

HB

198

# STATE OF ALASKA



LYMAN F. HOFFMAN  
REPRESENTATIVE

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## HOUSE OF REPRESENTATIVES

### DISTRICT 25

AKJACHAK  
AKIAK  
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KIPNUK  
KONGIGANAK  
KWETHLUK  
KWIGILLINGOK  
MEKORYUK  
NAPAKIAK  
NAPASKIAK  
NEWTOK  
NIGHTMUTE  
NUNAPITCHUK  
OSCARVILLE  
PLATINUM  
QUINHAGAK  
TOKSOOK BAY  
TUNTUTLIAK  
TUNUNAK

APR 21 1988 1:10 pm

### MEMORANDUM

TO: Senator Jay Kerttula  
Chairman, Senate Judiciary Committee

FROM: Representative Lyman Hoffman *Lyman*

DATE: April 21, 1988

RE: Scheduling of CS SS HB 198 (Judiciary)

I request your favorable consideration for scheduling CS SS HB 198 (Judiciary), an act relating to the permissive and nonpermissive use of land, at your earliest convenience.

Attached please find the following documents:

- 1) Copy of CS SS HB 198 (Judiciary)
- 2) April 14th Fiscal Note
- 3) Briefing paper
- 4) Alaska Land Use Council Recommendations on Trespass
- 5) Trespass Problems on Native Land brief
- 6) Letters of support

If there are any additional questions concerning this legislation, please do not hesitate to contact me at your convenience.

Thank you.

FISCAL NOTE

REQUEST:

Revision Date: April 14, 1988  
Title: "An Act relating to the permissive and nonpermissive use of land."  
Sponsor: House Judiciary  
Requestor: House Judiciary

Agency Affected: Department of Law  
BRU: Prosecution  
Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The committee substitute for HB 198 removed all of the references to the criminal law and criminal penalties contained in the original version of the bill. Consequently, there will not be a fiscal impact on the Department of Law.

Prepared by: Richard I. Pegues, Director Phone: 465-3672  
Division: Administrative Services Date: April 14, 1988  
Approved by Commissioner: Grace Berg Schaible, Atty. Gen. Date: April 14, 1988  
Agency: Department of Law

Distribution (by preparer):

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

CSSSHE 198 BRIEFING PAPER

The bill amends Titles 09 and 11 to provide for the permissive use of unimproved land for recreational purposes, setting out the rights and responsibilities of landowners and users, and protecting landowners from certain liability.

Need for the bill is generated by the complex and time-consuming process of transferring federal public domain to private and state ownership. Trespass often occurs because of the complexity of landownership patterns in Alaska and the common misconception that any open and unused land is public land.

SECTION BY SECTION ANALYSISSection 1.

Adds a new section to Alaska Statute 09.45.730. It recognizes the right to enter another's land to conduct geophysical exploration as a valuable interest which warrants protection by law. A mineral explorer who goes onto another person's land to gather geotechnical data or take mineral resources without permission from the landowner is a geophysical trespasser. This new section establishes treble damages for such trespass, unless said trespass is unintentional or involuntary or the defendant had probable cause to believe he was not on another's land. In the latter case, only actual damages may be assessed. This provision.

compliments the current law covering the unlawful taking of trees.

Section 2.

This section amends Alaska Statute 09.45.795 by limiting the liability of an owner of unimproved land for any injury or death resulting from a person making recreational use of the land without being charged compensation for said use. The landowner remains liable for acts of gross negligence or reckless or intentional misconduct.

If a landowner charges a use fee for recreational purposes, he remains liable for such injury and death as he has invited the public on his land.

Section 3.

Defines unimproved and as including a trail; or a road built to provide access, but which is no longer maintained or used.

Section 4.

Establishes standards for posting remote parcels. This is more reasonable than current law which indicates "notice against trespass is given by posting in a reasonably conspicuous manner

under the circumstances". This section only addresses the appropriate posting of certain access points commonly used to enter the land. A person entering the land at an unposted point can not be charged with trespass unless he knew he was on property and his presence was prohibited.

TO: Alaska Land Use Council  
THROUGH: Staff Committee  
FROM: Trespass Work Group  
SUBJECT: Recommendations on Trespass  
DATE: September 11, 1985

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In January 1985, the Council adopted a work item addressing unauthorized use and trespass on both public and private lands. A work group including the following agencies was established:

- Alaska Federation of Natives (Lead Agency)
- State of Alaska, Department of Natural Resources
- State of Alaska, Department of Fish and Game
- State of Alaska, Department of Law, District Attorney's Office (ad hoc)
- State of Alaska, Department of Public Safety (ad hoc)
- U.S. Dept. of Interior, Bureau of Land Management
- U.S. Dept. of Agriculture, Forest Service
- U.S. Dept. of Interior, Fish and Wildlife Service
- U.S. Dept. of Interior, National Park Service
- U.S. Dept. of Interior, Bureau of Indian Affairs (ad hoc)

Under the leadership of the Alaska Federation of Natives, the group has developed a comprehensive set of recommendations on the subject. The primary focus of attention has been to identify ways to foster cooperation among landowners and recommend actions which may be taken by public agencies and private landowners to prevent and alleviate the growing problems of trespass and unauthorized use especially inadvertent use which constitutes the majority of the problems now occurring.

The Work Group spent several months identifying ways to foster cooperation among landowners in terms of preventing and abating trespass and unauthorized use on public and private land.

The underlying direction of the work group's recommendations is a good neighbor approach which encourages public and private land owners to cooperate to prevent trespass on adjoining land. The recommendations of the group are not intended to conflict with or contradict the responsibility of each landowner to enforce applicable laws and regulations on his own land to prevent trespass or unauthorized use.

The work group paid considerable attention to the question of who should be responsible for implementing each recommendation. In a number of cases the entity that would be most appropriate to implement the recommendation is identified in the report. It must be recognized, however, that the affected owner, public or private, has the primary responsibility for initiating actions to prevent trespass and working with neighboring landowners to develop a solution.

Some of these recommendations will require additional funding. These recommendations should be referred to by agencies as they prepare their respective budgets so that they may requisition funds needed to fulfill their responsibilities associated with trespass enforcement and abatement.

Members of the Trespass Work Group:

Mike Reimann  
Chairman  
Alaska Federation of Natives  
Don taken for  
Carl M. Yanagawa  
State of Alaska  
Dept. of Fish & Game  
Walt Smith  
U.S. Dept. of Agriculture-  
Forest Service

Ron Swome  
State of Alaska  
Dept. of Natural Resources

Salvatore DeLeonardo  
U.S. Dept. of Interior  
Bureau of Land Management

Paul S. Baker  
U.S. Dept. of Interior  
Fish & Wildlife Service

David McCabe  
U.S. Dept. of Interior  
National Park Service

RECOMMENDATIONS

WORK ITEM #1 - Recommend specific activities that offer public education intended to prevent unauthorized use of private and public lands.

A. User Information Maps<sup>1</sup> and Brochures Illustrating Land Ownership

Through better knowledge of the state's land ownership pattern, a significant amount of the inadvertent trespass activity could be prevented. In order to remedy this problem, easy to understand maps and brochures depicting land ownership should be prepared and made readily available to users of state, federal and other public land. These maps or brochures should be prepared for those areas which receive high public use and should show, in as much detail as possible, the land status for the area. Once completed, these maps should be made available to the public through public agencies, public information facilities, appropriate retail outlets and Native corporation offices. It is recommended that agencies preparing maps and brochures follow the steps outlined below.

1. Identification of areas subject to high use and trespass - Sites and easements which are subject to high public use should be identified by the landowner. It is recommended that agencies notify and solicit this information from regional corporations and other major landowners<sup>2</sup> prior to preparing user information maps. Such priority areas would most likely include the railbelt and roadbelt, the Bristol Bay area, specific parts of southeast Alaska, well used river corridors, major recreation areas, and transportation corridors. By identifying areas subject to trespass in these priority areas, it is possible to determine where land ownership maps are most needed. Due to funding priorities it will be necessary to focus first on those areas subject to high use and frequent trespass problems.
2. Preparation of maps - It is recommended that public agencies and Native corporations give due consideration to trespass abatement by establishing priorities for preparation of user information maps. It is recommended, prior to an agency's completion of these maps that major landowners review the map, when practical or reasonably necessary, to ensure that the land ownership information is accurately depicted.

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<sup>1</sup>General User Information Maps - These maps are of a general nature and should show land ownership boundaries and land status information. These maps are generally available for distribution to the public and are meant to inform the user about general topics concerning Alaska including land use, sources for additional information, or availability of areas for recreational use.

<sup>2</sup>Major landowners-Since the passage of ANCSA, large tracts of both state and federal land have been transferred to private landowners. These landowners include the Alaska Native regional corporations, village corporations, or other parties receiving tracts of land. Other major landowners include state and federal agencies such as the Bureau of Land Management and the State of Alaska, Department of Natural Resources.

- a. Easement Atlas - The existing easement atlas project being carried out by the State of Alaska, Department of Natural Resources (DNR) is an example of a mapping program which meets the need of providing accurate land ownership maps. Under this project, DNR is preparing map atlases for the Bristol Bay and Copper River Basin areas. These atlases are made up of maps at 1:63,360 scale. They show the location of all valid public easements and rights-of-way, as well as the land status for those areas. If these atlases prove to be beneficial, they should be prepared for other areas of the state subject to high public use.
  - b. Native Corporation Maps - It is recommended that Native corporations also prepare maps of their land status which could be posted in regional centers, agency offices, Native corporation offices, hunting and fishing lodges, etc.
3. Distribution of Maps - It is recommended that the distribution of user information maps, whether free or at a nominal cost, be expanded. Whenever practical, appropriate land ownership maps should be made available and distributed to the following: aircharter businesses, guides, hunters, fishermen, campers and others who use public land. As they are completed, the DNR easement atlases should be distributed through state and federal agency offices.

B. Language for Public Documents Regarding Trespass and Unauthorized Use

It is recommended that appropriate language regarding the use of private land appear on all public documents (i.e., brochures, maps or informational leaflets) on land use, recreation, hunting and fishing, as well as any other documents which are appropriate. An example of wording that might be useful for this purpose is set forth below:

"Both small and large tracts of privately owned land are located within and adjacent to the boundaries of publicly owned land throughout the state. This private land is not open to public use or travel without permission from the landowner, unless public easements have been reserved or there is a valid existing public right-of-way. Navigable rivers passing through private land are available for use up to the ordinary high water mark. Tidelands are also available for public use up to the mean high tide mark.

Invasion of community and camp privacy is a concern of many rural residents. Be sensitive to local concerns. Trapping cabins and tent camps are essential to the livelihood of many rural residents. They should not be used except in case of real emergency. They may appear abandoned, especially in late summer when the brush is tall. The owners will return though and will need everything they left for the coming winter. The early trappers and wilderness travelers established an honorable tradition of respecting camps and cabins - a tradition that continues today.

Users should check with the \_\_\_\_\_ (insert appropriate land management agency) to determine the location of public land and public easements across private land. For information regarding the use of private land contact the landowner. Use or travel across private land or an unauthorized use of a public easement could be considered criminal trespass."

### C. General Public Education Program on Trespass

A general public education program focusing on trespass is recommended and necessary. It should emphasize Alaska land ownership patterns, the need to prevent trespass and unauthorized use and respect private and public land. This public education program should be directed at both local residents and visitors. Outlined below are several suggestions for educating the public about trespass and unauthorized use.

1. **Public Service Announcements** - Public service announcements for radio and television should be developed and presented to the Alaska public by concerned parties. These announcements should inform the public about land ownership patterns and land use policies within Alaska. Such announcements could be developed on a state-wide basis or for particular use areas, such as wildlife refuges, parks or regional geographic areas. The Alaska Land Use Council will encourage interagency efforts to develop general statewide public service announcements. It is expected that both public agencies and Native organizations will participate in preparing and presenting public service announcements for specific areas or uses.

Whenever possible, these announcements should be aired on programs dealing with hunting, fishing, recreation, etc. The announcements should emphasize that it is an individual's responsibility to become familiar with the land ownership patterns and trespass policies and laws for specific areas in Alaska. To the extent possible, an announcement should include an explanation of the allowable activities and uses for the different categories of public and private land in a particular area. It should also describe the means by which the public may become familiar with land ownership patterns, trespass laws and policies.

2. **Visitor Centers and Other Public Information Centers** - When appropriate, available information on land ownership and land use and trespass policies should be integrated into visitor center materials, as well as other public information outlets or programs. It is recommended that the visitor centers have maps, easement atlases, Native land policies and land ownership brochures available. This information should be provided to the visitor centers by the appropriate entity and it should include a list of contacts for additional information concerning the use of public and private land. Visitor center and public information personnel should be able to inform the public about the location of large tracts of private land near or adjacent to public land.
3. **Native Corporation Brochures and Actions** - It is recommended that the Alaska Federation of Natives prepare an informational brochure describing Native land ownership in the state and the need to respect this privately owned land. Those Native corporations and public agencies which have serious trespass problems should consider setting up booths at sports fairs and other public events to explain their land management policies and practices.
4. **Publications** - Whenever possible, descriptions of existing land management policies and appropriate maps showing land ownership patterns should be included in magazines, tourist brochures, publications such as the Alaska Milepost, etc. Recently, Northwest Publishing has offered to include this information in their Milepost publications. Public and private landowners are encouraged to provide this information to these periodicals.

5. Central Depository For Land Use Policies and DNR Easement Atlases - A central depository should be established for information on land use policies and copies of the DNR easement atlases. Land owners are responsible for ensuring that the information on file is current. It is recommended that this information be updated on a regular basis. Possible locations for this purpose include visitor centers or the Department of Interior Resource Library. Such a depository will provide both landowners and the general public with a central location to acquire information about land use policies and public easement information. Official land status information will continue to be available at existing land records offices.
6. School Education Program - It is recommended that a land information program be developed for use in public schools throughout the state. This program could include audio - visual aids and other educational materials on the history of the various land acts and programs which have affected land ownership and land use in Alaska; specifically this should include the Alaska Native Claims Settlement Act, the Alaska National Interest Lands Conservation Act, and the Alaska Statehood Act. The program could also include information on current land management policies, including trespass, throughout Alaska. It is recommended that the University of Alaska and Department of Education be requested to produce the program.

#### D. Land Use Policies

It is recommended that Native corporations establish policies for the use of their land. These policies should be made available for reference at the central depository and visitor information centers.

#### E. Cooperation

It is recommended that neighboring public and private landowners work together to provide the general public with land use policies and permit information concerning public and private land. Private landowners should provide information of this nature to public agencies managing adjacent land. Once this information has been provided, public agencies should make the information available to the general public through their offices. Agency personnel will not be expected to interpret the Native land policy information or to issue permits. It is recommended that public agencies make similar information available to the Native corporations in order that they may distribute the information to the public.

#### F. Landowner Education Program

It is recommended that guidelines and/or educational programs be developed to provide private landowners with information regarding management and protection of privately owned land from trespass and unauthorized use. The education program should focus on landowner rights, duties and liabilities with regard to detaining trespassers, methods for pursuing criminal and civil action, reporting procedures for trespass activities, land management options, and permitting systems for commercial and non-commercial uses. This program may include the use of videos, public service announcements, brochures, etc. It should be a cooperative effort between private landowners and public agencies. It is recommended that the Alaska Federation of Natives, Alaska Native Foundation and other regional profit and non-profit Native corporations explore and implement this program.

WORK ITEM #2 - Discuss known and suspected problems of unauthorized use and explore ways land and resource managers may be able to assist each other, as permitted by applicable laws, in implementing their respective responsibilities for enforcement and management to prevent unauthorized use. Among other things the group should identify problems and solutions associated with unauthorized access and travel across public land, permitting systems and other trespass prevention measures.

#### A. Cooperation & Trespass Prevention Measures

Agencies and private land owners are encouraged to cooperate and develop informal, and where appropriate formal agreements, which will encourage landowners to report to the appropriate landowner instances of unauthorized use and trespass on adjacent land. In the limited instances where formal agreements are advisable, the agreements should not be burdened with liability clauses regarding failure to report trespass incidents. The agreement should generally specify the types of activities which will constitute unauthorized use or trespass for the purpose of reporting such actions. It is recommended that landowners be responsible for informing their neighbors about their land management policies and priorities. It will be necessary for private landowners to provide such policies to agencies so they will know when to inform a land owner of a possible incident of trespass or unauthorized use. Generally, it is recommended that land managers concentrate on reporting trespass actions which cause resource damage, could lead to lasting resource damage, are a taking of timber or a mineral resource, represent continued unauthorized commercial use, or are activities which might lead to adverse possession.

1. Land Bank Agreements - Land Bank agreements may be used as a vehicle between public and Native land owners to report suspected trespass incidents. Unless otherwise specified, such agreements should not impose a liability upon the reporting agency.
2. Land Exchanges/Boundary Adjustments - In some high use areas, land exchanges or minor boundary adjustments may remedy trespass problems. It is recommended that a program be implemented whereby Native corporations could request public land management agencies to make land exchanges, boundary adjustments and/or acquire public easements to remedy or ameliorate chronic trespass problems.

#### B. Program Development

Agency heads, Native corporation officers and other appropriate policy representatives should provide direction on the development of programs and policies to prevent and deal with trespass problems.

1. Identification and on-site management of site and trail easements - It is recommended that land owners and public agencies cooperatively identify easements subject to high public use. Programs should be implemented by the appropriate manager which ensure that these sites and trails receive priority in terms of posting and management. Providing appropriate facilities such as outhouses and litter barrels, as well as providing trail maintenance and clean-up programs, should be considered in those areas receiving high use. The Dillingham effort could be used as a model for this program. In this case, the BLM provided signs regarding public use of an ANCSA §17(b) easement, and in turn, the village corporation posted the signs along the easements on their land.

Public agencies and Native corporations should investigate the use of funding sources, such as DOT/PF's local roads and trails program monies, to help finance the identification and placement of signs along high use areas and public easements. The agency with primary management responsibility should develop standardized signs to identify authorized uses of easements and high use public areas.

2. Land Use Planning - Land use planning efforts for public and private land should take into consideration the impact of various activities which might cause trespass problems. Land use plans should identify heavily used areas which are open to public use.
3. Native Owned Land - It is suggested that Native corporations consider identifying areas on Native owned lands which may be open to public use for specific purposes. If opened, this land could be made available on a permit basis or non-permit basis. The Native corporations should also identify those areas which require the greatest protection against trespass and unauthorized use. They should then establish priorities for trespass abatement and for protecting specific areas against trespass and unauthorized use.

#### C. Law Enforcement

It is the perception of the Native community that trespass laws are not being adequately enforced, nor are trespass complaints being investigated in a timely manner. It is recommended that the Department of Public Safety investigate various mechanisms to improve upon the enforcement of trespass laws.

#### WORK ITEM #3 - Identify activities that may lead to trespass and unauthorized use on adjacent land and recommend possible ameliorating actions.

##### A. Coordination of Planning and Development Efforts

It is recommended that adjacent landowners coordinate with one another when developing activities that would attract the public since certain facilities or activities tend to have a magnetic quality which attracts or encourages the public use. Landowners should strive to implement their programs in a way to minimize activities or development which create unwanted trespass problems for adjacent landowners.

##### B. Uses Along Public Waters, Tidelands and Submerged Lands

It is recommended that agencies and private landowners work together to minimize trespass and unauthorized use problems which might occur on private uplands because of activities which are permitted along public waters, tidelands and submerged lands.

## Legislative Action

After considerable discussion, the work group felt that recommending specific changes in state law was inappropriate as part of its recommended actions for trespass abatement. The work group, however, recognized that existing laws may not provide for effective control of trespass on public and private land; therefore legislative action may be needed.

Although land use activities have largely remained unchanged in Alaska since the passage of ANCSA and ANILCA, land ownership and management patterns have changed dramatically. Areas previously open for virtually unregulated public use are no longer available for that same purpose.

Existing state trespass laws evolved when private land ownership was generally confined to small blocks of land, usually 160 acres or less in size. The reality now is that in addition to the usual small blocks of private land, Native village and regional corporations own large blocks of land, thousands and even millions of acres in size. Boundaries between public and privately owned land are usually poorly defined, difficult to distinguish on the ground, and may extend for literally hundreds of miles.

Changing land ownership patterns require, at the minimum, a thorough review of current laws with respect to posting requirements and penalties currently applicable to trespass violations, as well as a review of state law authorizing adverse possession to determine whether it still serves a useful purpose in Alaska property law. Additional attention should be directed to the unauthorized taking of resources, such as sand, gravel and timber, from private land since current civil and/or criminal laws and penalties for such unauthorized use may be inadequate.

The work group also agreed that liability laws should be examined and amended, if necessary, to limit the liability on the part of the land owner or manager for public use of their land. Limitations on liability might encourage private landowners to permit public use of their land.

The work group recognizes the importance of the legislative recommendations set forth by Jim Messick in the Department of Public Safety report, Trespass and Unauthorized Use of Native Lands in Alaska. The report may well serve as a starting point for a thorough review of all state laws which currently apply to trespass on private land.

In light of the massive changes in land ownership patterns, AFN and private landowners should undertake a critical review of all state laws dealing with trespass, unauthorized use of privately owned land and resources, and private landowner liabilities. The goal of such a review should be to recommend legislative action, if deemed necessary, to achieve two objectives: 1) require practical and reasonable measures for protecting private land and associated resources from trespass; and 2) reduce, as much as possible, the risk that land owners take if they allow recreational use of their land by the general public.

## TRESPASS AND EASEMENT MANAGEMENT PROBLEMS ON NATIVE OWNED LANDS

Elizabeth M. LeBlanc  
Calista Corporation - Land & Natural Resources Dept.  
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## ABSTRACT

Ever since Alaska Native corporations began to receive title to their lands, they have been faced with the ever increasing problem of trespass. The types of trespass and frequency of incidents varies from region to region. This paper will familiarize individuals with the trespass problem since it provides an overview of the trespass problem and identifies forms of trespass which affect the ability of government agencies to provide adequate protection against trespass.

## INTRODUCTION

December 18, 1971 is a significant date for the Native community in Alaska. This date marks the signing of the historic Alaska Native Claims Settlement Act (ANCSA). When Congress passed ANCSA, it provided for the transfer of 44 million acres of land throughout Alaska to Native owned corporations. ANCSA created several landlords, each of whom was concerned with the disposition of their land and the activities upon it. During the past 15 years the state has been undergoing a complex and often times confusing process of land transfers conveying federal ownership of land to state and private interests. The changing patterns of land ownership, although major, seem pale in the face of the many complex legal issues resulting from the changing land status (e.g. navigability determinations, legal challenges involving grandfather rights, over-selections, trespass enforcement, easements, etc.)

As a result of the various land transfers, there is a great deal of confusion in Alaska as to land status and the rights attached to land ownership. Land that was available for public use one year is not available the next year. The situation has led to an increasing problem of trespass on private land by the general public. The public often fails to realize that the land conveyed to the Native corporations is private land, and does not realize that even though these lands are seemingly unused, undeveloped, and largely unfenced and unmarked, entry onto the land could constitute trespass.

Land conveyed to Native corporations is private property and as such enjoys all the rights and protection due an individual owner. Unfortunately, protecting Native owned land from unauthorized use and entry by the public is becoming a serious problem for the Native corporations and has varying consequences. As with any private landowner, the Native corporations are experiencing an infringement on their ownership rights. The protection once afforded to these lands through their remote location and inaccessibility is rapidly diminishing as Alaska's non-Native rural population grows, as easement reservations provide increased access to remote areas, and as competition for the land and its resources intensifies.

There are two principal categories of unauthorized use.

1. Casual use whereby an individual strays from adjacent public land or easements. This type of use generally occurs without a permit or license, while an individual is hunting, fishing, hiking, camping, etc. These forms of

trespass are usually inadvertent, but over a period of time may adversely impact subsistence or Native lifestyles. Although these activities do not create immediate problems, there is the possibility that they will significantly impact land management policies or create a possessory right, if ignored.

2. Unauthorized use whereby an individual damages the land or removes resources found on the land thereby affecting the economic base of a Native corporation. Such activities may include cutting timber, illegal exploration for minerals or removal of sand and gravel.

The trespass problem is difficult to handle because Native land holdings are often remote and cover vast undeveloped areas which are not always easily accessible by the land owner or its managers. Some of the trespass problems are endemic to any large tract of undeveloped land; others have been precipitated by the massive change in the State's land status that has occurred in recent years and is still occurring. The trespass problem, however, is not confined to land owned solely by Native corporations, nor is the problem limited to remote areas of the state. Other private landowners, in particular, those in the Kenai Peninsula and the Matanuska-Susitna Borough are also experiencing trespass problems due to rapid growth and increased recreational use.

#### TYPES OF TRESPASS

Native corporations are experiencing several forms of trespass on their lands. Most instances of trespass are inadvertent, but many times the trespass is intentional and causes significant harm to the landowner.

##### Trespass Resulting From Misuse of Public Easements

In the State of Alaska there are many types of easements, including trails of varying widths, public rights-of-way, site easements for vehicle parking, temporary camping, and loading and unloading of supplies, utility easements, railroad rights-of-way, section line easements and easements for communication systems, oil and gas activities, etc.

Although there are many types of easements, the misuse of ANCSA 17(b) easements is of particular concern to Native landowners since these easements were reserved only on Native corporation land. ANCSA 17(b) easements now encumber vast amounts of Native corporation land and go largely unmanaged. Under Section 17(b) of ANCSA, the Secretary of Interior was authorized to reserve public easements across land selected by Native corporations pursuant to ANCSA. The purpose of these easements is to provide public access to publicly owned land and major waterways. These easements were to be reserved so that their impact on the Native culture, lifestyle and subsistence resources was minimized. ANCSA 17(b) easements are for a specific use, location and size and they may be used only for a specific purpose which is described in a corporation's interim conveyance documents. For example, many 17(b) easements are limited to winter use and, therefore, cannot be used at other times of the year. Section 17(b) of ANCSA does not give the public the right to use Native lands for recreational purposes; it only provides access to public recreational areas. All too often, the public misunderstands the purpose of the 17(b) easement or that the use of the easement is regulated by law, thereby failing to realize that the land underlying the easement is private property and should be respected as such.

A key factor contributing to the trespass problem is the absence of a program for managing and protecting 17(b) easements against misuse. The various federal and state agencies have been unable to implement regulations for easement management because each agency is faced with vastly different objectives. Although federal

agencies within the Department of Interior are permitted, within established guidelines, to adopt their own procedures for 17(b) easement management, state and other federal agencies are not bound by these guidelines. Consequently, federal and state agencies are reluctant to manage public use of the 17(b) easements, citing lack of legal authority and funding.

Under existing policies and practices there is no way for the public to know when or if they are trespassing on private land. In most areas, there are no indicators of private ownership (i.e., signs or fences) which identify the location of 17(b) easements or property boundaries for private owned land. Furthermore, there is no single agency or source (i.e., map, brochure, guidebook, etc.) to which the public may go for information about land ownership and land status, including the location of private land, permissible activities on easements, and laws concerning trespass and public use of undeveloped land.

Perhaps the most bothersome and complex trespass problem is the misuse or non-use of 17(b) easements. In most instances, the public is not aware that the easements exist, so noncompliance is a common occurrence. It is very easy for individuals to stray beyond the boundaries of the easements because there are no signs or markings on the ground delineating easement location. This results in a high incidence of trespass, much of which is inadvertent or unintentional. However, the most troublesome problem is that the public uses the easement for purposes other than what was designated in the interim conveyance document. For example, 25 ft. winter trails are used as summer haul roads or one acre site easements are used for long-term camping. These situations are difficult to monitor because the Native landowner, usually a village corporation, is not aware of the procedures pertaining to the management of 17(b) easements, nor does the corporation know the exact location of the easement on its land.

The location of a 17(b) easement is obviously an important factor in easement management and trespass enforcement. Since the easements are on private land, the state of Alaska's trespass laws are in effect. This creates a difficult situation because the state's criminal law on trespass cannot be held to apply in most instances of trespass occurring off 17(b) easements. The law excludes from criminal trespass any entry upon unimproved land where there is no marker, sign or fence indicating a prohibition against such intrusion.\* As the statute is now written, it encourages and permits casual trespass on private land, rather than preventing it. The law currently sanctions this type of activity so long as an individual is not intending to commit a crime and the land is unused and unfenced, or the individual using the land has not been advised by the land owner that the land is indeed private land. It should be remembered that many casual trespassers carry guns for bear protection or hunting. It is not an enviable position for a village land manager, who has no law enforcement training or authority to approach these individuals to inform them that they are trespassing.

#### Trespass off a Navigable Waterbody

Problems of trespass occurring off of navigable waterbodies are similar to those associated with trespass off 17(b) easements. The problem, however, has been compounded because there are disagreements about where the boundary of the uplands is located along navigable waterbodies. Typically, uplands are defined as that land above the mean high water mark; the state, however, tends to view the demarcation more liberally. In any event, the trespass problem usually involves people boating up a river or flying in by float plane and then using the uplands along the shoreline of the navigable waterbody for recreational purposes such as camping, fishing, hunting, firewood gathering or other incidental activities.

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\* AS 11.46.350

It is nearly impossible to prosecute these types of trespass because state law currently requires the land to be posted before a law enforcement officer can take action on a trespass violation. Under the law, such a minimal intrusion upon the land is not a criminal offense unless reasonable notice is provided. However, it is difficult for the village corporations to comply with the law and provide adequate notice along rivers or lakes since many are inholdings on Native corporation land. In most cases, posting signs forbidding trespass cannot be done without great expense or difficulty to the large landowner.

#### Recreational Trespass

A large number of trespass actions may be described as "recreational trespass." This type of trespass usually involves a one-time situation where individuals stray onto Native corporation lands from adjacent public lands or 17(b) easements and then camp overnight, go hiking, fishing, hunting, trapping, gather firewood or do a wide array of similar activities. Many of these trespass occurrences seem to be inadvertent and appear to occur because the public does not have adequate information about the use of 17(b) easements or land ownership patterns.

Due to the vast amount of private land in Alaska and the remote location of much of the land, it is quite possible that there are improvements on the land for which a landowner has no actual knowledge. Although AS 09.45.795 provides liability protection against injuries received by trespassers on unimproved and apparently unused land, no liability protection is provided to the landowner for those situations involving unknown improvements, such as mine shafts, gravel pits, old abandoned cabins, and old roads, trails and airstrips. Under the present law, it is quite possible for a trespasser to sue a landowner for injuries received while trespassing on private land if any of these improvements are present in these situations. The courts typically examine the nature of the improvement, the cost of removing the improvement, the landowner's likeliness, and actual knowledge of the improvement's existence, and the extent to which the improvement can be considered an attractive nuisance. In those cases involving a trespass action, the courts in other states have held that a landowner owes a minimum of care to a trespasser.\* Since Alaska has almost no case law dealing with trespass or wrongful death or injury of a trespasser, it is possible that a private landowner could be held liable in a personal injury suit involving a trespasser on unimproved lands.

The size of the land area, duration, impact and intent, all to one degree or another determine how severe a trespass activity may be. Not all trespass actions are equally severe, nor are they all harmless activities. It is important to note there is a significant difference between an individual hiking across the land and a "D-8 cat" crossing the land. A bulldozer crossing the tundra only one time can cause severe surface degradation, whereas a camper may cause no permanent damage. However, the potential for damages by the camper from fire and litter are ever present regardless of the type, extent and frequency of the unauthorized use. Furthermore, there is the ever present possibility that historical sites and cemeteries may be damaged or looted by the casual trespasser. This situation is most common on Native land.

#### Unauthorized Use of Land and Natural Resources

Unauthorized use of land and natural resources usually results in a loss of revenue to the Native corporation. In some cases, physical damage to the land itself may occur. Over a long period of time, removal of valuable resources through gravel extraction, gold mining, cutting of timber, or even extensive fishing and hunting can significantly impact the economic viability of a Native corporation and its

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\* LeBlanc, E.M., "Section-by-Section Analysis - HB 660," April, 1986, unpublished report to the State of Alaska Legislature.

individual shareholders. The hunting and fishing issue is particularly sensitive in those areas dependent on subsistence activities or dependent on commercial fishing along rivers.

Although most of these trespass activities result only in a loss of revenue, they can create a possessory right if ignored. Fishermen, trappers, miners, etc., have built structures of varying types on Native owned lands. Some of these people moved onto the land prior to the passage of ANCSA in 1971, but did not file the proper paperwork to establish their residence or activity. In the absence of these records, they appear to have no "valid existing right" under ANCSA and hence, may be trespassing unless they have occupancy rights under Section 14(c) of ANCSA. Others who moved onto the lands after ANCSA are in a similar, but less defensible position. In addition, historical roads and trails which were not reserved by 17(b) easements are present on Native corporation land. Continued use of these rights-of-way by the public could lead to the creation of a prescriptive easement across the corporation's land. Should this type of trespass go unchallenged, it may lead to an eventual claim of adverse possession against a Native corporation's lands or the creation of an additional easement which will result in an actual loss of land.

#### Geological and Geophysical Trespass

In recent years, Native corporations have discovered that illegal geologic exploration activities have been occurring on their land. In these situations, mineral exploration companies have gone onto or flown over regional and village corporation land to conduct geologic exploration activities without the permission of the subsurface owner. In the Lower 48, these activities are a recognized form of trespass and are considered to be a tort known as wrongful appropriation of the right to explore 'or a resource.\* The courts have recognized a landowner's right of recovery against a geophysical explorer who enters upon land with ut authority and conducts a geophysical survey. Damages have been awarded to a landowner for geophysical trespass based on actual surface damages, on loss of the exploration rights, and on loss of the leasing value.\*

In the case of a geophysical trespass, physical harm to the property is usually only of minor consequence because modern surveying methods cause little or no physical damage to the land. Consequently, the greatest concern of a landowner is not damage to land, but the loss of prospective economic advantages. A landowner's major losses occur when information regarding the mineral estate is misappropriated. The landowner is then deprived of a valuable exploration right, and if the survey tends to demonstrate that the land is valueless for mineral development, a landowner may be denied the opportunity to lease or sell his rights to the mineral estate, thereby denying the landowner any profits and placing him in an unequal bargaining position.

#### PROBLEMS RELATIVE TO ENFORCEMENT AND PROSECUTION OF TRESPASS

Trespass in its many aspects is a problem that impacts all private landowners in Alaska, whether they be a Native corporation or a homesteader. It is a problem which must be addressed on a statewide basis in order to resolve the fundamental issues of law and public responsibility.

#### Jurisdiction for Trespass Enforcement

While the division of responsibility between the state and federal government relative to trespass seems clear, actual determination of responsibility is usually complicated because of the changing land status. There is no disagreement that

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\* LeBlanc, E.M., "Section-by-Section Analysis - HB 660," April 1986, Unpublished Report to State of Alaska Legislature.

federal agencies are responsible for trespass enforcement on Native land during the withdrawal, selection and adjudication processes. However, once title is transferred by interim conveyance, such land is considered private land, subject only to completion of a survey. At this point, Native corporation land falls under the State of Alaska's jurisdiction. Since it is private land, it is the state's responsibility to provide law enforcement and respond to trespass complaints and if necessary prosecute trespassers.

The most difficult situation, however, is determining who is responsible for trespass situations involving the misuse of 17(b) easements. In those situations where the easement user strays from the 17(b) easement onto adjoining land, the trespass is on the property rights of the private land owner. Therefore, the responsibility for any action rests with the owner because it is a trespass on the corporation's property rights. Furthermore, if an easement user utilizes land within the 17(b) easement for purposes other than what was specified for that easement, but does not obstruct or damage the easement (e.g. overnight camping on a 17(b) easement), the underlying landowner must take action on the unauthorized use. The exception is when damage or obstruction to the 17(b) easement occurs. In this situation, the easement holder (BLM or other governmental agency) is responsible for taking action because actual interference or damage to the easement itself has occurred.

It is difficult for private landowners to get state officials to aggressively prosecute those cases involving trespass on private land. The various law enforcement agencies by and large do not view trespass as a major crime, consequently little is done to enforce the state's trespass laws, even when requested to do so by a landowner experiencing trespass problems. However, more frequently, agencies responsible for trespass enforcement take no action whatsoever on reported trespass violations, either due to lack of time, funding or manpower.

#### Lack of Surveys on Conveyed Land and 17(b) Easements

A major stumbling block to effective enforcement against trespass lies in the lack of identifiable boundaries of the property and easements. Since the majority of the land which has been conveyed to Native corporations is not yet surveyed, there is the possibility that some instances of trespass are occurring on the periphery of Native corporation land. Consequently, there may be cases where legitimate questions will arise as to whether an alleged trespass did, in fact, occur. In those situations, the only way to settle the dispute is to have the area in question surveyed.

As long as Native corporation land remains unsurveyed, it will be difficult to make a clear determination as to whether or not a trespass did occur. Without such a determination, prosecutors may actually decline to prosecute trespass cases. The need to determine boundaries prior to prosecuting trespass cases places an undue burden on Native corporations and substantially increases the costs associated with trespass enforcement and prosecution.

#### Statutory Issues

The initial determination of whether to pursue a civil or criminal action against a trespass is usually made on a case-by-case basis by the affected Native corporation. In determining which cases to prosecute the guideline is usually intent--was it inadvertent or deliberate and is the impact minimal or profound. Clearly any use of the land which can lead to a claim of adverse possession or a prescriptive easement, thereby jeopardizing or diminishing a Native corporation's ownership rights is a situation which justifies pursuing a trespass action.

The primary problem associated with trespass enforcement is the statutory requirement that notice against trespass be "given by posting in a reasonably conspicuous manner" (AS 11.46.350). The posting requirement is ambiguous since the definition of "a reasonably conspicuous manner" is subject to varied

interpretations. In most situations under the present law, posting is interpreted to mean that the land must be posted at frequent intervals, i.e., every 100 feet along all exterior property boundaries including lake and river edges. Given the vastness of Native corporations' land holdings, this requirement for posting or fencing is unrealistic. The present law leaves everything to interpretation. This can lead to conflict between a landowner and the law enforcement officer and prosecutor. A landowner's interpretation of the minimum posting requirement may result in the land owner not posting his land sufficiently to satisfy law enforcement officers or prosecutors. For example, under a strict interpretation of the law, if a float plane lands on a lake or river inside a private landowner's property boundaries, the land would not be considered to be posted "in a reasonably conspicuous manner," if signs were posted only on the property's exterior boundaries. To be considered adequately posted, the courts could interpret the law to mean that signs have to be posted along the shores of all interior lakes and rivers.

As it now stands, private landowners are unable to gain assistance from the state criminal process even if there is a flagrant and purposeful instance of trespass if the landowner has not met the posting requirements. Private landowners with large tracts of land must post literally hundreds and thousands of signs to meet the letter of the law. This is a very expensive and burdensome requirement for landowners. The law does not consider the uniqueness of Native land ownership patterns (vast tracts of undeveloped private land). In fact, in many areas of the state, it is impossible for landowners to post signs simply because there are no trees on which to attach "no trespassing" signs.

It is difficult to keep all private lands adequately posted in remote areas because signs weather and people constantly vandalize them. As it is now written, the state's posting requirement for large land areas, such as those owned by the Native corporations, is unrealistic and in many instances cannot be implemented economically or practically by the large landowners.

Another problem associated with prosecution of trespass cases lies with the State Criminal Code which defines trespass relative "to intent to commit a crime" The revised Criminal Code provides that "a person, who without intent to commit a crime on the land, enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, is privileged to do so, (emphasis added) unless; 1) notice against trespass is personally communicated to that person by the owner of the land or some authorized person; or 2) notice against trespass is given by posting in a reasonably conspicuous manner under the circumstances."\*

For the most part, Alaska's statutes are subject to varying interpretation and place the burden of proof that trespass has occurred on the landowner. As it now stands, the statute may be interpreted in a manner which will permit a person to enter on private land to go hunting, fishing, camping, prospecting, etc., so long as the person is not intending to commit a crime and the land is unused, unfenced, and no one advises the user to the contrary. The statute reflects the philosophy that if a landowner wants to exclude intruders, the landowner should be solely responsible for taking steps to do so. The entire burden of protecting one's lands is thereby placed on the landowner.

In summary, it is difficult for Native corporations to get federal and state officials to aggressively prosecute those cases involving casual trespass on Native

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\* AS 11.46.320 and AS 11.46.330

lands. In their present form, the Alaska's statutes are very vague as to what constitutes trespass, consequently they do not provide private land owners with adequate protection against trespasses nor does it allow for the prosecution of trespass even though the landowner's rights may have been infringed upon. The criminal code is not an effective tool for dealing with trespass simply because people, by and large, do not view trespass as something which should be punished by criminal statutes. This is in significant contrast to the lower 48 where several states make it a crime to hunt on private land if the hunter has not gotten permission from the landowner beforehand.\*

When selecting trespass cases for prosecution care must be taken to differentiate between acts which are fundamentally civil in nature and those which constitute criminal trespass. It is not reasonable to expect that all trespass offenses will be prosecuted as criminal actions. It is important to note, however, that a civil action is usually not a very satisfactory remedy because it is expensive for the private landowner to hire attorneys to file the action and there is no certainty of recovering more than nominal amounts for damages. Unless state trespass laws are amended so that the enormous evidentiary burden placed on the landowner is removed, the majority of trespass activities will remain unabated and will continue to be difficult to prosecute.

#### TRESPASS AND EASEMENT MANAGEMENT POLICIES

There have been and will continue to be times when the uniqueness of each Native corporation's land management style and situation mandates a trespass policy which may differ from that of other corporations. In fact, there are numerous possible ways to address the extensive trespass issue from both the Native corporation and public agency perspective.

##### Native Corporation Land Management Policies and Practices

Recently, many village and regional corporations have developed their own land management policies to ensure that Native corporation land is suitably protected from trespass. It has been difficult for the Native corporations without land policies to gain agency support for enforcement of existing trespass laws. The Alaska Federation of Natives has recommended that each corporation draft an unauthorized use policy which addresses the corporation's liability should someone be injured on Native corporation land while trespassing; the corporation's policy for prosecuting trespass; and a definition of what constitutes trespass. In addition, the corporations are being encouraged to establish guidelines for determining which trespass actions will be prosecuted as criminal actions and which will be prosecuted as civil cases.

Another approach village and regional corporations have taken is to identify land which is of primary interest to them and concentrate on trespass and unauthorized use on said land, recognizing that it may be impossible for law enforcement agencies to effectively respond to all trespass incidents occurring on the corporation's land. The balance of the land is then managed and protected against trespass by the Native corporation. Another alternative has been to identify classes of trespass and set priorities relative to the degree to enforcement necessary to protect the corporations' interests.

Finally, in order to provide a greater degree of protection against unauthorized use of their land, individual Native corporations have begun to implement permit systems for controlling access. The permit allows an individual to enter onto the

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\* State of Wisconsin Criminal Code §94.13

corporation's land for a specific activity, thereby eliminating a part of the unauthorized use problem. Furthermore, the permit provides the corporation with a means of notifying individuals of the stipulations for using the corporation's land and protects the corporation from liability claims should the individual be injured while occupying the land.

#### Joint Cooperation Policies Between Native Corporations and Public Agencies

In January 1985, the Alaska Land Use Council (ALUC) adopted a work item addressing unauthorized use and trespass on both public and private land. A work group, including federal and state agencies and Native corporations, was established to develop recommendations on trespass. Under the leadership of the Alaska Federation of Natives, the group developed a comprehensive set of recommendations on the subject. The group primarily focused its attention on ways to foster cooperation among landowners, and recommend actions which should be taken by public agencies and private landowners to prevent and alleviate the growing problem of trespass and unauthorized use, especially inadvertent use which constitutes the majority of the trespass incidents now occurring. The Work Group's recommendations were adopted by the Alaska Land Use Council in November 1985 and are now in effect. They are entitled "Trespass Abatement Recommendations".

The underlying direction of the work group's recommendations is a good neighbor approach which encourages public and private land owners to cooperate to prevent trespass on adjoining land. The recommendations were designed so that they would not conflict with nor contradict the responsibility of each landowner to enforce applicable laws and regulations on his own land.

The work group paid considerable attention to the question of who should be responsible for implementing the recommendations. It was recognized that the affected land owner, public or private, has the primary responsibility for initiating actions to prevent trespass, as well as working with neighboring landowners to develop ways to resolve trespass problems occurring on one another's land.

Although the ALUC trespass abatement recommendations provide direction to state and federal agencies on trespass and easement management, several problems still exist. Under existing policies and procedures, public agencies are unable or unwilling to respond to the trespass problems that now exist. On the state level, this may result from there being no state policy about investigating and prosecuting instances of trespass on Native corporation land. Furthermore, it does not appear that the relationships, if any, have been determined between state and federal law enforcement and prosecution agencies in relation to trespass enforcement and abatement responsibilities on Native corporation land.

The problem between federal and state agencies is further compounded because the incidence of unauthorized use and lack of information about land ownership and trespass policies is so widespread that a rigid policy of enforcement and prosecution by the agencies cannot be implemented at this time. Often times trespass problems go unsubstantiated due to uncertainties about land status including: location of boundaries between uplands and the beds of navigable waters, the location of on-the-ground boundaries, the timeliness of Native allotment applications, and so forth.

Because of the complexity of the problems involved in the overall trespass issue and agency perception that the public dislikes trespass enforcement, there has been a reluctance on the part of public agencies to expend the manpower and resources necessary to effectively deal with the problem. Trespass prevention and abatement problems continue to be of very low priority in terms of personnel and funding. Furthermore, state and federal policies and laws must be written so that they provide the private landowner with adequate protection against trespass. State and federal policies and laws need to be established or revised so they are easier to enforce, allow for prosecution of trespassers and provide the private land owner with greater protection against trespasses than now exists.

## SUMMARY

Trespass often occurs because of the complexity of land ownership patterns in Alaska and the common misconception that any open and unused land is public land. The confusion is further compounded by the fact that federal and state agencies have different land management policies which may affect private landowners. Consequently, it is often difficult to determine whether a trespass was caused by inadvertence or by indifference to private property rights. It is safe to assume that the public will never be knowledgeable about all aspects of the trespass problem in Alaska, therefore the problems will continue to occur as both in-state and out-of-state residents continue to hunt, fish, camp, etc., in remote areas of Alaska. As more people move to and visit Alaska, it is expected that this situation will intensify. At the same time, Native corporations and other landowners will become more sophisticated in the management of their lands and more concerned about easement control and trespass in general. The days when various segments of the public could assume a right to relatively uncontrolled use of land in Alaska are over.

Increasing recognition of land values and the competing demands for the use of land resources requires a more vigorous and effective program to facilitate lawful use of private land. Land managing agencies need to recognize the opportunities to educate the public about changes in land ownership and identify specific land that has been transferred to the private sector. Since the Native corporations' land holdings are so vast and the boundaries so intermingled with other state, federal and private land, any reasonable approach to the trespass problem clearly must be multifaceted if it is to be successfully addressed in a manner that will not tax the resources of the private landowner or the management agencies.

Furthermore, existing laws and public policy must be redirected to help protect vast privately owned tracts of land from trespass in a manner that continues to provide access to public land. It is an appropriate time to consider amending the inadequate trespass laws with the intent of protecting the private property rights of Alaskans.

## REFERENCES

- Alaska Land Use Council Trespass Work Group, September 1985, "Recommendations on Trespass" committee memorandum
- LeBlanc, E.M., April 1986, "Section by Section Analysis for HB660 -State of Alaska Legislature, unpublished paper
- Messick, M.J., August 1981, Trespass and Unauthorized Use of Native Lands in Alaska, pp. 1-42, State of Alaska, Dept. of Public Safety

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TESTIMONY OF ROBERT W. LOESCHER  
BEFORE THE HOUSE JUDICIARY COMMITTEE  
ON HOUSE BILL 198  
March 29, 1988

MY NAME IS ROBERT W. LOESCHER. I AM THE SENIOR VICE PRESIDENT RESOURCE MANAGEMENT FOR SEALASKA CORPORATION, THE NATIVE REGIONAL CORPORATION FOR SOUTHEAST ALASKA. SEALASKA PRESENTLY OWNS APPROXIMATELY 238,000 ACRES OF SURFACE AND 493,000 ACRES OF SUBSURFACE LOCATED THROUGHOUT SOUTHEAST ALASKA. SEALASKA WILL ALSO RECEIVE APPROXIMATELY 100,000 ACRES OF SURFACE AND SUBSURFACE AS PART OF ITS FINAL ENTITLEMENT UNDER THE ALASKA NATIVE CLAIMS SETTLEMENT ACT. ALMOST ALL OF SEALASKA'S LAND IS REMOTE, UNIMPROVED, BUT ACCESSIBLE BY LAND, AIR AND WATER. AS THE MAJOR PRIVATE LAND OWNER FOR SOUTHEAST ALASKA, SEALASKA WOULD LIKE TO EXPRESS ITS SUPPORT FOR HOUSE BILL 198.

SEALASKA CORPORATION, IN CONCERT WITH THE ALASKA FEDERATION OF NATIVES, HAVE REVIEWED THE COMMITTEE SUBSTITUTE FOR THE SPONSOR SUBSTITUTE OF HB 198. IN RESPONSE TO THE CONCERNS EXPRESSED BY MEMBERS OF THIS COMMITTEE, WE NOW OFFER THE PROPOSED DRAFT AS A SUBSTITUTE FOR THE PRESENT COMMITTEE SUBSTITUTE FOR HB 198. BOTH SEALASKA AND AFN FELT THAT HB 198 CONTAINED SOME AMBIGUITY AND DUPLICATION WHICH NEEDED TO BE ADDRESSED. OUR DRAFT, WHICH IS OFFERED TO THIS COMMITTEE, IS OUR EFFORT TO PROVIDE A MUCH CLEANER VERSION OF THIS BILL. THIS DRAFT, HOWEVER

ROBERT W. LOESCHER  
TESTIMONY

STILL PRESERVES THE PROVISIONS WHICH PROTECT THE LANDOWNER FROM CERTAIN TYPES OF LIABILITY.

THE NEW DRAFT OF HB 198 HAS CONDENSED THE PROVISIONS CONCERNING RECREATIONAL USE IN SECTION 1 OF HB 198. ADDITIONALLY, WE PROPOSED THAT NEW SECTIONS BE ADDED TO INSURE THAT NO PROPERTY RIGHTS WILL BE CREATED OR CONVEYED THROUGH RECREATIONAL USE OF PROPERTY.

SECTION 2 OF HB 198 CONCERNING TREBLE DAMAGES FOR GEOLOGICAL TRESPASS REMAINS THE SAME IN OUR DRAFT. SECTION 3 OF HB 198, WHICH SOUGHT TO AMEND AS 09.45.795, HAS BEEN ALTERED TO ADDRESS THE CONCERNS OF THIS COMMITTEE AND TO BRING THE AMENDMENT INTO CONFORMITY WITH THE PROPOSED VERSION OFFERED BY SENATOR DUNCAN.

OUR RE-DRAFT OF HB 198 REDUCED THE SPECIFIC INSTANCES OF TRESPASS TO INCLUDE ONLY THOSE ACTS WHICH HAVE BEEN AMBIGUOUS AS TO WHETHER SUCH ACTS CONSTITUTED TRESPASS. UNDER OUR RE-DRAFT, THOSE ACTS WOULD NOW BE CONSIDERED TRESPASS. SECTION 7 OF HB 198 HAS BEEN ALTERED TO CLEARLY ESTABLISH THE REQUIREMENTS FOR POSTING OF SIGNS TO PROHIBIT TRESPASS. THIS LANGUAGE HAS BEEN PREVIOUSLY PROPOSED BY SEALASKA IN ITS EARLIER COMMENTS REGARDING HB 198.

WE FEEL THAT THIS NEW DRAFT OF HB 198 PRESERVES THE SAME CONCERNS ADDRESSED IN THE EARLIER VERSION OF HB 198. HOWEVER, WE

BELIEVE THAT THIS VERSION IS MORE SUCCINCT AND CLEARER. IT  
RESOLVES THE AMBIGUITIES WHICH EXISTED IN HB 198. WE ENCOURAGE  
THIS COMMITTEE TO REVIEW THIS NEW DRAFT AND ADOPTED IT AS THIS  
COMMITTEE'S SUBSTITUTE FOR HB 198.

THANK YOU FOR YOUR TIME AND INTEREST.

# Ahtna, Inc.

MAR 25 1988

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ST-24

March 18, 1988

Peter Goll  
Alaska State Legislature  
P.O. Box V (M.S. 3100)  
Juneau, Alaska 99811

RE: Support of H.B. 198

Dear Peter:

By virtue of this letter, I am hereby expressing my support for House Bill 198. This bill, if passed into law, would be of great benefit to the private property owner. It comes at time when problems related to trespass are at a upsurge, and unauthorized usage of one's private property are ever-the-more increasing. The issue and consequences of trespass have never been openly discussed, but rather set aside. As a result, trespass problems have grown out of proportion and furthermore, have been interpreted by many to mean permissiveness rather than the opposite.

As a Native Corporation in charge of the management of many acres of land, we find, in many instances, unauthorized uses of our lands by users who couldn't care less who owns what lands. The users seem to know that since the current trespass laws are so vague, and can be interpreted differently, that enforcement will be to a minimum or not at all. Even the State Troopers in charge of enforcement are reluctant to pursue instances of trespass. They find themselves caught between the individual(s) and the private property owners, where the latter must prove beyond a reasonable doubt that trespass did occur. Until the proof is conveyed, it is either forgotten, neglected or ignored...but the damage is already done. These problems associated with trespass will continue to arise until something is done. It will never go away!

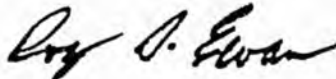
Again, for a private property owner with the management responsibility of many acres of land, trespass confrontations can become very serious. Although H.B. 198 is a long way from ideal, we feel it is the most reasonable first step toward rectifying the prob-

Support of HB 198  
March 18, 1988  
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lem. Although there are other desired features in this legislation, the most important part of this bill is the elimination of the legal liability of landowners for users who use other "open lands" for recreational purposes. It really helps corporations in reducing their liability!

Let me say, in closing, that Ahtna, Inc., as a landowner, desires to have a bill such as H.B. 198 become law, as it does clarify to some degree what constitutes trespass along with other sections that clearly assist private landowners in protecting their lands.

Respectfully submitted,



Roy S. Ewan  
President

cc: Land Committee  
Ray Craig, Land Protection Officer  
Shareholder Committee Chairmen  
Village Council Presidents



February 16, 1988

The Honorable Lyman Hoffman  
Representative, District 25  
The Honorable John Sund  
Representative, District 1B  
House of Representatives  
c/o The House Judiciary Committee  
P.O. Box V  
Juneau, Alaska 99811

Re: House Bill 198 - "An Act Relating to the  
Permissive and Nonpermissive Use of Land"

Gentlemen:

Sealaska Corporation is the Regional Native corporation for southeast Alaska. Sealaska owns approximately 493,000 acres of land located throughout southeast Alaska. Almost all of Sealaska's land is remote, unimproved, but accessible by land, air and water. As the major private landowner for southeast Alaska, Sealaska would like to express its support for this legislation and offer the following comments with regard to HB 198, "An Act Relating to the Permissive and Nonpermissive Use of Land."

Under the provision of the proposed Bill, Sealaska would not be liable for injury or death if permission were given for recreational use, nor would Sealaska be liable for any injury or death if the property were unimproved. However, much of our land contains logging roads used by Sealaska and others as part of its timber harvesting. Many of these logging roads have been put to bed, with culverts and bridges removed and natural vegetation permitted to grow over these roads. As you may know, Sealaska is required to do this under the Alaska State Forest Practices Act, AS 41.17. Though these roads are now abandoned, liability could attach. It is our impression that the intent of this legislation is to exclude liability under these circumstances, and Sealaska is offering some suggested amendments to cover those concerns.

The intent of HB 198 is to clarify for the landowner, the duty it owes to someone who enters upon its land. Section 1 of the current version of HB 198 (CS for Sponsor Substitute for HB 198 (Judiciary), Bradley 2/3/88) ("CSSSHB 198") provides ample protection to the landowner provided that the use of the land was recreational and without compensation. This encompasses permissive use of the land, but does not include someone who is using the land without permission.

The only protection afforded the landowner from liability to a trespasser is found in Section 4 of the current version of HB 198, which merely states that the landowner is not liable in tort to a trespasser. Sealaska would ask the Committee to compare this short provision with the provision found in Section 1 of that Bill. If no duty of care is owed to one using the land with permission, then no duty should be owed to one using the land without permission. This would be in accord with the common law principle that no duty of care is owed to a trespasser. Sealaska believes that this principle should be clearly established in this Bill. To that end, Sealaska has drafted a substitute for Section 3 to be used in place of the current Section 3 of CSSSHB 198 for this purpose. A copy of the proposed amending language is attached. The intent of the proposed language is to specifically provide that no liability will attach to a landowner if a trespasser enters upon the land and is injured or killed.

Some of Sealaska's lands are isolated tracts, either surrounded by water or by federal/state-owned land. In such situations, access to Sealaska's land could be obtained anywhere along the perimeter, through roads which pass through federal or state-owned lands but do not enter Sealaska's lands, or by an accessible landing beach. Under the proposed Section 7 of CSSSHB 198, Sealaska would be protected from trespassers if it takes the steps of posting the property "at each roadway or apparent way of access." However, it is physically impossible for Sealaska to post notice at every conceivable access point. A better rule would be to require posting at specific known access points or along the perimeter at specified cardinal directions. To that end, Sealaska offers a proposed substitute for Section 7 of CSSSHB 198, which is enclosed for this Committee's review and use.

In sum, the burden of liability should lie with the trespasser and not with the landowner. Therefore, it should be an act of trespass if entry is made upon the land of another without permission regardless of posting and


February 16, 1988

-3-

liability should not be contingent upon providing notice of some prohibitive act. HB 198 goes far to address these concerns. However, Sealaska believes that the enclosed substituted sections would further clarify the legislature's intent regarding protection from unpermissive use of land and limiting liability for permissive use of land.

Sincerely,

SEALASKA CORPORATION

  
Robert W. Lescher  
Senior Vice President  
Resource Management

RWL/amt

s\rep.ltr

Attachments: Proposed substitute for Section 3  
Proposed substitute for Section 7

cc/enc: Sen. Jim Duncan  
Sen. Richard Eliason  
Sen. Lloyd Jones  
Rep. Peter Goll  
Rep. Ben Grussendorf  
Rep. Bill Hudson  
Rep. Robin Taylor  
Rep. Fran Ulmer  
Byron I. Mallott  
Sam Kito  
Janie Leask  
John Hartle  
Larry Kimball  
Stephen F. Sorensen, Esq.

# STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.  
JUNEAU, ALASKA 99801-1796  
PHONE: (907) 465-2400

February 2, 1988

The Honorable John Sund  
Chairman  
House Judiciary Committee  
P.O. Box V  
Juneau, Alaska 99811

Dear Representative Sund:

Subject: SSHB 198 - An act relating to the permissive and non permissive use of land.

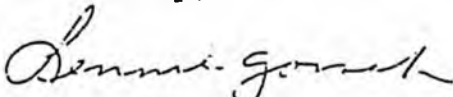
Position: As the bill is currently written it does not affect the Department of Natural Resources. If it was amended to include an exemption from liability as outlined below, the Department of Natural Resources would enthusiastically support it.

Background: The Department has many concerns relating to liability on state land. If this exemption of liability was extended to state land it would resolve many of those concerns about recreational use of both developed and undeveloped land and concerns regarding injuries and damages when we issue leases and permits.

The state should not be liable if it leases land in its natural condition and others improve it, as long as it was in its natural condition when it was originally leased.

Recommendation: The Department of Natural Resources recommends that the bill include "state land" under the definition of land, Sec. 05.40.010(g)(2).

Sincerely,



Judith M. Brady  
Commissioner

FISCAL NOTE

REQUEST:

Revision Date: 2/1/88  
Title: Permissive and nonpermissive use of land.  
Sponsor: Hoffman  
Requestor: House Judiciary Comm.

Agency Affected: DWR  
BRU: Land and Water Mgt.  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

[Empty box for analysis]

Prepared by: Janet Burleson Phone: 465-3400  
Division: Land and Water Management Date: 2/1/88  
Approved by Commissioner: Louise Barton-Comstock Date: 2-2-88  
Agency: 11

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

ALASKA FEDERATION OF NATIVES, INC.  
1987 ANNUAL CONVENTION

RESOLUTION NO. 87-12

TITLE: ANCSA LANDS TRESPASS

WHEREAS, the United States Congress recognized and transferred land ownership of specific land holding under the 1971 ANCSA Legislation; and

WHEREAS, sixteen (16) years have passed and interim conveyance has not yet been completed by the Department of Interior, to those ANCSA LANDS to this day; and

WHEREAS, trespass by U.S. citizens, tourists, developers and the general public occurs in and about the Native Corporation regions on a daily basis for many different reasons unknown to those Alaska Native landowners and as time progresses this inadvertant passage over and use of those private ANCSA LANDS causes concern to all involved.

NOW THEREFORE BE IT RESOLVED by the delegates to the 1987 annual convention of the Alaska Federation of Natives, Inc. that enforcement and compliance of trespass laws by the state and federal government on those ANCSA private lands begin today, and to support HB 198 in the forthcoming legislative session.

CONVENTION ACTION: PASSED



FEB 1 1988

File

# ALASKA FEDERATION OF NATIVES, INC.



411 W 4th Avenue, Suite 301 • Anchorage, Alaska 99501 • Phone (907) 274-3611

January 27, 1988

Senator John Binkley  
Alaska State Legislature  
P. O. Box V  
Juneau, Alaska 99811

*John*  
Dear Senator Binkley:

Representative Lyman Hoffman has notified the Federation that Committee Chairman Representative John Sund has scheduled HB 198 (Permissive and Non-Permissive Use of Land) for hearings before the House Judiciary Committee for February 3 at 1:30 pm.

HB 198 is important to private landowners in general. It is extremely important to Native landowners who have acquired large, remote holdings that were open to use and occupancy under earlier federal management.

HB 198 is but one element generated by the efforts of state, federal and Native representatives, as members of the Alaska Land Use Council, to resolve trespass and land management related issues. The bill focuses on the use of private land for recreational purposes in exchange for relief, under certain conditions, to the landowner of liability.

The enclosed AFN Resolution No. 87-1? was presented to and passed by the entire 1987 Convention delegation. Such overwhelming support indicates the importance of this bill to the Native community.

I respectfully request your support of HB 198.

Thank you.

Sincerely,

*Janie Leask*  
Janie Leask  
President

enclosure

cc: Representative Hoffman ✓

# ALASKA FEDERATION OF NATIVES, INC.



411 W 4th Avenue, Suite 301 • Anchorage, Alaska 99501 • Phone (907) 274-3611

January 27, 1988

Representative Henry Springer  
Alaska State Legislature  
P. O. Box V  
Juneau, Alaska 99811

Dear Representative <sup>Henry</sup> Springer:

Representative Lyman Hoffman has notified the Federation that Committee Chairman Representative John Sund has scheduled HB 198 (Permissive and Non-Permissive Use of Land) for hearings before the House Judiciary Committee for February 3 at 1:30 pm.

HB 198 is important to private landowners in general. It is extremely important to Native landowners who have acquired large, remote holdings that were open to use and occupancy under earlier federal management.

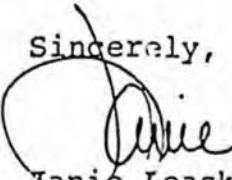
HB 198 is but one element generated by the efforts of state, federal and Native representatives, as members of the Alaska Land Use Council, to resolve trespass and land management related issues. The bill focuses on the use of private land for recreational purposes in exchange for relief, under certain conditions, to the landowner of liability.

The enclosed AFN Resolution No. 87-12 was presented to and passed by the entire 1987 Convention delegation. Such overwhelming support indicates the importance of this bill to the Native community.

I respectfully request your support of HB 198.

Thank you.

Sincerely,

  
Janie Leask  
President

enclosure

cc: Representative Hoffman ✓

Opinions

# No trespassing — protecting private property in Alaska

Several members of a hunting party stray onto private land and without realizing it. The land is unmarked, and each of the hunters assumes they are still on public land. At the end of the day, the hunters build a fire and camp overnight. Is this a trespass situation?

A contractor needs to clear some land for construction of a small structure on public land. Rather than keeping to the easement with the bulldozer he needs to do the work, he decides to take a shortcut across some privately owned land. What harm can there be if crossing just once?

In another area of the state, several men make their way furtively onto unmarked land they clearly know is privately owned. They vandalize an area by digging up some old gravesites, in search of valuable artifacts they can sell. They find nothing of value, and do irreparable damage to the site.

Everyone would certainly recognize the latter incident as a serious case of trespass, and few would argue the need

about by the complex and time-consuming process of land transfer initiated by the Statehood Act and the Alaska Native Claims Settlement Act. The need for public education on the issue was also discussed. Today's column will focus on efforts being undertaken to alleviate the problem of trespass in Alaska.

In January of 1985, the Alaska Land Use Council began work to address unauthorized use and trespass on both public and private land. A working group was established with representation from the state of Alaska, the federal government and a representative of the Alaska Federation of Natives.

The result of the working group's efforts was a formal set of Trespass Abatement Recommendations that was unanimously adopted by the ALUC in October of 1985. The Trespass Abatement Recommendations took a "good neighbor" approach which encourages public and private landowners to cooperate to prevent trespass on ad-

joining land. The recommendations identify specific ways to offer public education intended to prevent unauthorized use of public and private land. For example, state and federal agencies are now providing trespass related information on agency maps, brochures and land planning documents. Private and public landowners are jointly establishing priorities for preparation of user information maps. They are also identifying and focusing attention on areas subject to high use and trespass.

The state's Department of Natural Resources, in cooperation with Bristol Bay Native Corporation, is developing an Easement Atlas for the Bristol Bay region. This joint mapping program will not only provide accurate land ownership information, but will also show the location of all valid public easements and right of way in the region. These and other efforts to identify privately held lands adjoining public areas are

the impossibility of marking the boundaries of the vast land tracts privately held in Alaska. For example, Doyon Ltd., one of the regional corporations created by ANCSA, is the largest private landowner in the United States. Some blocks of land held by Doyon, although not entirely contiguous, would well exceed the size of Rhode Island.

Other cooperative efforts brought about by the recommendations include coordination of information for public education; public service announcements; visitor center displays that illustrate land status through maps and publications; and development of formal agreements, such as Land Bank agreements and land exchanges as vehicles to report suspected trespass incidents.

In addition to actions already being implemented, the working group's recommendations included establishing a central depository for land use policies and DNR easement information; a school educational program

that introduces materials on the history of the various land acts impacting Alaska and their effect on land ownership; and a landowner educational program that teaches sound land management principles and protection from trespass.

All of these recommendations are good ideas. They focus on public education of the issue, a much more reasonable approach to the problem than attempting to prosecute every person who inadvertently crosses private land. As a final suggestion, Alaska statutes need to be rewritten to better protect landowners under both authorized and unauthorized use situations. AFN, with input from private property owners, has drafted proposed legislation for introduction in the legislature. It is a first step to protecting private property interests.

Janle Leask, an Alaska native, is president of the Alaska Federation of Natives.



by Janie Leask

for prosecution. But there is also the potential for serious harm in the first two cases cited. In the first, there is the potential for a forest fire, as well as some likelihood for adverse impact to the subsistence resources of the region. In the second, there is a possibility of serious damage to the land by heavy equipment. A bulldozer crossing the tundra only one time can cause severe surface degradation. In both of the first two cases, repeating the trespass violations over a period of time may have a much more adverse impact on the land, and on subsistence activity in the area. My last column focused on trespass problems I brought up