 1884 was the legislation which brought United States law to Alaska, including RS 2477, and can be regarded as the date at which the grant became effective in the Territory.

In 1923 the Territorial legislature formally accepted the grant by dedicating all Section lines to be public highways with an

easement of either 66 feet or 100 feet depending on the land status at the time of the dedication. Informal acceptance of the grant has occurred every time men cut their way through the wilderness during the gold rush in effect constructing public highways for all to use. Many years of use by succeeding fortune seekers, trappers, traders, subsistence users and recreationists along these routes has reinforced this legacy. Once granted and accepted, the vacant, unreserved public lands over which the right of way lies are severed from ownership by the federal government and pass to the Territory, the State or the public of those political entities.

The Alaska National Interest Lands Conservation Act (ANILCA) mandated the preparation of management plans for the lands added to the Conservation System Units (CSUs) created by that act. Unfortunately, both the Federal and State agencies have for the most part not adequately considered these public highways in the planning efforts now underway. Failure to confront the issue of RS 2477 has and will continue to do harm to the interests of the State, the Federal government and the Alaskan public.

Recently, a miner was arrested by Park Service personnel within the bounds of the Yukon-Charley National Preserve while moving a bulldozer along the Bulenberg Trail which both he and State officials claim is a valid RS 2477 right of way. The miner has patented and unpatented mining claims in the National Preserve to which he is guaranteed access by Section 1110 of ANILCA. These "guarantees" are honored by requiring miners and other traditional users of the lands in question to contend with considerable amounts of paperwork to receive permits providing access to these lands. This Commission believes that this system of permitting is contrary to the spirit and the letter of the law where legitimate RS 2477s are involved. Formal recognition of valid RS 2477 rights of way by the various Federal agencies would simplify the problem of access and allow the use of a transportation system that has been in existence for over eighty years. The use of valid rights of way belonging to the State of Alaska should not be subject to the issuance of permits by Federal land managers.

This is clearly the intent of the Congress as evidenced by the report of the Senate Energy and Natural Resources Committee (Report #96-413; November 14, 1979; page 303): "Those private lands, and those lands owned by the State of Alaska or a subordinate political entity, are not to be construed as subject to the management regulations which may be adopted to manage and administer any national conservation system unit which is adjacent to, or surrounds, the private or non-federal public lands. Federal laws and regulations of general applicability to both private and public lands, such as the Clean Air Act, the Water Pollution Control Act, U.S. Army Corps of Engineers wetlands regulations, and other Federal statutes and regulations of general applicability would be applicable to

private or non-federal public land inholdings within the conservation system units, and to such lands adjacent to conservation system units, and are thus unaffected by the passage of this bill."

The State officials responsible for asserting the State's claims and managing these rights of way on behalf of the Alaskan public have been reluctant to do so. Perhaps this is due to a desire to de-polemicize the relations between the State and Federal governments since the passage of ANILCA. However, an absence of both a clear policy and the political will to follow through on such a policy is tantamount to a "de facto" abandonment of these rights of way. This Commission is implacable in its opposition to such an abandonment.

The Yukon-Charley National Preserve case involves more than the issue of access by RS 2477 and will be settled in a court of law. One thing is clear however, according to personnel in both the Alaska Department of Transportation and the Department of Natural Resources, the trail used in this instance is a valid, documented RS 2477.

The Citizens' Advisory Commission on Federal Areas proposes the formation of a work group or task force which will establish a procedure to confirm the State's RS 2477 claims. The Commission requests that the member agencies of the ALUC cooperate fully in the implementation of this proposal. Such cooperation would include agency acknowledgement of identified RS 2477 rights of way in the planning efforts of the CSUs, as well as adequate personnel and funding for the necessary research.

The Commission recommends that the Alaska Department of Transportation and Public Facilities and the Department of Natural Resources act as the co-lead agencies on behalf of the State in the task force. We recommend the Bureau of Land Management as the lead agency for the Federal government.

This matter is in urgent need of attention. Access to legitimate inholdings on the CSUs is not being adequately addressed despite the guarantees of ANILCA Section 1110. In the absence of a clear initiative on the part of the State, there is little the land management agencies of the Federal government are able or willing to do on the issue of RS 2477 while plans for the CSUs are being prepared. Timely action by the appropriate State agencies is necessary to ensure federal and private recognition of RS 2477 rights of way.

The Citizens' Advisory Commission on Federal Areas believes the ALUC is the proper channel through which this problem may be addressed. Formation of an intergovernmental task force will clear up some of the unanswered questions faced by private and public land managers.

# Alaska State Legislature

ARLISS STURGULEWSKI, Chairman  
BETTYE FAHRENKAMP, Vice Chairman  
JACK COGHILL  
DICK ELIASON  
VIC FISCHER  
RICK HALFORD  
FRED ZHAROFF




POUCH V  
JUNEAU, ALASKA. 99811  
(907) 465-4907

## Senate Committee on Resources

M E M O R A N D U M

February 28, 1985

TO: All Members  
Senate Resources Committee

FROM: Senator Arliss Sturgulewski   
Chairman, Senate Resources Committee

RE: SJR 10 Requesting that the Department of Natural Resources and the Department of Transportation and Public Utilities expedite the identification and establishment of rights-of-way for roads and trails on federal Bureau of Land Management plats which qualify under RS 2477.

Attached is a proposed committee substitute for SJR 10. It was developed in response to comments and suggestions during last Friday's hearing on this resolution. The resolution's sponsor, committee members who made specific wording suggestions at the hearing, and representatives of involved public groups were consulted in the development of this CS.

I would like to pass this resolution out at our meeting tomorrow. If you have specific objections, would you please contact me or committee staff as soon as possible. Thank you.

**DRAFT** 1

SJR10 DOCUMENT= 1 OF 1 PAGE = 1 OF 4

BILL = SJR10  
ROOT = SJR0010

BILL ROOT:  
SJR0010

BILL NUMBER:  
SJR10

INTRODUCED:  
1/30/85

REFERRED: Resources and  
Transportation

ORIG SPONSOR:  
BY COGHILL, ABOOD, BENNETT, DEVRIES,  
FAHRENKAMP, FAIKS, P.FISCHER, V.FISCHER,  
HALFORD, KELLY, KERTTULA & STURCULEWSKI

BILL HEADING:  
IN THE SENATE

No CHANGES 1st PAGE

COMMITTEE SUBSTITUTE FOR SENATE JOINT RESOLUTION NO. 10 (RESOURCES)

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

TITLE: Requesting that the Department of Natural Resources and the Department of Transportation and Public Facilities expedite the identification and establishment of rights-of-way for roads and trails on federal Bureau of Land Management plats which qualify under RS 2477.

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

WHEREAS the Alaska National Interest Lands Conservation Act of 1980 placed 124 million acres of land in Alaska into 71 federal conservation units, and outlined specific use requirements and restrictions for those units; and

WHEREAS there was no provision for establishing or protecting a transportation system in the development of comprehensive management plans for each conservation unit by the responsible federal management agency; and

WHEREAS several of the comprehensive management plans have been completed without recognition of existing roads and trails, preventing public access through these units to state and private lands and to state waters; and

WHEREAS comprehensive management plans for a minimum of nine national park and preserve units and five fish and wildlife refuge units are to be completed during calendar year 1985; and

WHEREAS the federal statutory authority for the establishment of recognized rights-of-way for roads and trails is contained in RS 2477 (43 U.S.C. sec. 932); and

WHEREAS the Department of Natural Resources and the Department of Transportation and Public Facilities on September 28, 1984, signed a Memorandum of Understanding with the federal Bureau of Land Management involving the northern region of Alaska only, establishing the procedure under which the rights-of-way could be recognized on Bureau of Land Management plats and in comprehensive plans for conservation units;

BE IT RESOLVED by the Alaska State Legislature that the Department of Natural Resources and the Department of Transportation and Public Facilities immediately propose a Memorandum of Understanding with the Bureau of Land Management, to be developed in consultation with other affected land owners and managers, relative to the remainder of the state; and be it

FURTHER RESOLVED that the state agencies involved affirmatively solicit information from miners, engineers, land surveyors, environmentalists, outdoor groups, landholders or any persons or organization that may have knowledge of the historic use of trails, to assist the departments in the identification of those roads and trails that could qualify under the provisions of RS 2477 (43 U.S.C. sec. 932) for addition to the state transportation system, and that may be useful to the federal agencies developing comprehensive management plans for the various Alaska National Interest Lands Conservation units; and be it

FURTHER RESOLVED that the involved state agencies develop draft policies regarding management, maintenance, liability, vacation, categories, widths, and other relevant concerns related to RS 2477 roads and trails, and that the agencies review these draft policies with affected land owners and managers, and then present these draft policies to the legislature during the second session of the Fourteenth Legislature.

COPIES of this resolution shall be sent to the Honorable Bill Sheffield, Governor of the State of Alaska, to the Honorable Esther Wunnicke, Commissioner of Natural Resources, to the Honorable Richard J. Knapp, Commissioner of Transportation and Public Facilities, and to Michael J. Penfold, State Director of the Bureau of Land Management.

CHANGES  
AS MARKED

AMENDMENT

OFFERED IN THE SENATE:

By: Stearns

To: \_\_\_\_\_ SENATE BILL No. \_\_\_\_\_

HOUSE BILL No. \_\_\_\_\_

PAGE: 2

LINE: \_\_\_\_\_

Line 9 after "that" add ~~the~~  
the ~~present~~ present  
Line 14 " "  
Line 23 " "

RESOLUTION ADDRESSING PROPOSED PLOTTING OF R.S. 2477 RIGHTS-OF-WAY TO PUBLIC LAND RECORDS

WHEREAS, the State of Alaska and the Bureau of Land Management have entered into a memorandum of understanding to identify and plot RS 2477 rights-of-way to the public land records; and

WHEREAS, the Alaska Native Claims Settlement Act corporations are major land holders which may be severely impacted by this action without an opportunity to participate in the decisions; and

WHEREAS, the notation of the public land records may provide the State of Alaska with added weight, in the case of litigation of an RS 2477 right-of-way, without a factual basis; and

WHEREAS, neither the State nor the Bureau of Land Management propose to adjudicate RS 2477 rights-of-way under the terms of the memorandum of understanding; and

NOW, THEREFORE, BE IT RESOLVED by the Alaska Native Land Managers Association that the Alaska Native Land Managers Association opposes the plotting of RS 2477 rights-of-way to the public land records.

WE FURTHER REQUEST that the following actions be taken:

1. Alaska Native Claims Settlement Act corporations are actively involved in the identification process, and
2. The Bureau of Land Management and the State of Alaska establish clear standards of construction and use against which all RS 2477 rights-of-way are to be considered, and
3. The issue of abandonment is clearly defined and addressed, and
4. Each RS 2477 right-of-way is adjudicated by the Bureau of Land Management, and
5. An accurate centerline description is provided to the Bureau of Land Management prior to plotting, and
6. A case file is established which sets out the history of each RS 2477 right-of-way together with complete documentation of the timing, duration type and amount of use and location.

BE IT FURTHER RESOLVED that this resolution be forwarded to the Alaska Federation of Natives, the Bureau of Land Management, the State Department of Natural Resources, the State Department of Transportation and Public Facilities, Alaska's Congressional Delegation, and to all State legislators.

Duly adopted this 30th day of January, 1985, in Anchorage, Alaska.

*Frances E. Zimmerman*

Frances E. Zimmerman, Secretary/Treasurer

P.O. Box 80674  
College, Ak. 99708  
13 February 1985

Dear Senator Coghill:

Thank you very much for attending the breakfast last Saturday and allowing several of us to share our concerns with you on water issues and access issues facing the resource development community in Alaska.

At breakfast I spoke to some of our concerns relating to preserving the access rights of all Alaskans on R.S. 2477 rights-of-way. We feel that if the State does not actively assert these rights NOW, before land use management plans are implemented, land managers will be able to administratively effect curtailment of the access by imposing restrictive regulations. The problems experienced with the U.S. Park Service by the inholders in Chisana provides a classic example. Miners operating near Van Curlers Bar experienced conflict with the Alaska Department of Natural Resources when they attempted to use a trail. The Alaska Department of Transportation chose to get a permit from ADNR on an R.S. 2477 trail that had not been platted in order to gain timely access to a pit on one of the Alaska Highway projects.

More general is the problem of using R.S. 2477 trails to comply with the public easements under 17(b) of the Alaska Native Claims Settlement Act. The right-of-way is established by the taking under R.S. 2477 and can be abandoned only under procedures established by State law. BLM is listing the allowable uses on 17(b) easements which are also R.S. 2477 rights-of-way. This effectively curtails the access to the average citizen because of the high cost of a lawsuit. The potential problems are underscored in the enclosed memorandum, Instruction Memorandum No. AK-85-72.

It is important that the State legislature take appropriate action to preserve existing access rights for all of the citizens of Alaska. Such action might include, but not be limited to:

1. Initiate a program of identifying all overland access to all private property rights in the State.
2. Provide for compensation to any citizen who has to go to court to maintain his right of access.
3. Require that all State land use management plans reflect a policy of unrestricted multiple use on R.S. 2477 trails and recognize ADOT/PF as the only agency authorized to generate user regulations.

The problems currently being experienced by water users in the State underscore the futility of trusting the federal and state regulatory agencies. These agencies have continually asserted that errors, omissions, or abuses can be corrected through the administrative process. Wrong - as the regulations become more complex the corrective procedures have been eliminated. Further, these agencies have administrative courts. Few individuals have the resources to sustain a long fight in the administrative court and follow through with the federal civil court.

The public interest would best be served if the State of Alaska would assert, in court if necessary, claims to all R.S. 2477 rights-of-way. To the best of my knowledge State law does not provide for the abandonment of a public right -of-way through the process of land classification or land use management planning.

For your information I have provided my copy of the U.S.B.L.M. Section 17(b) Easement Desk Manual published April 24, 1984.

If I can provide any specific input to you or your committee, please contact me by mail or call me at home. My telephone number is 488-6058.

Sincerely,

A handwritten signature in cursive script that reads "Helen Warner". The signature is written in dark ink and is positioned above the typed name.

Helen Warner



# United States Department of the Interior

IN REPLY REFER TO

2800 (932)

## BUREAU OF LAND MANAGEMENT

Alaska State Office  
701 C Street, Box 13  
Anchorage, Alaska 99513

November 23, 1984

RECEIVED

DEC 23 1984

Instruction Memorandum No. AK-85-72  
Expires 9/30/85

To: DM's and DSD's  
From: State Director, Alaska

Subject: Notation of R.S. 2477 Right-of-Way Assertions on the Public Land Records

This memorandum is intended to supplement manual guidance on notation of R.S. 2477 right-of-way assertions. The BLM manual policy on notation of claimed R.S. 2477 is intended to facilitate BLM management of those lands it administers. BLM needs a sound transportation plan in order to effectively manage those public lands it administers; therefore, it is necessary to identify existing access routes on the Bureau's official records.

Notation of any particular R.S. 2477 assertion of right to these records is discretionary. The manual merely provides BLM a procedure of noting R.S. 2477 claims on its records, if BLM agrees that the assertions have at least potential validity. The manual procedure is not intended to force BLM to note assertions it believes to be questionable or invalid.

It should, however, be remembered that an R.S. 2477 grant is created by taking. The rights acquired thereunder attached immediately when the facility was first appropriated or constructed under the statute. Once a right-of-way is established under R.S. 2477, it may be abandoned only under procedures established by State law.

The BLM should work with the State of Alaska to identify those existing access roads and trails which may be potentially valid R.S. 2477 assertions. When BLM agrees that a right may exist (i.e. the assertion may be valid) under the statute, it should note the assertion on its official land status records. If BLM does not agree that the right may exist, the assertion should not be noted to the records. BLM's notation of a potential right does not validate an invalid assertion and its failure to note a valid assertion does not void such assertion. The actual validity or nullity of an R.S. 2477 assertion can only be determined by a court of competent jurisdiction.

If an R.S. 2477 is asserted on a road or trail historically used only as a winter trail and use begins to occur during the other seasons which causes environmental damage, BLM's recourse is to try to get the State to maintain the trail or for BLM to sue for damages on Federal lands. Seasonality of use should

be defined by the type of use which existed at the time the trail or road was established or appropriated. The background and history of the trail may need to be checked to determine if use has been seasonal.

BLM will note potentially valid R.S. 2477 assertions only across lands which it administers. Notations will not be made on lands withdrawn for other agency use, unless BLM has an MOU regarding notation with that agency having jurisdiction over the land. Assertions of rights will not be noted on land which have been Interim Conveyed or Patented to a Native Corporation or Tentatively Approved or patented to the State of Alaska.

The BLM does not need comment or concurrence from Native Corporations to note assertions on lands that it manages (including lands that are merely selected by such corporations.) BLM is only acknowledging a claim of a valid existing right to such lands. Such an acknowledgment does not change the validity or invalidity of the right. The existence of such a potential right will not be cited in any conveyance document as an encumbrance. A Native Corporation is free to challenge the assertion, in court, after it acquires title.

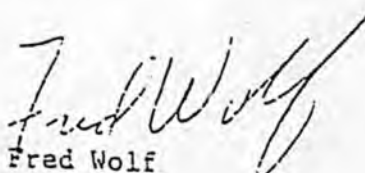
BLM will not specifically reference an R.S. 2477 claim, assertion or notation in the deeds or patents it issues for any claim or entry made under the public land laws, unless the inclusion of a reference to such claim has been agreed to, in writing by all affected parties.

There may be situations where the State of Alaska may find it advantageous to acquire a right-of-way under Title V of the Federal Land Policy and Management Act in lieu of an R.S. 2477 notation. Patents for entries made after granting of a Title V right-of-way are made subject to the right-of-way.

It should also be noted that the BLM cannot impose restrictions or stipulations restricting the use of an R.S. 2477 road or trail for those purposes authorized by statute. Only the State can impose restrictions on such uses. However, R.S. 2477 did not authorize the construction of non-access facilities such as powerlines, pipelines, etc. Such facilities, if not covered by a granted right-of-way constitute unauthorized use.

In deciding whether to note an assertion on the BLM records, BLM may perform a field examination and/or prepare a report to substantiate its decision as to disposition of the assertion. However, such action is not required.

Distribution:  
D-DSC (D-558A)

  
Fred Wolf  
State Director  
Acting

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

**REQUEST**

Bill/Resolution No.: SJR 10

Title: RS 2477 Identification

Sponsor: Corbill; et al

Requestor: \_\_\_\_\_

Date of Request: \_\_\_\_\_

**FISCAL DETAIL**

Agency Affected: DNR, DOT/PF

Program Category Affected: Management of Land & Water Resource

BRU, Program or Subprogram(s) Affected: \_\_\_\_\_

Land & Water Public Use

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

|                        | FY 85 | FY 86 | FY 87 | FY 88 | FY 89 | FY 90 |
|------------------------|-------|-------|-------|-------|-------|-------|
| <b>OPERATING</b>       |       |       |       |       |       |       |
| 100 PERSONAL SERVICES  |       | 92.0  | 92.0  | 92.0  | 92.0  | 92.0  |
| 200 TRAVEL             |       | 4.0   | 4.0   | 4.0   | 4.0   | 4.0   |
| 300 CONTRACTUAL        |       | 34.0  | 34.0  | 34.0  | 34.0  | 34.0  |
| 400 SUPPLIES           |       | 1.0   | 1.0   | 1.0   | 1.0   | 1.0   |
| 500 EQUIPMENT          |       |       |       |       |       |       |
| 600 LAND & STRUCTURES  |       |       |       |       |       |       |
| 700 GRANTS, CLAIMS     |       |       |       |       |       |       |
| 800 MISCELLANEOUS      |       |       |       |       |       |       |
| <b>TOTAL OPERATING</b> |       | 131.0 | 131.0 | 131.0 | 131.0 | 131.0 |

|                |  |  |  |  |  |  |
|----------------|--|--|--|--|--|--|
| <b>CAPITAL</b> |  |  |  |  |  |  |
|----------------|--|--|--|--|--|--|

|                |  |  |  |  |  |  |
|----------------|--|--|--|--|--|--|
| <b>REVENUE</b> |  |  |  |  |  |  |
|----------------|--|--|--|--|--|--|

**FUNDING: (Thousands of Dollars)**

|               |  |       |       |       |       |       |
|---------------|--|-------|-------|-------|-------|-------|
| GENERAL FUND  |  | 131.0 | 131.0 | 131.0 | 131.0 | 131.0 |
| FEDERAL FUNDS |  |       |       |       |       |       |
| OTHER         |  |       |       |       |       |       |
| <b>TOTAL</b>  |  |       |       |       |       |       |

**POSITIONS:**

|           |  |     |  |  |  |  |
|-----------|--|-----|--|--|--|--|
| FULL-TIME |  | 2.0 |  |  |  |  |
| PART-TIME |  |     |  |  |  |  |
| TEMPORARY |  |     |  |  |  |  |

**ANALYSIS:** Attach a separate page if necessary

Provides for two full-time positions (Natural Resource Officer II) to identify and compile information necessary to assert in court those roads and trails which qualify as RS 2477's. Includes funding for agency and public input, printing of maps and road/trail atlas, copying, public notice and advertisements. Also travel in support of research and to conduct public/agency meeting.

Prepared By: Gary Gustafson  
Division: Land & Water Management

Phone: 265-4347

Date: \_\_\_\_\_

Approved by Commissioner: William D. Sumrell, Deputy Date: 2/21/85  
Agency: \_\_\_\_\_

**Distribution (by Agency preparing fiscal note):**

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

7/1/84

Senator John B. (Jack) Coghill  
Alaska State Legislature

Douglas  
Juneau, Alaska 99811  
(907) 465-4745

Box 458  
Nenana, Alaska 99760  
(907) 832-5471



STATEMENT ON

SJR 10 (RS 2477 Rights of Way)

By Senator John B. Coghill

Senate Resources Committee - February 22, 1985

Thank you, Madam Chair, for the opportunity to present a few brief comments on an issue of vital importance not only to my district, but to all of Alaska - the salvaging of rights-of-way established under the federal RS 2477 provision. I appreciate your committee's willingness to examine this issue and to, I hope, take prompt action on it.

Prompt action is our mandate in this issue, because as we see with each passing day, the access potential created by our pioneering forebears when they struck out over those roads and trails into the heartland of Alaska - that access so essential to continued progress in Alaska - is quickly being bureaucratically removed from our grasp by those who would lock up Alaska. Over the next two years we will see the formation of dozens of state and federal land use plans, all of which must acknowledge the validity of the RS 2477 rights-of-way within the areas they cover or those rights-of-way will likely be gone forever.

Alaskans need those rights-of way. I think Congress knew what it was doing - back then - when it made provision for us to have access across federal lands. It is regrettable that we must now take this kind of virtually desperate action - to insist that the state and federal government enter into a cooperative agreement - to protect what is already ours and keep these rights-of-way on the books.

Thank you again, Madam Chair, for this committee's time spent on this issue. I hope the members will act favorably on SJR 10.



## *Citizens' Advisory Commission on Federal Areas*

515 Seventh Avenue  
Suite 310  
Fairbanks, Alaska 99701  
(907) 456-2012

February 26, 1985

Honorable Bill Sheffield  
Governor  
State of Alaska  
Pouch A  
Juneau, Alaska 99811

Re: RS 2477 Rights-of-Way

Dear Governor Sheffield:

You will recall that the Citizens' Advisory Commission on Federal Areas in September proposed formation of a task force sanctioned by the Alaska Land Use Council (ALUC) which would establish a procedure for confirming the State of Alaska's claims to RS 2477 rights-of-way. Our specific proposal was withdrawn when Bureau of Land Management (BLM) State Director Mike Penfold revealed that the Department of Natural Resources (DNR), the Department of Transportation and Public Facilities (DOTPF) and the BLM were negotiating a Memorandum of Understanding (MOU) for the implementation of a procedure similar to the one we were proposing. The MOU was signed September 28, 1984.

Our proposal advised that a necessary element in the success of such an undertaking would be the cooperation of the member agencies of the ALUC in the implementation of any procedure developed. Such cooperation would include adequate funding and manpower for the research needed. At this time we must advise you that it is necessary that adequate funds be allocated to permit the State agencies involved, DNR and DOTPF, to meet their objective of identifying and confirming RS 2477 rights-of-way.

Management authority for RS 2477 rights-of-way which cross non-State lands is vested with the Alaska DOTPF. We recognize that there are legitimate management concerns espoused by Federal land managers, Native and other private landowners and environmental groups. Adequate opportunities for interested parties to plan for State management of these rights-of-way exist and can be expanded if necessary, but only if the State retains its present authority to do so.

You are no doubt aware of the rigorous permitting process that Title XI of ANILCA requires prior to construction of a Transportation and Utilities System (TUS) on or across a Conservation System Unit (CSU). Most knowledgeable people in and out of the State government regard this process as extremely difficult, if not completely unworkable. Because of the difficulties inherent

Governor Sheffield

RS 2477

Page 2

in the Title XI process, it is critical that the management authority over, and State ownership of, RS 2477 rights-of-way be adequately recognized in the CSU planning efforts of federal agencies. Language recently adopted by the National Park Service (NPS) for inclusion in the General Management Plans that agency is preparing illustrates this:

"The Park Service is aware the State might assert certain claims of rights-of-way under R.S. 2477. The Service intends to cooperate with the State (and any other claimant) in identifying these claims, the nature, extent and validity of which may vary depending on the circumstances under which they were acquired or asserted. Notwithstanding that certain R.S. 2477 rights-of-way may exist, it will still be necessary for users of any right-of-way to comply with applicable Park Service requirements." (emphasis added)

This is so despite the assurances of ANILCA Section 1109 which states:

"Nothing in this title shall be construed to adversely affect any valid existing right of access."

We are painfully aware of the decline in State revenues and the necessity to minimize unessential expenditures. We are also aware that the economy of the State of Alaska is overly dependent upon the oil industry. The need to develop our resources in a rational manner to diversify our economy is more evident every day. The timber, mineral and tourist industries of the State must have access in order to expand. The rights-of-way granted the State through RS 2477 can play a vital role in this effort both as an alternative to Title XI and as leverage in securing more favorable decisions in Title XI and other resource management issues on federal lands.

We believe that it is of the utmost importance that the State of Alaska's ownership and management of these public rights-of-way be forcefully defended. By doing so, we can go a long way towards ensuring that debate over proposals to cross a CSU with a transportation system is managed here in Alaska rather than in Washington, D.C. As governor of our State, your support is necessary for the success of this endeavor.

Senate Joint Resolution #10 (SJR #10), sponsored by a bipartisan group of legislators, requests that DOTPF and DNR expedite the identification and establishment of rights-of-way for roads and trails on federal BLM plats which qualify under RS 2477. The Resolution also calls for the expansion of the current MOU, which presently applies only to the Interior region, into a statewide process. We endorse this resolution and urgently request that you give it your strongest support as well.

Governor Sheffield

RS 2477

Page 3

We also ask that you use the power of your office to insure that DOTPF and DNR receive adequate funding to implement an effective course of action pursuant to the objectives of SJR #10.

We reiterate our earlier acknowledgement that legitimate concerns by federal land managers, Native land owners and environmental groups exist. But these concerns over the management of RS 2477 rights-of-way are separate from the issue of ownership, and are more properly accommodated in the State transportation planning process. To allow management concerns to interfere with confirming ownership of the rights-of-way is to put the cart before the horse; it is analogous to requiring an "acceptable" land use plan to be in place before the State or the Native corporations can be issued a land conveyance.

We hope you will consider these points and see the interests of the State require positive action to preserve the full range of State prerogatives.

Sincerely,



Phil R. Holdsworth  
Chairman

cc: E. Wunnicke  
R. Knapp



## Citizens' Advisory Commission on Federal Areas

MAR 4 1985  
515 Seventh Avenue  
Suite 310  
Fairbanks, Alaska 99701  
(907) 456-2012

SJR 10

March 1, 1985

Senator Arliss Sturgulewski  
Pouch V  
Juneau, Alaska 99811

Dear Senator Sturgulewski:

The Citizens' Advisory Commission on Federal Areas is concerned about the lack of recognition of Revised Statute (RS) 2477 rights-of-way in the Conservation System Unit (CSU) planning efforts of federal agencies. Development of land management plans which recognize valid existing rights-of-way under RS 2477 or other applicable laws benefits not only the State but the federal agencies and private inholders within CSU's as well. Recognition would facilitate the evaluation of access and transportation needs for a variety of activities.

On February 16th, the Commission approved several recommendations on RS 2477 including one endorsing adoption of Senate Joint Resolution (SJR) #10. Proposed by a bipartisan group of legislators, SJR #10 urges the Department of Transportation and Public Facilities and the Department of Natural Resources to expedite identification of RS 2477 rights-of-way pursuant to a Memorandum of Understanding developed by those agencies and the Bureau of Land Management.

We are convinced that this issue is critical to the future well being of the State. While recognizing that there are legitimate concerns espoused by private landowners, environmental groups and federal agencies regarding the management of RS 2477's, we nonetheless view management and ownership as separate issues. Opportunities exist for interested groups to participate in the planning for management of rights-of-way and can be expanded if necessary to accommodate their concerns. Ownership of an RS 2477 is not dependent upon a particular management strategy, to insist that it should be is analogous to requiring a declaration of management intent on the part of the State or a Native corporation prior to conveyance of its land entitlement.

We urge you to support SJR #10 and to assist DNR and DOTPF through the budgetary process in their effort to identify and document the existence of RS 2477 rights-of-way.

Sincerely,

A handwritten signature in cursive script that reads "Stan Leaphart".  
Stan Leaphart  
Executive Director

# STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

NORTHERN REGION, Deputy Commissioner

MAR 13 1985  
BILL SHEFFIELD, GOVERNOR

2301 Peger Road  
Fairbanks, Alaska 99701  
(907) 452-1911

March 6, 1985

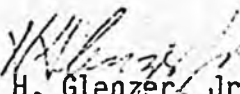
RE: Alaska Road Commission Report,  
#85-70

The Honorable Bettye Fahrenkamp  
Alaska State Senate  
Pouch V  
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

At the February 22, 1985, Senate Resources Committee hearing on Senate Joint Resolutions 5 and 10, you requested information from the Department regarding Alaska Road Commission records. Enclosed is a copy of the Alaska Road Commission Historical Narrative which I hope you will find useful.

Sincerely,

  
H. Glenzer, Jr.  
Deputy Commissioner

GR:bci

Enclosure

cc: Mim Dixon, Director, Division of Planning, Northern Region  
Susan Fleischhauer, Legislative Liaison, Headquarters  
Ray Gillespie, Legislative Assistant, Office of the Governor, Juneau  
Richard J. Knapp, Commissioner  
Paula Ramsey, Chief, Budget Coordination and Liaison Section, Headquarters  
Senator Arliss Sturgulewski, Chairman, Senate Resources Committee  
Janice Wagner, Legislative Coordinator, Planning, Northern Region

LEGISLATIVE REQUESTS

LEGISLATIVE REQUEST FORM INSTRUCTIONS:

- 1) When you receive a request by telephone, fill out the information above dotted line.
- 2) If you request follow-up by another person, send form to Janice Wagner by Rapicon.
- 3) If you plan to respond to request, write your name as "Person Assigned to Follow-up" and send xerox of form to Janice Wagner immediately. Then send completed form to Janice Wagner when response is completed.

LOG # 85-70

DATE REQUESTED 2-22-85

DATE DUE \_\_\_\_\_

RESPONSE DATE 3-6-85

LEGISLATOR: Bettye Tarrenkamp

REQUESTED BY: \_\_\_\_\_ PHONE NUMBER: \_\_\_\_\_

SUBJECT: Alaska Road Commission records

SUMMARY OF REQUEST: Needs Road Commission Records.

REQUEST RECEIVED BY: G. Rasm

PERSON ASSIGNED TO FOLLOW-UP: J. Wagner

FURTHER CONTACTS:

| NAME  | DATE OF CONTACT | MODE OF CONTACT | DATE OF RESPONSE |
|-------|-----------------|-----------------|------------------|
| _____ | _____           | _____           | _____            |
| _____ | _____           | _____           | _____            |
| _____ | _____           | _____           | _____            |

RESPONSE  BY LETTER (ATTACHED);  BY TELEPHONE

SUMMARY

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

OTHER \_\_\_\_\_

APR 25 1985



**ALASKA STATE CHAMBER OF COMMERCE**

310 Second Street  
Juneau, Alaska 99801  
(907) 586-2323

April 24, 1985

Senator Arliss Sturgulewski  
Pouch V  
Juneau, Alaska 99811

Dear Arliss:

Enclosed is a resolution adopted by the State Chamber's Board of Directors regarding Establishment of RS 2477 Rights-of-Way.

Your support of this critical issue is greatly appreciated.

Cordially,

A handwritten signature in black ink, appearing to read 'George Krasz', is written over the typed name.

George Krasz  
President

GK/rb

Enclosure

ALASKA STATE CHAMBER OF COMMERCE

RESOLUTION PERTAINING TO ESTABLISHMENT OF RS 2477 RIGHTS-OF-WAY.

WHEREAS, the development and production of natural resources in Alaska is a significant element in the economic base of the State of Alaska and the welfare of its inhabitants; and

WHEREAS, expansion of resource production is dependent on adequate access to areas in which resources are located; and

WHEREAS, access to a number of resource areas in Alaska may become possible by the use of routes established in the past and which are included in the inventory of trails owned by the State of Alaska as asserted by Memorandum 00-2528, April 8, 1984, to the U.S. Bureau of Land Management; and

WHEREAS, the procedures for the assertion of RS 2477 Rights-of-Way by the State of Alaska has been established in a Memorandum of Understanding between the Alaska Department of Natural Resources (DNR), and the Alaska Department of Transportation and Public Facilities (DOT/PF), and Bureau of Land Management (BLM), September 28, 1984, promulgated by the interior regional offices of these three agencies; and

WHEREAS, a coordinating committee comprising a representative of each agency (John Martin, DOT/PF; Joseph Sullivan, DNR; Dwight Hoepel, BLM) has been established; and

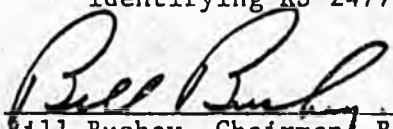
WHEREAS, the historical research, documentation and mapping required for the routes already inventoried and identification of trails not previously inventoried will require a significant effort and John Martin, DOT/PF, and Joseph Sullivan, DNR, are investigating the manpower and funding requirements to accomplish this effort.

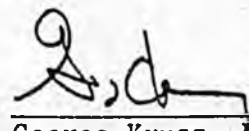
NOW THEREFORE, be it resolved by the Alaska State Chamber of Commerce that the implementation of RS 2477 Memorandum of Understanding dated September 28, 1984, AK-023-MU5-002, be strongly supported; and

BE IT FURTHER RESOLVED, that the State Legislature encourage this project by supporting adequate budget and/or priority assignment of personnel in DOT/PF and DNR and similar support by given by the Federal Government to BLM; and

BE IT FURTHER RESOLVED, to encourage all organizations and individuals to develop and submit to DOT/PF and DNR a list of priority routes known to them in Alaska which will be of maximum benefit for mineral, agricultural, commercial and recreation and that routes which can support more than one of the above be given particular emphasis; and

BE IT FURTHER RESOLVED; that full consideration be given to the corridor concept, alternate established routes and to existing land rights of others, including private owners and the national interest lands, in identifying RS 2477 Rights-of-Ways.

  
Bill Bushey, Chairman, Board of Directors  
Alaska State Chamber of Commerce  
March 1, 1985

  
George Krusz, President  
Alaska State Chamber of Commerce

SJR 10

SENATOR  
ARLISS STURGULEWSKI

2957 SHELDON JACKSON  
ANCHORAGE, ALASKA 99508  
SENATE DISTRICT F, SEAT A

# Alaska State Legislature



While in Juneau  
POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-3818

## Senate

February 9, 1985


Joe Vogler  
Ketchum Mines  
P. O. Box 40  
Fairbanks, Alaska 99707

Dear Joe:

You are certainly correct that the RS2477 issue is a major one. We need to pursue the clarification of status of rights-of-way vigorously!

As chairman of the Senate Resources Committee I plan to follow the progress of the negotiations between the Department of Transportation and Bureau of Land Management. On Friday, February 10th, the Senate Resources Committee is holding hearings on SJR 10.

Sincerely yours,

  
Senator Arliss Sturgulewski  
Senate District F

maf:cp

DRAFT

*See Melissa's note*

*Yes. I will pursue*

February 7, 1985

Joe Vogler  
Ketchum Mines  
P. O. Box 40  
Fairbanks, Alaska 99707

Dear Mr. Vogler:

You are certainly correct that the RS2477 issue is a major one and we need to pursue the clarification of status of rights-of-way vigorously.

As chairman of the Senate Resources Committee I plan to follow the progress of the negotiations between the Department of Transportation and Bureau of Land Management. <sup>u</sup> Good luck with your case.

Sincerely yours,

*and will no doubt be holding hearings on SJR 10.*

Senator Arliss Sturgulewski  
Senate District F

maf:cp

*also send Coghill's resolution which I composed and refer to this part a*

*he was writing because of Coghill's deso - changing her for her support*

*note copy*

*NOT necessary*

Dear Mr. Vogler:

You are certainly correct that  
the RS2477 issue is a major one  
and we need to pursue the clarification  
of <sup>the status of</sup> rights of way vigorously.

As chairman of the Resources Committee

I plan to follow the progress of the  
negotiations between DOI and BLM. Good  
luck with your case

(A - do you plan to have any  
hearings on this?)

Jul  
78

WAF

Ketchem Mines

"Established 1951"

2-3-85

FEB 7 1985

Senator Arlis Sturgulewski  
Juneau Alaska

Dear Senator .

Thank you for your support of Senate Joint Resolution 1110. It is most urgent that this be funded with at least 5 million - to do the research and interviewing of old-timers who live in Alaska and outside. Those who live outside will be very expensive to interview but it will be very cheap - compared to condemnation & the battle in Congress to get rights of way thru wilderness & Park areas.

We have been asking for 26 years - with but one exception - the Bellefleur trail - and I am most thankful for the legislative action on this for without it, I would be in trouble.

The B & I refuse to put it on their map at the direction of the volunter - but that will be corrected - hopefully short of the United States Supreme Court.

I am wondering why the

State of Alaska can intervene in the  
Granite Rocks case in Cal. - & not  
enter my suit vs the damn  
feds. Something is wrong.

Thank you for your help -  
Alaskan Patriot  
Joe Doyle

Resend

TELECOPY COVER SHEET  
FAIRBANKS INFORMATION OFFICE

TO: TIUU FOR: ~~Sen Sturgulanski~~ PHONE: \_\_\_\_\_

FROM: Paul Costello PHONE: \_\_\_\_\_

ADDITIONAL INSTRUCTIONS: Testimony for 2/22  
Senate Resource 5125 & 10  
Teleconference

DATE/TIME SENT: 2/22 SENT BY: PL

PLEASE ACK. RECEIPT:  HOLD FOR PICK-UP:

NUMBER OF PAGES 9 (NOT COUNTING COVER SHEET)

Good Afternoon, I am Paul Costello, representing both Doyon Ltd. and Interior Village Association. I would like to offer the following comments on proposed Senate Joint Resolution #10.

Assuming for discussion sake that RS 2477 rights of way are valid in light of their implicit repeal by Section 17b of the Alaska Native Claims Settlement Act, we see the following problems being created by the MOU and this proposed resolution:

1. The current effort underway to identify RS 2477 rights of way is in reality a biased data search by the State of Alaska to legitimize assertions of title to rights of way across private and public land at the expense of the landowner and taxpayers. The obvious intent is to "prove up" asserted rights of way rather than evaluate the facts surrounding each case, weigh them against established case law, and come to a tentative decision on their potential validity.

2. The MOU was drafted without the involvement of Doyon Ltd., and the village corporations in the interior, who happen to represent the largest group of private landowners in the State of Alaska. The reason is obvious: the MOU creates problems for us and other members of the native community, so the State and BLM chose to not involve the landowners concerned, because they knew they would object.

3. The MOU un-necessarily clouds native and other private land title, it creates serious land management problems for private land owners, it may create a significant burden on the States treasury, and, in the end pit citizen against citizen.

In order to understand our perspective, we have to go back into RS 2477 and understand how it is supposed to operate. Normally, there are two means to verify that an asserted RS 2477 right of way is legitimate. The first occurs when the state and the landowner either formally or informally come to some sort of an agreement that the State has a right of way, the road is maintained by the state and used by the public. The second occurs when the landowner disagrees with the State and blocks access, someone sues, and the final decision rests with the courts to determine on a factual basis, whether the state has a valid interest in the land. It is well established in law that the only entity with authority to adjudicate the States interest is the court system.

The MOU circumvents this process by creating a quasi-official adjudication of the states interest and noting the assertion to the public records. Despite any disclaimers on the records, the public is left with the impression that they have a right of access across private land, although there is no understanding what this right of access is, the limitations upon it, and the private landowner is faced with trespass by the person who has acted on the information created by the State.

During the MOU drafting process, a briefing paper was presented by DOTPF which clearly undermines our relation with DOTPF. I have included a copy of it with this testimony. There are two areas that are very troublesome. The first is the assertion that by noting these rights of way to the public record the State will automatically gain a leg up on the private landowner when it comes to challenging the validity of the assertion. It implies that should a given right of way be challenged in court and the judge were to look at the evidence produced by the state, and part of that evidence was the noted

Testimony SJR #10

BLM status plats, the court might be persuaded to think that the claim was valid because it had some form of adjudication and acceptance by the BLM, when in fact they have no business doing so. Secondly, and more important, the paper said that even though the State can assert title, and claim ownership, it clearly has no obligation to maintain the given road, nor any liability for its inaction. In other words the state wants the right of ownership, but does not want the responsibilities and liabilities that go with that right. We feel that if the state owns a right of way, they should accept full responsibility for it, which includes maintenance.

Let me give you a specific example. The Seventy Mile Trail, near Eagle, Alaska, is an well known trail used by miners to get into the Seventymile country. It began as a dog sled trail, graduated to oat trains in the winter, and now is suffering year round abuse by people trying to access their property. As the technology of vehiular transportation improved, more and more people are trying to get their equipment and supplies into the back country at a time of year when the land clearly is not able to support vehiular traffic. So as a result, the vehicles have begun to fan out in all directions to avoid the ditches and sink holes created by this abuse. In some areas the trail is considered dangerous by the people live there and they dont use it. Yet when the State and BLM were contacted by the landowners, their response was to pass the buck back and forth. The State (and BLM) chose to do nothing, yet the State clearly claims that it owns the right of way under RS 2477. This leaves the traveling public facing dangerous trail conditions, with no recourse except to move off the trail therefore damaging private land. It leaves the private landowner apparrently holding the liability bag if someone is injured, and facing the certainty of trespass and resource damage. This is a clearly unacepatable situation, yet this MOU and the proposed resolution, in our opinion, only make matters worse.

We are opposed to the resolution as it currently stands, because of the problems created by the MOU. We would rather see the following three things happen:

1. The State should prioritize those right of way assertions they feel are important, and begin talking to the landowners involved.

2. The State should actively seek private landowner involvement in the identification process. This means Doyon Ltd., the native Village corporations, Native allottees, and other private landowners.

3. The State should officially and clearly identify what they feel is the extent of thier rights and obligations as owner of RS 2477 rights of way. This should include, but is not limited to such things as, width of right of way, maintenance and operation obligations, limitations on use, for example is this a year around use open to all types of access?, location, ie, does this give the traveling public the right to move off the established trail when conditions change? etc. This statement must include acceptance of maintenance and operation of these rights of way.

Testimony SJR #10

Until these steps are taken, Doyon Ltd., and Interior Village Association cannot support the State and BLM in this effort, nor can we recommend that any other private land owner stand by and let this resolution proceed without objection.

Thank you for this opportunity to comment.

BRIEFING PAPER

Alaska Department of Transportation and Public Facilities

Northern Region

Division of Planning

REVISED STATUTE 2477 RIGHTS-OF-WAY

STATE MANAGEMENT  
JUL 29 10 21 AM '04  
DISTRICT

Legal Basis for RS 2477

Congress by the Act of July 26, 1866 granted rights-of-way for highways over unreserved public lands, and by doing so, established an extensive network of public rights-of-way in Alaska. This Act, now codified as 43 U.S.C. 932, Revised Statute (RS) 2477, states in full:

"The right-of-way for the construction of highways over public lands not reserved for public uses is hereby granted."

Although RS 2477 was repealed October 21, 1976 by Public Law 94-579, section 706 (90 stat. 2793), those rights-of-way previously established remain valid.

Geographic and Historical Development

In Alaska, RS 2477 rights-of-way are concentrated mainly in the Interior, Western and Southwestern regions of the state and in the Copper River basin. In Southeastern and along the Southcentral gulf coast, RS 2477 was not as important to transportation because of the accessibility via water.

RS 2477 highways have provided much of the access to areas of Alaska in the past and continue to do so. Historically, these roads were used for trade routes and access to mining areas. Today, they serve as access for mineral development, forestry, recreation, agriculture, hunting, fishing, inter-village travel, and access to homesteads, homesites, and other land disposals. Most of the well established, frequently traveled trails appearing on U.S.G.S. topographic maps are RS 2477 highways.

Since the RS 2477 statute was written in such a brief and nonspecific manner, it does not establish criteria for determining the location or width of the rights-of-way nor does it define what constitutes a "highway." What was considered a "highway" 118 years ago when the law was passed differs greatly from the modern concept. Further, a procedure for identifying and claiming rights-of-way was not established.

At this time, there is confusion and differences of opinion regarding the location, validity and extent of RS 2477 highways in Alaska. Although RS 2477 highways exist in several states, this issue has taken on special significance in Alaska because of the remoteness and inaccessibility of much of the state.

Additionally, the Alaska Statehood Act, the Alaska Native Claims Settlement Act (ANCSA), and the Alaska National Interests Lands Conservation Act (ANILCA) all initiated major changes in land ownership in Alaska. As land is transferred from the Public Domain to the State, Native corporations, private individuals, and other Federal agencies, there is a diversity of views regarding access and land management policies. Some landowners wish to regulate use by type of vehicle, weight, time of year, etc. Some favor preserving

access for local residents. Others prefer no access at all. Furthermore, as land is conveyed, the validity of RS 2477's is being questioned. Currently, in land conveyance documents, RS 2477 rights-of-way are protected only with the clause, "valid existing rights," with no visible evidence of them on the Federal or State land status plats. The existing Trail Inventory File, which catalogs many RS 2477 roads, is at a scale of 1:250,000 (standard U.S.G.S quad map) and does not show the the location of RS 2477's in sufficient detail to allow them to be entered on the land status plats.

### Need for Procedures

Confusion among State and Federal agencies and private landowners as to the implementation of RS 2477 continues to hinder management and use of these highways. It has become apparent that the public requires assistance in identifying RS 2477 roads. State, Federal and local governments, Native corporations, and other property owners need to know the location and authorized uses of RS 2477 roads in order to reasonably manage their lands.

For rights-of-way, land selection, land claims and other land transfer actions, land status plats serve as part of official records of land ownership for both the Federal government (through BLM) and the State government (through DNR). It is in the State's and the public's interest to establish these RS 2477 claims on both State and Federal land status plats, thereby asserting the RS 2477 claim and identifying its location. Placing the roads on the status plats would give more credibility to the State's claims and would establish, for the record, both a file and a geographic document asserting the claims. Thus, when land is conveyed, the State and public RS 2477 claims would be much more viable than simply a "valid existing rights" clause in a conveyance document. The location of each trail would be generally established, therefore it would be obvious to anyone researching land status that a right-of-way claim exists across a particular parcel.

If the State documents its claims, other parties are put in the position of challenging the State's claim rather than vice versa. Presently, the State would have to prove "valid existing rights," on conveyed land. If the trails were already on the status plats, anyone who disagreed would be in the position of challenging the State's claim. Asserting an RS 2477 claim in this manner is only an administrative determination since BLM does not adjudicate RS 2477 claims. If someone were to challenge the State, the State's claim would still have to be proven in court; however, we certainly would be in a much better position to do this.

### Other Findings

Discussions with DNR personnel in Anchorage who had been investigating regulations and court decisions relating to RS 2477's revealed the following points:

- 1) It appears that the definition of what constitutes a "highway" (which is the term used in the statute), is a matter for each state to determine. In Alaska, AS 19.45.001(8) defines a highway as that which "...includes a highway (whether in the primary or secondary systems), road, street, trail, walk, bridge, tunnel, drainage structure an other similar or related structure or facility, and right-of-way thereof..."

2) DOT&PF has management authority on RS 2477 where they occur on non-state land. Where RS 2477's occur on state land, DOT&PF has concurrent authority with the state agency having management authority over the land (usually DNR).

NOTE DNR  
BUT AN  
AG  
?

3) The courts have held that acceptance of an RS 2477 does not "impose on the public authority the duty to maintain." Therefore, a perfectly valid management decision might be to provide little maintenance or not to maintain a particular trail at all. Additionally, lack of maintenance over the years does not imply abandonment.

4) There are contradicting legal opinions regarding use restrictions, right-of-way vacations, and the role of a local government (i.e. boroughs) in the management of RS 2477's.

### Task Force on RS 2477

This issue was discussed at the Annual Meeting between the Bureau of Land and Regional Management (BLM) Fairbanks District Office and DOT&PF Northern Region on April 27, 1984. At that meeting it was decided to form a regional "task force" to discuss the situation. The Alaska Department of Natural Resources (DNR) was invited to join.

The Task Force on RS 2477 rights-of-way held its first meeting June 15, 1984. BLM, DNR and DOT&PF were present. The meeting established guidelines and procedures for asserting RS 2477 claims and having them established on the land status plats. The procedure is as follows:

- 1) A claim can be asserted by the State or any private individual.
- 2) A cover letter asserting a claim or accepting an RS 2477 grant must be submitted along with documentation supporting the date claimed. The date should preferably be based on expenditure of funds (public or private) or the earliest known date of public use. (An individual's time in constructing a road could be "translated" into funds).
- 3) A map at a scale no smaller than 1:63,360 depicting the route must be submitted with the supporting documentation and cover letter.
- 4) The trail number and quad number from the existing Trail Inventory File should be noted (if applicable) for clarification and cross-reference.
- 5) BLM will review each claim to verify that the land was "unreserved public land" as of the date claimed.
- 6) BLM will issue a serial number and establish a case file for each claim, as will DNR and DOT&PF. All correspondence should reference these numbers.
- 7) BLM will plot each trail claimed on their Master Title Plats and DNR will plot each one on the State's land status plats.
- 8) In order to prevent confusion, either DNR or DOT&PF will have the responsibility of submitting all necessary information to BLM.
- 9) All files, including maps, supporting data, etc., established by one agency should be duplicated and forwarded to the other agencies.

### RS 2477 Coordination Committee for Northern Alaska

To provide a orderly manner for claiming RS 2477's and to avoid duplication of effort, the Task Force has suggested establishing an "RS 2477 Coordination Committee for Northern Alaska." This committee would consist of representatives from BLM, DNR and DOT&PF. Its purpose would be to coordinate and

prioritize efforts on asserting RS 2477 claims, to discuss any areas of disagreement and to keep each agency informed on the other agencies' efforts.

### RS 2477 Management Review Board for Northern Alaska

Regarding the management of these roads, the Task Force has recommended establishing an "RS 2477 Management Review Board for Northern Alaska." This board would provide a forum to discuss differences relating to the management of RS 2477's. Problems which have come up in the past such as use restrictions, requests to vacate, and alignment, will continue. With contradicting legal opinions, an inter-agency forum for handling these issues would benefit all concerned and provide a multi-agency response to problems. Discussions could lead to possible solutions. Recommendation passed by this board would show a concerted effort by all agencies involved to provide thoughtful management actions. This would also provide one agency with the means to seek additional support in making a management decision. Additionally, any decision would be the result of the actions of several agencies rather than the decision of just one. DOT&PF as manager or co-manager of these roads would have veto power over any board recommendation.

Composition of this board would consist of two members from BLM, DNR and DOT&PF, with one member from the Citizens' Advisory Commission on Federal Areas and one invited member from a related professional organization (i.e., an officer of the International Right-of-Way Association). Temporary membership could be extended to governmental land managing agencies affected by matters under discussion and to private land owners affected. The board would meet as needed at the request of any board members.

### Memorandum of Agreement

To implement the Task Force recommendations, a preliminary Memorandum of Understanding (MOU) between BLM, DNR and DOT&PF has been drafted. At this time, the MOU would exist only between BLM's Fairbanks District Office, DNR's Northcentral District, and DOT&PF's Northern Region. Northern and Interior Alaska is most affected by RS 2477 roads. Since the Fairbanks offices of these agencies have begun efforts, and established a precedent with the Bulenberg Trail, it was felt that an MOU at the District/Regional level would serve as a "testing area" for this procedure. Also, the archives of the University of Alaska-Fairbanks are the largest in the state, making Fairbanks better suited for the historical research. Should this procedure succeed (as we are confident it will) then this MOU, or one similar, could be extended to other regions. A copy of the draft MOU is attached.

The participating agencies are in agreement that an effort such as this seems long overdue. It has the enthusiastic support of the BLM Fairbanks District Manager, Carl Johnson, who will be presenting this issue and the MOU concept to the BLM Advisory Council meeting on August 15, 1984 and to the Haul Road Meeting on August 23, 1984. It also has the support of the DNR Northcentral District Manager, Division of Land and Water Management, Jerry Brossia.

### Program Needs

In order to complete this project, a commitment by DOT&PF and the other agencies is necessary. The prioritization and assertion of RS 2477 roads would be an ongoing process over several years (estimated 5 years for 100-150 trails). Historical research, personal interviews and preparation of maps are the

specific tasks needed for asserting the claims and having them plotted on land status plats. A rough estimate indicates that this effort would require approximately \$100,000 per year which would provide for the research of 20 - 25 trails per year. This estimate is based on the time and effort actually spent for the Bulenberg Trail acquisition.

In order to accomplish this, there are a number of alternatives for DOT&PF to consider.

## 1) Funding Sources

- a) A current source of capital money is in the Bulenberg Trail Acquisition project which has \$95,000 remaining. This money was appropriated by the State Legislature for the purpose of acquiring the right-of-way of the Bulenberg Trail. DNR researched historical data and interviewed several people and asserted an RS 2477 claim. Since the right-of-way was secured in this manner (by DNR) most of the existing DOT&PF funds remains unspent. However, legislative action would be necessary to enable us to use the money on other trail acquisitions.
- b) An item could be included in the FY 86 CIP Submittal which would change the existing Bulenberg Trail legislation and appropriate additional funds.
- c) The RS 2477 activities could be included in the FY 86 DOT&PF operating budget as contractual and/or personal services.

## 2) Organization/Staffing

- a) Should in-house staff be used, this project could be handled by either Planning, Right-of-Way or Special Projects. The decision of which group(s) to use would depend upon the manpower available and the funding levels of each section.
- b) An alternative is to contract this project out to an independent firm which would prepare maps and research historical data for our use. This would require project management within DOT&PF.
- c) Another alternative is a cooperative agreement with the University of Alaska-Fairbanks, using a Reimbursable Services Agreement (RSA). A university student could research historical data and provide the map(s) for the trails. This alternative has the advantage that DOT&PF would have more direct control over the person(s) doing the work. In addition this would probably be the least expensive alternative. Since this work is not so much difficult as it is time consuming, this project would be ideal for a student.

## Recommendations

The MOU between BLM, DNR and DOT&PF should be reviewed and signed so this project may begin in a timely manner. First it must be decided whether

DNR or DOT&PF shall have the responsibility to submit the supporting documentation to BLM.

We recommend that DOT&PF seek a revised program change from the interim legislative committees to use the Bulenberg Trail appropriation for RS 2477 right-of-way acquisition. This amount could be used for the first year's work, beginning in FY 85.

Further, we recommend that an agreement with the University of Alaska-Fairbanks be entered into to establish a cooperative arrangement with a graduate level student(s) to research the historical data for the trails and possibly to provide the maps needed.

The Coordination Committee should be appointed and meet promptly to establish the "first priority" trails so that the first efforts will begin with inter-agency cooperation.

Adequate funds should be budgeted in the FY 86 Capital and Operating Budgets to continue this activity.

DP:dp

FEB 15 1985

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\*  
\* DELIVER TO: JPOM \*  
\*  
\* ORIGINAL \*  
\* SENT: 02/15/85 TIME: 08:20 \*  
\* FROM: LANA TRUJILLO \*  
\* SUBJECT: FOM \*  
\* PRINT DATE: 02/15/85 TIME: 08:20 \*  
\*  
\*\*\*\*\*

TO: ALL LEGISLATORS

FROM: SHERWIN A. START, 320 MCCARREY ST., C, ANCHORAGE, 99504,  
337-8988

RE: SJR 10

ALL I CAN'T FIGURE IS WHY IT HAS TAKEN SO LONG FOR THE STATE TO  
WAKE UP TO THE FACT THAT THE BLM HAS VACATED THOUSANDS OF MILES  
OF EASEMENTS ACROSS MILLIONS OF ACRES OF FORMER FEDERAL LANDS NOW  
STATE. THEY HAD POTENTIAL OF BEING VITAL TO THE STATE??

\*\*\*\*\*  
\*  
\* DELIVER TO: LTCJ \*  
\*  
\* ORIGINAL \*  
\* SENT 02/22/85 TIME: 13:52 \*  
\* FROM: LIOF \*  
\* SUBJECT: SJR 5 & 10/SENATE RESOURCES \*  
\* PRINT DATE: 02/22/85 TIME: 13:53 \*  
\*  
\*\*\*\*\*

EMAIL #3 - FAIRBANKS PARTICIPANTS

TO TESTIFY

17. HUGH B. FATE, JR.

18. Ric Davidge <sup>LOIC</sup>

\*\*\*\*\*  
 \* DELIVER TO: LTCJ \*  
 \* ORIGINAL \*  
 \* SENT: 02/22/85 TIME: 13:35 \*  
 \* FROM: LIOF \*  
 \* SUBJECT: SJR 5 & 10/SENATE RESOURCES \*  
 \* PRINT DATE: 02/22/85 TIME: 13:35 \*  
 \*\*\*\*\*

EMAIL # 2 - FAIRBANKS PARTICIPANTS

TO TESTIFY

12. ROGER BURGGRAF *LOK*

13. STAN RYBACHEK *LOK*

14. STAN LEAPHART *OK Ent Dis Cit Adv.*

15. JOHN SIMS ~~DC~~ DCEED.

16. PAULA CULLENBERG - *W/ Tanana Chiefs Conf - you met her when she was down about water quality*

*will submit*  
*will submit* Scott Healeyman AK Environmental Lobby  
 Phil Halderson A-MG.

\*\*\*\*\*  
\*  
\* DELETED : CJ \*  
\*  
\* ORIGINAL \*  
\* SENT: 02/22/85 TIME: 15:17 \*  
\* FROM: LIOF \*  
\* SUBJECT: SEN RES T/C SJR 5&10 \*  
\* PRINT DATE: 02/22/85 TIME: 15:18 \*  
\*  
\*\*\*\*\*

TO DORIS IN JUNEAU

ONGOING SENATE RESOURCES T/C

WILL YOU PLEASE INFORM THE CHAIR THAT JERRY BROSSIE WOULD LIKE TO  
MAKE A COUPLE OF QUICK COMMENTS AFTER THE LAST SPEAKER.

MICHELE - FAIRBANKS

\*\*\*\*\*  
 \*  
 \* DELIVER TO: LTCJ  
 \*  
 \* ORIGINAL  
 \* SENT: 02/22/85 TIME: 13:27  
 \* FROM: LIOF  
 \* SUBJECT: SJR 5 & 10/SEN RESOURCES  
 \* PRINT DATE: 02/22/85 TIME: 13:27  
 \*  
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PARTICIPANT LIST #1- FAIRBANKS

TO TESTIFY:

1. JERRY BROZIA *OK ✓*
2. MARY JANE FATE *OK ✓* *Regional Dir — 2477 P.O.U.*  
*Rampart Village Co. V.*
3. JOE VOGLER *OK ✓*
4. ALLEN R. CRONK *OK ✓*
5. RUDY VETTER *OK ✓*
6. DONALD ~~STERN~~ *Stain ✓*
7. FRANK BOREKI/TANANA CHIEFS CONF. *Realty Officer ✓*
8. RANDY ROGERS, NORTHERN ALASKA ENVIRONMENTAL CENTER *OK ✓*
9. PAUL COSTELLO/DOYON *OK ✓* *C.V.A.*
10. DONALD E. RUNDBERG - with ISLM - *no* *may only be there to answer questions*
11. DEL ACKELS *OK ✓*

\*\*\*\*\*  
\*  
\* DELIVER T TCJ \*  
\*  
\* ORIGINAL \*  
\* SENT: 02/22/85 TIME: 14:01 \*  
\* FROM: DAVID JENSEN \*  
\* SUBJECT: ANCHORAGE PARTICIPANTS \*  
\* PRINT DATE: 02/22/85 TIME: 14:02 \*  
\*  
\*\*\*\*\*

TO: DORIS-TCJNU

FROM: DAVID-TCANC

PARTICIPATING IN ANCHORAGE AT THIS TIME ARE THE FOLLOWING PEOPLE:

TO TESTIFY:

JAMES R JINKS *OK*

*Per David/OK*

TO OBSERVE:

1. VERNON R. WIGGINS - ALWC
2. MIKE DEBRA OYLEAR - AK. LAND USE COUNCIL
3. RIC DAVIDGE - ASST. SECT. FISH, WILDLIFE PARKS
4. ROB WALKINSHAW - DEPT. NATURAL RESOURCES
5. DEE FRANKFOURTH - ""
6. JERRY GALLAGHER - DNR DIV. OF MINING
7. DAN WILKERSON - DEC
8. LARRY VAN DAELE - ADF G
9. JAMES R. JINKS - AMA
10. SUE WOLF
11. GARY GUSTAFSON - DNR
12. JIM CULBERTSON - DNR
13. R. CONTOR - NFS
14. M. FINLEY - NFS
15. MIKE ABBOTT
16. JACK ALLEN
17. RON LUCLEY - AK. LAND USE COUNCIL

Offered: 3/4/85  
Referred: Transportation  
and Finance

CS changes marked in  
orange 

Original sponsors: Coghill, Abood,  
Bennett, et al

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE JOINT RESOLUTION NO. 10 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 Requesting that the Department of Natu-  
6 ral Resources and the Department of  
7 Transportation and Public Facilities  
8 expedite the identification and estab-  
9 lishment of rights-of-way for roads and  
10 trails on federal Bureau of Land Manage-  
11 ment plats which qualify under RS 2477.

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

13 WHEREAS the Alaska National Interest Lands Conservation Act of 1980  
14 placed 124 million acres of land in Alaska into 71 federal conservation  
15 units, and outlined specific use requirements and restrictions for those  
16 units; and

17 WHEREAS, contrary to the provisions of the Alaska National Interest  
18 Lands Conservation Act of 1980, there was no provision for establishing or  
19 protecting a transportation system in the development of comprehensive  
20 management plans for each conservation unit by the responsible federal  
21 management agency; and

22 WHEREAS several of the comprehensive management plans have been com-  
23 pleted without recognition of existing roads and trails, preventng public  
24 access through these units to state and private lands and to state waters;  
25 and

26 WHEREAS comprehensive management plans for a minimum of nine national  
27 park and preserve units and five fish and wildlife refuge units are to be  
28 completed during calendar year 1985; and

29 WHEREAS the federal statutory authority for the establishment of

1 recognized rights-of-way for roads and trails is contained in RS 2477 (43  
2 U.S.C. sec. 932); and

3 WHEREAS the Department of Natural Resources and the Department of  
4 Transportation and Public Facilities on September 28, 1984, signed a Memo-  
5 randum of Understanding with the federal Bureau of Land Management involv-  
6 ing the northern region of Alaska only, establishing the procedure under  
7 which the rights-of-way could be recognized on Bureau of Land Management  
8 plats and in comprehensive plans for conservation units;

*Governor's instruction*

9 BE IT RESOLVED by the Alaska State Legislature that the Department of  
10 Natural Resources and the Department of Transportation and Public Facil-  
11 ities immediately ~~develop, in consultation with other affected land owners~~  
12 ~~and managers, and~~ propose a Memorandum of Understanding with the Bureau of  
13 Land Management relative to the remainder of the state; and be it

14 FURTHER RESOLVED <sup>that the Bureau include</sup> that the state agencies involved affirmatively soli-  
15 cit information from miners, engineers, land surveyors, ~~environmentalists,~~  
16 ~~outdoor groups, landholders, or other persons or organizations that may~~  
17 ~~have knowledge of the historic use of roads and trails~~ to assist the  
18 departments in the identification of those roads and trails that could  
19 qualify under the provisions of RS 2477 (43 U.S.C. sec. 932) for addition  
20 to the state transportation system, and that may be useful to the federal  
21 agencies developing comprehensive management plans for the various Alaska  
22 National Interest Lands Conservation units; and be it

added  
by  
Resources  
Committee

23 ~~FURTHER RESOLVED that the involved state agencies develop draft pol-~~  
24 ~~icies regarding management, maintenance, liability, vacation, categories,~~  
25 ~~widths, and other relevant concerns related to RS 2477 roads and trails,~~  
26 ~~and that the agencies review these draft policies with affected landowners~~  
27 ~~and managers, and then present these draft policies to the legislature~~  
28 ~~during the second session of the Fourteenth Alaska State Legislature.~~

*Governor instruct the*

29 COPIES of this resolution shall be sent to the Honorable Bill Shef-

1 field, Governor of the State of Alaska, to the Honorable Esther Wunnicke,  
2 Commissioner of Natural Resources, to the Honorable Richard J. Knapp,  
3 Commissioner of Transportation and Public Facilities, and to Michael J.  
4 Penfold, State Director of the Bureau of Land Management.

# Alaska State Legislature

ARL ISS STURGULEWSKI, Chairman  
BETTYE FAHRENKAMP, Vice Chairman  
JACK COGHILL  
DICK ELIASON  
VIC FISCHER  
RICK HALFORD  
FRED ZHAROFF



POUCH V  
JUNEAU, ALASKA. 99811  
(907) 485-4907

## Senate

### MEMORANDUM Committee on Resources

February 21, 1985

**TO:** All Members  
Senate Resources Committee

**FROM:** Staff  
Senate Resources Committee

**RE:** SJK 10 Requesting that the Department of Natural Resources and the Department of Transportation and Public Facilities expedite the identification and establishment of rights-of-way for roads and trails on federal Bureau of land Management plats which qualify under RS 2477.

Enclosed in this packet are:

- 1) A December, 1984 memo from Melissa Fouse to Sen. Sturgulewski that does a very good job of providing a short summary of the RS 2477 trails issue.
- 2) A summary of the RS 2477 issue by the Northern Region, Division of Planning of DOT/PF.
- 3) A position paper and summary of the RS 2477 issue by Randy Rogers, Director of the Northern Alaska Environmental Center.
- 4) An RS 2477 Issue Paper to the Alaska Land Use Committee by BLM.
- 5) A memo to the Alaska Land Use Council by the Citizen's Advisory Commission On Federal Areas on RS 2477 rights of way.
- 6) A Memorandum of Understanding between the state (DNR and DOT/PF) and BLM.
- 7) A BLM instruction memorandum on RS 2477 assertions.
- 8) Two letters from Paul Costello, president of The Interior Village Association, opposing RS 2477 assertions.
- 9) A letter to BLM from Spud Williams opposing RS 2477 assertions.
- 10) A resolution from the Greater Fairbanks Chamber of Commerce supporting RS 2477 assertions.

Committee staff has contacted a wide range of people to make them aware of this hearing. We would expect vigorous and divergent public testimony, particularly via the teleconference hookup in Fairbanks.

SENATOR  
ARLISS STURGULEWSKI

2957 SHELDON JACKSON  
ANCHORAGE, ALASKA 99508  
SENATE DISTRICT F, SEAT A

# Alaska State Legislature



Senate

While in Juneau  
POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-3818

MEMORANDUM

19 December 1984

TO: Senator Arliss Sturgulewski  
FROM: Melissa Fouse

A short issue outline (cribbed in part from DOT) is as follows:

From 1866 to 1976 there was a federal law which granted states free rights-of-way across unappropriated public lands. This law was repealed in 1976 but states' claims may still be made under that statute, now called RS 2477. The object of the grant was to enable citizens to construct roads across public domain. There were no conditions except that the road had to be constructed and used by the public on what was at the time unreserved public land. RS 2477s were used for postal routes, freight hauling and access to mining claims, as well as other commercial travel and general public rights-of-way.

The status of these public rights-of-way is becoming an issue now due to the land use management plans being developed in federal areas as well as in areas that have been conveyed (such as native lands).

Historically, the state has not asserted its claims to these rights-of-way unless there was a construction project planned and then funds were used from construction monies to fund the process of asserting claim, which requires BLM approval and may require litigation.

The BLM, DNR, and DOT have recently signed a memorandum of agreement in which the BLM outlines its requirements for the state to prepare maps showing the location of public highways established under the authority of RS 2477.

Since the Memorandum of Agreement was signed, there have been meetings held investigating prior assertions. Apparently back in 1974, the

old Department of Highways did a trails inventory and sent it to the BLM asserting claim. The file at DOT shows a letter from the BLM asking for another copy, but there was no response as to the status of the claims. The DOT is using that trails inventory as a base for their current claim. The BLM is saying the maps used at the time the trails inventory was completed are not adequate to meet the BLMs current mapping requirements.

Some of the issues to be addressed when considering the assertion of the state to rights-of-way across what were public lands during the time that the trail use was established is the reaction of the National Park Service, the native corporations, and any other group who might want to litigate the validity of the claim.

If the state does obtain the rights-of-way, what is the state's legal responsibility for operation and maintenance, road openings and closures, and liability?

In addition, the state has to determine the order of priority for adjudication if any of the claims have to end up in court, and whether or not the state wishes to join in current lawsuits or future lawsuits on behalf of other organizations or persons (such as the Joe Vogler case currently going on),

The documentation currently being required by BLM is costly and time consuming to prepare, and historical documentation will be harder and harder to obtain as time goes by (such as affidavits from old-time users).

Even if the BLM does accept the states claims, it could still be challenged in court by any interested party - i.e., an environmental group, another federal agency (such as the National Park Service as regards ANILCA lands) or perhaps even the state division of parks. In addition to these larger groups, there are groups, at least in Fairbanks, who want trail uses restricted to a particular kind of use, such as dog-sledding, cross-country skiing, etc.

Since there are so many special interests involved, the state has apparently not developed any firm policy toward the resolution of these issues and claims to rights-of-way. I am informed that the Attorney General's office is not interested in getting involved in court proceedings having to do with the state's claims, either.

I have a file containing more in-depth information.

cc: McKie Campbell

Alaska Department of Transportation and Public Facilities

Northern Region

Division of Planning

REVISED STATUTE 2477 RIGHTS-OF-WAY

FILED  
JUL 23 10 21 AM '64  
ALASKA

Legal Basis for RS 2477

Congress by the Act of July 26, 1866 granted rights-of-way for highways over unreserved public lands, and by doing so, established an extensive network of public rights-of-way in Alaska. This Act, now codified as 43 U.S.C. 932, Revised Statute (RS) 2477, states in full:

"The right-of-way for the construction of highways over public lands not reserved for public uses is hereby granted."

Although RS 2477 was repealed October 21, 1976 by Public Law 94-579, section 706 (90 stat. 2793), those rights-of-way previously established remain valid.

Geographic and Historical Development

In Alaska, RS 2477 rights-of-way are concentrated mainly in the Interior, Western and Southwestern regions of the state and in the Copper River basin. In Southeastern and along the Southcentral gulf coast, RS 2477 was not as important to transportation because of the accessibility via water.

RS 2477 highways have provided much of the access to areas of Alaska in the past and continue to do so. Historically, these roads were used for trade routes and access to mining areas. Today, they serve as access for mineral development, forestry, recreation, agriculture, hunting, fishing, inter-village travel, and access to homesteads, homesites, and other land disposals. Most of the well established, frequently traveled trails appearing on U.S.G.S. topographic maps are RS 2477 highways.

Since the RS 2477 statute was written in such a brief and nonspecific manner, it does not establish criteria for determining the location or width of the rights-of-way nor does it define what constitutes a "highway." What was considered a "highway" 118 years ago when the law was passed differs greatly from the modern concept. Further, a procedure for identifying and claiming rights-of-way was not established.

At this time, there is confusion and differences of opinion regarding the location, validity and extent of RS 2477 highways in Alaska. Although RS 2477 highways exist in several states, this issue has taken on special significance in Alaska because of the remoteness and inaccessibility of much of the state.

Additionally, the Alaska Statehood Act, the Alaska Native Claims Settlement Act (ANCSA), and the Alaska National Interests Lands Conservation Act (ANILCA) all initiated major changes in land ownership in Alaska. As land is transferred from the Public Domain to the State, Native corporations, private individuals, and other Federal agencies, there is a diversity of views regarding access and land management policies. Some landowners wish to regulate use by type of vehicle, weight, time of year, etc. Some favor preserving

access for local residents. Others prefer no access at all. Furthermore, as land is conveyed, the validity of RS 2477's is being questioned. Currently, in land conveyance documents, RS 2477 rights-of-way are protected only with the clause, "valid existing rights," with no visible evidence of them on the Federal or State land status plats. The existing Trail Inventory File, which catalogs many RS 2477 roads, is at a scale of 1:250,000 (standard U.S.G.S quad map) and does not show the the location of RS 2477's in sufficient detail to allow them to be entered on the land status plats.

### Need for Procedures

Confusion among State and Federal agencies and private landowners as to the implementation of RS 2477 continues to hinder management and use of these highways. It has become apparent that the public requires assistance in identifying RS 2477 roads. State, Federal and local governments, Native corporations, and other property owners need to know the location and authorized uses of RS 2477 roads in order to reasonably manage their lands.

For rights-of-way, land selection, land claims and other land transfer actions, land status plats serve as part of official records of land ownership for both the Federal government (through BLM) and the State government (through DNR). It is in the State's and the public's interest to establish these RS 2477 claims on both State and Federal land status plats, thereby asserting the RS 2477 claim and identifying its location. Placing these roads on the status plats would give more credibility to the State's claims and would establish, for the record, both a file and a geographic document asserting the claims. Thus, when land is conveyed, the State and public RS 2477 claims would be much more viable than simply a "valid existing rights" clause in a conveyance document. The location of each trail would be generally established, therefore it would be obvious to anyone researching land status that a right-of-way claim exists across a particular parcel.

If the State documents its claims, other parties are put in the position of challenging the State's claim rather than vice versa. Presently, the State would have to prove "valid existing rights," on conveyed land. If the trails were already on the status plats, anyone who disagreed would be in the position of challenging the State's claim. Asserting an RS 2477 claim in this manner is only an administrative determination since BLM does not adjudicate RS 2477 claims. If someone were to challenge the State, the State's claim would still have to be proven in court; however, we certainly would be in a much better position to do this.

### Other Findings

Discussions with DNR personnel in Anchorage who had been investigating regulations and court decisions relating to RS 2477's revealed the following points:

- 1) It appears that the definition of what constitutes a "highway" (which is the term used in the statute), is a matter for each state to determine. In Alaska, AS 19.45.001(8) defines a highway as that which "...includes a highway (whether in the primary or secondary systems), road, street, trail, walk, bridge, tunnel, drainage structure or other similar or related structure or facility, and right-of-way thereof..."

2) DOT&PF has management authority on RS 2477 where they occur on non-state land. Where RS 2477's occur on state land, DOT&PF has concurrent authority with the state agency having management authority over the land (usually DNR).

3) The courts have held that acceptance of an RS 2477 does not "impose on the public authority the duty to maintain." Therefore, a perfectly valid management decision might be to provide little maintenance or not to maintain a particular trail at all. Additionally, lack of maintenance over time years does not imply abandonment.

4) There are contradicting legal opinions regarding use restrictions, right-of-way vacations, and the role of a local government (ie. boroughs) in the management of RS 2477's.

#### Task Force on RS 2477

This issue was discussed at the Annual Meeting between the Bureau of Land and Regional Management (BLM) Fairbanks District Office and DOT&PF Northern Region on April 27, 1984. At that meeting it was decided to form a regional "task force" to discuss the situation. The Alaska Department of Natural Resources (DNR) was invited to join.

The Task Force on RS 2477 rights-of-way held its first meeting June 15, 1984. BLM, DNR and DOT&PF were present. The meeting established guidelines and procedures for asserting RS 2477 claims and having them established on the land status plats. The procedure is as follows:

- 1) A claim can be asserted by the State or any private individual.
- 2) A cover letter asserting a claim or accepting an RS 2477 grant must be submitted along with documentation supporting the date claimed. This date should preferably be based on expenditure of funds (public or private) or the earliest known date of public use. (An individual's time in constructing a road could be "translated" into funds).
- 3) A map at a scale no smaller than 1:63,360 depicting the route must be submitted with the supporting documentation and cover letter.
- 4) The trail number and quad number from the existing Trail Inventory File should be noted (if applicable) for clarification and cross-reference.
- 5) BLM will review each claim to verify that the land was "unreserved public land" as of the date claimed.
- 6) BLM will issue a serial number and establish a case file for each claim, as will DNR and DOT&PF. All correspondence should reference these numbers.
- 7) BLM will plot each trail claimed on their Master Title Plats and DNR will plot each one on the State's land status plats.
- 8) In order to prevent confusion, either DNR or DOT&PF will have the responsibility of submitting all necessary information to BLM.
- 9) All files, including maps, supporting data, etc., established by one agency should be duplicated and forwarded to the other agencies.

#### RS 2477 Coordination Committee for Northern Alaska

To provide a orderly manner for claiming RS 2477's and to avoid duplication of effort, the Task Force has suggested establishing an "RS 2477 Coordination Committee for Northern Alaska." This committee would consist of representatives from BLM, DNR and DOT&PF. Its purpose would be to coordinate and

prioritize efforts on asserting RS 2477 claims, to discuss any areas of disagreement and to keep each agency informed on the other agencies' efforts.

### RS 2477 Management Review Board for Northern Alaska

*Frank*

Regarding the management of these roads, the Task Force has recommended establishing an "RS 2477 Management Review Board for Northern Alaska." This board would provide a forum to discuss differences relating to the management of RS 2477's. Problems which have come up in the past such as use restrictions, requests to vacate, and alignment, will continue. With contradicting legal opinions, an inter-agency forum for handling these issues would benefit all concerned and provide a multi-agency response to problems. Discussions could lead to possible solutions. Recommendation passed by this board would show a concerted effort by all agencies involved to provide thoughtful management actions. This would also provide one agency with the means to seek additional support in making a management decision. Additionally, any decision would be the result of the actions of several agencies rather than the decision of just one. DOT&PF as manager or co-manager of these roads would have veto power over any board recommendation.

Composition of this board would consist of two members from BLM, DNR, and DOT&PF, with one member from the Citizens' Advisory Commission on Federal Areas and one invited member from a related professional organization (i.e., an officer of the International Right-of-Way Association). Temporary membership could be extended to governmental land managing agencies affected by matters under discussion and to private land owners affected. The board would meet as needed at the request of any board members.

### Memorandum of Agreement

To implement the Task Force recommendations, a preliminary Memorandum of Understanding (MOU) between BLM, DNR and DOT&PF has been drafted. At this time, the MOU would exist only between BLM's Fairbanks District Office, DNR's Northcentral District, and DOT&PF's Northern Region. Northern and interior Alaska is most affected by RS 2477 roads. Since the Fairbanks offices of these agencies have begun efforts, and established a precedent with the Bulenberg Trail, it was felt that an MOU at the District/Regional level would serve as a "testing area" for this procedure. Also, the archives of the University of Alaska-Fairbanks are the largest in the state, making Fairbanks better suited for the historical research. Should this procedure succeed (as we are confident it will) then this MOU, or one similar, could be extended to other regions. A copy of the draft MOU is attached.

The participating agencies are in agreement that an effort such as this seems long overdue. It has the enthusiastic support of the BLM Fairbanks District Manager, Carl Johnson, who will be presenting this issue and the MOU concept to the BLM Advisory Council meeting on August 15, 1984 and to the Road Meeting on August 23, 1984. It also has the support of the DNR Northcentral District Manager, Division of Land and Water Management, Jerry Brossida.

### Program Needs

In order to complete this project, a commitment by DOT&PF and the other agencies is necessary. The prioritization and assertion of RS 2477 roads would be an ongoing process over several years (estimated 5 years for 100-150 trails). Historical research, personal interviews and preparation of maps are the

specific cases needed for asserting the claims and having them plotted on land status plats. A rough estimate indicates that this effort would require approximately \$100,000 per year which would provide for the research of 20 - 25 trails per year. This estimate is based on the time and effort actually spent for the Bulenberg Trail acquisition.

In order to accomplish this, there are a number of alternatives for DOT&PF to consider.

## 1) Funding Sources

a) A current source of capital money is in the Bulenberg Trail Acquisition project which has \$95,000 remaining. This money was appropriated by the State Legislature for the purpose of acquiring the right-of-way of the Bulenberg Trail. DNR researched historical data and interviewed several people and asserted an RS 2477 claim. Since the right-of-way was secured in this manner (by DNR) most of the existing DOT&PF funds remains unspent. However, legislative action would be necessary to enable us to use the money on other trail acquisitions.

b) An item could be included in the FY 86 CIP Submittal which would change the existing Bulenberg Trail legislation and appropriate additional funds.

c) The RS 2477 activities could be included in the FY 86 DOT&PF operating budget as contractual and/or personal services.

## 2) Organization/Staffing

a) Should in-house staff be used, this project could be handled by either Planning, Right-of-Way or Special-Projects. The decision of which group(s) to use would depend upon the manpower available and the funding levels of each section.

b) An alternative is to contract this project out to an independent firm which would prepare maps and research historical data for our use. This would require project management within DOT&PF.

c) Another alternative is a cooperative agreement with the University of Alaska-Fairbanks, using a Reimbursable Services Agreement (RSA). A university student could research historical data and provide the map(s) for the trails. This alternative has the advantage that DOT&PF would have more direct control over the person(s) doing the work. In addition this would probably be the least expensive alternative. Since this work is not so much difficult as it is time consuming, this project would be ideal for a student.

## Recommendations

The MOU between BLM, DNR and DOT&PF should be reviewed and signed so this project may begin in a timely manner. First it must be decided whether

We recommend that DOT&PF seek a revised program change from the interim legislative committees to use the Bulenberg Trail appropriation for RS 24777 right-of-way acquisition. This amount could be used for the first year's work, beginning in FY 85.

Further, we recommend that an agreement with the University of Alaska-Fairbanks be entered into to establish a cooperative arrangement with a graduate level student(s) to research the historical data for the trails and possibly to provide the maps needed.

The Coordination Committee should be appointed and meet promptly to establish the "first priority" trails so that the first efforts will begin with inter-agency cooperation.

Adequate funds should be budgeted in the FY 86 Capital and Operating Budgets to continue this activity.

DP:dp



# Northern Alaska Environmental Center

218 DRIVEWAY  
FAIRBANKS, ALASKA 99701  
(907) 452-5021

TO: Senate Resources Committee  
Arliss Sturgulewski, Chair

FROM: Randy R. Rogers, Director, NAEC

SUBJ: SJR 10--R.S. 2477

Date: February 21, 1985

In September the Bureau of Land Management and the Alaska Departments of Transportation and Natural Resources signed a memorandum of understanding, the full implications of which those parties are most likely not even aware. This memorandum establishes a procedure for placing formal assertions of R.S. 2477 rights-of-way by the state on both state and federal master title plats, signifying the legitimization of a state right-of-way.

The process of developing this agreement took place with absolutely no public involvement and, in fact, BLM would not even allow representatives of the Northern Alaska Environmental Center to review copies of the memorandum while in its draft stages. In addition to the lack of public involvement, representatives of the National Park Service, Fish and Wildlife Service, and native corporations, whose lands may be substantially impacted by this agreement, were not included on the committee that drafted the memo.

Revised Statute 2477 was originally established by the U.S. Congress in the Act of July 26, 1866. The entire, original statute provided:

"The right of way for the construction of highways over public lands not reserved for public uses is hereby granted."

This law was established at a time when automobiles and D-9 Cats did not exist and a "highway" referred to a wagon trail at most.

Because the law is so vague most of the parameters defining the actual use of R.S. 2477 have been established through case law. Yet, there have been very few cases in Alaska which define how the law applies within the state. Despite this lack of a conclusive definition, the memorandum of understanding uses what small body of law is available to establish criteria for the BLM to accept the assertions. This will result in placing the burden of legally challenging the application of the law on individual persons who disagree with the shaky BLM definition.

There are literally hundreds of historic trails in Alaska which could possibly be claimed under R.S. 2477. Many of these trails cross portions of conservation units and have the potential to severely compromise the purposes for which the units were established.

An example of one such trail is the Bielenberg Trail where a miner was arrested this fall when he moved mining equipment across the Yukon-Charley National Preserve to his mining claims on Woodchopper Creek. The miner contends that, because the route he was using is a public highway established under the terms of R.S. 2477 (a claim which has not been legally proven), he does not need an access permit from the National Park Service.

This case of trespass on NPS lands is now in court. Meanwhile, the State of Alaska has filed a formal assertion of this right-of-way with BLM under the process defined in the new memorandum of understanding, an action which jeopardizes NPS' position in court because of the R.S. 2477 policy of BLM. BLM, it should be pointed out, is an agency of the Department of the Interior, as is NPS.

Another controversy with regard to R.S. 2477 which is extremely disturbing involves Gates of the Arctic National Park. In February, 1984, the Department of Natural Resources sent a letter to NPS stating that, because the route of the Coldfoot Classic Sleddog Race lies on state-claimed R.S. 2477 rights-of-way and on navigable waterways, the organization conducting the race need not obtain a special-use permit from the Park Service.

This action regarding a sleddog race may be viewed as an innocent action; however, under the current state policy, or lack of policy, once the right-of-way is established it could be used for unrestricted mining access or other purposes which would be devastating to the wilderness resources of the park. In this instance, NPS responded to the state that the route would not be considered a valid right-of-way until legally proven through the courts.

This example further demonstrates the widely differing interpretations of R.S. 2477 by NPS and BLM. Although the agreement between BLM and the state is not intended to apply to lands not under BLM management, validation of the rights-of-way on BLM lands could establish a precedent that would be detrimental to legal challenges of their validity on NPS, Fish and Wildlife Service, native, or private lands.

In developing its R.S. 2477 policy, BLM has obviously not considered its ramifications to other land managing agencies, nor has it thoroughly considered how it will affect land under its own jurisdiction.

At the November 15, 1984, meeting of the Fairbanks District BLM Advisory Council, a BLM representative indicated that, if the state asserted an R.S. 2477 claim into the primitive portion of the White Mountains National Recreation Area, (which is closed to all off-road vehicle use) and the assertion met the criteria spelled out in the memorandum of understanding thereby ending up on the BLM master title plats, a miner could drive a D-9 Cat through the primitive area with no BLM approval required.

Many potential R.S. 2477 routes are important for their recreational use, but their status as such is unclear because of the confusion surrounding R.S. 2477. Two primary examples are the Chena Hot Springs Winter Trail and the Circle-Fairbanks Historic Trail.

In July, 1982, the state acknowledged that the Chena Hot Springs Winter Trail has standing as an R.S. 2477 right-of-way yet refused to protect the trail's recreational properties because it is not a "main or significant arterial thoroughfare." When the Fairbanks North Star Borough discussed the establishment of the Circle-Fairbanks Trail as a recreational trail, the Department of Natural Resources indicated that, because the trail is identified as an R.S. 2477, they could do nothing to manage it for recreational purposes.

The importance of clearing up the R.S. 2477 issue is demonstrated by the fact that over 30 percent of recreational trails in the Fairbanks North Star Borough inventory are tentatively identified as R.S. 2477 rights-of-way by the Department of Transportation.

Equally disturbing as the recent developments with the R.S. 2477 issue is that, although the new agreement between the state and BLM defines a procedure for placing R.S. 2477 rights-of-way on land status plats, thereby legitimizing the claims, the involved state agencies are not certain who will be responsible for managing, maintaining or accepting liability for the roads. And questions such as what period of non-use constitutes abandonment of the rights-of-way, if the rights-of-way are restricted to historical types and seasons of use, and what width the rights-of-way are, remain to be answered.

The manner in which this major state and federal action has taken place is highly questionable. It is irresponsible land management on the part of both the BLM and the state to establish an agreement or take action to validate any of these possible rights-of-way before it is known what purpose they will serve, what effects they will have on management of surrounding lands, how they will be managed, and where the legal responsibilities lie. The need to delineate how R.S. 2477 will be dealt with in Alaska is clear, but a procedure to administratively approve the rights-of-way without public involvement, and prior to an adequate understanding of how they will be managed makes a travesty of safeguarding the public interest.

The state and BLM should abolish the existing memorandum of understanding, examine the basic legal, fiscal, and management responsibilities associated with the rights-of-way, and establish a new procedure for solving this dilemma which is accompanied with full public involvement and the participation of all affected land owners and managers.



# United States Department of the Interior

IN REPLY REFER TO

2800 (932)

## BUREAU OF LAND MANAGEMENT

Alaska State Office  
701 C Street, Box 13  
Anchorage, Alaska 99513

September 7, 1984

Memorandum

To: Member of ALUC  
From: State Director, Alaska  
Subject: R.S. 2477 Issue Paper

Transmitted herewith is an issue paper which sets forth BLM's policy on R.S. 2477 rights-of-way. The policy has been altered enough in recent years to allow us to note these claims on our records provided the State takes the initiative and files an application for notation which meets the criteria set out in the issue paper.

In the absence of the State formally asserting its rights under the Statute, BLM has no choice but to consider the lands involved to be vacant public lands without established public access. BLM has had numerous discussions with the State concerning R.S. 2477 and the State is well aware of our policy and procedures.

Enclosed is a draft MOU between our Fairbanks District Office and the State of Alaska which is intended to facilitate the policy set out in the issue paper. Also enclosed is a copy of our BLM Manual section on R.S. 2477 and a copy of a Regional Solicitor's Office memorandum to the Bureau of Indian Affairs dated May 21, 1980.

The Fairbanks District Office and the State of Alaska, Department of Transportation and Public Facilities, Northern Region have been working on this Draft MOU for sometime now and have established a good working document which fits well within the constraints of our regulations.

Our first preference would be to have the cooperative State Federal work on R.S. 2477 started in Fairbanks proceed. However, we would not object to the Council taking this matter under its wing if this is what the State wishes. Under any circumstance, the State must clearly take the leadership role.

Michael J. Penfold  
State Director

Enclosure (1) w/Exhibits I, II, and III

## Issue Paper - R.S. 2477 Roads and Trails

Under DOI existing authority and policy, it is the responsibility of the State of Alaska to officially assert its claimed rights by filing applications for notation of such rights-of-way on our records. Such applications in addition to providing the information required to show the highway meets the four criteria set out below must provide a plottable description of the facility so that BLM's records can be properly noted.

The Act of July 26, 1866, R.S. 2477 (43 U.S.C. 932) provided:

"The right-of-way for the construction of highways over public lands not reserved for public uses, is hereby granted."

This statute, which was repealed by the Federal Land Policy and Management Act (FLPMA) of October 21, 1976, 90 stat. 2743, has been interpreted as granting a right-of-way for public use over public land without limiting the method of establishment of that right-of-way. The grant becomes fixed when a public highway is definitely established in one of the ways authorized by the laws of the State where the land is located.

The Act (R.S. 2477) did not specify the extent of the grant, the width of the right-of-way, or the nature of the right conveyed. Since the Department does not grant such rights-of-way, it has consistently held that it has no authority to adjudicate claims made under this Act. Therefore, acknowledgements of such claims have not been inserted in Federal Land Patents. The courts have held that reservation of an R.S. 2477 right in our patents is not necessary to validate or protect rights-of-way created under the statute.

In order to facilitate proper management of the public land, the Department has to have sound transportation plans. It is, therefore, necessary to identify all public roads in a given area. To facilitate such identification the Bureau of Land Management has recently been given authority to note claimed R.S. 2477 highways (roads, trails, etc.) on its official status plats, provided that requests for notation meet the following criteria:

1. In order for a valid right-of-way to exist, there must have been actual construction of a highway. Mere use, planning, or survey is not considered construction. However, construction of the highway need not have occurred all at once. Road maintenance often equals improvement and even construction. When the history of a road is questionable, its existence in a condition adequate for public use may constitute evidence that construction has taken place.
2. The highway is free and open to the public at large.
3. The construction of the highway on unreserved public land must have occurred prior to repeal of R.S. 2477 on October 21, 1976.
4. The State must have a procedure to confirm the R.S. 2477 public highway right-of-way grant.

Once the State application is received, BLM has the responsibility to assure that the lands covered by the claimed right-of-way were, on the date of establishment of the highway, unreserved public lands. If the information submitted by the State meets the four criteria above, BLM assumes (it does not adjudicate the claim) that the road is a bona fide R.S. 2477 highway. The BLM then acknowledges the State's claim and plots the right-of-way on its records.

Any uses other than for highway purposes within the boundaries of an R.S. 2477 right-of-way must be permitted by BLM by a separate right-of-way grant. It should also be noted that the R.S. 2477 grant extends only to the right-of-way itself, it does not include ancillary facilities such as material sources and stockpile areas.

The Fairbanks District of BLM is currently working on a Memorandum of Understanding with the State of Alaska, Department of Transportation and Public Facilities. This MOU is intended to facilitate notation of the State's claimed R.S. 2477 rights on BLM's official records.

BLM has no objection to elevating this MOU to State level if the Council so desires. However, even if the MOU is elevated to State level, BLM cannot by law or regulation note the State's R.S. 2477 claims to its records until the State DOT/PF files a formal request for notation accompanied by a plottable description and a date of appropriation. The initiative to begin the record notation process rests with the State.

Further, until the State officially identifies its claimed R.S. 2477 rights, so they can be noted on the records, Federal agencies have no recourse but to treat the lands involved as if they were free and clear of encumbrances. As an example, numerous contacts were made with the State of Alaska during the planning process on the Steese NCA and the White Mountains NRA. At no time has the State of Alaska identified any R.S. 2477 claims within these planning areas.



## Citizens' Advisory Commission on Federal Areas

119 Seventh Avenue  
Suite 310  
Fairbanks, Alaska 99701  
907/456-2012

TO: ALASKA LAND USE COUNCIL MEMBERS

FROM: CITIZENS' ADVISORY COMMISSION ON FEDERAL AREAS

RE: RS 2477 RIGHTS OF WAY

DATE: SEPTEMBER 13, 1984

In 1866 the U.S. Congress passed a law entitled "An Act granting the right of way to Ditch and Canal Owners over the Public Lands, and for other Purposes." Section 8 of this act, which generally dealt with mining activities on the public lands, read as follows: "And be it further enacted, That the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted."

This grant, more commonly known as Revised Statute (RS) 2477 (43 USC §932), was a standing offer by the Federal government until it was repealed with the passage of the Federal Land Policy and Management Act (FLPMA) of 1976. While RS 2477 is no longer the legal basis for the construction of new public highways, valid existing rights granted to the Territory, State and public of Alaska during the period of the act's efficacy are protected by FLPMA Section 701 and reaffirmed by ANILCA Section 1109.

There are perhaps 150 or more RS 2477 rights of way in Alaska, concentrated primarily in the interior, which were accepted directly by the public of the State and the Territory through actual construction and use. This is exclusive of the Section-line right of way dedicated by the State in AS 19.10.010. which legislation acts as formal acceptance of the grant offered. Informal acceptance, that which is accepted directly by the public through actual use, is an equally valid right recognized in case law on the subject.

On State owned lands, authority for the management of these public rights of way is vested in both the Department of Natural Resources (DNR) and the Department of Transportation and Public Facilities (DOT/PF). On Federal and private lands, DOT/PF has primary authority as the managing agency. This authority would extend to those ANILCA lands which were vacant and unreserved public lands during the period of time when the grant was in effect in the Territory and State. The Alaska Organic Act of 1884 was the legislation which brought United States law to Alaska, including RS 2477, and can be regarded as the date at which the grant became effective in the Territory.

In 1923 the Territorial legislature formally accepted the grant by dedicating all Section lines to be public highways with an

easement of either 65 feet or 100 feet depending on the land status at the time of the dedication. Informal acceptance of the grant has occurred every time men cut their way through the wilderness during the gold rush in effect constructing public highways for all to use. Many years of use by succeeding fortune seekers, trappers, traders, subsistence users and recreationists along these routes has reinforced this legacy. Once granted and accepted, the vacant, unreserved public lands over which the right of way lies are severed from ownership by the federal government and pass to the Territory, the State or the public of those political entities.

The Alaska National Interest Lands Conservation Act (ANILCA) mandated the preparation of management plans for the lands added to the Conservation System Units (CSUs) created by that act. Unfortunately, both the Federal and State agencies have for the most part not adequately considered these public highways in the planning efforts now underway. Failure to confront the issue of RS 2477 has and will continue to do harm to the interests of the State, the Federal government and the Alaskan public.

Recently, a miner was arrested by Park Service personnel within the bounds of the Yukon-Charley National Preserve while moving a bulldozer along the Bulenberg Trail which both he and State officials claim is a valid RS 2477 right of way. The miner has patented and unpatented mining claims in the National Preserve to which he is guaranteed access by Section 1110 of ANILCA. These "guarantees" are honored by requiring miners and other traditional users of the lands in question to contend with considerable amounts of paperwork to receive permits providing access to these lands. This Commission believes that this system of permitting is contrary to the spirit and the letter of the law where legitimate RS 2477s are involved. Formal recognition of valid RS 2477 rights of way by the various Federal agencies would simplify the problem of access and allow the use of a transportation system that has been in existence for over eighty years. The use of valid rights of way belonging to the State of Alaska should not be subject to the issuance of permits by Federal land managers.

This is clearly the intent of the Congress as evidenced by the report of the Senate Energy and Natural Resources Committee (Report #96-413; November 14, 1979; page 303): "Those private lands, and those lands owned by the State of Alaska or a subordinate political entity, are not to be construed as subject to the management regulations which may be adopted to manage and administer any national conservation system unit which is adjacent to, or surrounds, the private or non-federal public lands. Federal laws and regulations of general applicability to both private and public lands, such as the Clean Air Act, the Water Pollution Control Act, U.S. Army Corps of Engineers wetlands regulations, and other Federal statutes and regulations of general applicability would be applicable to

private or non-federal public land inholdings within the conservation system units, and to such lands adjacent to conservation system units, and are thus unaffected by the passage of this bill."

The State officials responsible for asserting the State's claims and managing these rights of way on behalf of the Alaskan public have been reluctant to do so. Perhaps this is due to a desire to de-polemicize the relations between the State and Federal governments since the passage of ANILCA. However, an absence of both a clear policy and the political will to follow through on such a policy is tantamount to a "de facto" abandonment of these rights of way. This Commission is implacable in its opposition to such an abandonment.

The Yukon-Charley National Preserve case involves more than the issue of access by RS 2477 and will be settled in a court of law. One thing is clear however, according to personnel in both the Alaska Department of Transportation and the Department of Natural Resources, the trail used in this instance is a valid, documented RS 2477.

The Citizens' Advisory Commission on Federal Areas proposes the formation of a work group or task force which will establish a procedure to confirm the State's RS 2477 claims. The Commission requests that the member agencies of the ALUC cooperate fully in the implementation of this proposal. Such cooperation would include agency acknowledgement of identified RS 2477 rights of way in the planning efforts of the CSUs, as well as adequate personnel and funding for the necessary research.

The Commission recommends that the Alaska Department of Transportation and Public Facilities and the Department of Natural Resources act as the co-lead agencies on behalf of the State in the task force. We recommend the Bureau of Land Management as the lead agency for the Federal government.

This matter is in urgent need of attention. Access to legitimate inholdings on the CSUs is not being adequately addressed despite the guarantees of ANILCA Section 1110. In the absence of a clear initiative on the part of the State, there is little the land management agencies of the Federal government are able or willing to do on the issue of RS 2477 while plans for the CSUs are being prepared. Timely action by the appropriate State agencies is necessary to ensure federal and private recognition of RS 2477 rights of way.

The Citizens' Advisory Commission on Federal Areas believes the ALUC is the proper channel through which this problem may be addressed. Formation of an intergovernmental task force will clear up some of the unanswered questions faced by private and public land managers.

MEMORANDUM OF UNDERSTANDING  
BETWEEN ALASKA DEPARTMENT OF NATURAL RESOURCES AND  
ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES  
AND  
BUREAU OF LAND MANAGEMENT

PURPOSE

1. The purpose of this agreement is to establish the procedures for the assertion of RS 2477 rights-of-way by the Alaska Department of Natural Resources (DNR) and the Alaska Department of Transportation and Public Facilities (DOT&PF) to the Bureau of Land Management (BLM). Federal, state, and local officials need to know locations of RS 2477 public right-of-way assertions in order to assist such officials in their land and resource management decisions. The public needs to know the location of RS 2477 public right of way assertions to avoid unauthorized uses on private lands. This Memorandum of Understanding (MOU) will establish procedures that will enable RS 2477 rights-of-way assertions to be placed on land status plats.

BACKGROUND

2. RS 2477, formally codified as 43 U.S.C 932 (repealed by P.L. 94-579, Federal Land Policy and Management Act of October 21, 1976), provides:

The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.

3. By regulation found in 43 C.F.R. 2802.5 (b), the Bureau of Land Management has provided:

In order to facilitate management of the public lands, any person or state or local government which has constructed public highways under the authority of RS 2477 (43 U.S.C. 932, repealed October 21, 1976) may file a map showing the location of such public highways with the authorized officer.

4. In Hamerly v. Denton, 359 P. 2d 121, 123 (Alaska 1961), the Alaska Supreme Court stated that the general rule regarding acceptance of the RS 2477 federal grant:

Before a highway may be created, there must be either positive act on the part of appropriate public authorities of the state, clearly manifesting an intention to accept the grant, or there must be public use for such a period of time and under such conditions as to prove that the grant has been accepted.

5. The United States Department of the Interior, Office of the Solicitor, stated in a memorandum dated July 7, 1983:

"[(T)he Department of the] Interior has long recognized that State law controls what constitutes a (R.S. 2477) highway within each state;" and

6. Alaska Statute 19.45.001(3) states:

"Highways includes a highway (whether included in the primary or secondary systems), road, street, trail, walk, bridge, tunnel, drainage structure and other similar or related structure or facility, and right-of-way thereof, and further includes a ferry system, whether operated solely inside the state or to connect with a Canadian highway, and any such related facility;" and

7. WHEREAS by statute, AS 19 SLA 1923; 123 SLA 1951; 35 SLA 1953; AS 19.10.010, the State of Alaska has accepted the RS 2477 grant.

8. The RS 2477 grant has also been accepted in many cases by actual public use or expenditure of public monies on unreserved public lands for highway purposes.

#### POLICIES AND PROCEDURES

9. DOT&PF shall have responsibility for asserting and for identifying and submitting maps to BLM of all RS 2477 rights-of-way established before October 21, 1976, identified on the list of state maintained highways. DOT&PF's responsibility under this paragraph includes both state and non state lands.

10. DNR or DOT&PF may identify, assert, and submit maps and evidence of use to BLM for all other RS 2477 rights-of-way established before October 21, 1976, situated upon any land within the State of Alaska.

11. DNR or DOT&PF shall accept evidence of use on any right-of-way established before October 21, 1976, from other state agencies, local governments, and members of the public. For all claims of RS 2477 rights-of-way which involve state land or provide access to state land or public water an ADL/LAS case file will be established.

12. DNR or DOT&PF may maintain duplicate sets of all files regarding RS 2477 rights-of-way. All newly created RS 2477 files, or any documents to be added to an existing file, will be duplicated and forwarded from one agency to the other.

13. All maps showing the location of RS 2477 rights-of-way established before October 21, 1976, submitted to BLM shall be the best maps possible but not of lesser detail than standard USGS maps at a scale 1:63,360. Maps and supporting documentation shall be submitted by both agencies concurrently. The submission of such maps showing the location of RS 2477 rights-of-way on public lands shall not be conclusive evidence as to their existence. Similarly, a failure to show the location of RS 2477 rights-of-way on any map shall not preclude a later finding as to their existence.

14. There shall be established an RS 2477 coordinating committee in the Northern Region of Alaska composed of DNR, DOT&PF and BLM. The purposes for this committee are as follows:

(a) coordination of agency priorities for identifying, locating, and asserting RS 2477 rights-of-way;

(b) coordination of RS 2477 processing procedures for identifying, locating, establishing case files, making assertions, and platting claims on both federal and state land status plats; and

(c) coordination of requests made to and by the agencies.

15. Each assertion of the existence of an RS 2477 right-of-way made pursuant to this agreement and the submissions to BLM will be reviewed by BLM to ensure the land was unreserved public land as of the date claimed and was established prior to the repeal of the law on October 21, 1976. BLM will not adjudicate the validity of RS 2477 assertions.

16. BLM, DNR, and DOT&PF shall each issue a serial number and establish a case file for each claim made pursuant to this agreement. All correspondence shall reference all agencies' file numbers.

17. BLM shall plot each RS 2477 right-of-way asserted on their Master Title Plats when the following criteria are met (BLM Manual 2801.24 B.1, Rel. 2-152, 9/10/82):

1. Criteria for identification of R.S. 2477 Public Highways, include four elements:

a. In order for a valid right-of-way to come into existence, there must have been the actual building (construction) of a highway. Mere use, planning, or surveying, does not equal construction. However, construction may not have occurred all at once. Road maintenance often equals improvement, or even construction.

Increments of maintenance over several years may equal construction. When public funds have been spent on the road it may be a public road. When the history of a road is unknown or questionable, its mere existence in a condition adequate for public use may be evidence that construction has taken place.

b. A highway is freely open to everyone. Roads that have had access restricted to the public by locked gates or other means may not be public highways.

c. The construction of a public highway on unreserved public land must have occurred prior to October 21, 1976.

d. A State has to have a procedure to confirm the R.S. 2477 public highway right-of-way permit.

18. This MOU establishes the state's procedure to confirm the RS 2477 and thereby fulfills item d in paragraph 17 above.

19. DNR shall plot each RS 2477 right-of-way asserted on their land status plats.

20. Nothing in this Memorandum of Understanding shall obligate any party in the expenditure of funds, or for future payments of money, in excess of appropriations authorized by law.

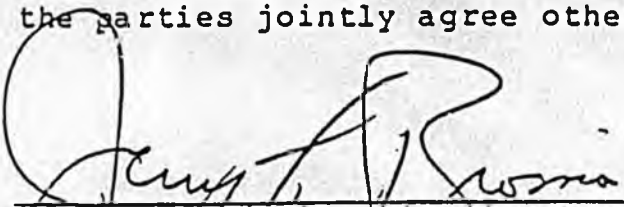
21. Each party agrees that it will be responsible for its own acts and the results thereof and each party shall not be responsible for the acts of the other parties; and each party agrees it will assume to itself risk and liability resulting in any manner under this agreement.

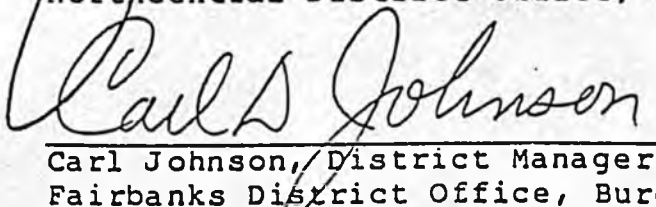
22. Nothing in this MOU is intended to limit agency or individual rights to normal administrative or judicial appeal processes.

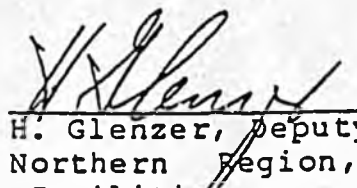
23. Nothing herein is intended to conflict with Federal, State or local laws or regulations. If there are conflicts, this agreement will be amended as soon as practical to bring it into conformance with conflicting laws or regulations.

24. It is understood by all parties that individual citizens may be entitled to assert rights-of-way under RS 2477 notwithstanding this agreement. Nothing in this Agreement shall affect the right of private citizens to assert rights-of-way under RS 2477 in conformance with applicable law.

25. The effective date of this agreement shall be from the date of final signature. The agreement shall remain in effect until the parties jointly agree otherwise.

  
\_\_\_\_\_  
Date 9-28, 1984  
Jerry L. Prossia, District Manager,  
Northcentral District Office, Alaska Department of Natural Resources

  
\_\_\_\_\_  
Date 9/28, 1984  
Carl Johnson, District Manager,  
Fairbanks District Office, Bureau of Land Management

  
\_\_\_\_\_  
Date 20 Sept, 1984  
H. Glenzer, Deputy Commissioner,  
Northern Region, Alaska Department of Transportation & Public  
Facilities



# United States Department of the Interior

IN REPLY REFER TO

2300 (932)

## BUREAU OF LAND MANAGEMENT

Alaska State Office  
701 C Street, Box 13  
Anchorage, Alaska 99513

November 23, 1984

Instruction Memorandum No. AK-85-72  
Expires 9/30/85

To: DM's and DSD's

From: State Director, Alaska

Subject: Notation of R.S. 2477 Right-of-Way Assertions on the Public Land Records

This memorandum is intended to supplement manual guidance on notation of R.S. 2477 right-of-way assertions. The BLM manual policy on notation of claimed R.S. 2477 is intended to facilitate BLM management of those lands it administers. BLM needs a sound transportation plan in order to effectively manage those public lands it administers; therefore, it is necessary to identify existing access routes on the Bureau's official records.

Notation of any particular R.S. 2477 assertion of right to these records is discretionary. The manual merely provides BLM a procedure of noting R.S. 2477 claims on its records, if BLM agrees that the assertions have at least potential validity. The manual procedure is not intended to force BLM to note assertions it believes to be questionable or invalid.

It should, however, be remembered that an R.S. 2477 grant is created by taking. The rights acquired thereunder attached immediately when the facility was first appropriated or constructed under the statute. Once a right-of-way is established under R.S. 2477, it may be abandoned only under procedures established by State law.

The BLM should work with the State of Alaska to identify those existing access roads and trails which may be potentially valid R.S. 2477 assertions. When BLM agrees that a right may exist (i.e. the assertion may be valid) under the statute, it should note the assertion on its official land status records. If BLM does not agree that the right may exist, the assertion should not be noted to the records. BLM's notation of a potential right does not validate an invalid assertion and its failure to note a valid assertion does not void such assertion. The actual validity or nullity of an R.S. 2477 assertion can only be determined by a court of competent jurisdiction.

If an R.S. 2477 is asserted on a road or trail historically used only as a winter trail and use begins to occur during the other seasons which causes environmental damage, BLM's recourse is to try to get the State to maintain the trail or for BLM to sue for damages on Federal lands. Seasonality of use should

be defined by the type of use which existed at the time the trail or road was established or appropriated. The background and history of the trail may need to be checked to determine if use has been seasonal.

BLM will note potentially valid R.S. 2477 assertions only across lands which it administers. Notations will not be made on lands withdrawn for other agency use, unless BLM has an MOU regarding notation with that agency having jurisdiction over the land. Assertions of rights will not be noted on land which have been Interim Conveyed or Patented to a Native Corporation or Tentatively Approved or patented to the State of Alaska.

The BLM does not need comment or concurrence from Native Corporations to note assertions on lands that it manages (including lands that are merely selected by such corporations.) BLM is only acknowledging a claim of a valid existing right to such lands. Such an acknowledgment does not change the validity or invalidity of the right. The existence of such a potential right will not be cited in any conveyance document as an encumbrance. A Native Corporation is free to challenge the assertion, in court, after it acquires title.

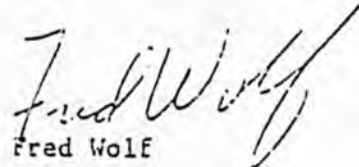
BLM will not specifically reference an R.S. 2477 claim, assertion or notation in the deeds or patents it issues for any claim or entry made under the public land laws, unless the inclusion of a reference to such claim has been agreed to, in writing by all affected parties.

There may be situations where the State of Alaska may find it advantageous to acquire a right-of-way under Title V of the Federal Land Policy and Management Act in lieu of an R.S. 2477 notation. Patents for entries made after granting of a Title V right-of-way are made subject to the right-of-way.

It should also be noted that the BLM cannot impose restrictions or stipulations restricting the use of an R.S. 2477 road or trail for those purposes authorized by statute. Only the State can impose restrictions on such uses. However, R.S. 2477 did not authorize the construction of non-access facilities such as powerlines, pipelines, etc. Such facilities, if not covered by a granted right-of-way constitute unauthorized use.

In deciding whether to note an assertion on the BLM records, BLM may perform a field examination and/or prepare a report to substantiate its decision as to disposition of the assertion. However, such action is not required.

Distribution:  
D-DSC (D-558A)

  
Fred Wolf  
State Director  
Acting



CORPORATE DEVELOPMENT AND  
TECHNICAL SERVICES FOR  
VILLAGE BUSINESS CORPORATIONS

127 1/2 MINNIE STREET  
FAIRBANKS, ALASKA 99701  
TELEPHONE: (907) 452-1601

October 23, 1984

Dan Alex, President  
Alaska Native Land Managers Association  
Pouch 6699  
Anchorage, AK 99502

Dear Dan:

Enclosed are copies of a recent MOU between BLM, DNR and DOT/PF (in Fairbanks), and a DOT/PF briefing paper on RS2477 Rights-of-Way. I have serious objections to them from both a land title and a land management perspective.

To begin, RS2477 Rights-of-Way are rights-of-way which, if valid, are rights granted outside the statutory realm of ANCSA or FLPMA, i.e., 43 USC 932. Basically, if a right-of-way is to be determined valid, the land over which it crossed had to be vacant, unreserved, public lands at the time use began and there has to be a determination, (frequently in court if the landowner objected), that there was sufficient public use or expenditure of public funds, to qualify under the statute. If determined valid, the right-of-way width was usually ditch to ditch. The only entity with the authority to adjudicate these rights is a court of law, not the BLM.

What this means in practical terms is that these rights-of-way have never been identified in title documents granted to private landowners in this state or elsewhere in the lower 48 until the State of Alaska pressured BLM to insert these rights-of-ways in native conveyances. Since BLM cannot, by law, adjudicate these rights, they are considered assertions until they are proven.

If a trail or road crossed a private landowners property and the landowner questioned the public's right to use the trail, the owner may block the trail. If the user objects, he can take the landowner to court to protect his right of access, or vice versa.

The MOU, needless to say, was written without native input. It establishes a de facto adjudication process which places these rights-of-way on BLM's land status documents and ultimately in Native Land conveyances. The Native landowner has no opportunity to protest. The State, on the other hand, has gained another leg up on the private landowner by having these assertions of rights placed on the public land records and Native land title without

Dan Alex  
October 23, 1984  
Page 2

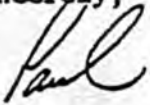
an opportunity for complete adjudication in the proper forum. (Please read their briefing paper closely.) If the RS2477 assertion ends up in the land conveyance, the Corporation receives a clouded title document and faces potentially significant management problems.

The management problems can be significant. First, most of these RS2477 assertions are made on cold winter trails. With modern technology, many people want to use these trails in the summertime, a period when it is impractical to use the trail in its winter location, so they begin to move this way and that to avoid the pot holes and permafrost areas creating new trails and often serious surface damages. This creates surface damage problems for the landowner. There is also a question whether the public has the right to use a winter trail in the non-winter months.

Secondly, as the DOT/PF briefing paper points out, even if an RS2477 is determined to be valid, the state has reserved the right to decline to maintain the rights-of-way. This leaves the landowner with continued resource destruction and the public using a potentially unsafe public right-of-way. In simple terms, the state wants ~~its~~ cake and eat it, too. I say that if they want the rights of ownership, they should accept the obligation to manage and maintain them!

My recommendation to the Native Land Managers is to consider these points and, if they agree, develop a strategy involving our congressional delegation and state legislators to remove these assertions from the public land records until proven valid in the proper forum and seek legislation that would require the state to accept management responsibility when they assert title.

Sincerely,



Paul C. Costello  
President

PCC/bap



File: RS 2477  
CORPORATE DEVELOPMENT AND  
TECHNICAL SERVICES FOR  
VILLAGE BUSINESS CORPORATIONS

127 1/2 MINNIE STREET  
FAIRBANKS, ALASKA 99701  
TELEPHONE: (907) 452-1601

November 1, 1984

Lavelle Black  
Dept. of Interior  
Alaska Program Staff (311)  
18th and "C" Streets, N.W.  
Washington, D.C. 20240

DEPARTMENT OF  
NATURAL RESOURCES  
JAN 21 1984  
COMMISSIONER'S OFFICE  
JUNEAU

CC TO MV  
Tom H  
Sandra Schubert  
(Sen. Fairbank)  
Kie Campbell  
(Sen. Fairbank)

Dear Lavelle:

Here is the letter and enclosures we discussed today. As I indicated, they create problems in three related areas.

1). To begin, if I were a native landowner, I would be offended that BLM drafted such a document without any visible effort to involve the native community. As my lawyer friends would say, "It flies in the face of ANCSA."

2). Next, the MOU establishes a de facto adjudication of less than fee interests when BLM does not have the authority to adjudicate RS 2477 interests. The only forum to properly adjudicate them is with the landowner, or if that proves to be unsuccessful, in court. The only Federal land title to be prejudiced with these questionable assertions are native lands. In my experience I have never found a Federal patent in the Lower 48 which purported to adjudicate an RS 2477.

3). It represents land management philosophy at its least, i.e., the State would like title any way they can get it, but want "the right to refuse service" (maintenance) to anyone. This creates a conflict between the unsuspecting user and the landowner when a user attempts to use a damaged trail and finds that he cannot because of permafrost degradation, for example. He makes the choice of not going or just moving the trail over a bit to avoid the impassable section. Hence, he infuriates the landowner by destroying surface resources and trespassing. The user then faces an irate landowner, possible criminal charges and the State who chooses to do nothing. The Seventy Mile Trail in Eagle is a good example.

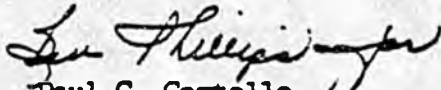
My solution is simple. Revoke the MOU and let the landowners and the State decide in the manner most practical which right is valid and who is responsible for that right. If a right is valid because there is a continuing public use and need, then let the State seek the funds to maintain the right-of-way on a case by case basis. BLM is helping neither themselves

Lavelle Black  
Nov. 1, 1984  
Page 2

nor the Native community nor, in the run, the taxpayers of this state,  
in trying to decide what is best for a situation that they have no legal  
obligation to be involved in.

I hope that this finds you well and enjoying the fall season in  
Washington. Give my regards to Bob...

Sincerely,

  
Paul C. Costello  
President

Enc: Letter to Dazz Alex  
Briefing Paper  
MOU

PCC/bap

# Tanana Chiefs Conference, Inc.

Doyen Building  
201 First Avenue  
Fairbanks, Alaska 99701  
Phone (907) 452-8251

December 21, 1984

Mr. Mike Penfold  
State Director  
Bureau of Land Management  
Box 13  
701 "C" Street  
Anchorage, Alaska 99513

Dear Mr. Penfold:

We recently received copies of a Memorandum of Understanding (MOU) between BLM's Fairbanks District, DNR's North Central District, and DOT/PP's Northern Region. The MOU states in its Purpose that federal, state and local officials need to know the locations of RS 2477 rights-of-way assertions in order to manage their respective lands. The MOU goes on to set procedures under which DOT and DNR will submit evidence supporting RS 2477 r/w assertions and BLM's Fairbanks District will plot these assertions on the Master Title Plats (MTP).

We believe this is a serious mistake on BLM's part and will only add more confusion to land management in Alaska. RS 2477 r/w carry much more uncertainty than just their location. There continues to be unanswered questions about their width, the allowed uses, degree of public use needed to establish a valid grant; abandonment, and maintenance. By recording the State's asserted claims on MTP's, BLM perpetuates these vagaries and even passes them on to the recipients of lands conveyed by BLM. It is BLM's responsibility to convey clear title to land and it is the State's right to seek legal remedies to whatever argument they have with such title. By placing such nebulous claims as RS 2477's on their records, BLM adds credence to unproved assertions and puts those who receive BLM conveyances in the position of having to defend their titles from the moment they receive them. A government title then becomes a sham since the basic rights of the owner aren't even defined by the agency conveying the title.

Prior to the MOU, DOT/PP prepared a briefing paper on RS 2477 r/w which states in part:

"If the State documents its claims, other parties are put in the position of challenging the State's claim rather than vice versa. Presently, the State would have to prove 'valid existing rights' on conveyed land. If the trails

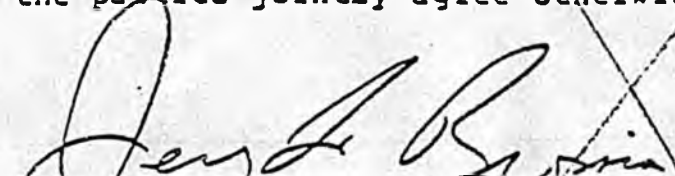
*File RS 2477*


*Cost  
Title*

23. Nothing herein is intended to conflict with Federal, State or local laws or regulations. If there are conflicts, this agreement will be amended as soon as practical to bring it into conformance with conflicting laws or regulations.

24. It is understood by all parties that individual citizens may be entitled to assert rights-of-way under RS 2477 notwithstanding this agreement. Nothing in this Agreement shall affect the right of private citizens to assert rights-of-way under RS 2477 in conformance with applicable law.

25. The effective date of this agreement shall be from the date of final signature. The agreement shall remain in effect until the parties jointly agree otherwise.

  
Date 9-28, 1984  
Jerry L. Brossia, District Manager,  
Northcentral District Office, Alaska Department of Natural Resources

  
Date 9/28/, 1984  
Carl Johnson, District Manager,  
Fairbanks District Office, Bureau of Land Management

  
Date 28 Sept, 1984  
H. Glenzer, Deputy Commissioner,  
Northern Region, Alaska Department of Transportation & Public  
Facilities

were already on the status plats, anyone who disagreed would be in the position of challenging the State's claim. Asserting an RS 2477 claim in this manner is only an administrative determination since BLM does not ~~adjudicate RS 2477 claims~~. If ~~someone~~ were to challenge ~~the State~~, the State's claim would still have to be proven in court; however, we certainly would be in a much better position to do this."

Clearly the State's strategy is to cultivate doubt about titles to lands crossed by their asserted rights-of-way and to place the burden of proof on the patentee. BLM is promoting this strategy in your own Instruction Memo, AK-85-72 of November 28, 1984 stating that "the BLM does not need comment or concurrence from Native Corporations to note assertions on lands that it manages (including lands that are merely selected by such corporation)". Furthermore, that, "A Native Corporation is free to challenge the assertion, in court, after it acquires title".

The use of the word 'free' in this context is ludicrous. Native Corporations and individuals should be FREE from receiving clouded title to their lands after waiting 13 years, and FREE from having to defend their titles from assertions to nonspecific encumbrances.

By putting the State's assertions on MTP's, the BLM invites trespass by third parties such as miners, hunters and recreationalists. We believe that BLM, in effect, is creating the conditions whereby such trespass will certainly result. This would affect not only private lands but national parks, wildlife refuges, and wilderness areas, since the MOU covers "any land within the State of Alaska, ...both state and non-state lands".

Section 4 of the MOU cites a State court decision contrary to BLM Manual 2801 B.1.a., which requires actual construction, rather than mere use to establish a valid grant. We would like to know which interpretation will apply to federal lands? Since the MOU only names the Fairbanks District, we would like to know what the statewide procedures are and what your bureauwide procedures are. We would also like to know what weight these assertions have on lands already patented or IC'd, and on Native Allotments; whether they are pending, approved or certificated. We would also like to know if landowners affected by these RS 2466 claims are being notified by BLM of these assertions and being given an opportunity to submit material for ~~the~~ case files.

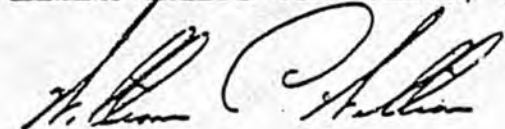
December 21, 1984

Page 3

These right-of-way assertions are going to cloud land titles all over the State and BLM's present course is only passing the problem on to those receiving BLM conveyances. It is BLM's responsibility to convey CLEAR title and to protect the integrity of selected lands under BLM's ~~BLM~~ management. To accomplish this BLM should seek a statute of ~~limitations for asserting rights-of-way under RS 2477~~. There should be Federal regulations that clearly define the requirements to be met before a valid grant can issue, as well as the width of the right-of-way, the responsibility for maintenance, the allowed uses, seasonal use, cessation of use, notice and appeals. These rights-of-way will greatly affect the management and development of all our lands. Their requirements and rights granted must be no less clear than any other type of right-of-way and cannot be left to interpretation if a Federal land patent is to carry its weight as the beginning in the chain of title. Valid public access certainly needs to be protected, but in the present situation RS 2477 jeopardizes far more than it protects.

Sincerely,

TANANA CHIEFS CONFERENCE, INC.



William C. "Spud" Williams  
President

✓ jv  
cc: Bill How

RESOLUTION #2-185

RESOLUTION PERTAINING TO ESTABLISHMENT OF RS 2477 RIGHTS-OF-WAY

WHEREAS, the development and production of natural resources in Interior Alaska is a significant element in the economic base of the Fairbanks community and the welfare of its inhabitants; and

WHEREAS, expansion of resource production is dependent on adequate access to areas in which resources are located; and

WHEREAS, access to a number of resource areas in Interior Alaska may become possible by the use of routes established in the past and which are included in the inventory of trails owned by the State of Alaska as asserted by Memorandum 00-2528, April 8, 1974, to the U.S. Bureau of Land Management; and

WHEREAS, the procedures for the assertion of RS 2477 Rights-of-Way by the State of Alaska has been established in a Memorandum of Understanding between the Alaska Department of Natural Resources (DNR), and the Alaska Department of Transportation and Public Facilities (DOTPF, and Bureau of Land Management (BLM), September 28, 1984, promulgated by the interior regional offices of these three agencies; and

WHEREAS, a coordinating committee comprising a representative of each agency (John Martin, DOTPF; Joseph Sullivan, DNR; Dwight Hempel, BLM) has been established; and

WHEREAS, the historical research, documentation and mapping required for the routes already inventoried and identification of trails not previously inventoried will require a significant effort and John Martin, DOTPF, and Joseph Sullivan, DNR, are investigating the manpower and funding requirements to accomplish this effort.

NOW THEREFORE, be it resolved by the Greater Fairbanks Chamber of Commerce that the implementation of RS 2477 Memorandum of Understanding dated September 28, 1984, AK-023-MU5-002, be strongly supported; and

BE IT FURTHER RESOLVED, that the State Legislature encourage this project by supporting adequate budget and/or priority assignment of personnel in DOTPF and DNR and similar support by given by the Federal Government to BLM; and

BE IT FURTHER RESOLVED, to encourage all organizations and individuals to develop and submit to DOTPF and DNR a list of priority routes known to them in Interior Alaska which will be of maximum benefit for mineral, agricultural, commercial and recreation and that routes which can support more than one of the above be given particular emphasis; and

BE IT FURTHER RESOLVED; that full consideration be given to the corridor concept, alternate established routes and to existing land rights of others, including private owners and the national interest lands, in identifying RS 2477 Rights-of-Ways; and

BE IT FURTHER RESOLVED, that copies of this Resolution be forwarded to:

DEPARTMENT OF  
NATURAL RESOURCES

JAN 31 1984

COMMISSIONER'S OFFICE  
BUREAU

Resolution #2-185  
RS 2477 Right-of-Way  
Page 2

Governor of Alaska  
Commissioner, Department of Natural Resources, Alaska  
Commissioner, Department of Transportation and Public  
Facilities, Alaska  
President of the Senate, Alaska Legislature  
Resources and Transportation Committees of the House, Alaska  
Legislature  
Senator Ted Stevens  
Senator Frank Murkowski  
Congressman Don Young  
Secretary of the Interior  
Director, Bureau of Land Management, Washington D.C.  
Alaska State Director, Bureau of Land Management, Anchorage,  
Alaska  
Director, Northern Region, Bureau of Land Management, Fairbanks,  
Alaska

DATED THIS 14TH DAY OF JANUARY, 1985.

GREATER FAIRBANKS CHAMBER OF COMMERCE BOARD OF DIRECTORS

By

  
Title President and Chief Executive Officer

Attachments: Memorandum 00-2528, April 8, 1974  
Memorandum AK-023-MU5-002, September 28, 1984