

***RS 2477***

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Mary Van Nimwegen

*Joint Senate & House Transportation Resources 1/20/89*

RS2477



THE SECRETARY OF THE INTERIOR  
WASHINGTON

Memorandum

To: Secretary.

From: <sup>Acting</sup> Assistant Secretary for Fish and Wildlife and Parks  
Assistant Secretary for Land and Minerals Management

(Sgd) Susan Recce

Subject: Departmental Policy on Section 8 of the Act of  
July 26, 1866, Revised Statute 2477 (Repealed),  
Grant of Right-of-Way for Public Highways (RS 2477)

Although RS 2477 was repealed nearly 12 years ago, controversies periodically arise regarding whether a public highway was established pursuant to the congressional grant under RS 2477 and the extent of rights obtained under that grant. Under RS 2477, the United States had (has) no duty or authority to adjudicate an assertion or application. However, it is necessary in the proper management of Federal lands to be able to recognize with some certainty the existence, or lack thereof, of public highway grants obtained under RS 2477.

With the passage of the Federal Land Policy and Management Act, the Bureau of Land Management (BLM) developed procedures, policy, and criteria for recognition, in cooperation with local governments, of the existence of such public highways and notation to the BLM's land records. This has allowed the BLM to develop land use plans and to make appropriate management decisions that consider the existence of these highway rights.

Issues have recently been raised by the State of Alaska and others which question not only the BLM policy but also the management actions by other bureaus within the Department. We have had the BLM review and report on the various issues and concerns (Attachment 2) and consulted with the State of Alaska, the BLM, the Fish and Wildlife Service, and the National Park Service.

We believe that the land management objectives of the Department will be improved with adoption of a Departmental policy and recommend that the attached policy (Attachment 1) be adopted for Departmentwide use.

Approve: Donald Paul Hodel

Disapprove: \_\_\_\_\_

Date: DEC 07 1988

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

Attachments: 1-RS 2477 Policy  
2-BLM Report

cc: Secretary's Reading File (2)

ES (8): MIB Rm. 6221

LM (2)

FW (2)

330 Official

330 Reading File, MIB 3660

LLM-330:Bingham:3/4/88, IB Rm. 3660:343-5441:0434B09

Revised: FW-Wyman:10/4/88:343-9211:RS2477.1

## RS 2477

Section 8 of the Act of July 26, 1866  
Revised Statute 2477 (43 U.S.C. 932)  
Repealed October 21, 1976

Section 8 of the Act of July 26, 1866, provided:

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

Although this statute, 43 U.S.C. 932 (RS 2477), was repealed by Title VII of the Federal Land Policy and Management Act of October 21, 1976, 90 Stat. 2793, many rights-of-way (R/W) for public highways obtained under the statute exist or may exist on lands administered by the Department and other Federal agencies. The existence or lack of existence of such highway R/Ws has material bearing on the development and implementation of management plans for conservation system units and other areas of Federal lands. Land managing Bureaus of the Department should develop, as appropriate, internal procedures for administratively recognizing those highways meeting the following criteria and recording such recognized highways on the land status records for the area managed by that Bureau.

Acceptance:

To constitute acceptance, all three conditions must have been met:

1. The lands involved must have been public lands, not reserved for public uses, at the time of acceptance.
2. Some form of construction of the highway must have occurred.
3. The highway so constructed must be considered a public highway.

Public lands, not reserved for public uses:

Public lands were those lands of the United States that were open to the operation of the various public land laws enacted by Congress.

Public lands, not reserved for public uses, do not include public lands reserved or dedicated by Act of Congress, Executive Order, Secretarial Order, or, in some cases, classification actions authorized by statute, during the existence of that reservation or dedication.

Public lands, not reserved for public uses, do not include public lands pre-empted or entered by settlers under the public land laws or located under the mining laws which ceased to be public lands during the pendency of the entry, claim, or other.

Construction:

Construction must have occurred while the lands were public lands, not reserved for public uses.

Construction is a physical act of readying the highway for use by the public according to the available or intended mode of transportation - foot, horse, vehicle, etc. Removing high vegetation, moving large rocks out of the way, or filling low spots, etc., may be sufficient as construction for a particular case.

Survey, planning, or pronouncement by public authorities may initiate construction but does not, by itself, constitute construction. Construction must have been initiated prior to the repeal of RS 2477 and actual construction must have followed within a reasonable time.

Road maintenance over several years may equal actual construction.

The passage of vehicles by users over time may equal actual construction.

#### Public Highway:

A public highway is a definitive route or way that is freely open for all to use. It need not necessarily be open to vehicular traffic for a pedestrian or pack animal trail may qualify. A toll road or trail is still a public highway if the only limitation is the payment of the toll by all users. Multiple ways through a general area may not qualify as a definite route, however, evidence may show that one or another of the ways may qualify.

The inclusion of a highway in a State, county, or municipal road system constitutes being a public highway.

Expenditure of construction or maintenance money by an appropriate public body is evidence of the highway being a public highway.

Absent evidence to the contrary, a statement by an appropriate public body that the highway was and still is considered a public highway will be accepted.

#### Ancillary uses or facilities usual to public highways:

Facilities such as road drainage ditches, back and front slopes, turnouts, rest areas, and the like, that facilitate use of the highway by the public are considered part of the public highway R/W grant.

Other facilities such as telephone lines, electric lines, etc., that were often placed along highways do not facilitate use of the highway and are not considered part of the public highway R/W grant. An exception is the placement of such facilities along such R/W grants on lands administered by the Bureau of Land Management prior to November 7, 1974. Prior to this date, the requirement of filing an application for such facilities was waived. Any new facility, addition, modification of route, etc., after that date requires the filing of an application/permit for such facility. Facilities that were constructed, with permission of the R/W holder, between November 7, 1974, and the effective date of this policy, should, except in rare and unusual circumstances, be accommodated by issuance of a R/W or permit authorizing the continuance of such facility.

Width:

For those highway R/Ws in the State, county, or municipal road system, i.e., the R/W is held and maintained by the appropriate government body, the width of the R/W is as specified for the type of highway under State law, if any, in force at the time the grant could be accepted.

In some cases, the specific R/W may have been given a lesser or greater width at the time of creation of the public highway than that provided in State law.

Where State law does not exist or is not applicable to the specific highway R/W, the width will be determined in the same manner as non-governmentally controlled highways.

Where the highway R/W is not held by a local government or State law does not apply, the width is determined from the area, including appropriate back slopes, drainage ditches, etc., actually in use for the highway at the later of (1) acceptance of the grant or (2) loss of grant authority under RS 2477, e.g., repeal of RS 2477 on October 21, 1976, or an earlier removal of the land from the status of public lands not reserved for public uses.

Abandonment:

Abandonment, including relinquishment by proper authority, occurs in accordance with State, local or common law or Judicial precedence.

Responsibilities of Agency and Right-of-Way Holder:

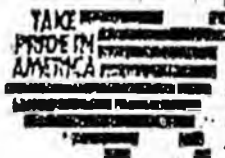
This policy addresses the creation and abandonment of property interests under RS 2477 and the respective property rights of the holder of a R/W and the owner of the servient estate.

Under the grant offered by RS 2477 and validly accepted, the interests of the Department are that of owner of the servient estate and adjacent lands/resources. In this context, the Department has no management control under RS 2477 over proper uses of the highway and highway R/W unless we can demonstrate unnecessary degradation of the servient estate. It should be noted, however, that this policy does not deal with the applicability, if any, of other federal, state, and/or local laws on the management or regulation of R/Ws reserved pursuant to RS 2477.

Reasonable activities within the highway R/W are within the jurisdiction of the holder. As such, the Department has no authority under RS 2477 to review and/or approve such reasonable activities. However, review and approval may or may not occur, depending upon the applicability, if any, of other federal, state, or local laws or general relevance to the use of a R/W.



## United States Department of the Interior

BUREAU OF LAND MANAGEMENT  
WASHINGTON, D.C. 20240

IN REPLY REFER TO

APR

2801 (330)  
RS 2477

## Memorandum

To: Assistant Secretary - Land and Minerals Management

From: Director, Bureau of Land Management

Subject: Departmental Policy on Section 8 of the Act of July 26, 1866,  
Revised Statute 2477 (Repealed), Grant of Right-of-Way For Public  
Highways (RS 2477)

Issue: Department Policy on the Recognition of Public Highway Rights-of-Way  
Granted Under RS 2477 and the Administration of such Recognized  
Grants.

Need:

Significant issues have been raised, principally in Alaska, regarding the Department's interpretation and position as to the acceptance of the right-of-way (R/W) grant offered by Congress by Section 8 of the Act of July 26, 1866, RS 2477, repealed by Title VII of the Federal Land Policy and Management Act of October 21, 1976, 90 Stat. 2793 (FLPMA). For those grants recognized, issues exist as to the extent of the grant, i.e., terms and conditions such as the width, allowable uses, and Federal oversight.

Historically, such issues have generally affected only the Bureau of Land Management (BLM), with minor impact on other Federal land managing agencies. Two relatively recent events have heightened the need for expressed policy at the Departmental or higher level. First, the repeal of RS 2477 in 1976 closed the door to the acceptance of the grant for new highways or corrections to existing road situations to perfect acceptance of the grant. Secondly, the addition of extensive acreages in Alaska to the National Park and National Wildlife Refuge Systems by the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) requires the managing agency to consider the possible existence of RS 2477 highways on these Conservation System Units. Other Federal land managing agencies in Alaska, principally the Forest Service, U.S. Department of Agriculture, are also involved but to a lesser extent than the three Interior Bureaus.

Historical:

RS 2477 provided:

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

In the past, the Department paid little attention to such public highways on the public lands since if the grant was not accepted today it could be tomorrow. In disposing of the public lands, the General Land Office and, subsequently, the BLM did not even include the existence of such public highways in the patent document; the agency had no duty to adjudicate the acceptance or non-acceptance of the highway grant. As with other "open" offers by Congress, such as the railroad grants, the existence of such rights were considered factual matters that the settler or enterer of public lands should recognize as existing at the time of settlement or entry. Disputes between the holder of the highway and the patentee were left for settlement in local court under the laws of the State or Territory.

As a result, there is lacking any quantity of administrative or judicial decisions at the Federal level to provide much assistance in setting Federal policy and a plethora of local judicial decisions, often conflicting between States or Territories. Attachment 8 is a summary of published administrative decisions regarding RS 2477.

#### Regulations:

Regulations promulgated by the Department in 1938 provided:

"The grant . . . becomes effective upon the construction or establishing of highways in accordance with the State laws, over public lands not reserved for public uses. No application should be filed under said R.S. 2477 as no action on the part of the Federal Government is necessary." See 43 CFR 244.55 (1938) (Par. 55, Circ. 1237a, May 23, 1938).

In 1949, regulations were added to provide for a highway applicant to petition the BLM to modify a "public use" reservation to allow application of RS 2477. See 43 CFR 244.47 (1949).

In 1952, the regulations were modified to exclude from the RS 2477 grant any R/Ws for facilities with respect to which any other provision of law specifically required the filing of an application for R/W. These regulations also waived the requirement of filing an application for all facilities usual to or along a highway R/W (certain specific exceptions) where the holder of the highway R/W consented. These regulations also provided that the R/W granted under RS 2477 would be subject to certain terms and conditions—clearing, soil and resource conservation, prevent and suppress fires, build or repair facilities damaged in construction of highway, restoration upon termination, nondiscrimination, and reservation of certain minerals. Where the highway holder consented to construction of related facilities, such holder was responsible for compliance with appropriate terms and conditions of the Department for the type of facility. See 43 CFR 244.58 (1953 Supp).

In 1974, the regulations were modified to remove the waiver provided in 1952 and required applications to be filed for facilities usual to a highway. See 43 CFR 2822.2-2 (1979).

With the repeal of RS 2477 in 1976, regulations were adopted allowing any person or State or local government which has constructed public highways under RS 2477 to file a map showing the location of such highway with the BLM. See 43 CFR 2802.5(b) (1985). This action was taken to facilitate the management of the public lands under the FLPMA.

#### BLM Policy:

Current policy is contained in BLM Manual 2801.48B (1986). It provides:

- Grant became fixed when constructed and accepted as a public highway.
- Construction must be actual; survey and planning are not construction. Road maintenance over several years may equal construction. Incremental maintenance over several years may equal construction. Construction on public lands must have occurred prior to 10/21/76. Where history is unknown or questionable, its existence in condition suitable for public use is evidence that sufficient construction has taken place.
- Highway must be public, an access road restricted by locked gates is not a public highway. Expenditure of public funds on a road will equate to a public highway. State in which road is located must have a procedure to confirm the road as a public highway, i.e., a public highway may not be created contrary to local law.
- RS 2477 did not specify the extent, width, or nature of rights conveyed. State law specifying highway width(s) that is specific to RS 2477 highways shall be used. Where State law does not apply, width is that required for the road uses existing at the time of acceptance or repeal of RS 2477.
- Holder has right to maintain, including realignment and reconstruction within the R/W width; activities outside require permit.
- Facilities usual to public highways, i.e., telephone and electric lines, are to be authorized by separate R/Ws granted under FLPMA; grandfather clause for those established during application waiver period.
- Field Offices are directed to work with each State, county, and municipality to identify all existing highways; acknowledge, serialize, and note Master Title Plats of those meeting criteria.

#### Concern in Alaska:

By 1985 many issues were raised in Alaska concerning possible RS 2477 R/Ws and management plans being prepared for the individual Conservation System Units created under the ANILCA. Positions and concerns expressed by the State (both administrative and legislative), Native entities, minerals industry, conservation groups, and others illustrated a need for a single Departmental or Federal Government position on RS 2477. In 1986, the BLM State Director, Alaska, was asked to chair an interagency group consisting of the regional heads of the BLM, Fish and Wildlife Service, National Park Service, and the

Forest Service to formulate a policy acceptable to these regional heads. A proposed policy was submitted by that group, together with comments by the State of Alaska, to the Director, BLM, in August 1987 requesting agency approval (Attachment 1). This proposed policy deviates from existing BLM policy in two areas: (1) establishing the width as that which was necessary for the use involved at the time the land was reserved for a public use or the repeal of RS 2477 (ignoring State statutes) and (2) providing that the Federal land managing agency had administrative control over use of the public highway.

Expressing reservations with the proposed policy, the Governor of Alaska's Washington representative requested meetings with the Assistant Secretaries for Land and Minerals Management and for Fish and Wildlife and Parks to present the State's views and seek a policy acceptable to both the State and the Department. As a result of such a meeting on November 24, 1987, the Governor's representative submitted four issues needing resolution, including the State's reasoning for its position on the issues. These issues and our response are contained in Attachments 5 and 6. With some clarification, BLM's existing policy is acceptable to the Governor's representative on all but one issue--legislative acceptance of RS 2477 on section lines.

Interior's Position is critical:

As the steward of the public lands, not reserved for public purposes, the Department's past and current policy and rulings on the acceptance of the grant of R/Ws for public highways can have impacts on the management of Federal lands in the 30 "public land" States--basically those west of the Mississippi River. RS 2477 issues involving the creation of "Federal reserves - Forests, Parks, Refuges" at the turn of the century and the early 1900's have, generally, been long resolved either through Federal recognition, abandonment, or judicial decisions, although some issues such as utility lines usual to a public highway still occur. Federal reserves created from unreserved public lands in the near past, especially the Conservation System Units in Alaska established under the ANILCA, contain or possibly contain numerous RS 2477 issues.

The one remaining issue involving recognition of acceptance of the congressional grant by State/Territorial law or local government ordinance not diligently followed by actual construction is an issue that has a potential effect on many Federal reserves in the public domain States as well as the remaining public lands under BLM jurisdiction.

In addition there is a perception, with some reality, that decisions made reflecting Federal lands will carry over into the private realty arena. Concern has been expressed here by the Alaska Federation of Natives.

Section Line RS 2477 R/Ws:

Alaska contends, as do some other States, that a positive act by the public authorities, i.e., State/Territory legislative branch, county or municipal authorities pursuant to State law, declaring a public highway along all section/township lines is acceptance of the grant offered by Congress under RS 2477. It is contended that such a covenant runs with the land, whether a highway is actually constructed or not, until there is appropriate action taken to abandon or otherwise terminate the R/W pursuant to State law or judicial action. To mollify private landowners who received title from the United States subsequent to such section line legislation, the Alaska Governor's representative has indicated that the State would compensate such owners prior to actual construction of a section line highway.

While section line statutes constitute the primary discussion issue, this issue would also include those cases where the appropriate local authority, counties, for example, by resolution or other appropriate action declared the establishment of a public highway along a route which, for some reason, was never actually constructed.

Western States which have/had section line statutes include Alaska (Territorial and State), Arizona (however State law requires a road to be adopted by the county or other jurisdiction after it has been constructed to become a public highway), North and South Dakota (Dakota Territorial law), and Kansas. Montana, although it does not have a section line statute, has interpreted RS 2477 as requiring construction. Various counties in California, Colorado, and Washington are known to have enacted section line ordinances. Local courts have held that, once dedicated, the highway may only be terminated according to the procedures of the local jurisdiction which, depending on the local jurisdiction, may be only through a public procedure of intent to abandon, hearing, and final abandonment or may occur through non-use and/or adverse possession.

As early as 1898 the Department held that such section line statutes or ordinances did not apply unless the highway was actually constructed (26 LD 446) (Attachment 2). In 1980, the Deputy Solicitor provided a lengthy and detailed position on RS 2477 to the Department of Justice (Attachment 3). Included in this letter was the requirement that construction must have occurred for acceptance of the RS 2477 grant. At the request of the District Court, Alaska, the United States submitted an Amicus Curiae brief to the Court in 1986, which included detailed reasoning that RS 2477 requires construction in order to establish a R/W (Attachment 4).

Problems if Section Lines Adopted:

A number of issues arise if such section line legislation/ordinances are considered acceptance of the grant under RS 2477. Among these are:

When/What does it attach?

If the land was covered by a rectangular survey our position would be that the grant would have become effective on the date of the legislation or ordinance.

If the land is subsequently surveyed, does the effective date of the grant relate back to the date of the legislation or ordinance or to the date of survey? We believe the later would be the answer.

If the land is reserved for public use prior to survey but subsequent to the legislation or ordinance, does the affect of the legislation or ordinance attach upon survey? We believe that it would not.

Are officially accepted protraction diagrams, which are used for resource sale/lease and from which subsequent surveys conform as to the location of township and section corners, considered as establishing section lines for which the grant becomes effective? We would not concur with such a proposition.

In Alaska, departures from the usual rectangular survey system are authorized, especially for conveyances to the State and to Native Corporations. Since these surveys are based on the township grid (identified as T.-N., R.-E., -M) but do not necessarily identify sections, i.e., the interior of the township is designated Tract A or Tracts A & B, would the surveyed lines that would otherwise correspond to section lines be impressed with the R/W grant? We think they would.

Alaska. Depending on the answers to the above questions, only a small amount of federally owned land would be subject to a R/W grant if applied to only actually surveyed section lines (by 1976 only about 15 percent of the State had been surveyed) and most all Federal lands if applied to protracted survey lines.

#### Impacts outside of Alaska

Assume that the R/W grant attaches to the section line where such land was public land, not reserved for public use, at the time of the legislative act or subsequent date when actually surveyed.

North and South Dakota. All surveyed public land, not reserved for public use, in these two States in 1872 would be impressed with a section line R/W grant. At time of subsequent survey, such public lands not entered would also be impressed with the R/W grant.

In 1872, little public lands had been set aside for public uses; Forest Reserves, the forerunners to National Forests, and National Parks, came into existence in the 1890's and later. In these two States, 9.5 million acres are owned by the Federal Government (1981 Public Land Statistics), including some 4.0 million reacquired acres. Acres by agency are: Forest Service 3.0 millions acres, Corps of Engineers 1.1 million, Fish and Wildlife Service 0.5 million, and BLM, National Park Service, Bureau of Reclamation, and Bureau of Indian Affairs at 0.2 million each.

Kansas. All surveyed public land, not reserved for public use, in this State in 1907 would be impressed with a section line R/W grant. At time of subsequent survey, such public lands not entered would also be impressed with the R/W grant. By 1976 all lands in the State had been surveyed.

Only some 750,000 acres are owned by Federal agencies--Corps of Engineers 320,000; Army 125,000; and Forest Service 105,000. The majority of this acreage is acquired land.

Other Western States. Arizona had (has) section line legislation, however, the courts there ruled that Arizona law also required an acceptance action after construction for the road to become a public highway.

In Washington, California, and Colorado, there are published cases involving section line ordinances enacted by county government, i.e., the Douglas County, Washington, ordinance of April 6, 1897. To identify the extent of such county ordinances would require a historical search of individual County actions.

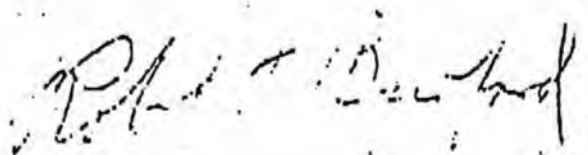
It is our recommendation that we do not modify our interpretation of the Statute that construction must have occurred in order for a R/W grant under RS 2477 to attach.

Federalism - Executive Order 12612:

With the possible exception of the section line issue, existing BLM policy and the action we are herein recommending comport with the principles of Executive Order 12612. The section line issue involves interpretation of a Federal statute and the property rights of the United States and various States, including Alaska. To accede to the position of the State of Alaska would have adverse impact on numerous properties of the Federal Government, including the possibility of having to reacquire such property interests to protect Federal interests.

Recommendation:

It is recommended that the Department retain the policy established in BLM Manual 2801.48B (1986) and adopt it as Departmental policy for use by other land managing Bureaus in the Department.



8 Attachments

- 1 - SD AK BLM Memo of 8/1/87 + Attachment
- 2 - 26 L.D. 466
- 3 - SOL letter of 4/23/80
- 4 - Pgs 1 & 16-26 of US Amicus Brief in Greenhouse
- 5 - Katz letter of 12/4/87
- 6 - BLM response
- 7 - Katz letter of 2-29-88
- 8 - Summary of Published Administrative Decisions

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Abandonment:

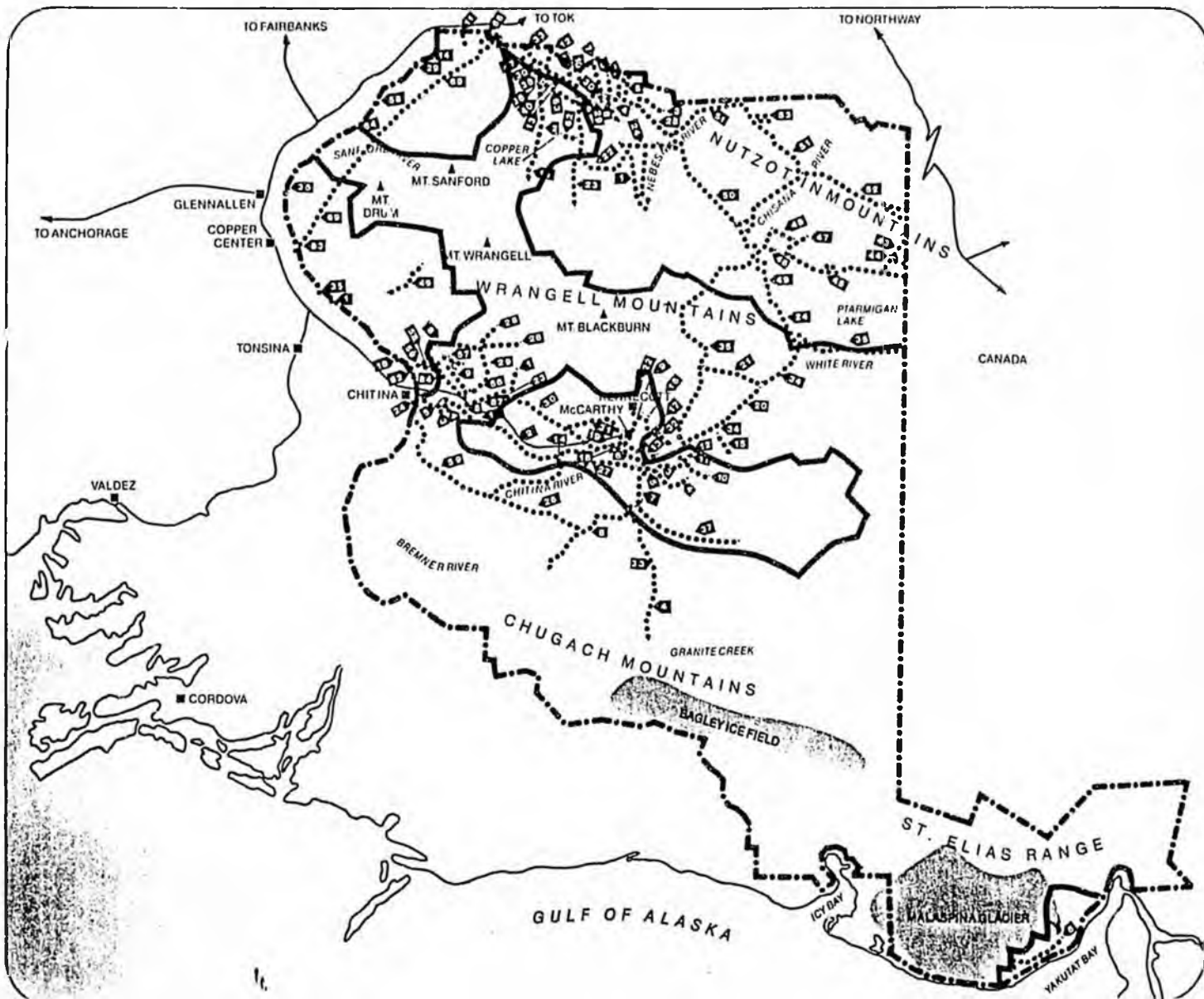
Abandonment, including relinquishment by proper authority, occurs in accordance with State, local or common law or Judicial precedence.

Responsibilities of Agency and Right-of-Way Holder:

This policy addresses the creation and abandonment of property interests under RS 2477 and the respective property rights of the holder of a R/W and the owner of the servient estate.

Under the grant offered by RS 2477 and validly accepted, the interests of the Department are that of owner of the servient estate and adjacent lands/resources. In this context, the Department has no management control under RS 2477 over proper uses of the highway and highway R/W unless we can demonstrate unnecessary degradation of the servient estate. It should be noted, however, that this policy does not deal with the applicability, if any, of other federal, state, and/or local laws on the management or regulation of R/Ws reserved pursuant to RS 2477.

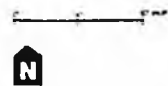
Reasonable activities within the highway R/W are within the jurisdiction of the holder. As such, the Department has no authority under RS 2477 to review and/or approve such reasonable activities. However, review and approval may or may not occur, depending upon the applicability, if any, of other federal, state, or local laws or general relevance to the use of a R/W.

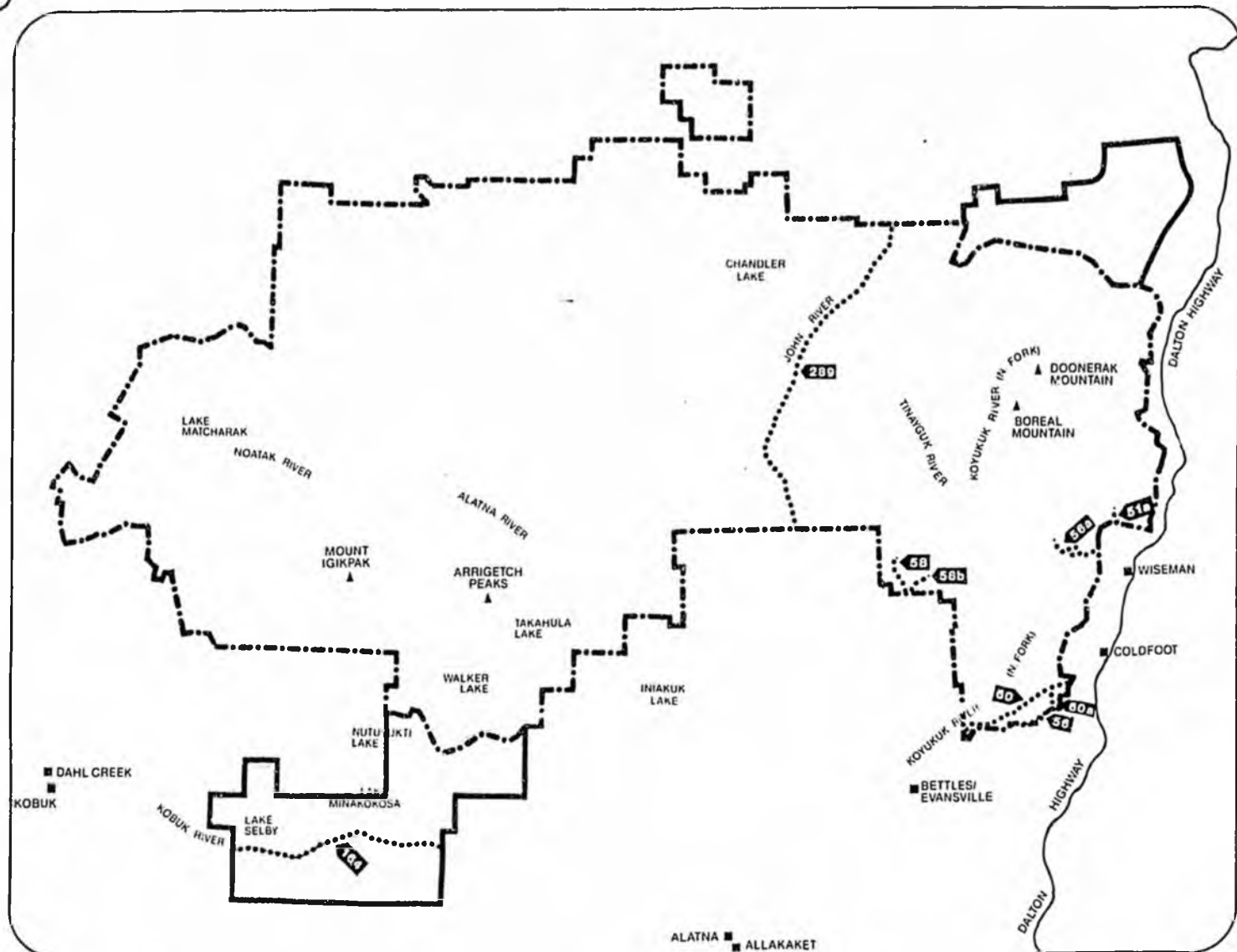


THIS MAP HAS BEEN PROVIDED BY THE STATE TO ILLUSTRATE HIS OFFERINGS OF WAY THAT HAVE BEEN ASSIGNED THE MAP DOES NOT ESTABLISH THE VALIDITY OF THESE RIGHTS OF WAY AND DOES NOT NECESSARILY PROVIDE THE PUBLIC THE RIGHT TO TRAVEL OVER THESE AREAS. THE USE OF OFF ROAD VEHICLES IN THE MOUNTAINS OTHER THAN ESTABLISHED ROADS OR DESIGNATED AREAS IS PROHIBITED BY 36 CFR 114. THESE CLAIMS DO NOT CONSTITUTE DESIGNATED ROUTES FOR OFF ROAD VEHICLE USE.

**POSSIBLE R.S. 2477 RIGHTS-OF-WAY**  
**WRANGELL-ST. ELIAS**  
**National Park and Preserve**

- PARK BOUNDARY
- PRESERVE BOUNDARY
- GLACIERS AND ICEFIELDS
- ..... POSSIBLE R.S. 2477 TRAIL
- 286** R.S. 2477 TRAIL NO.  
(This number corresponds to the Alaska Existing Trails System Source State of Alaska Department of Transportation Public Facilities Submitted April 1974)





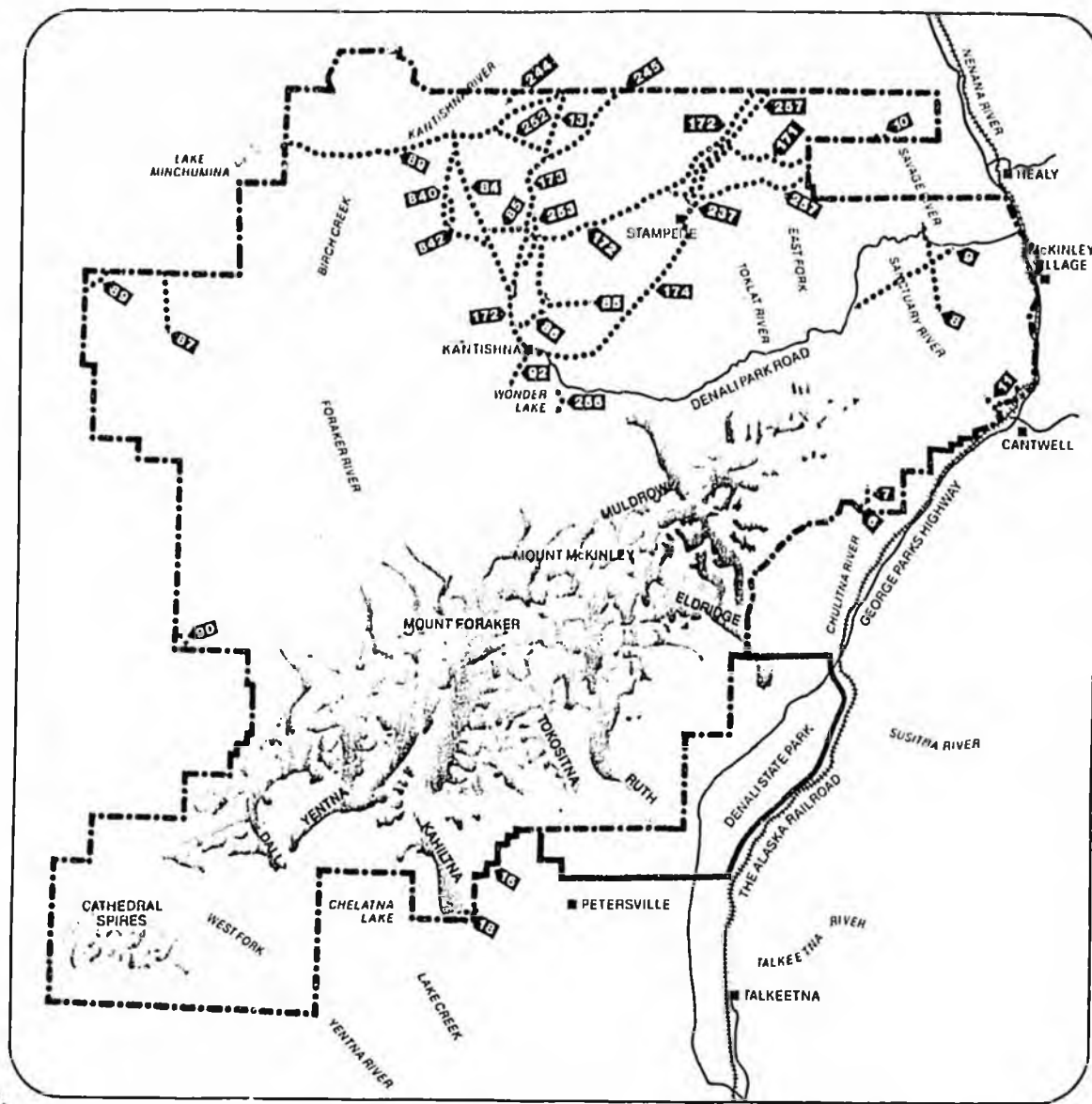
THIS MAP HAS BEEN PROVIDED BY THE STATE TO ILLUSTRATE ITS 2477 RIGHTS-OF-WAY CLAIMS. IT DOES NOT ESTABLISH THE VALIDITY OF THESE RIGHTS-OF-WAY AND DOES NOT NECESSARILY PROVIDE THE PUBLIC THE RIGHT TO TRAVEL OVER THESE AREAS. THE USE OF OFF ROAD VEHICLES IN LOCATIONS OTHER THAN ESTABLISHED ROADS OR DESIGNATED AREAS IS PROHIBITED BY AS 30 CFR 1114. THESE CLAIMS DO NOT CONSTITUTE DESIGNATED ROUTES FOR OFF ROAD VEHICLE USE.

**POSSIBLE R.S. 2477  
RIGHTS-OF-WAY  
GATES OF THE  
ARCTIC  
National Park and Preserve**

- PARK BOUNDARY
- PRESERVE BOUNDARY
- ..... POSSIBLE R.S. 2477 TRAIL
- 22 R.S. 2477 TRAIL NO.

(This number corresponds to the Alaska Existing Trails System Source State of Alaska Department of Transportation Public Facilities Submitted April 1974)





THIS MAP HAS BEEN PROVIDED BY THE STATE TO ILLUSTRATE ITS RIGHTS-OF-WAY THAT HAVE BEEN ASSERTED. THE MAP DOES NOT ESTABLISH THE VALIDITY OF THESE RIGHTS-OF-WAY AND DOES NOT NECESSARILY PROVIDE THE PUBLIC THE RIGHT TO TRAVEL OVER THESE AREAS. THE USE OF OFF-ROAD VEHICLES IN LOCATIONS OTHER THAN ESTABLISHED ROADS OR DESIGNATED AREAS IS PROHIBITED BY 38 C.F.R. 171.11. THESE CLAIMS DO NOT CONSTITUTE DESIGNATED ROUTES FOR OFF-ROAD VEHICLE USE.

**POSSIBLE R.S. 2477  
RIGHTS-OF-WAY  
DENALI  
National Park and Preserve**

- PARK BOUNDARY
- PRESERVE BOUNDARY
- GLACIERS
- POSSIBLE R.S. 2477 TRAIL
- R.S. 2477 TRAIL NO.  
(This number corresponds to the Alaska Existing Trails System. Source: State of Alaska Department of Transportation/Public Facilities Submitted April 1974)



STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907.465-3800

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

Mary Van Nimwegen

*Joint Senate Transportation  
and Senate Resources*

*2/3/86*

*Senate Resources*

*2/22/85*

STEVE COWPER  
GOVERNOR



PHONE  
907-452-1545  
451-2920

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
FAIRBANKS

December 14, 1988

The Honorable Senator  
Bettye Fahrenkamp  
Suite 201  
119 North Cushman Street  
Fairbanks, AK 99701

Dear Senator *Bettye* Fahrenkamp:

Re: Revised Statute 2477

Enclosed is a copy of the recent policy agreement reached on RS 2477. It is the long-awaited agreement that I promised to send, once it became official.

The policy does not deal with section line easements because of differing opinions about the relevant law.

Sincerely,

A handwritten signature in cursive script that reads "Rebecha".

Rebecha Miller, Director  
Fairbanks Regional Office

Encl.



THE SECRETARY OF THE INTERIOR  
WASHINGTON

Memorandum

To: Secretary.

From: <sup>(Sgt)</sup> Acting Assistant Secretary for Fish and Wildlife and Parks, *Susan Recce*  
Assistant Secretary for Land and Minerals Management

Subject: Departmental Policy on Section 8 of the Act of  
July 26, 1866, Revised Statute 2477 (Repealed),  
Grant of Right-of-Way for Public Highways (RS 2477)

Although RS 2477 was repealed nearly 12 years ago, controversies periodically arise regarding whether a public highway was established pursuant to the congressional grant under RS 2477 and the extent of rights obtained under that grant. Under RS 2477, the United States had (has) no duty or authority to adjudicate an assertion or application. However, it is necessary in the proper management of Federal lands to be able to recognize with some certainty the existence, or lack thereof, of public highway grants obtained under RS 2477.

With the passage of the Federal Land Policy and Management Act, the Bureau of Land Management (BLM) developed procedures, policy, and criteria for recognition, in cooperation with local governments, of the existence of such public highways and notation to the BLM's land records. This has allowed the BLM to develop land use plans and to make appropriate management decisions that consider the existence of these highway rights.

Issues have recently been raised by the State of Alaska and others which question not only the BLM policy but also the management actions by other bureaus within the Department. We have had the BLM review and report on the various issues and concerns (Attachment 2) and consulted with the State of Alaska, the BLM, the Fish and Wildlife Service, and the National Park Service.

We believe that the land management objectives of the Department will be improved with adoption of a Departmental policy and recommend that the attached policy (Attachment 1) be adopted for Departmentwide use.

Approve: Donald Paul Hodel

Disapprove: \_\_\_\_\_

Date: DEC 07 1988

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

Attachments: 1-RS 2477 Policy  
2-BLM Report

cc: Secretary's Reading File (2)  
ES (8): MIB Rm. 6221  
LM (2)  
FW (2)  
330 Official  
330 Reading File, MIB 3660  
LLM-330:Bingham:3/4/88, IB Rm. 3660:343-5441:0434809  
Revised: FW-Wyman:10/4/88:343-9211:RS2477.1

## RS 2477

Section 8 of the Act of July 26, 1866  
Revised Statute 2477 (43 U.S.C. 932)  
Repealed October 21, 1976

Section 8 of the Act of July 26, 1866, provided:

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

Although this statute, 43 U.S.C. 932 (RS 2477), was repealed by Title VII of the Federal Land Policy and Management Act of October 21, 1976, 90 Stat. 2793, many rights-of-way (R/W) for public highways obtained under the statute exist or may exist on lands administered by the Department and other Federal agencies. The existence or lack of existence of such highway R/Ws has material bearing on the development and implementation of management plans for conservation system units and other areas of Federal lands. Land managing Bureaus of the Department should develop, as appropriate, internal procedures for administratively recognizing those highways meeting the following criteria and recording such recognized highways on the land status records for the area managed by that Bureau.

Acceptance:

To constitute acceptance, all three conditions must have been met:

1. The lands involved must have been public lands, not reserved for public uses, at the time of acceptance.
2. Some form of construction of the highway must have occurred.
3. The highway so constructed must be considered a public highway.

Public lands, not reserved for public uses:

Public lands were those lands of the United States that were open to the operation of the various public land laws enacted by Congress.

Public lands, not reserved for public uses, do not include public lands reserved or dedicated by Act of Congress, Executive Order, Secretarial Order, or, in some cases, classification actions authorized by statute, during the existence of that reservation or dedication.

Public lands, not reserved for public uses, do not include public lands pre-empted or entered by settlers under the public land laws or located under the mining laws which ceased to be public lands during the pendency of the entry, claim, or other.

Construction:

Construction must have occurred while the lands were public lands, not reserved for public uses.

Construction is a physical act of readying the highway for use by the public according to the available or intended mode of transportation - foot, horse, vehicle, etc. Removing high vegetation, moving large rocks out of the way, or filling low spots, etc., may be sufficient as construction for a particular case.

Survey, planning, or pronouncement by public authorities may initiate construction but does not, by itself, constitute construction. Construction must have been initiated prior to the repeal of RS 2477 and actual construction must have followed within a reasonable time.

Road maintenance over several years may equal actual construction.

The passage of vehicles by users over time may equal actual construction.

#### Public Highway:

A public highway is a definitive route or way that is freely open for all to use. It need not necessarily be open to vehicular traffic for a pedestrian or pack animal trail may qualify. A toll road or trail is still a public highway if the only limitation is the payment of the toll by all users. Multiple ways through a general area may not qualify as a definite route, however, evidence may show that one or another of the ways may qualify.

The inclusion of a highway in a State, county, or municipal road system constitutes being a public highway.

Expenditure of construction or maintenance money by an appropriate public body is evidence of the highway being a public highway.

Absent evidence to the contrary, a statement by an appropriate public body that the highway was and still is considered a public highway will be accepted.

#### Ancillary uses or facilities usual to public highways:

Facilities such as road drainage ditches, back and front slopes, turnouts, rest areas, and the like, that facilitate use of the highway by the public are considered part of the public highway R/W grant.

Other facilities such as telephone lines, electric lines, etc., that were often placed along highways do not facilitate use of the highway and are not considered part of the public highway R/W grant. An exception is the placement of such facilities along such R/W grants on lands administered by the Bureau of Land Management prior to November 7, 1974. Prior to this date, the requirement of filing an application for such facilities was waived. Any new facility, addition, modification of route, etc., after that date requires the filing of an application/permit for such facility. Facilities that were constructed, with permission of the R/W holder, between November 7, 1974, and the effective date of this policy, should, except in rare and unusual circumstances, be accommodated by issuance of a R/W or permit authorizing the continuance of such facility.

Width:

For those highway R/Ws in the State, county, or municipal road system, i.e., the R/W is held and maintained by the appropriate government body, the width of the R/W is as specified for the type of highway under State law, if any, in force at the time the grant could be accepted.

In some cases, the specific R/W may have been given a lesser or greater width at the time of creation of the public highway than that provided in State law.

Where State law does not exist or is not applicable to the specific highway R/W, the width will be determined in the same manner as non-governmentally controlled highways.

Where the highway R/W is not held by a local government or State law does not apply, the width is determined from the area, including appropriate back slopes, drainage ditches, etc., actually in use for the highway at the later of (1) acceptance of the grant or (2) loss of grant authority under RS 2477, e.g., repeal of RS 2477 on October 21, 1976, or an earlier removal of the land from the status of public lands not reserved for public uses.

Abandonment:

Abandonment, including relinquishment by proper authority, occurs in accordance with State, local or common law or Judicial precedence.

Responsibilities of Agency and Right-of-Way Holder:

This policy addresses the creation and abandonment of property interests under RS 2477 and the respective property rights of the holder of a R/W and the owner of the servient estate.

Under the grant offered by RS 2477 and validly accepted, the interests of the Department are that of owner of the servient estate and adjacent lands/resources. In this context, the Department has no management control under RS 2477 over proper uses of the highway and highway R/W unless we can demonstrate unnecessary degradation of the servient estate. It should be noted, however, that this policy does not deal with the applicability, if any, of other federal, state, and/or local laws on the management or regulation of R/Ws reserved pursuant to RS 2477.

Reasonable activities within the highway R/W are within the jurisdiction of the holder. As such, the Department has no authority under RS 2477 to review and/or approve such reasonable activities. However, review and approval may or may not occur, depending upon the applicability, if any, of other federal, state, or local laws or general relevance to the use of a R/W.



# United States Department of the Interior

BUREAU OF LAND MANAGEMENT  
WASHINGTON, D.C. 20240



IN REPLY REFER TO

APR

2801 (330)  
RS 2477

## Memorandum

To: Assistant Secretary - Land and Minerals Management

From: Director, Bureau of Land Management

Subject: Departmental Policy on Section 8 of the Act of July 26, 1866, Revised Statute 2477 (Repealed), Grant of Right-of-Way for Public Highways (RS 2477)

Issue: Department Policy on the Recognition of Public Highway Rights-of-Way Granted Under RS 2477 and the Administration of such Recognized Grants.

## Need:

Significant issues have been raised, principally in Alaska, regarding the Department's interpretation and position as to the acceptance of the right-of-way (R/W) grant offered by Congress by Section 8 of the Act of July 26, 1866, RS 2477, repealed by Title VII of the Federal Land Policy and Management Act of October 21, 1976, 90 Stat. 2793 (FLPMA). For those grants recognized, issues exist as to the extent of the grant, i.e., terms and conditions such as the width, allowable uses, and Federal oversight.

Historically, such issues have generally affected only the Bureau of Land Management (BLM), with minor impact on other Federal land managing agencies. Two relatively recent events have heightened the need for expressed policy at the Departmental or higher level. First, the repeal of RS 2477 in 1976 closed the door to the acceptance of the grant for new highways or corrections to existing road situations to perfect acceptance of the grant. Secondly, the addition of extensive acreages in Alaska to the National Park and National Wildlife Refuge Systems by the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) requires the managing agency to consider the possible existence of RS 2477 highways on these Conservation System Units. Other Federal land managing agencies in Alaska, principally the Forest Service, U.S. Department of Agriculture, are also involved but to a lesser extent than the three Interior Bureaus.

## Historical:

RS 2477 provided:

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

In the past, the Department paid little attention to such public highways on the public lands since if the grant was not accepted today it could be tomorrow. In disposing of the public lands, the General Land Office and, subsequently, the BLM did not even include the existence of such public highways in the patent document; the agency had no duty to adjudicate the acceptance or non-acceptance of the highway grant. As with other "open" offers by Congress, such as the railroad grants, the existence of such rights were considered factual matters that the settler or enterer of public lands should recognize as existing at the time of settlement or entry. Disputes between the holder of the highway and the patentee were left for settlement in local court under the laws of the State or Territory.

As a result, there is lacking any quantity of administrative or judicial decisions at the Federal level to provide much assistance in setting Federal policy and a plethora of local judicial decisions, often conflicting between States or Territories. Attachment 8 is a summary of published administrative decisions regarding RS 2477.

#### Regulations:

Regulations promulgated by the Department in 1938 provided:

"The grant . . . becomes effective upon the construction or establishing of highways in accordance with the State laws, over public lands not reserved for public uses. No application should be filed under said R.S. 2477 as no action on the part of the Federal Government is necessary." See 43 CFR 244.55 (1938) (Par. 55, Circ. 1237a, May 23, 1938).

In 1949, regulations were added to provide for a highway applicant to petition the BLM to modify a "public use" reservation to allow application of RS 2477. See 43 CFR 244.47 (1949).

In 1952, the regulations were modified to exclude from the RS 2477 grant any R/Ws for facilities with respect to which any other provision of law specifically required the filing of an application for R/W. These regulations also waived the requirement of filing an application for all facilities usual to or along a highway R/W (certain specific exceptions) where the holder of the highway R/W consented. These regulations also provided that the R/W granted under RS 2477 would be subject to certain terms and conditions—clearing, soil and resource conservation, prevent and suppress fires, build or repair facilities damaged in construction of highway, restoration upon termination, nondiscrimination, and reservation of certain minerals. Where the highway holder consented to construction of related facilities, such holder was responsible for compliance with appropriate terms and conditions of the Department for the type of facility. See 43 CFR 244.58 (1953 Supp).

In 1974, the regulations were modified to remove the waiver provided in 1952 and required applications to be filed for facilities usual to a highway. See 43 CFR 2822.2-2 (1979).

With the repeal of RS 2477 in 1976, regulations were adopted allowing any person or State or local government which has constructed public highways under RS 2477 to file a map showing the location of such highway with the BLM. See 43 CFR 2802.5(b) (1985). This action was taken to facilitate the management of the public lands under the FLPMA.

#### BLM Policy:

Current policy is contained in BLM Manual 2801.48B (1986). It provides:

- Grant became fixed when constructed and accepted as a public highway.
- Construction must be actual; survey and planning are not construction. Road maintenance over several years may equal construction. Incremental maintenance over several years may equal construction. Construction on public lands must have occurred prior to 10/21/76. Where history is unknown or questionable, its existence in condition suitable for public use is evidence that sufficient construction has taken place.
- Highway must be public, an access road restricted by locked gates is not a public highway. Expenditure of public funds on a road will equate to a public highway. State in which road is located must have a procedure to confirm the road as a public highway, i.e., a public highway may not be created contrary to local law.
- RS 2477 did not specify the extent, width, or nature of rights conveyed. State law specifying highway width(s) that is specific to RS 2477 highways shall be used. Where State law does not apply, width is that required for the road uses existing at the time of acceptance or repeal of RS 2477.
- Holder has right to maintain, including realignment and reconstruction within the R/W width; activities outside require permit.
- Facilities usual to public highways, i.e.; telephone and electric lines, are to be authorized by separate R/Ws granted under FLPMA; grandfather clause for those established during application waiver period.
- Field Offices are directed to work with each State, county, and municipality to identify all existing highways; acknowledge, serialize, and note Master Title Plats of those meeting criteria.

#### Concern in Alaska:

By 1985 many issues were raised in Alaska concerning possible RS 2477 R/Ws and management plans being prepared for the individual Conservation System Units created under the ANILCA. Positions and concerns expressed by the State (both administrative and legislative), Native entities, minerals industry, conservation groups, and others illustrated a need for a single Departmental or Federal Government position on RS 2477. In 1986, the BLM State Director, Alaska, was asked to chair an interagency group consisting of the regional heads of the BLM, Fish and Wildlife Service, National Park Service, and the

4

Forest Service to formulate a policy acceptable to these regional heads. A proposed policy was submitted by that group, together with comments by the State of Alaska, to the Director, BLM, in August 1987 requesting agency approval (Attachment 1). This proposed policy deviates from existing BLM policy in two areas: (1) establishing the width as that which was necessary for the use involved at the time the land was reserved for a public use or the repeal of RS 2477 (ignoring State statutes) and (2) providing that the Federal land managing agency had administrative control over use of the public highway.

Expressing reservations with the proposed policy, the Governor of Alaska's Washington representative requested meetings with the Assistant Secretaries for Land and Minerals Management and for Fish and Wildlife and Parks to present the State's views and seek a policy acceptable to both the State and the Department. As a result of such a meeting on November 24, 1987, the Governor's representative submitted four issues needing resolution, including the State's reasoning for its position on the issues. These issues and our response are contained in Attachments 5 and 6. With some clarification, BLM's existing policy is acceptable to the Governor's representative on all but one issue--legislative acceptance of RS 2477 on section lines.

Interior's Position is critical:

As the steward of the public lands, not reserved for public purposes, the Department's past and current policy and rulings on the acceptance of the grant of R/Ws for public highways can have impacts on the management of Federal lands in the 30 "public land" States--basically those west of the Mississippi River. RS 2477 issues involving the creation of "Federal reserves - Forests, Parks, Refuges" at the turn of the century and the early 1900's have, generally, been long resolved either through Federal recognition, abandonment, or judicial decisions, although some issues such as utility lines usual to a public highway still occur. Federal reserves created from unreserved public lands in the near past, especially the Conservation System Units in Alaska established under the ANILCA, contain or possibly contain numerous RS 2477 issues.

The one remaining issue involving recognition of acceptance of the congressional grant by State/Territorial law or local government ordinance not diligently followed by actual construction is an issue that has a potential effect on many Federal reserves in the public domain States as well as the remaining public lands under BLM jurisdiction.

In addition there is a perception, with some reality, that decisions made reflecting Federal lands will carry over into the private realty arena. Concern has been expressed here by the Alaska Federation of Natives.

Section Line RS 2477 R/Ws:

Alaska contends, as do some other States, that a positive act by the public authorities, i.e., State/Territory legislative branch, county or municipal authorities pursuant to State law, declaring a public highway along all section/township lines is acceptance of the grant offered by Congress under RS 2477. It is contended that such a covenant runs with the land, whether a highway is actually constructed or not, until there is appropriate action taken to abandon or otherwise terminate the R/W pursuant to State law or judicial action. To mollify private landowners who received title from the United States subsequent to such section line legislation, the Alaska Governor's representative has indicated that the State would compensate such owners prior to actual construction of a section line highway.

While section line statutes constitute the primary discussion issue, this issue would also include those cases where the appropriate local authority, counties, for example, by resolution or other appropriate action declared the establishment of a public highway along a route which, for some reason, was never actually constructed.

Western States which have/had section line statutes include Alaska (Territorial and State), Arizona (however State law requires a road to be adopted by the county or other jurisdiction after it has been constructed to become a public highway), North and South Dakota (Dakota Territorial law), and Kansas. Montana, although it does not have a section line statute, has interpreted RS 2477 as requiring construction. Various counties in California, Colorado, and Washington are known to have enacted section line ordinances. Local courts have held that, once dedicated, the highway may only be terminated according to the procedures of the local jurisdiction which, depending on the local jurisdiction, may be only through a public procedure of intent to abandon, hearing, and final abandonment or may occur through non-use and/or adverse possession.

As early as 1898 the Department held that such section line statutes or ordinances did not apply unless the highway was actually constructed (26 LD 446) (Attachment 2). In 1980, the Deputy Solicitor provided a lengthy and detailed position on RS 2477 to the Department of Justice (Attachment 3). Included in this letter was the requirement that construction must have occurred for acceptance of the RS 2477 grant. At the request of the District Court, Alaska, the United States submitted an Amicus Curiae brief to the Court in 1986, which included detailed reasoning that RS 2477 requires construction in order to establish a R/W (Attachment 4).

Problems if Section Lines Adopted:

A number of issues arise if such section line legislation/ordinances are considered acceptance of the grant under RS 2477. Among these are:

When/What does it attach?

If the land was covered by a rectangular survey our position would be that the grant would have become effective on the date of the legislation or ordinance.

6

If the land is subsequently surveyed, does the effective date of the grant relate back to the date of the legislation or ordinance or to the date of survey? We believe the later would be the answer.

If the land is reserved for public use prior to survey but subsequent to the legislation or ordinance, does the effect of the legislation or ordinance attach upon survey? We believe that it would not.

Are officially accepted protraction diagrams, which are used for resource sale/lease and from which subsequent surveys conform as to the location of township and section corners, considered as establishing section lines for which the grant becomes effective? We would not concur with such a proposition.

In Alaska, departures from the usual rectangular survey system are authorized, especially for conveyances to the State and to Native Corporations. Since these surveys are based on the township grid (identified as T.-N., R.-E., -M) but do not necessarily identify sections, i.e., the interior of the township is designated Tract A or Tracts A & B, would the surveyed lines that would otherwise correspond to section lines be impressed with the R/W grant? We think they would.

Alaska. Depending on the answers to the above questions, only a small amount of federally owned land would be subject to a R/W grant if applied to only actually surveyed section lines (by 1976 only about 15 percent of the State had been surveyed) and most all Federal lands if applied to protracted survey lines.

#### Impacts outside of Alaska

Assume that the R/W grant attaches to the section line where such land was public land, not reserved for public use, at the time of the legislative act or subsequent date when actually surveyed.

North and South Dakota. All surveyed public land, not reserved for public use, in these two States in 1872 would be impressed with a section line R/W grant. At time of subsequent survey, such public lands not entered would also be impressed with the R/W grant.

In 1872, little public lands had been set aside for public uses; Forest Reserves, the forerunners to National Forests, and National Parks, came into existence in the 1890's and later. In these two States, 9.5 million acres are owned by the Federal Government (1981 Public Land Statistics), including some 4.0 million reacquired acres. Acres by agency are: Forest Service 3.0 millions acres, Corps of Engineers 1.1 million, Fish and Wildlife Service 0.5 million, and BLM, National Park Service, Bureau of Reclamation, and Bureau of Indian Affairs at 0.2 million each.

Kansas. All surveyed public land, not reserved for public use, in this State in 1907 would be impressed with a section line R/W grant. At time of subsequent survey, such public lands not entered would also be impressed with the R/W grant. By 1976 all lands in the State had been surveyed.

Only some 750,000 acres are owned by Federal agencies--Corps of Engineers 320,000; Army 125,000; and Forest Service 195,000. The majority of this acreage is acquired land.

Other Western States. Arizona had (has) section line legislation, however, the courts there ruled that Arizona law also required an acceptance action after construction for the road to become a public highway.

In Washington, California, and Colorado, there are published cases involving section line ordinances enacted by county government, i.e., the Douglas County, Washington, ordinance of April 6, 1897. To identify the extent of such county ordinances would require a historical search of individual County actions.

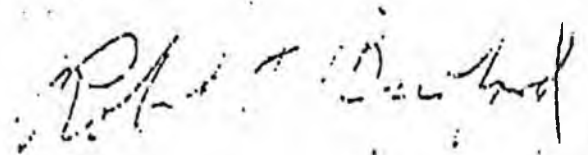
It is our recommendation that we do not modify our interpretation of the Statute that construction must have occurred in order for a R/W grant under RS 2477 to attach.

Federalism - Executive Order 12612:

With the possible exception of the section line issue, existing BLM policy and the action we are herein recommending comport with the principles of Executive Order 12612. The section line issue involves interpretation of a Federal statute and the property rights of the United States and various States, including Alaska. To accede to the position of the State of Alaska would have adverse impact on numerous properties of the Federal Government, including the possibility of having to reacquire such property interests to protect Federal interests.

Recommendation:

It is recommended that the Department retain the policy established in BLM Manual 2801.48B (1986) and adopt it as Departmental policy for use by other land managing Bureaus in the Department.



8 Attachments

- 1 - SD AK BLM Memo of 8/1/87 + Attachment
- 2 - 26 L.D. 466
- 3 - SOL letter of 4/23/80
- 4 - Pgs 1 & 16-26 of US Amicus Brief in Greenhouse
- 5 - Katz letter of 12/4/87
- 6 - BLM response
- 7 - Katz letter of 2-29-88
- 8 - Summary of Published Administrative Decisions

dividend checks, in communities that have no banks. The Post Office designated about 160 Alaska communities and contract post offices where this service could continue. It has also promised to work with the state on a case-by-case basis if the issue occurs anywhere else. The prompt delivery of food packages under the Women, Infants and Children program is another problem which the state is seeking to solve on a permanent basis. (A temporary solution has been achieved.)

Housing - This year, the state focused primarily on specific initiatives that provided at least some help to the depressed residential housing market in Southcentral Alaska. The state originated a successful dialogue with the Administrator of the Veterans Administration to cancel what would have been a disastrous housing auction by that agency in Anchorage. We also worked closely with the Alaska State Building Authority (ASBA) and the Alaska Congressional Delegation to insure the success of the Willow Park initiative. That project included obtaining authority from the U.S. Department of Housing and Urban Development to demolish Willow Park and, in turn, to provide subsidized housing through the acquisition of existing scattered site housing throughout Anchorage.

RS 2477 (Public Access) - The state and the U.S. Department of Interior are on the brink of an agreement concerning the establishment, use, and abandonment of rights-of-way for public access under former RS 2477. Until it was repealed in 1976, RS 2477 constituted a standing Federal offer of rights-of-way for highway purposes on public lands otherwise available for such purposes.

Submerged Lands - After several years, Congress was finally persuaded to pass legislation authorizing the BLM to apply to state and Native land conveyances the acreage chargeability rules used everywhere else in the nation, and repealing a statute of limitations that restricted the state's ability to challenge certain navigable waters determinations. Passage of the legislation means that the state and Natives can receive their full land entitlements from the federal government, and that much unnecessary litigation concerning navigable waters will be avoided.

In the context of the submerged lands legislation, Congress passed a provision that requires the Secretary of the Interior to submit any proposed ANWR land exchange agreements to Congress for approval.

Payment-in-Lieu of Taxes (PILT) - Federal law provides payments to local governments whose boundaries include extensive areas of federally-owned land to partially compensate the governments for their inability to tax those lands. Until this year, these "PILT" payments were

## V. PROPOSED RS 2477 CORRIDORS

Diversifying Alaska's economy will be enhanced greatly if the following RS 2477 corridors (routes) are validated by the State of Alaska:

- 1) Arctic Coastal Plain - access to oil/gas
- 2) Nenana/Kobuk/Ambler- access to several mineralized areas
- 3) Upper Cook Inlet (Beluga) - access to coal and a port for export to Pacific markets
- 4) Yukon/Kuskokwim Portage - a link between the Yukon and Kuskokwim Rivers for improved transportation
- 5) Susitna/McGrath - access to mineralized area
- 6) Kantishna Spur - tourism/recreation/mining/timber
- 7) Circle/Eagle - access to mineralized areas
- 8) Aleutian Crossing - Port Moller to Balboa Bay - access to resources

A summary of each corridor, its paralleling RS 2477 ROWs and rationale for use, follows.

# PROPOSED R.S. 2477 CORRIDORS



Corridor # 1: Arctic Coastal Plain

Length: approximately 200 miles

Land status: Arctic National Wildlife Refuge, Native lands

Rationale for use: access to oil and gas

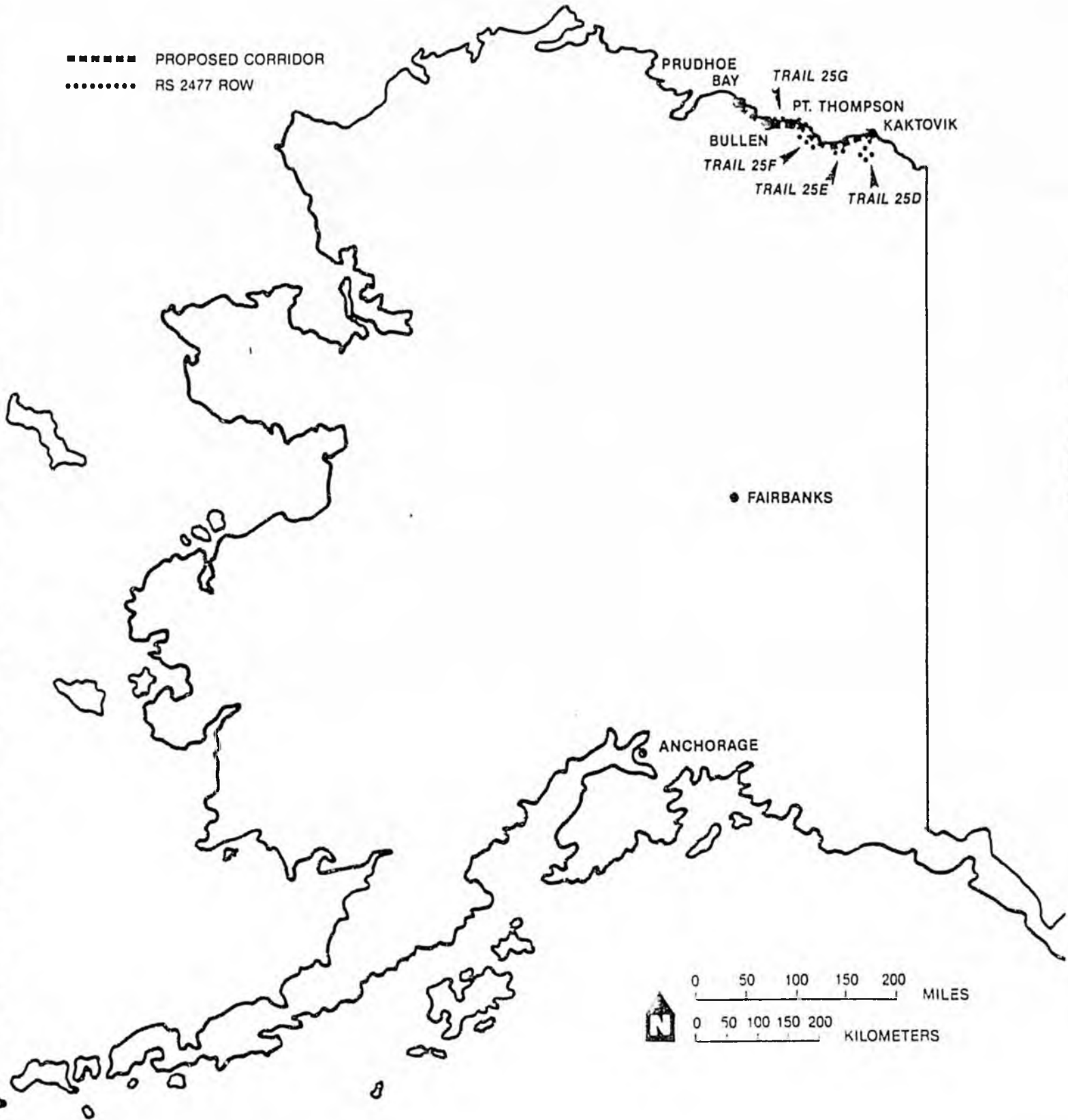
This corridor will prove invaluable if the Arctic Coastal Plain is explored and significant quantities of hydrocarbons are located. The Department of Interior's 1002 report, released in November 1986, recommends that the Refuge be opened. For this to happen, the U.S. Congress must pass legislation. If this takes place, the Coastal Plain could provide a major diversification of oil sources to allow the Trans Alaska Pipeline to continue to operate at full capacity. Currently, unless additional fields are developed, TAPS throughput will drop below capacity starting in 1988 and will decline by approximately 50% in 1990. In addition, gas reserves at Pt. Thompson contain valuable gas liquids which could be moved to market in the same feeder pipeline from ANWR to TAPS.

Socio-economic climate: The Alaskan community at large, the Arctic Slope Regional Corporation and the Kaktovik Village Council endorse exploration of the Refuge and presumably would support utilization of this corridor. Most national environmental groups oppose exploration and development within the Refuge.

Applicable RS 2477s: The corridor, as can be seen in the accompanying map, conforms with or parallels at least four existing RS 2477 rights-of-way which run along the Coastal Plain - trails 25D, 25E, 25F, and 25G. Note that the trails are not all continuous because the ice pack was utilized as part of the trail system.

# CORRIDOR #1 ARCTIC COASTAL PLAIN

■■■■■ PROPOSED CORRIDOR  
..... RS 2477 ROW



Corridor # 2: Nenana/Kobuk/Amblor  
(Alaska Railroad extension to Kobuk Valley)

Length: approximately 550 miles

Land status: This corridor crosses state, Native and federal properties including the Kanuti National Wildlife Refuge, Gates of the Arctic National Park and Preserve, Kobuk Valley National Park, Selawik National Wildlife Refuge and BLM lands.

Rationale for use: access to major mineralized areas

This corridor will provide access to numerous world-class mineral deposits on the Seward Peninsula, including bonanza size deposits of copper and critical strategic minerals, such as chromium. It will also provide access for fire control and recreation purposes. The villages in the Kobuk region will benefit from reduced costs for goods and services linked to lower transportation costs. A railroad would also serve as a means to carry local goods to market.

Various routes have been studied for this corridor. The route indicated on the accompanying map is from the Alaska Transportation Corridor Study, prepared by the Federal Highway Administration, U.S. Department of Transportation (1970). It runs from the existing railroad line in Nenana to north of Black Bear Flats and then along the south side of the Tanana River to Round Point, where a bridge would be required. The line then follows the Tozitna and Mentanontli valleys near Norseman Lake to the Koyukuk River at Alatna. It then proceeds westerly following the Alatna River, passing south of Norutak Lake and into the Kobuk River valley to the Dahl Creek Airstrip near Kobuk and continues west to Shungnak, then proceeds northwesterly through a valley on the east side of the Kobuk River to Amblor.

An Alaska Miners Association study, Future Mineral Freight Estimates, Interior Alaska (1982), determined that it is economically feasible to develop this corridor to the Kobuk/Amblor area because of the enormous quantities of valuable ores that await production. The preferred mode of transportation is a railroad.

Socio-economic climate: The construction of a railroad will provide the necessary transport for bulk resource shipments, while limiting the influx of "outsiders," a major concern of local residents.

Some federal agency personnel and environmentalists oppose the use of any corridors, including this one. However, the economic impact arising from development will benefit people

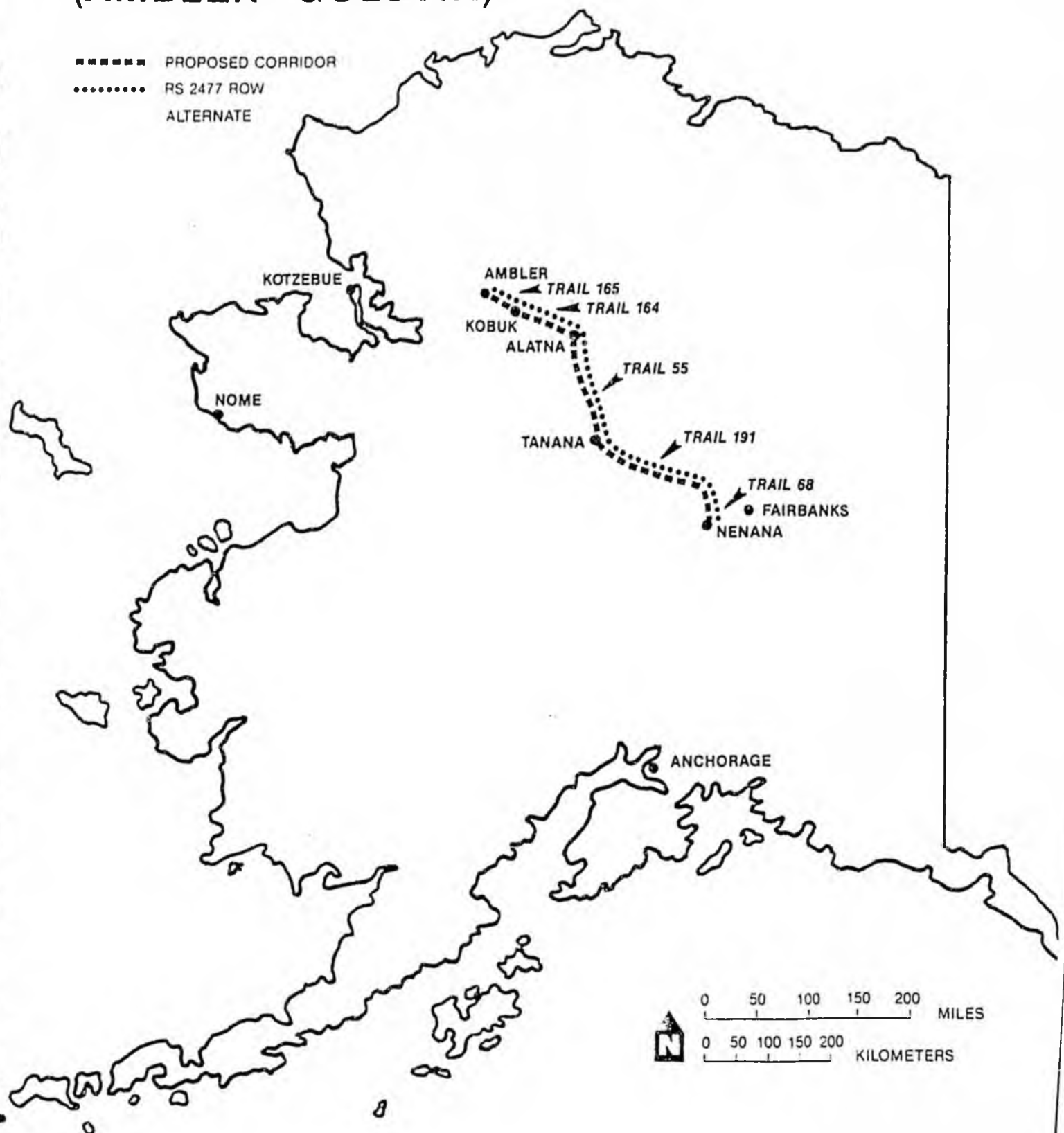
living in that region at a time when prospects for economic growth are diminishing and the resources can help the nation as a whole. The Red Dog Mine project, with its emphasis on local employment and environmentally-sensitive development, can be used as a model.

A number of experts believe that such a corridor, rather than tie into the railbelt, should extend southwest from Ambler to Golovin. (See map on following page.)

Applicable RS 2477s: There are many RS 2477 ROWs in this region, however, those applicable to this route are indicated on the map as trails 68, 191, 55, 164, and 165. The route to Golovin would follow RS 2477 ROWs 165, 98, 217, 264, and 156.

# CORRIDOR # 2 AMBLER - NENANA or alternate (AMBLER - GOLOVIN)

----- PROPOSED CORRIDOR  
..... RS 2477 ROW  
ALTERNATE



Corridor # 3: Upper Cook Inlet (near Beluga)

Length: approximately 175 miles

Land status: state lands, Native lands

Rationale for use: transportation link from the existing railbelt to coal resources and/or a port for export to Lower 48 and the Pacific Rim. This route would provide a major outlet for Alaska's mineral resources from the Interior region of the state.

Proposed modes of transportation are either road or railroad. The transport of minerals from Interior Alaska as well as energy related resources including oil, gas, and coal to shipping points is the prime reason for this corridor. Major coal resources in this area could provide jobs for Alaska's people and revenues for the state.

The corridor extends along a northeast-southwest alignment about 10 miles east of the Susitna River, then runs west along the flats of the north side of Cook Inlet. It crosses the Susitna and Beluga Rivers and ends just north of the Drift River Delta at existing oil shipping facilities.

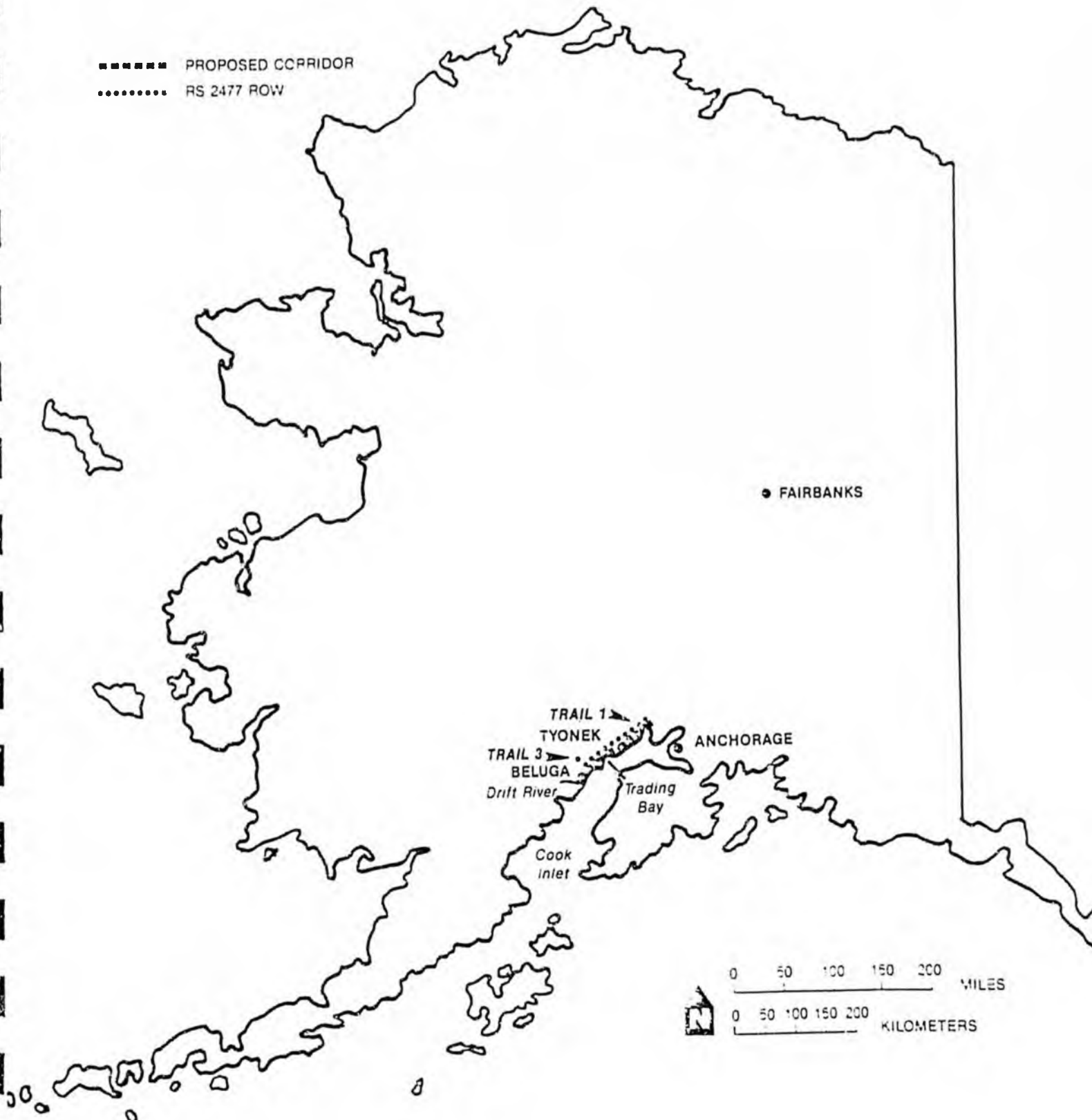
This corridor would also be a starting point for access to the north side of the Alaska Range, a highly-mineralized area untapped due to lack of transportation access.

Socio-economic climate: With the recent construction of a gas pipeline along this corridor by ENSTAR, the environmental problems have already been addressed and only those individuals who oppose all development should oppose its continued use. The villagers in Tyonek have expressed some concern about potential adverse impacts, and yet welcome job opportunities.

Applicable RS 2477s: Two RS 2477s (trails 1 and 3) run along the coastal area of Cook Inlet.

# CORRIDOR # 3 BELUGA / UPPER COOK INLET

----- PROPOSED CORRIDOR  
..... RS 2477 ROW



Corridor # 4: Yukon/Kuskokwim Portage or Canal

Length: approximately 30 miles

Land status: Yukon Delta National Wildlife Refuge, Native lands, BLM lands

Rationale for use: linkage between Yukon & Kuskokwim Rivers

This route was originally developed by the Jesuits who built a tramway, using a windlass to hoist boats and barges out of the water and wooden rails to move them between the rivers. A north-south corridor, it lies between the Yukon and Kuskokwim Rivers. It extends from a point southeast of Holy Cross on the Yukon south to the Kuskokwim, west of Aniak. The portage can provide up to two months of additional ice-free navigation on the Yukon River. Using the lower Kuskokwim River would shorten the barging route and time into the Yukon and would provide deeper shipping waters than the shallow lower Yukon. The results would include improved transportation for bulk cargo, movement of petroleum and mineral exploration equipment and product. In winter months, snowmobiles could use the frozen route to reduce the distance in overland travel.

The benefits include better distribution of cargo after the portage or canal is opened, and greater mobility for people in that region.

Socio-economic climate: The main impetus for establishing such a portage or canal will come from the Native people, village and regional corporations, as well as natural resource industries that need improved water transportation. If a canal is considered, water quality, fisheries and waterfowl habitats will have to be studied as well as permafrost dehydration and water interchange vis-a-vis fisheries impact.

Applicable RS 2477s: Trail 16 parallels the proposed corridor. This route has a history of state construction and maintenance dating back to the 1930's according to the records of the Alaska Road Commission.

# CORRIDOR # 4 YUKON - KUSKOKWIM PORTAGE

- PROPOSED CORRIDOR
- ..... RS 2477 ROW



Corridor # 5: Susitna/McGrath

Length: approximately 225 miles

Land status: State and BLM lands

Rationale for use: mineralized area

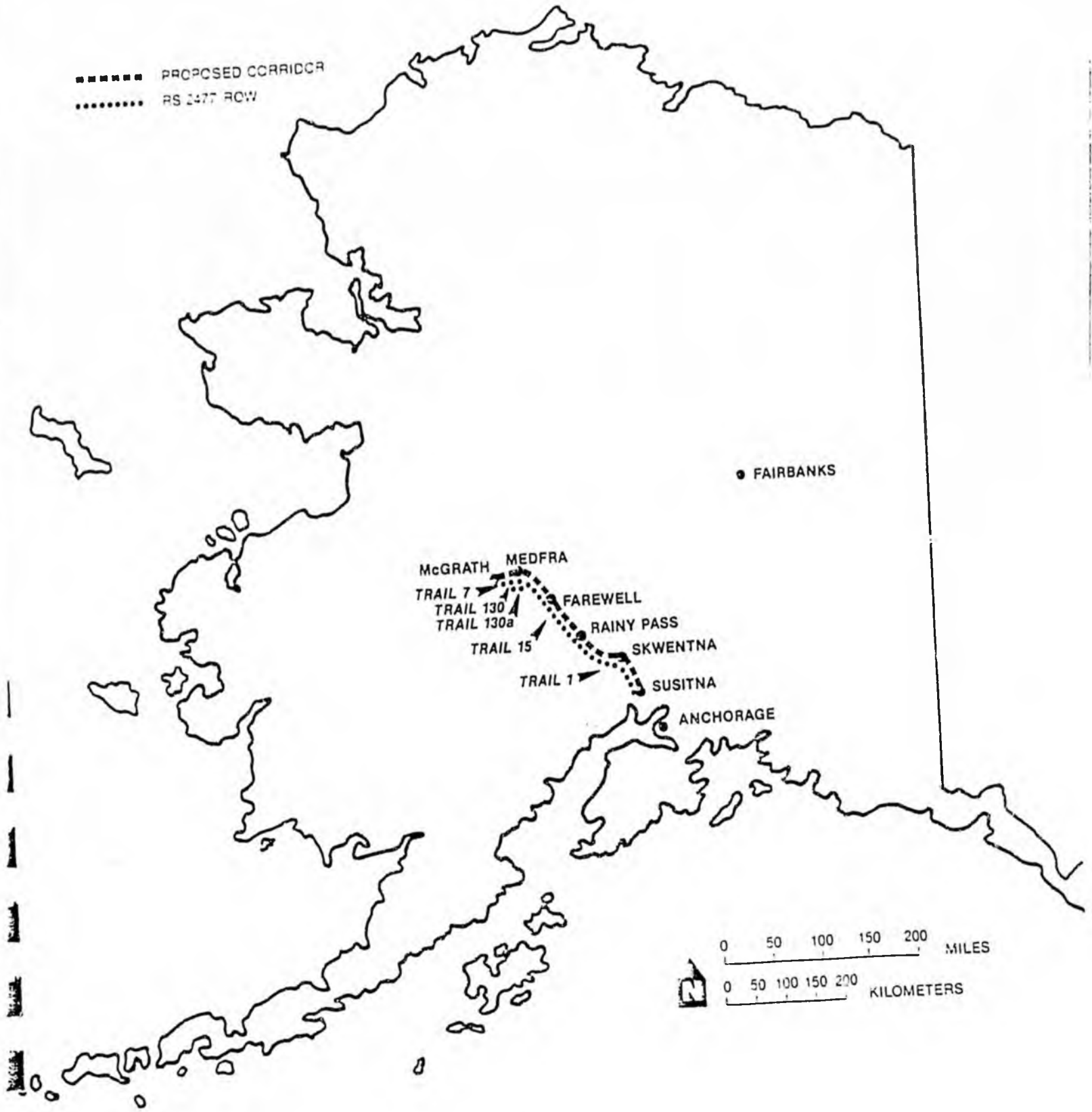
This corridor would provide access from Southcentral Alaska to the mineral belt that lies northwest of the Alaska Range. Mode of transportation would be a railroad or highway. This corridor begins at the abandoned village of Susitna (on the Susitna River) and runs northwest to the Skwentna River then north to the junction with Happy River. It continues westward through the Alaska Range by way of Rainy Pass and emerges on the north side at Farewell, then follows the south fork of the Nikolai to a junction of the south and east forks of the Kuskokwim where the trail forks, with one route continuing to Medfra and the other turning southwesterly along the north side of the Kuskokwim River to McGrath.

Socio-economic climate: The benefits include development of minerals that could significantly impact Alaska's economy. In addition, year-round job opportunities will be created for people living in the region. Portions of this route follow the Iditarod Trail which has been designated a National Historic Trail.

Applicable RS 2477s: There are several RS 2477s along this corridor, including those that make up the original Iditarod Trail. These include trails 1, 15, 130, 130A, and 7 (to McGrath.)

# CORRIDOR # 5 SUSITNA / McGRATH

----- PROPOSED CORRIDOR  
..... RS 2477 ROW



Corridor # 6: Kantishna Spur

Length: approximately 25 miles

Land status: Denali National Park, state lands

Rationale for use: tourism, recreation, mining & timber

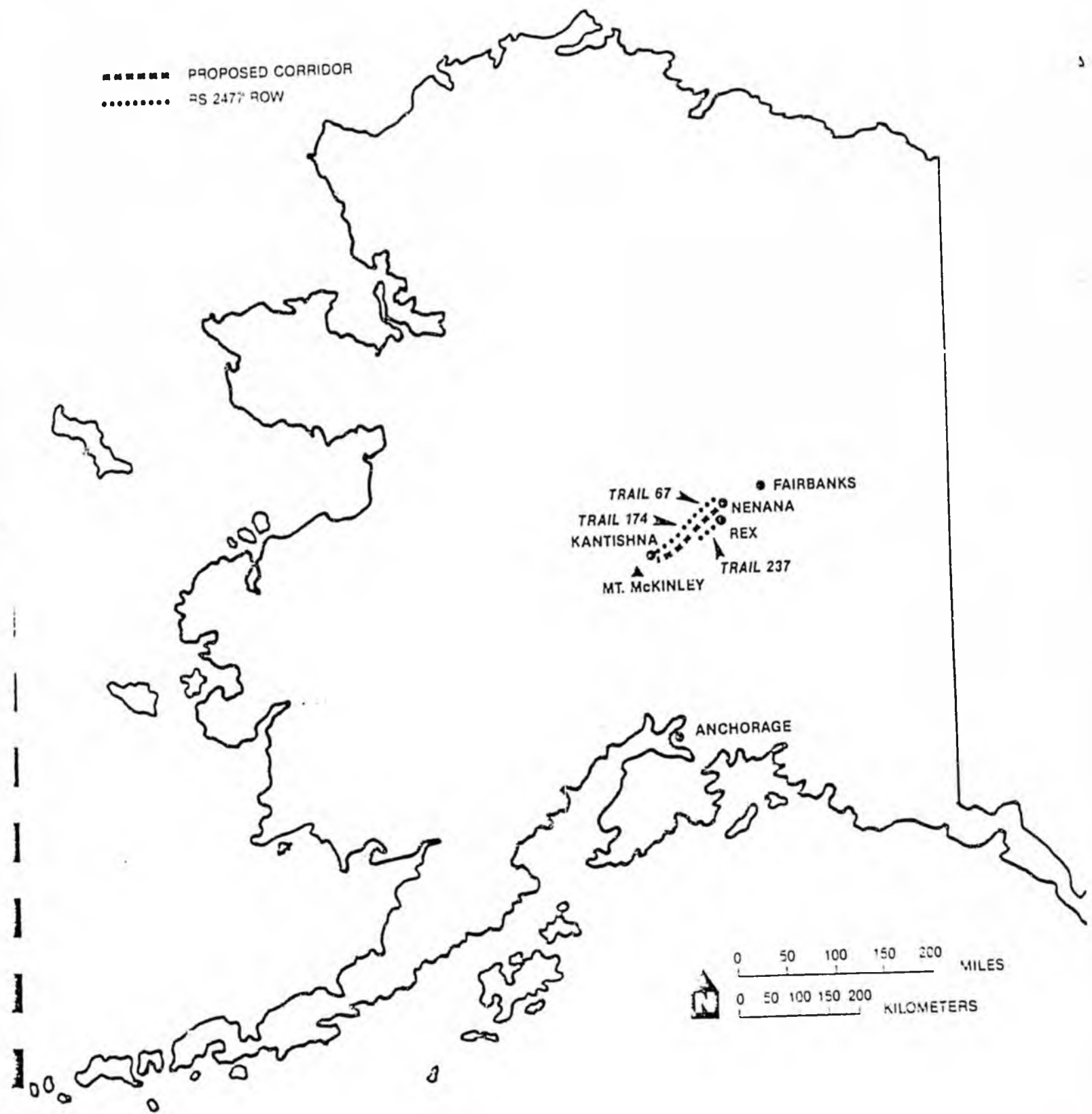
This route runs southwesterly alongside the Kantishna Hills to Kantishna on the north boundary of Denali National Park. Kantishna is presently connected by a road through the park. This route would provide access to mining areas with deposits of gold, silver, lead, tin and antimony. Access to the north side of the park would also be a major benefit for recreational purposes. This route could also be extended north towards Nenana. The Alaska DOT/PF conducted extensive studies on a highway into this area in 1982.

Socio-economic climate: The mining industry in the state would be supportive of this route and tourism in the area could be substantially assisted by this corridor. Opposition from environmentalists and the Park Service can be expected.

Applicable RS 2477s: There are six to eight RS 2477s in the northern area of the park, several of which lie near the proposed corridor including trails 67, 237, and 174. In addition to its validity, vis-a-vis RS 2477, the Kantishna Road was quit claimed to the State in the Omnibus (statehood) Act.

# CORRIDOR # 6 KANTISHNA

----- PROPOSED CORRIDOR  
..... RS 2477' ROW



Corridor # 7: Circle-Eagle

Length: approximately 130 miles

Land status: Yukon-Charley Rivers National Preserve,  
Native lands

Rationale for use: access to mineralized areas and  
recreation

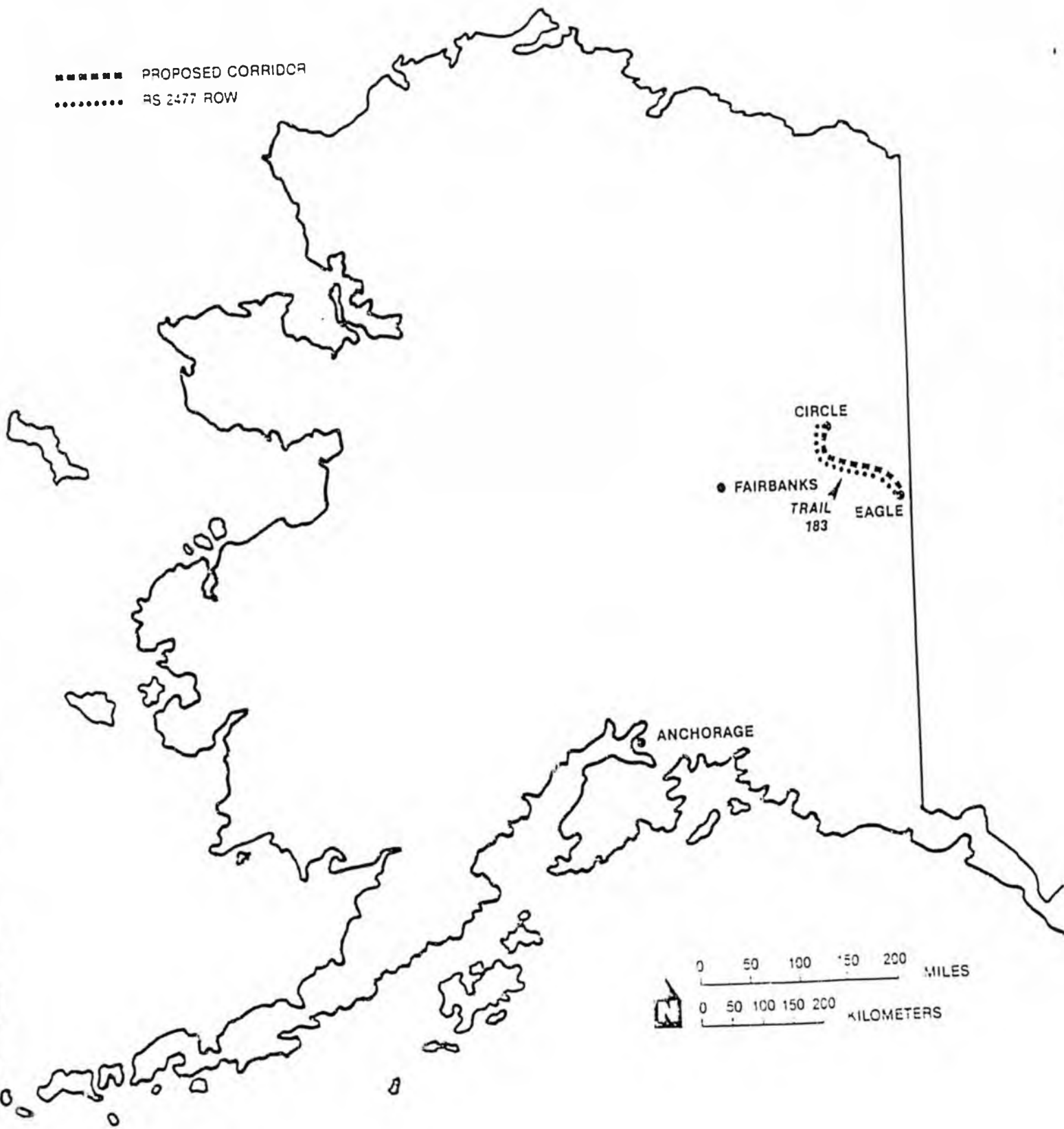
The route runs southeast along the Yukon River from the Steese Highway near Circle to Eagle on the Yukon about 6 miles from the US/Canada border where the route connects to the Taylor Highway. The route crosses the Charley River ten miles upstream from the confluence with the Yukon. Modes of transportation include a highway and possible oil and gas pipelines. This corridor will increase access into a highly mineralized area for development and exploration of gold, coal and possibly asbestos. It would also allow for recreation access and fire control activities.

Socio-economic climate: Increased jobs during construction would benefit the local and state economies, and there could be an increase in tourism through this historic area. Opposition from the Park Service and environmentalists is expected and possibly from some elements within the communities of Circle and Eagle. Attention must be given to water quality, erosion near crossings, permafrost degradation and wildlife values.

Applicable RS 2477s: Trail 183 runs along the south side of the Yukon River from Circle to Eagle and has a history of state construction and maintenance expenditures.

# CORRIDOR #7 CIRCLE / EAGLE

----- PROPOSED CORRIDOR  
..... RS 2477 ROW



Corridor #8 - Aleutian Crossing  
Port Moller to Balboa Bay

Length: approximately 25 miles

Land status: Alaska Peninsula National Wildlife Refuge,  
Native lands

Rationale for use: to enhance the region's transportation system to support resource development including oil and gas from lease sale areas on the north side of the peninsula or OCS sale area. There is potential for a port site on Balboa Bay.

This route was identified in the State's Bristol Bay Area Plan as one of three preferred trans-peninsula routes for transportation corridors. The corridor runs from the Bering Sea through Portage Valley to Lefthand Bay on Balboa Bay.

Socio-economic climate: The State of Alaska and Bristol Bay Native Corporation have recognized the potential of this corridor to transport oil and gas from the north side of the peninsula to deepwater ports on the Pacific Ocean and the use of this corridor for general transportation across the Alaska Peninsula. The corridor could be used for pipelines, roads, transmission lines and transportation or utility systems, according to the Bristol Bay Area Plan.

Applicable RS 2477s: Trail 3 runs parallel to this proposed corridor.

# CORRIDOR # 8 ALEUTIAN CROSSING

- PROPOSED CORRIDOR
- ..... RS 2477 ROW

