

Reprints

Access on Alaska's Lands and Water related to public use and enjoyment of fish and wildlife



Overview of Access Provisions for Fish and Wildlife Managers

House Resources
2/28/2001

Access Issues which we handle for ADF&G,
noting only those we're covering today:

- ✘ ANCSA 17(b) site and trail easements across native corporation lands connecting public lands/waters
- ✘ RS 2477 trails and easements across federal, private, and state lands
- ✘ Public trust doctrine rights of access on waterways for boating, fishing, hunting, etc. regardless of ownership
 - ✘ ANILCA 1110(a) general public access on federal land
 - ✘ ANILCA 811 traditional subsistence access on federal land
 - ✘ other ANILCA access guarantees across federal land to state and private inholdings
 - ✘ ANILCA 905 Native allotments

Access--

Why is it so important to ADF&G?

- If you can't get there, you can't hunt, fish, trap, or otherwise use and enjoy our fish, wildlife, and water resources.




Use of and Access to State Waters

(Navigable for “public use” under Public Trust Doctrine)

- Alaska Constitution Article 8, Sections 3, 13, 14, 15
- Alaska Statute (AS) 38.05.126
 - constitutional right to free access to, and use of, navigable or public water
 - state has full power and control over those waters
 - ownership of land adjacent to water does not grant an exclusive right of use
- AS 38.05.127
 - “to & along” waterway easements - state land transfers
- AS 38.05.128
 - no one may not obstruct or interfere with free passage

Navigability for Public Use

 *If you can float a boat on it, you can use it!*

AS 38.05.965 “. . . Any water forming a river, stream, lake, pond, slough, creek, bay, sound, estuary, inlet, strait, passage, canal, sea or ocean, or any other waterbody within the territorial limits of the state subject to its jurisdiction, that is navigable in fact for any useful public purpose . . .”

- Commercial navigation, floating logs, landing and taking off of aircraft, and public boating, trapping, hunting, fishing or other public recreational purposes; portaging

 *If you are fishing in it, you can walk in it to fish!*

ALASKA STATUTES

38.05.126. Navigable and public water.

- (a) The people of the state have a constitutional right to free access to and use of the navigable or public water of the state.
- (b) The state has full power and control of all of the navigable or public water of the state, both meandered and unmeandered, and the state holds and controls all navigable or public water in trust for the use of the people of the state.
- (c) Ownership of land bordering navigable or public water does not grant an exclusive right to the use of the water and a right of title to the land below the ordinary high water mark is subject to the rights of the people of the state to use and have access to the water for recreational purposes or other public purposes for which the water is used or capable of being used consistent with the public trust.
- (d) This section may not be construed to affect or abridge valid existing rights or create a right or privilege of the public to cross or enter private land.

Sec. 38.05.127. Access to navigable or public water.

- (a) Before the sale, lease, grant, or other disposal of any interest in state land adjacent to a body of water or waterway, the commissioner shall,
 - (1) determine if the body of water or waterway is navigable water, public water, or neither;
 - (2) upon finding that the body of water or waterway is navigable or public water, provide for the specific easements or rights-of-way necessary to ensure free access to and along the body of water, unless the commissioner finds that regulating or limiting access is necessary for other beneficial uses or public purposes.
- (b) The department shall adopt regulations implementing this section.
- (c) Nothing in this section affects valid existing rights or limits in any way the constitutional right of the public to use and have free access to the navigable or public waters of the state.
- (d) Upon application by a municipality or an affected owner of land, the department may vacate, release, modify, or relocate an easement and right-of-way for public access to or along navigable or public waters reserved by the department in a patent issued under AS 29.65 or former AS 29.18, if the commissioner determines the action is consistent with the public interest.
- (e) The establishment of easements or rights-of-way for oil and gas and mineral leases under (a) of this section need not be made until the leases are ready to be developed.
- (f) Rights-of-way or easements to waterways established under (a)(2) of this section shall be established approximately once each mile unless the commissioner makes a written finding that regulating or limiting access is necessary for other beneficial uses or public purposes.
- (g) The commissioner may exchange land under AS 38.50 to create access to public water of the state.

Sec. 38.05.128. Obstructions to navigable water.

- (a) A person may not obstruct or interfere with the free passage or use by a person of any navigable water unless the obstruction or interference is
 - (1) authorized by a federal agency and a state agency;
 - (2) authorized under a federal or state law or permit;
 - (3) exempt under 33 U.S.C. 1344(f) (Clean Water Act);
 - (4) caused by the normal operation of freight barging that is otherwise consistent with law; or
 - (5) authorized by the commissioner after reasonable public notice.
- (b) An unauthorized obstruction or interference is a public nuisance and is subject to abatement. The cost of abatement shall be borne by the violator and is in addition to any penalty imposed by the court.
- (c) This section may not be construed to affect or abridge valid existing rights.
- (d) Free passage or use of any navigable water includes the right to use land below the ordinary high water mark to the extent reasonably necessary to use the navigable water consistent with the public trust.
- (e) Free passage or use of any navigable water includes the right to enter adjacent land above the ordinary high water mark as necessary to portage around obstacles or obstructions to travel on the water, provided
 - (1) entry is made without injury or damage to the land;
 - (2) entry is made in the least obtrusive manner possible;
 - (3) there is no reasonable alternative available to avoid the use of the adjacent land above the ordinary high water mark; and
 - (4) the navigable water is reentered immediately below the obstacle or obstruction at the nearest point where it is safe to do so.
- (f) A violation of (a) of this section is a class B misdemeanor.

Public Trust Doctrine

Alaska Constitution Article VIII, section 3 states:

Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

Alaska Constitution Article VIII, section 13 states:

All surface and subsurface waters reserved to the people for common use, except mineral and medicinal waters, are subject to appropriation. Priority of appropriation shall give prior right. Except for public water supply, an appropriation of water shall be limited to stated purposes and subject to preferences among beneficial uses, concurrent or otherwise, as prescribed by law, and to the general reservation of fish and wildlife.

Alaska Constitution Article VIII, section 14 states:

Free access to the navigable or public waters of the State, as defined by the legislature, shall not be denied any citizen of the United States or resident of the State, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes.

Alaska Constitution Article VIII, section 15 provides, in pertinent part:

No exclusive right of special privilege of fishery shall be created or authorized in the natural waters of the State...

Alaska Statute 38.05.965(13) defined navigable waters:

"navigable water" means any water of the state forming a river, stream, lake, pond, slough, creek, bay, sound, estuary, inlet, strait, passage, canal, sea or ocean, or any other body of water or waterway within the territorial limits of the state or subject to its jurisdiction, that is navigable in fact for any useful public purpose, including but not limited to water suitable for commercial navigation, floating of logs, landing and takeoff of aircraft, and public boating, trapping, hunting waterfowl and aquatic animals, fishing, or other public recreational purposes;

The Legislature further interpreted the constitutional protections for public use of the waters in an act relating to the navigable or public waters of the state, declaring in the preamble (85 SLA ch.82):

- (a) The people of the state have a constitutional right to free access to the navigable or public waters of the state.
- (b) Subject to the federal navigational servitude, the state has full power and control of all of the navigable or public waters of the state both meandered and unmeandered, and it holds and controls all navigable or public waters in trust for the use of the people of the state.
- (c) Ownership of land bordering navigable or public waters does not grant an exclusive right to the use of the water and any rights of title to the land below the ordinary high water mark are subject to the rights of the people of the state to use and have access to the water for recreational purposes or any other public purpose for which the water is used or capable of being used consistent with the public trust.
- (d) This Act may not be construed to affect or abridge valid existing rights or create any right or privilege of the public to cross or enter private land.

Public Trust Doctrine

The Public Trust Doctrine provides that public trust lands, waters and living resources in a state are held by the state in trust for the benefit of all the people, and establishes the right of the public to fully utilize the public trust lands, waters, and resources for a wide variety of public uses. Each state has the authority and responsibility for managing these public trust assets to assure the public rights are upheld.

The Public Trust Doctrine applies whenever navigable waters or the lands beneath those waters are altered, developed, conveyed, or otherwise managed. It also applies whether the trust lands are publicly or privately owned. Public trust lands are generally those lands below navigable waters, with the upper boundary being the ordinary high water mark. Tidelands, shorelands of navigable lakes and rivers, as well as the land beneath oceans, lakes and rivers are usually considered public trust lands.

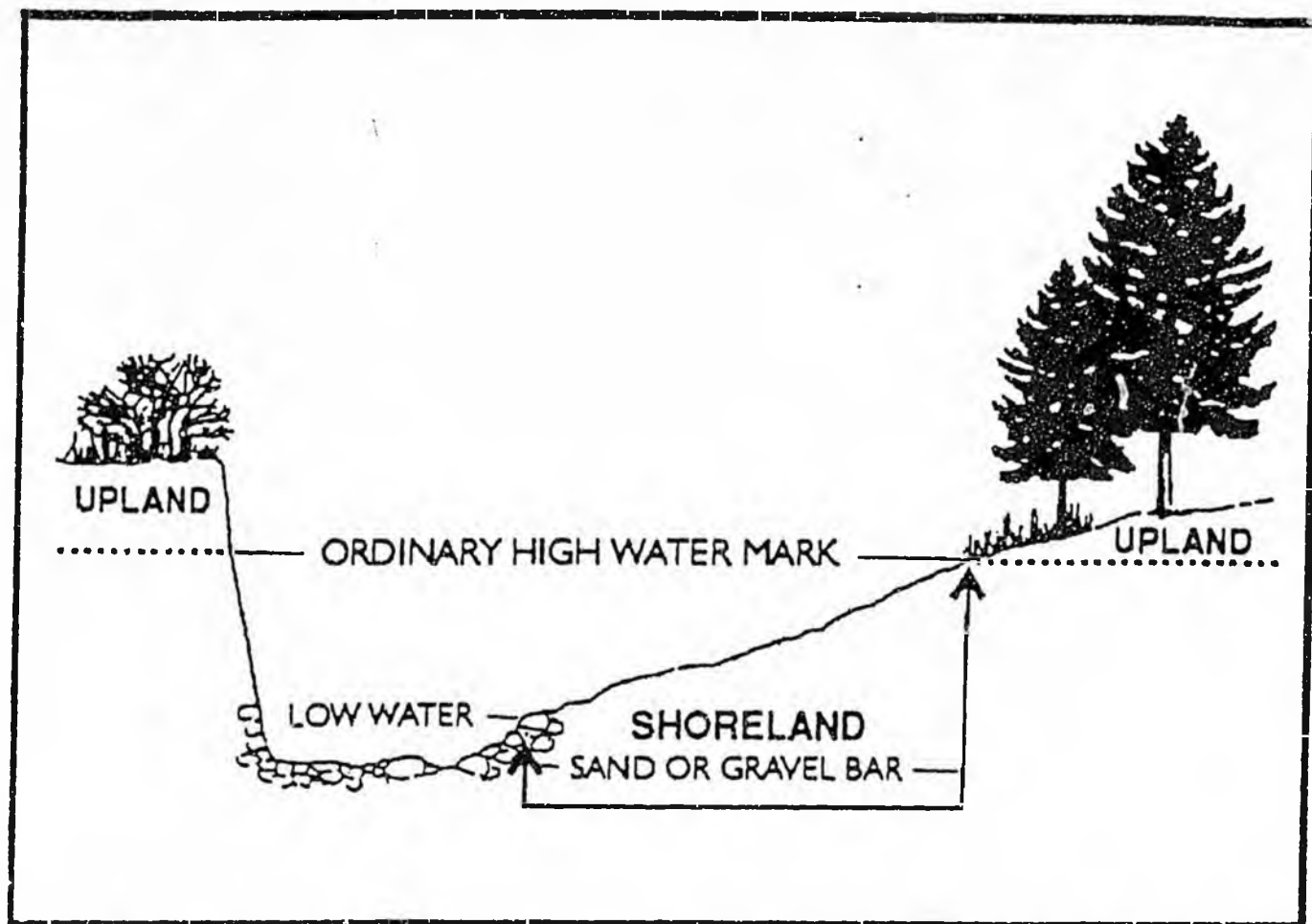
The Alaska Constitution contains numerous provisions embracing principles of the Public Trust Doctrine that require the state to exercise authority to ensure that the right of the public to use navigable waters for navigation, commerce, recreation, and related purposes is protected. In Alaska, the Public Trust Doctrine extends beyond those submerged lands in which the state holds title to include all waters that are navigable. The state's waters are themselves reserved to the people for common use.

The Alaska Constitution (Article VIII, sections 1, 2, 3, 6, 13, and 14) and Alaska Statutes (38.05.127 and 38.05.128) contain some of the provisions that are the legal basis for applying the Public Trust Doctrine in Alaska. In Alaska, this doctrine guarantees the public's right to engage in activities such as commerce, navigation, fishing, hunting, trapping, and swimming, while also providing for the protection of areas for ecological study.

The Alaska Constitution provides that "free access to the navigable or public waters of the state, as defined by the legislature, shall not be denied any citizen of the United States or resident of the state, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes." The Alaska Supreme Court has concluded "the provisions in article VIII [of the Constitution] were intended to permit the broadest possible access to and use of state waters by the general public." *Wernberg v State*, 516 P. 2d 1191, 1198-9 (Alaska 1973). The Alaska legislature has broadly defined the navigable and public waters available for public use in AS 38.05.965. Moreover, the legislature has endorsed a broad interpretation of the Public Trust Doctrine constitutionalized in article VIII in finding that:

Ownership of land bordering navigable or public waters does not grant an exclusive right to the use of the water and any rights of title to the land below the ordinary high water mark are subject to the rights of the people of the state to use and have access to the water for recreational purposes or any other public purposes for which the water is used or capable of being used consistent with the public trust. sec. 1, ch. 82, SLA 1985.

The legislature has also declared that the right to use state waters does not include the right to enter or trespass upon private lands. Nevertheless, with 99 percent of Alaska in public ownership at statehood, federal and state laws providing that the transfer of land to private parties also provide for public access to navigable waters have had broad effect. For instance, AS 38.05.127 implements the state constitutional guarantee of access to navigable waters under Article VIII, Section 14. Under the statute, the Commissioner of the Alaska Department of Natural Resources must "provide for the specific easements or rights-of-way necessary to ensure free access to and along the body of water, unless the Commissioner finds that regulating or eliminating access is necessary for other beneficial uses or public purposes."



The "Ordinary High Water Mark"

The Ordinary High Water Mark can usually be identified by the vegetation line along the bank or shore, or by other distinctive signs. It is defined as the mark along the bank or shore where the presence and action of water are so common and usual as to leave a natural line impressed on the bank or shore. That line may be indicated by erosion, shelving, changes in soil characteristics, destruction of terrestrial vegetation, or other distinctive physical characteristics.

State of Alaska Navigability Programs

Interagency Team

Protect the public rights associated with navigable waters, including the state's title to the submerged lands.

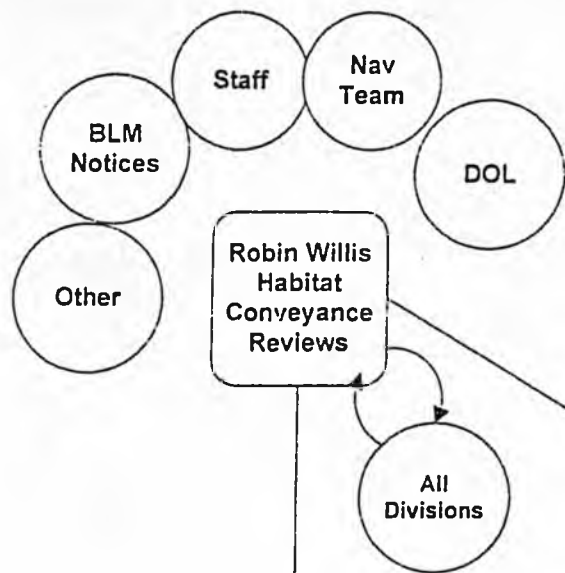
1. Identify the proper criteria for determining navigability in Alaska and gather sufficient information about the uses and physical characteristics of individual waterbodies so that accurate navigability determinations can be made when disputes arise.
2. Research and document public vs. private land disputes.
3. Answer public requests for navigability and public access information.
4. Monitor federal land conveyances and management programs to identify particular navigability disputes.
5. Seek cooperative resolution of navigability problems through negotiations and legislation.
6. Prepare for statewide navigability litigation.

Fish and Game Program

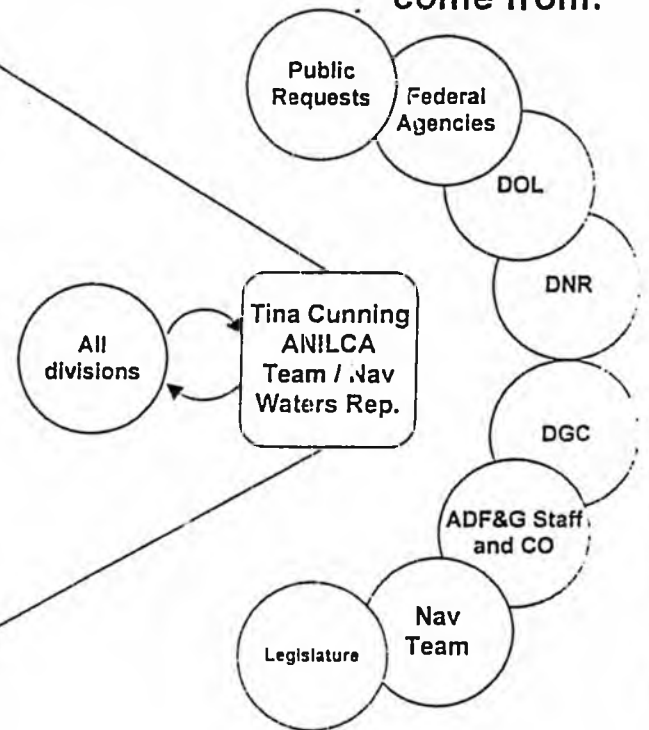
Protect the public rights associated with the enjoyment of fish and wildlife, including access across private land to public land and waters.

1. Research, document, and provide accurate information on access to and from waterways.
2. Research and document navigability statewide in preparation of future title claims.
3. Educate and train staff and public on navigability and Public Trust Doctrine.
4. Research private landowner rights vs. public rights of access across private land to public lands and waters.

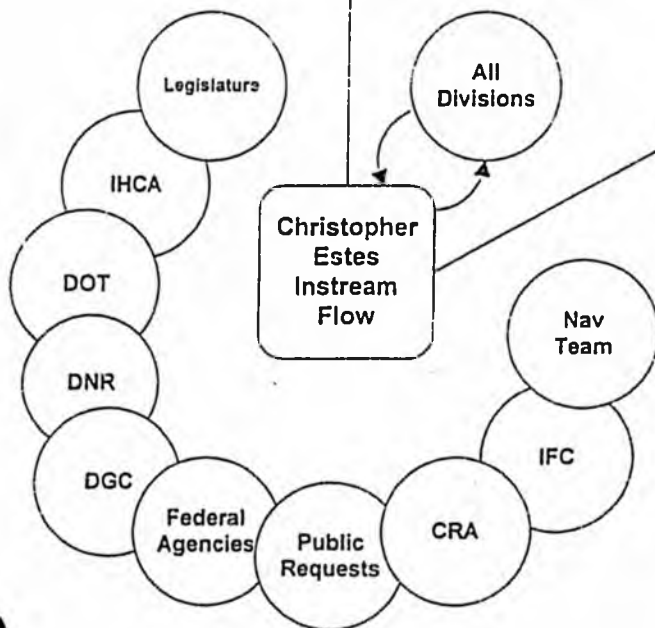
**Assignments
come from:**



**Assignments
come from:**



**Assignments
come from:**



**Frequent
communication
assures networking
with appropriate
division's staff and
expertise**

Waterbody Use and Observation Questionnaire

Return mailing:

**Attn: Kamie Simmons
Navigable Waters Program
Alaska Department of Fish and Game
333 Raspberry Road
Anchorage, AK 99518**

Date: _____

Full Name of Interviewee: _____

Signature of Interviewee: _____

Current Address: _____

Phone Number: _____

Waterbody Name: _____

U.S.G.S quadrangle map name, if known: _____

**PLEASE ATTACH ADDITIONAL PAPER OR INFORMATION TO BEST
DESCRIBE YOUR EXPERIENCES**

A. Please describe the waterbody. Please be as specific as possible and include widths, depths, gradients, obstructions (artificial and natural), and seasonal water flows, i.e., lower dry periods, flood periods, and freeze up periods.

B. Have you ever used the waterbody?

- 1) How long have you been using the waterbody, and how often? Include months and years.
- 2) What sections of the waterbody are you most familiar with? Attach a map if necessary.
- 3) What types of activities have you conducted on the waterbody? Example fishing, hunting, boating, transportation, and guiding.

C. How do you access the waterbody?

- 1) Where do you actually enter the waterbody?
- 2) Where do you travel to?
- 3) Where do you take out at? List names of roads, trails, etc.
- 3) Are there more access points that you are familiar with but have not used?
- 4) If there are obstructions, is it possible to portage?

D. What type of craft do you use when you are on the waterbody?.

1) What is the size of the craft used?

2) What is the weight of the craft?

Less than 100 lbs 100-400 lbs 400-800 800-1000+ lbs.

3) What is the estimated weight of the gear and people transported?

Less than 100 lbs. 100-400 lbs 400-800 800-1000+ lbs.

4) What type of propulsion is used on the craft?

5) What is the largest size craft you have seen on this waterbody? Based on your experience, what is the largest craft this waterbody could support?

E. Have you observed other people on the waterbody? In what types of crafts? What activities?

1) Do you know of anyone who is paid to take people out in a boat on the waterbody as a guide?

2) Do you know of anyone that has used this waterbody but not actually seen them on the waterbody?

F. Please list any other contacts that would provide first hand accounts of use on this waterbody.

ANCSA Section 17(b)
Public Access Easements

Robin Willis

Access Defense Program
Habitat Division, Anchorage

267-2329

robin_willis@fishgame.state.ak.us

ALASKA NATIVE CLAIMS SETTLEMENT ACT

PASSED ON DECEMBER 18, 1971

CREATED ALASKA NATIVE TRUST

- \$462,500,000 from the U.S. Treasury
- \$500,000,000 from U.S. & STATE OF ALASKA under revenue sharing

44 million acres of land

- 12 Regions in state & a 13TH Region for non-residents (18 m. acres surface + 22 m. subsurface)
- 220+ Villages (22 m. surface acres)

Terms of selections ~ 1st round 12-18-74; 2nd round 12-18-75;
3rd round for Regions 12-18-76

ANCSA Sec. 17(b) Easements

ESTABLISHED JOINT FEDERAL-STATE LAND USE PLANNING COMMISSION (LUPC)

Sec. 17(b)(1) -

"The Planning Commission shall identify public easements across lands selected by Village Corporations and the Regional Corporations and at periodic points along the courses of major waterways which are reasonably necessary to guarantee international treaty obligations, a full right of public use and access for recreation, hunting, transportation, utilities, docks, and such other public uses as the Planning Commission determines to be important."

ANCSA Sec. 17(b) Easements - cont.

- Section 17(b)(2) -

"In identifying public easements the Planning Commission shall consult with appropriate State and Federal agencies, shall review proposed transportation plans, and shall receive and review statements and recommendations from interested organizations and individuals on the need for and proposed location of public easements . . . "

ANCSA Sec. 17(b) Easements - cont.

EVOLUTION OF EASEMENT IDENTIFICATION

- The LUPC existed from 1971 to 1979
- 1979 - 1991, DNR Division of Land & Water assumed state's lead for identifying and negotiating for 17(b) easements.
- In 1991, ADF&G and other DNR divisions were requested to assume responsibility for identifying and protecting access interests.
- BLM continues to defer to DNR as the primary state authority

HISTORY of 17(b) EASEMENTS

- 1975 ~ BLM began conveying lands
 - 1976 ~ first easement policy issued by the Secretary of the Interior:
 - 25' & 50' wide trails
 - 60' & 100' wide roads
 - One acre site easements
 - 25' wide continuous streamside & shoreline easement
 - 1976 ~ litigation filed opposing easement policy
 - 1977 ~ agreement to continue conveying land while litigation ongoing; Terms of agreement:
 - U. S. would terminate easements determined unlawful
 - Native corporations would donate easements determined lawful
- Approx. 110 conveyances issued pursuant to agreement

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HISTORY of 17(b) EASEMENTS - cont.

- 1977 ~ Alaska District Court decision required termination of continuous streamside & shoreline easements.
 - To expedite conveyance process, the federal government (with state concurrence) agreed to conform the easements in stages.
 - Terminate unlawful easements immediately
 - Receive appropriate donations from corporations prior to patent

The termination requirement was applied to all conveyances, not just those party to the litigation.

- Nov 1978 ~ BLM issued new regulations
 - Easements only for access to public lands and major waterbodies
 - Recreational use on an easement (e. g., fishing) was prohibited

17(b) EASEMENT REGULATIONS

General Requirements

- ① Reasonably necessary to guarantee access to publicly owned lands or major waterways and other public uses
- ② Primary standard for determining which easements are reasonably necessary shall be present existing use (i. e., use as of 12/18/76)
- ③ Absent present existing use, public easements can only be reserved -
 - To guarantee international treaty obligations
 - Where no reasonable alternative route or site exists
 - To provide access to isolated tracts of public land

17(b) Easement Regulations - cont.

- All public easements reserved shall be specific as to use, location, and size. *Standard sizes and uses may be varied only when justified by special circumstances.*
- A public easement shall be *terminated if it is not used for the purpose for which it was reserved by the date specified in the conveyance, if any, or by December 18, 2001.*
 - An easement may be terminated at any time if its retention is no longer needed for public use or governmental function
 - An easement shall not be terminated if it provides access to isolated public lands solely because of absence of proof of public use

IMPORTANT ANCSA DEFINITIONS

- Major waterway – any river, stream, or lake which has a significant use in its liquid state by watercraft for access to publicly owned lands or between communities.
- Present existing use – use by either the general public (Native and/or non-Native) or by Federal, State, or municipal corporations on or before 12/18/76

17(b) EASEMENT DESCRIPTIONS- *Trails*

1976

VS

2000

- 25' wide trail – provide for foot travel, snow machines, dogsleds, horseback riding, small vehicles, and uses of a similar character.
 - 50' wide trail – provide for all terrain vehicles, track vehicles, 4-wheel drive vehicles, and uses of a similar character.
 - 60' wide road – accommodate local vehicular traffic and related uses.
 - 100' wide road – accommodate major traffic arteries or roads connecting communities or regions.
 - Coastline easement – provide for access along marine coastline, including deviation from the waterline due to topography or waterfront obstruction and to provide beaching of boats and floatplanes.
- 25' wide trail – accommodate travel by foot, dogsleds, animals, snowmobiles, two and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs GVW)
 - 50' wide trail – accommodate travel by large all-terrain vehicles (more than 3,000 lbs GVW), track vehicles, and 4-wheel drive vehicles.
 - 60' wide existing road – accommodate travel by automobiles or trucks.
 - 100' wide proposed road – proposed road whose width can be reduced if after construction a lesser width is sufficient

17(b) EASEMENT DESCRIPTIONS - *Sites*

1976

VS

2000

- Campsites and boat and float plane pullout spaces – one acre located within a reasonable distance from water or linear access routes, with access to and from.
 - Provides for temporary camping through use of undeveloped sites; boat and float plane pullout areas, and sanitation facilities
- One acre site easements – reserved for aircraft landing or vehicle parking (e. g., aircraft, boats, ATV's cars, trucks), temporary camping, loading or unloading at a trail head, along an access route or waterway, or within a reasonable distance of a transportation route or waterway where there is a demonstrated need to provide for transportation to publicly owned lands or major waterways.
 - Temporary camping, loading or unloading shall be limited to 24 hours.
 - Reserved on the marine coastline only a periodic points were reasonably necessary to facilitate transportation on coastal waters

ANCSA CONVEYANCE PROCESS

- 1 - Lands proposed for conveyance ~ reviewed by BLM District Office staff to identify tentative easement recommendations
- 2 - Easement recommendations ~ sent to state and other interested parties who are given opportunity to request additional easements
- 3 - BLM District Office staff review all recommendations received and prepare list of final easement recommendations for the State Office
- 4 - The BLM State Office issues **Decision to Issue Conveyance** that outlines all necessary easements and other terms and conditions

*The **Decision** is appealable - Anyone who can show a **TITLE** interest can appeal to the Interior Board of Land Appeals (IBLA).*

- 5 - If no appeal, then Interim Conveyance or Patent issued

ANCSA 17(b) Easements; Seldovia example

9-63 State selected & received Tentative Approval

12-74 Seldovia Native Association (SNA) selects land

74/75 Easements work completed

9-75 & 3-77 Tentative

Approvals rejected

10-75 & 12-78 Lands

conveyed to SNA

(12-78 conveyance

subject to easement

conformance)

ANCSA 17(b) Easements; Seldovia example - cont.

- 3-83 State QCDs inholdings on Seldovia Lake to SNA, reserving 25' wide public access trail to State land
- 12-83 Continuous shoreline easement terminated
- 1993 Lands patented to SNA, easements not conformed
- 1997 BLM and Community members attempt to mark and clear easements up Seldovia Valley, prevented by questions on location and uses
- 7-97 SNA requests termination of a majority of the easements accessing Seldovia Valley as they are "no longer needed for public use"
- 8-97 BLM responds to request, acknowledging need for easements
- 98 to Present BLM, State, SNA, City of Seldovia and others continue efforts to negotiate a reasonable settlement

Questions that remain

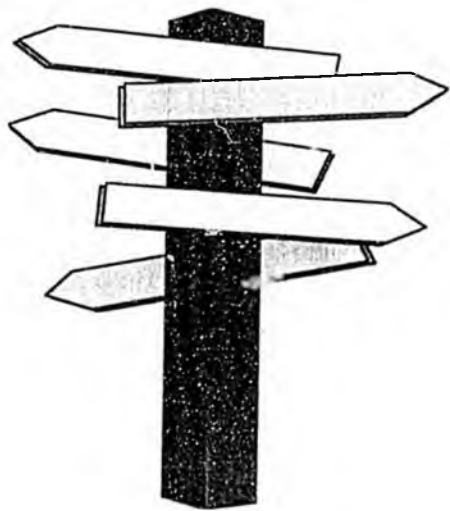
- Location of the easement reserved?
- Did the “*existing*” route refer to an historic route established by the CCC? does it qualify as an RS277?
- Are there valid section lines within these townships?
- Is Seldovia Lake state public waters to which access should be reserved?
- Can allowable uses on these trails be reduced to non-motorized and under what authority?
- Who should manage the easements since they access state land?
- Can motorized vehicles be used within the city’s designated watershed?
- What access, if any, is available through University land?

AND THE LIST GOES ON . . .

Current Problems

- * 2001 Easement Termination Project
 - * Overselections
- * Marking & Managing Easements (state participation?)
 - * Allowable Uses

RS 2477
trails & section line easements



Tina Cunning
Commissioner's Office
funded through Wildlife Division
Anchorage, 267-2248
tina_cunning@fishgame.state.ak.us

RS 2477 ~ trails & section line easements

The revised statute, passed in 1866, states in its entirety:

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

A RS 2477 right-of-way (ROW) could be established only over land owned by the federal government not otherwise restricted or reserved. “*Reserved*” means it was set aside as a national park, monument, forest, military reservation, or similar withdrawal. If the ROW grant predated the reservation, it remains a valid property right. RS 2477s are the responsibility of the respective states to assert and manage.

RS 2477 ~ trails & section line easements - cont.

Examples of “reserved”:

- *Entry dates* (for homesteads, headquarter sites, trade and manufacturing sites, etc.)
- *Location dates* (for unpatented and patented federal mining claims)
- *Occupancy dates* (for Native Allotments)
- EO's, PLO's, etc. that appear on the township's federal historical index and have effect of withdrawing land
- *Reservation dates* (for national parks and other withdrawals for specific purposes)

Width of Easements - If acceptance was by a public authority, width would be at the usual width for that type of highway:

- Between 1917 and 1949, 60' would apply.
 - After 1949, 100' width applies.
- If user-established, the trail is at a minimum width capable of containing the roadway

RS 2477 ~ Trails & Section Lines Easements

- DOT-DNR 1993-1998 RS 2477 Project:
 - \$1.1 million over 5 years
 - 2000+ trails researched
 - 602 trails qualified as RS 2477 easements
 - Since then, 69 more identified as qualifying and 12 recommended to be “removed”
- 1998 State Legislation ~ The State of Alaska, through 19.100.010 (commonly referred to as SB 180), public use, expenditure of public funds for construction and other means, claims numerous rights-of-ways across federal land under RS 2477, including section line easements and rights-of-way identified in AS 19.30.400.
 - DNR required to annually report to Legislature:
 - (1) any trails for addition to Alaska Statute 19.30.400(d), and
 - (2) trails for removal due to lack of historical use or status of withdrawals of the public land, rendering it “reserved”.

[Only 3 identified for addition in 2000]

RS 2477 ~ trails & section line easements cont.

Federal hurdles ~ Federal agencies frequently refuse to recognize RS 2477 trails, although do recognize section line easements.

The validity of all RS 2477 rights-of-way will be determined on a case by case basis. Although the DOI has attempted to define the terms of the grant through regulation, Congress mandated that no rules governing RS 2477 would be effective until specifically authorized by an act of Congress.

State hurdles ~ Ch 26 SLA recording requirement

~ Management questions--permitting

RS 2477 ~ Trails & section line easements cont.

- RS 2477 trails and section line easements can be replaced by alternative public access only if compliance with Chapter 26 SLA 98, AS19.30.410.

“Agencies of the state may not vacate a right-of-way acquired by the state under form 43 USC 932 unless (1) a reasonably comparable, established alternate right-of-way or means of access exists that is sufficient to satisfy all present and reasonably foreseeable uses;”

- DNR is adopting revised regulations in two phases:
administrative adjudication of assertions, eliminating “certification process” assertion of RSTs, identifying use permit and widths, and may propose legislation to change the “vacation” of easements process

RS 2477 Current Problems

- * 17(b) & RS 2477s overlap but width and use differences
- * Status on Native lands, University lands, Mental Health, and crossing railroads
- * Marking & managing section line easements between DOT & DNR (role of ADF&G?)
- * Valid surveys of location
- * Vacating
- * Allowable Uses
- * Municipal Authorities