

LEG. FINANCE - BILLS 1977 - 1978 818

HB 838 cont. 818

I WILL CONCLUDE WITH SOME POSITIVE POLICIES WE PROPOSE FOR THE ROAD IN THE INTERESTS OF RESPONSIVE LOCAL GOVERNMENT AND PROPER TRANSPORTATION PLANNING:

1. WE SAY LIMIT THE ROAD TO INDUSTRIAL USE, POSSIBLY ON A SEASONAL BASIS, AND LIMIT PUBLIC ACCESS TO A CONTROLLED TOUR BUS OPERATION, SUCH AS THE ONE BEING PROPOSED BY THE ARCTIC SLOPE REGIONAL CORPORATION.
2. AS THE GAS-LINE IS COMPLETED, WE RECOMMEND FULL CONSIDERATION OF DESIGNATION OF THE HAUL ROAD AREA AS A LIVING CULTURAL PARK, WITH FULL SUBSISTENCE RIGHTS FOR OUR VILLAGE RESIDENTS AND WITH A SINGLE COOPERATIVE MANAGEMENT SYSTEM DESIGNED TO PROTECT AND ENHANCE THE NATIVE CULTURES. SIGNIFICANT PARTS OF THE OIL AND GAS PIPELINES COULD ALSO BE NOTED AND PROTECTED AS HISTORIC RESOURCES. WE COULD PRESERVE THE TRANSPORTATION HISTORY OF THE CORRIDOR, STARTING WITH MIGRATIONS FROM THOUSANDS OF YEARS AGO AND RUNNING RIGHT DOWN TO MODERN-DAY NATIONAL ENERGY DEVELOPMENT. THE BOROUGH IS WORKING WITH BLM, THE PARK SERVICE AND THE STATE TO FURTHER EXPLORE THIS IDEA. ACCESS TO THE CULTURAL PARK COULD STILL BE BY CONTROLLED TOUR BUS OR BY HIKING, BOAT OR AIR UNDER CAREFUL PLANNING AND MANAGEMENT.
3. ONCE IT IS DETERMINED THAT THE INDUSTRIAL-USE PERIOD OF THE ROAD IS COMPLETE, OR THAT THE ROAD IS NO LONGER

ESSENTIAL TO INDUSTRIAL USE, WE RECOMMEND CONSIDERATION OF TOTAL CLOSURE AND FULL RESTORATION OF THE AREA TO ITS NATURAL STATE.

AS A MATTER FOR SOUND STATE AND NATIONAL ARCTIC POLICY, ROADS SUCH AS THE HAUL ROAD SHOULD BE SEEN AS A THREAT TO NATIONAL ARCTIC ENVIRONMENTAL SECURITY AND, WHENEVER POSSIBLE, AIR AND BARGE TRANSPORTATION SHOULD BE USED EXCLUSIVELY TO SUPPLY PRUDHOE BAY AND THE PIPELINE. THE STATE AND FEDERAL GOVERNMENTS SHOULD ACTIVELY DISCOURAGE EVEN UNNECESSARY INDUSTRIAL TRAFFIC ON THE HAUL ROAD.

4. NO MATTER WHAT HAPPENS WITH THE ROAD, WE INSIST ON FULL STATE AND FEDERAL COMPLIANCE AND COOPERATION WITH OUR ZONING ALONG THE ROAD AND WITH SUBSEQUENT HISTORICAL PRESERVATION AND MASTER STREETS AND ROUTES PLANS WHICH WE WILL PREPARE FOR THE AREA. WE ARE A STRONG HOME RULE BOROUGH AND WILL MAKE FULL USE OF OUR POWERS TO PROTECT OUR INTERESTS. WE ARE ALSO CONSIDERING A TIME-PHASED AIRPORT AND ROAD CONSTRUCTION ORDINANCE WHICH WILL REQUIRE THE STATE TO CHECK WITH US AND PHASE ALL FUTURE AIRPORT AND ROAD IMPROVEMENTS WITH THE NEEDS AND PRIORITIES OF OUR VILLAGES.

5. WE HAVE NOTED ONE LINE OF THOUGHT... THAT THE ROAD HAS TO BE PUNCHED WIDE-OPEN TO ALL PUBLIC MOTORISTS BECAUSE OF FEDERAL CONTRIBUTIONS OF GRAVEL: OVER \$2 MILLION. I HAVE ALREADY WRITTEN THE GOVERNOR AND SUGGESTED THE BOROUGH MIGHT BE ABLE TO USE SOME OF ITS CAPITAL IMPROVEMENTS FUNDS TO HELP BUY BACK GRAVEL AND OTHER FEDERAL INVESTMENTS IN THE ROAD AS A WAY OF MAINTAINING CONTROL AND ENSURING PROPER PLANNING AND ENVIRONMENTAL PROTECTION. WE HAVE BEEN WORKING STEADILY WITH BLM AND THE STATE ON AN OVERALL MASTER PLAN FOR THE ROAD AREA SO WE ALREADY HAVE A RECORD OF INITIATING AND PARTICIPATING IN SOUND TRANSPORTATION PLANNING EFFORTS WHICH HAS BEEN CLEAR AND CONSISTENT OVER A LONG PERIOD OF TIME.

I HOPE YOU WILL NOW START TO TREAT THE NORTH SLOPE BOROUGH SERIOUSLY AS A FULL-FLEDGED HOME RULE GOVERNMENT, AND TAKE OUR POSITION AND OUR POLICIES TO HEART. FORTUNATELY, IN THIS CASE AT LEAST, GOING ALONG WITH THE BOROUGH MAKES CLEAR ECONOMIC AND ENVIRONMENTAL SENSE FOR THE STATE AS A WHOLE. WE SHOULD ALL STOP AND WONDER HOW IT IS THAT THE OIL INDUSTRY HAS BEEN ABLE TO MANIPULATE US HERE, ALL GROWN ADULTS, INTO SERIOUSLY CONSIDERING MAINTAINING THEIR ILL-ADVISED ROAD TO PRUDHOE BAY AS A PUBLIC HIGHWAY. HOW MUCH HARM ARE WE WILLING TO ALLOW THE INDUSTRY TO INFLICT UPON US IN ALASKA?

Tanana Chiefs Conference, Inc.

Daye Building
First and Third Streets
Fairbanks, Alaska 99701
Phone (907) 452-8251

March 27, 1973

The Honorable Jay S. Hammond
Governor of the State of Alaska
Pouch A
Juneau, Alaska 99811

Dear Governor Hammond:

Just recently, Tanana Chiefs Conference, Inc. passed a resolution on the State Legislature's actions on proposed bills opening the haul road for use by the general public. The purpose of this letter is to give testimony on the proposed actions and concomitant recommendations. Reinforcing the comments of this letter are the attached resolutions passed unanimously by the forty-two villages represented by the Tanana Chiefs Conference, Inc.; the resolutions are 73-15, 74-9 and 76-23.

APPREHENSIONS

The major apprehension as cited by the resolutions is that of the fear of losing a way of life should the haul road be open to the general public. The way of life that is now held by the Interior residents is very delicate in that any impact on the land and the wildlife and other resources that it holds will, without a doubt, surface unresolvable ramifications. Unlike the way of life that is demonstrated in the larger urban centers and other communities that are closely linked by the existing highway system, the way of life in the rural communities is significantly different in that the livelihood is very dependent on the land in a subsistence (or non-cash) economy as opposed to a cash economy manner of existence. Although many will say that the passage of the ANCSA will enhance the capabilities of rural residents to conform to the cash-economy way of living, it is TCC's determination that the capital benefits stipulated the ANCSA will not be felt for many years to come. The way of life in Interior Alaska is then highly dependent upon land in its natural and most purest form undisturbed by man-made facilities and influence.

Basic needs such as food, clothing, and other essential attributes (including the nutritional needs of a Native diet) for maintaining such a livelihood can only be gleaned from the fish and game resources in the region. It is subsequently apparent that the opening of the haul road would severely tax the now limited resource. Take for example the lack of the resource along the Steese, Taylor, and Elliott highways today. Ten to fifteen years ago, the resources were plentiful. But not today.

The Honorable Jay S. Hammond
March 27, 1978
Page Two

Opening any new road to the general public would further diminish the inflicted resource. The subsistence lifestyle is in jeopardy as are the people who live this way unless steps are taken to preserve and ready the lifestyle for conforming into another lifestyle more prepared to face today's standards in urban Alaska.

It is important to note that rural Alaska is leaning toward the opinion that it must take all Alaskans, whether rural or not, to preserve the lifestyle and the resources incident to the subsistence lifestyle in Alaska. It is also the opinion that the majority of people living in Alaska do not know what subsistence lifestyle is; many have not truly experienced it.

There is also the apprehension that if the haul road is to be open to the general public, State funds will also be taxed in that funds will have to exist to maintain the road satisfactorily for public use; to insure protection of existing regulations dealing with the taking of fish and game; to insure security of the pipeline to guarantee no spillage from malicious damage on surrounding landscapes; and to meet other countless responsibilities the State will be faced with. Funds used for the haul road might be better used to insure satisfactory delivery of services to rural communities in the areas of upgrading the existing transportation systems; of educational facilities and programs; of health problems, disease prevention and associated programs; and of the Department of Public Safety in its role to protect the inherent rights and lifestyles of all individuals in the State of Alaska. Notwithstanding the possible negative legal ramifications of user's fees for paying part of the costs for the maintenance of the haul road, this doesn't address the issue of other responsibilities the State will have once the haul road is open to the general public; to the extent that surrounding resources will be effected is not known at this time, resources to include the human resources.

This leads to another apprehension in the State's ability to financially meet the needs to the human resources impacted. What promise has been shown and what questions have been addressed from the State's legislative, judiciary, and administrative branches that should the haul road be open to the public, how or who should meet the socio-economic pressures of the people affected by such opening. Allowing the general public to utilize the haul road will be a first step in many to come for outsiders to infringe upon the delicate lifestyle of the rural people. This will bring about pressures that will have to be dealt with, most likely in terms of social service assistance grants and other financial aid in the form of impact monies. It seems quite a burden for the State of Alaska in meeting these costs and others not mentioned or not yet known; more, no doubt, will appear.

Another fear that relates to possible long-term impact are those that could very well produce intangible negative repercussions on the com-

The Honorable Jay S. Hammond
March 27, 1978
Page Three.

munities along the haul road. Primary in this area is the alarm centered around the unseen impact permanent facilities such as lodges, service stations, camping areas, and rest areas will have. More important is the precedent that will be set with the utilization of this road as it relates to future road and highway systems through rural Alaska. The intangibles are too distant to get a handle on until planning has taken place which will include a maximum of public input in the total process.

RECOMMENDATIONS

Quite eminent is the recommendation from TCC that any legislative action should not take place. With respect to the legal findings concerning whether or not the road justifies user's fees or whether or not the State should buy back portions of the road for such purposes, action at this time relating to the disposition of the haul road is untimely and out of context with the methodology of wise planning. Until such legal questions are answered, the interim use of the road as the State's administration sees it more properly fits into the spectrum of events leading to a more permanent situation. If the intent of such legislation is to immediately open the road to the general public without adequate planning and limitations for public access, such legislation is truly an act of hastiness and disregard to proper well thought-out decision-making. Opening the road for purposes of catering the interests of urban developers leaves little consideration to the basic needs of a lifestyle found in communities near the haul road. A positive approach in looking at the future use of the road would be to adopt an interim policy much like the administration has conceived and delay the introduction of any bills that would allow any access until more thought has been given to legal, financial and social concerns.

In looking at the proposed use, another positive and structured step would be to begin the creation of a process at arriving at a suitable conclusion. This process has been given much consideration by many agencies. I will not address their specific recommendations, however, it is TCC's feeling that public involvement from the communities closely adjacent to the haul road is important. Further, it is recommended that other agencies such as the Fairbanks North Star Borough, the Arctic Slope Borough, Gwitchya Gwitchin Gwinaye (the nonprofit regional association for the Fort Yukon Flats villages) Boyce, Limited, the Arctic Slope Regional Corporation, et al, should have formal involvement in the study design; this will also include village corporations and traditional councils. On a more state-wide involvement, perhaps a coordinating council of nine to eleven people from different agencies in the State system and local people should be instituted along with staff support, their duties being the implementation of a careful objective study in the use of the haul road.

It is also realized that there are a lot of residents in the rural communities who are lacking in information concerning the haul road. More programs or workshops aimed toward creating public awareness on the issue of the haul road and others would be a positive step in involving

The Honorable Jay S. Hammond
March 27, 1978
Page Four

people in statewide or local issues. With concern to the recommended study mentioned above, periodic public meetings in the potentially effected villages to bring people up-to-date on the haul road matter would be an affirmative step in involving State citizens in the planning process.

TCC also recommends that before legislation is introduced concerning the utilization of the haul road, the State should defer such action until the BLM concludes their land use study in the corridor. It is our understanding that the BLM's planning process has begun where meetings with communities and villages close to the pipeline will take place this late spring or early summer. Data from that study can be an invaluable planning resource for the recommended study. Also, by exchanging information with the Federal entity, it would come as an assured feeling that the State is working closely with all involved to protect the interests and lifestyle of rural Alaska; moreover, it should create the feeling that the State and Federal Governments are not deciding the future activities of the corridor and the haul road with goals that are not harmonious and compatible, leaving the rural residents relentlessly caught in the middle.

In closing, I would like to reiterate that the rural residents of Interior Alaska are opposed to any move that would open the haul road to the general public. It is felt that doing such would endanger a lifestyle that is very, very delicate in these times. The opening of the haul road to the general public would leave the rural communities without the necessary resources to live a lifestyle necessary to sustain their culture and diet.


Opening the haul road would follow the precedent started from other roads crisscrossing the Interior and amplify their impact on the resources needed for a subsistence lifestyle.

Although this testimony has gone over points already been said, it is important to know that this issue is vitally important to Alaskans in rural communities.

Thank you for your consideration and careful deliberation over the comments brought forth here.

Sincerely,

TANANA CHIEFS CONFERENCE, INC.



Chris Anderson, Director
Village Government Services

Enclosures: As stated.

TANANA CHIEFS CONFERENCE, INC.

BOARD OF DIRECTORS RESOLUTION NO. 78-15

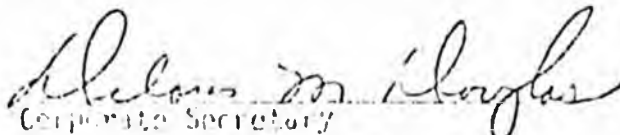
- WHEREAS, the Tanana Chiefs Conference in Board Resolution 74-9 opposed the agreement made by the State of Alaska with the Alyeska Pipeline Service Company to construct a North Slope Haul Road up to the standards of a second class highway and to open up this road to the general public subsequent to construction of the Trans-Alaska pipeline; and
- WHEREAS, the Tanana Chiefs Conference in Board Resolution 76-28 opposed the opening of the North Slope haul road to the public subsequent to the construction of the Trans-Alaska pipeline; and
- WHEREAS, both these resolutions opposed the opening of the haul road because opening the haul road would destroy the subsistence activities which are necessary to feed and clothe and to maintain the way of life and cultural traditions of the people living in the interior region north of the Yukon River by severely taxing the limited fish and game resources of this region; and
- WHEREAS, it has been the experience of the people of the rural areas of the interior region that the opening of road(s) such as the Steese, Taylor and Paxston roads to the general public has resulted in destroying subsistence activities; and
- WHEREAS, this destruction of subsistence activities along these roads is obvious to anyone traveling the roads in the lack of visible game and the evidence of the reckless discharge of firearms, such as shot-up road signs; and
- WHEREAS, the State of Alaska has not shown a responsible, positive attitude toward conservation of game in the interior region as evidenced by its support of the opening of the haul road to the general public; and
- WHEREAS, the result of this irresponsible attitude on the part of the state will be increased federal activity in designating Alaska lands as wilderness areas in which only severely limited subsistence activity will be permitted.

NOW THEREFORE BE IT RESOLVED that the Tanana Chiefs Conference opposes the opening of the North Slope Haul Road to the general public; and

BE IT FURTHER RESOLVED that the Tanana Chiefs Conference opposes House Bills 338 and 350 and Senate Bill 107.

CERTIFICATION

I hereby certify that this Resolution was duly passed by the Tanana Chiefs Conference Board of Directors on March 16, 1978, at Fairbanks, Alaska.


Corporate Secretary
Tanana Chiefs Conference, Inc.

Tanana Chiefs Conference, Inc.

Board Resolution 74-9

- WHEREAS, it is one of the main functions of the Tanana Chiefs Conference to protect the traditional lifestyle of its Native people and,
- WHEREAS, the interior region of the Tanana Chiefs Conference north of the Yukon River supports communities who rely very heavily upon the subsistence way of life in order to feed and clothe themselves and their families and,
- WHEREAS, the land, rivers and streams and lakes of the northern interior region of the Tanana Chiefs Conference have a relatively low productivity of fish and game and,
- WHEREAS, an agreement has been made by the State of Alaska and Alyeska Pipeline Service Company to construct a North Slope road to be built to secondary highway standards and to be made open to the general public as a major state highway after trans-Alaska oil pipeline construction has been completed and,
- WHEREAS, no single event will greater influence the future of northern interior Alaska with greater impact than will the opening up of this land with a public access state highway and,
- WHEREAS, public vehicle access to this area will create severe conflicts over uses of subsistence resources on either side of the highway for virtually the entire northern region of the Tanana Chiefs Conference, and will vastly increase the pressures on these resources and,
- WHEREAS, the policy established by state officials to open this area to public vehicle access was made entirely without regard to the tremendous impact it will create upon the land and the people who live on and from it, and without the input of these people in this policy making decision and therefore,
- BE IT RESOLVED, that the Tananaⁿ Chiefs Conference assembly urgently requests that the decision to take the Yukon River Bridge and North Slope road conform to second class highway standards and open to public use be reversed, and that the entire question of public use of this corridor be very carefully reviewed by a select

committee to include representation from the Tanana Chiefs Conference, Doyon, Limited, the rural villages from the general area of the pipeline corridor, other private citizen groups, the Alaska Department of Fish and Game, United States Bureau of Sport Fisheries and Wildlife, National Park Service, Joint Federal-State Land Use Planning Commission and other appropriate Native regional and village entities and other appropriate parties, with the study to culminate in a series of public hearings in the villages which would be most closely affected.

I hereby certify that the foregoing resolution was duly passed by the Tanana Chiefs Conference, Inc., Board of Directors, at a meeting in Fairbanks, Alaska on the 15th day of March, 1974.



Flora Bergman, Secretary

TANANA CHIEFS CONFERENCE CONVENTION 1976

Resolution #76-28

- WHEREAS, the Tanana Chiefs Conference, Inc. (TCC) is an Indian tribe as defined in the Indian Self-Determination Act and the Alaska Native Claims Settlement Act and is recognized by the Secretary of the Interior; and
- WHEREAS, due to the Trans-Alaska Pipeline system, a haul road has been constructed for delivery of equipment, materials and people through areas utilized by the members of the Tanana Chiefs Conference for subsistence hunting, fishing and trapping; and
- WHEREAS, the people of the Tanana Chiefs region are concerned about the impact of the opening of the haul road and the quality of life traditionally enjoyed by the people of the Tanana Chiefs Conference; and
- WHEREAS, the permanent maintenance of the North Slope haul road would present a costly burden upon the citizens of Alaska, whose taxes are expended at a rate in excess of state income at present; and
- WHEREAS, the migratory patterns of fish, fowl, indigenous game and species native to the regions penetrated by the haul road have already been altered, and would be further changed by the increased hunting pressure attendant to the public opening of their road;
- NOW THEREFORE BE IT RESOLVED that the Tanana Chiefs Conference, assembled in convention this 19th day of March, 1976 does hereby oppose the opening of the North Slope haul road to the public subsequent to construction of the Trans-Alaska pipeline.

Iloa Bergman
Signed

March 19, 1976
Date

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. HB-83b and HB-850
 Title An Act Relating to the North Slope Haul Road
 Requested by House State Affairs Committee Date February 28, 1978

II. FISCAL DETAIL
 Agency Affected Department of Transportation & Public Facilities
 Program Category Affected Highway Maintenance
 Budget Request Unit(s) Affected Maintenance & Operations Buildings

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES			1893.6			
200 TRAVEL			731.5			
300 CONTRACTUAL			1579.2			
400 COMMODITIES			679.0			
500 EQUIPMENT			348.4			
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

FUNDING (Thousands of Dollars)

GENERAL FUND			5231.7			
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

(SEE ATTACHED MEMORANDUM)

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB-833 and HB-850
 Title An Act Relating to the North Slope Haul Road
 Requested by House State Affairs Committee Date February 28, 1978

II. FISCAL DETAIL

Agency Affected Department of Transportation & Public Facilities
 Program Category Affected Highway Maintenance
 Budget Request Unit(s) Affected Maintenance & Operations Buildings

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FUNDING (Thousands of Dollars)

GENERAL FUND			5231.7			
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

(SEE ATTACHED MEMORANDUM)

IV. DATE March 23, 1978 PREPARED BY Justin Swift
 AGENCY Maintenance & Operations
 PHONE 452-1911 ext. 261
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

STATE
of ALASKA

MEMORANDUM

TO: James O'Sullivan
Deputy Commissioner
Maintenance & Operations
Anchorage

DATE: March 23, 1978

FILE NO:

452-1911

TELEPHONE NO:

FROM: Charles Meggitt
Regional Director
Maintenance & Operations
Interior Region

SUBJECT: Fiscal Notes
HB-838 & HB-850

RECEIVED
MAR 26 1978

Please find attached a fiscal note that will cover both bills. Our interpretation of these bills is that the time period would be the same as our budget request with the condition that the road will be open to the public.

We do not feel that DOT/PF will incur any additional expense due to the road being open to the public. Public Safety will incur extra expense and we have assumed they will do their own fiscal note.

We did not reduce our budget to reflect a reduction in access control because we feel some sort of control will be required in either case.

CM/JS/dc

Attachment



Steve
Cowper

**PUBLIC EMPLOYEES
LOCAL 71 AFL-CIO**

HEADQUARTERS

903 W. NORTHERN LIGHTS BLVD., ANCHORAGE, ALASKA 99503

BUSINESS MANAGER - SECRETARY TREASURER

AL J. BAFFONE, SR.



May 12, 1978

The Honorable Steve Cowper
Representative
State of Alaska
Pouch V
Juneau, AK 99811

RE: North Slope Road

Dear Chairman Cowper:

It is my understanding that the House Bill on the North Slope Road is now in your committee for consideration.

Section .270 located on page two, line 19 says, as I interpret it, that the maintenance of the North Slope Road will be done under a bid contract. If that is the correct interpretation of that section, then Local 71 would have to go on record in opposition to the enactment of the North Slope Road legislation, if in fact it contains language that would place the maintenance of the Road to bid contract in the private sector. As you should be aware, the State of Alaska, Department of Transportation and Public Facilities, with particular interest to the Maintenance and Operations section, has established a very good record on the maintenance of State owned and maintained roads where there has been sufficient appropriations for them to do so.

As you also might be aware, the District Council of Laborers', at the request of Local 71 an affiliate thereof, passed a resolution calling for the opening of the road with specific inference on the fact that the maintenance of the road should be by the State of Alaska and its very competent and qualified State employees.

Steve, Local 71 would appreciate your assistance in this area of obtaining either a clearer understanding of the intent of Section 19.25.270 or removing said reference from the piece of legislation.

JUNEAU

KEN SPRAY
BUSINESS REPRESENTATIVE
114 50 FRANKLIN ST., ROOM 103
(907) 586-0993

ANCHORAGE

JENNIE DAY PETERSON
MONTY HENNINGER
BUSINESS REPRESENTATIVES
(907) 276-7211

FAIRBANKS

JIM YOUNGER
BUSINESS REPRESENTATIVE
208 WENDELL, ROOM 205
(907) 452-5024

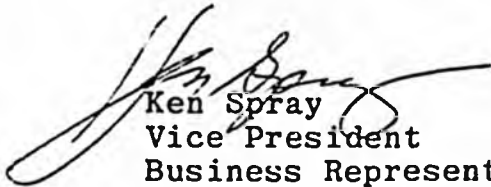
Representative Steve Cowper

-2-

May 12, 1978

If you have any questions on this piece of legislation, please feel free to contact me.

Sincerely,



Ken Spray
Vice President
Business Representative
AFL-CIO, Local 71

KS/bb

STATE OF ALASKA

JAY S. HAMMOND, Governor

OFFICE OF THE GOVERNOR

DIVISION OF POLICY DEVELOPMENT AND PLANNING

Phone 465-3512

Pouch AD - Juneau 99811

May 19, 1978

The Honorable Steve Cowper
Chairman, House Finance Committee
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Mr. Cowper:

I would like to bring to your attention some serious deficiencies in CSHB 838 "An Act relating to the North Slope Road".

Section 1 creates a new section, AS 19.10.105, which requires the state to maintain the North Slope Road for 12 months each year for any and all users. There are three problems with this section.

(1) Subsection (b) of AS 19.10.105 precludes "preferential access . . . to any group of users" and requires that the road must be open to all if it is open to any. This provision eliminates the Commissioner's existing authority to close the road for the safety or welfare of drivers. It would preclude, for example, closures to all but emergency vehicles necessary for oil spills, explosions, etc. Unlike any other road in the state highway system, restrictions on the basis of vehicle type will be precluded.

(2) Subsection (c) requires that the road be maintained "for use by the general public for 12 months each year". As indicated above, other roads can be closed when necessary for the safety and welfare of the public (avalanches, mud slides, earthquakes, washouts, ice conditions, etc.). This section would remove the Commissioner's authority to do so, regardless of the conditions, because it must be maintained for use "12 months each year."

Numerous factors exist which justify preferential access for certain types of users under certain circumstances for this road more than any other not less. Just to mention a few: (1) unavailability of any facilities for the public, (2) environmental impact to the region, (3) level of maintenance required for different types of users, (4) security problems associated with the Alyeska Pipeline, (5) safety of drivers.

The Honorable Steve Cowper
May 19, 1978
Page 2

(3) "North Slope Road" is not defined. Is it the road north of Fairbanks, the Yukon River Bridge or some other demarcation? That is a significant problem in light of the fact that this section would require that the Department of Transportation treat this road differently from any other, as discussed above.

Section 2 of CSHB 838 requires the Department of Natural Resources to "make available...land of the state along the North Slope Road for necessary facilities." The department cannot make available that which does not exist. The road is within a federal corridor which is under the jurisdiction of the Bureau of Land Management, Department of Interior. * The state's ability to make land available is restricted to 100 feet on either side of the centerline (which is enough for the road, shoulders and drainage, but not for the construction of facilities). Although there is some possibility that the D-2 bill may make some of the federal land in the corridor state land in the future that transfer will not make land available for facilities before October, 1978. That portion of the corridor which is within the jurisdiction of the North Slope Borough's planning and zoning authorities may or may not be available for facilities for the public, inasmuch as the Borough has indicated its opposition to unrestricted public use and has zoned the area for industrial use.

Section 4 of the bill adds a new subsection to Title 16, changing current law in three ways.

(1) The first sentence prohibits the operation of a "mechanical vehicle off of the right-of-way of the North Slope Road north of the Yukon River Bridge." Several questions are raised by this new prohibition: anywhere in Alaska north of the bridge, regardless of how far from the road? by any person, including state personnel (state troopers, medical aides, pipeline surveillance officials)? does the prohibition apply regardless of whether the land is state or federal, public or private? Currently BLM controls what kinds of vehicles can be used on BLM land, under what circumstances and by whom. Does this prohibition attempt to supersede federal regulatory control? Can it?

(2) The second sentence precludes hunting north of the bridge within five miles of the road. Current law confers to the Board of Game the authority to regulate hunting. The Board has closed the area to big game hunting by emergency regulation. Is it the purpose of this sentence to remove the Board's authority or to annul the existing regulation? What about subsistence hunting within the area?

* State land which is within the corridor: airport leases at Galbraith, Prospect, Dietrich; 160 acres at Tatalina River, south of the Yukon; some land at Prudhoe Bay.

The Honorable Steve Cowper
May 19, 1978
Page 3

(3) The third sentence provides that sport fishing "may be permitted under regulation of the Board of Fisheries" north of the bridge. As with the mechanical vehicle restriction, there is no area limitation (five miles or five hundred) so it appears to apply anywhere north of the bridge. However, it is unclear what this sentence actually means, as the Board already has this authority, not only for sport fishing, but commercial and subsistence fishing, as well. Does this sentence in any way change existing authority of the Board over any kind of fishing "north of the bridge?"

Section 5 of the bill mandates a policy to maintain the road "under bid contract". However, if no "satisfactory bid is received," the department "is responsible for maintenance for the period specified in AS 19.10.105(c)." My principal objection to this section is its vagueness. What is a "satisfactory bid" (cost effective? technically adequate? a favorite bidder?)? Why reference the period specified in AS 19.10.105(c)?

In closing, I want to emphasize the practical problems associated with the requirement of CSHB 838 that the road be opened to all users this fall. No facilities currently exist for public users of the road: no gas stations, restaurants, motels, telephones or medical facilities. The land which would be necessary for these facilities is primarily controlled by BLM; BLM has begun a public-involved land planning process to decide how that land should be classified. Secretary of Interior Cecil Andrus has indicated his preference that the road be restricted to industrial users until the end of gasline construction. But, even if some BLM land is made available, it would not be available soon enough for construction of facilities which the public could use during 1978 and perhaps not even during 1979. In spite of the total lack of essential facilities, the public will be on the road in October if CSHB 838 passes. I ask you to consider the grossly expanded liability of the state to road users under these conditions. Please also consider the potentially expanding costs to the state if these facilities for the public are to be provided by the state (for the sake of safety or timeliness or to reduce liability).


There are countless reasons why the Legislature should resist an unrestricted opening of the road to the general public this fall, including Alyeska's concern for pipeline security, Northwest Pipeline's need for the road for gasline construction (the road itself will be used in some location as a work pad for laying pipe), and the many reasons indicated by the groups which have testified in opposition to unrestricted public use of the road: Federal State Land Use Planning Commission, Tanana Chiefs Conference, Doyon, Arctic Slope, North Slope Borough, Alyeska, Northwest Pipeline Company, many conservation organizations, Alaska Transportation Planning Council, Ninto, Bettles, Rampart, Stevens Village, Allakaket/Alatna, plus many more.

The Honorable Steve Cowper
May 19, 1978
Page 4

Please take a moment to review the attached "Haul Road Fact Sheet" which in outline form reviews all of the basic facts which were published in a report by the Division in December, 1977: "North Slope Haul Road: An Analysis of the Issues."

Thank you for your consideration of these comments.

Sincerely,



Frances A. Ulmer
Director

Attachment

cc: all Legislators
all Commissioners

HAUL ROAD FACT SHEET

1. Governor's Haul Road Position

- a. Haul Road will become a state highway come October of this year.
- b. Road usage will be limited to industrial activities, at least until completion of gas pipeline.
- c. Road will be closed to private autos during this period (i.e., not limiting industrial/resource development - just private autos initially).
- d. Bus operations will be permitted (see below for FHWA/DOT position).
- e. State will provide public recreational facilities on the north side of the Yukon River. The public is, and will still be able to drive to north of the bridge.
- f. The state will maintain the road for industrial users on a year-round basis.
- g. The state has been looking into ways to have the major industrial users of the road share in its maintenance costs.
- h. The state has been investigating possible "user charges" for what will be essentially exclusive use of the road (see FHWA/DOT position).
- i. The Commissioner of DOT/PF now has broad powers to control use of the road to protect the health, safety and welfare of the general public.
- j. The citizen's Alaska Transportation Planning Council will be used to provide policy guidance on future road use.

2. Adjacent Lands

- a. State responsibility (through DOI grant) limited to 100' on either side of ROW centerline. No development totally possible within the ROW.
- b. BLM has ultimate responsibility for use and management of adjacent lands--facilities (state and private), lateral roads, development. permits. etc.
- c. BLM, State, North Slope Borough and North Star Borough working together to develop a management plan for uses of corridor lands. Completion date - September - October 1978.

- d. Governor and BLM will shortly be signing a Memorandum of Understanding for the joint planning of public lands in Alaska.
- e. Planning and zoning authority is statutorily delegated to the North Slope Borough (north of Atigun Pass), the state (except for overriding reasons) shall comply with local ordinances and regulations.
- f. North Slope Borough's new zoning ordinance restricts uses to maintenance, emergency and service facilities necessary for road upkeep. All other uses conditional, requiring a Borough permit.

3. Haul Road Costs

a.	<u>COST FACTORS (In Millions of Dollars)</u>		
	<u>Operating Costs</u>	<u>Capital Costs</u>	Total
Restricted Use			
Year-Round			
FY 79	\$7.3	\$12.7	20.0
FY 80	9.2	-	9.2
Restricted Use			
Summer Only			
FY 79	5.7	12.2	17.9
FY 80	5.8	-	5.8
Public			
Year-Round			
FY 79	7.9	13.0	20.9
FY 80	9.8	-	9.8
Public			
Summer Only			
FY 79	6.1	12.7	18.8
FY 80	6.7	-	6.7

Examples

--General public access (year-round) increases operating costs between \$600,000 - \$800,000 annually (mainly public safety, fish and wildlife protection, environmental monitoring).

--Year-round maintenance, as opposed to seasonal, increases operating costs by approximately \$1 MM - \$3 MM annually.

- b. Greatest operating expenditure option - unrestricted year-round maintenance (\$9.8 MM in FY 80) is approximately 70 percent higher (\$4.0 MM annually) than the lowest cost option - restricted use, summer only (\$5.8 MM in FY 80).
- c. Unrestricted year-round - opening could increase the total annual maintenance budget of the state highway system by approximately 20 percent.
- d. Note; Capital cost figures do not include provision for public facilities (rest stops, gas stations, lodges, restaurants).
- e. Needed for start-up by October 78 (no matter which use option is decided upon), FY 78 special capital appropriation of approximately \$12.2 MM.

4. Impacts of Private Auto Access

- a. Increases environmental pressures affecting streams, fish and wildlife, tundra, waste disposal, etc.
- b. Integrity of oil pipeline becomes of critical concern.
- c. Conflict with construction of gas pipeline (road = work pad at certain locations) is certain.
- d. Safety--no facilities for the general public.
- e. Note: no impact however on resource development in northern Alaska by restricting private autos-- those uses would be permissible.

5. Land Manager's Position

- a. Department of the Interior (Andrus) - restrict to industrial use.
- b. North Slope Borough - restrict to industrial use.
- c. Administration - restrict to industrial use.

6. Public Opinion

- a. Opposing unrestricted public access (in addition to all the land managers) - Alaska Transportation Planning Council, Alaska Growth Policy Council, F-SLUPC, Tanana Chiefs Conference, Doyon Corporation, all the conservation organizations, Northwest Pipeline, Alyeska, BP, Exxon, villages of Minto, Rampart, Stevens Village, Evansville, Bettles, Allakaket/Alatna.

- b. Supporting general public use - Alaska Truckers Assoc., Alaska Visitor's Assoc., Alaska Chapter - Assoc. of General Contractors of America, Anchorage and Fairbanks Chambers of Commerce, ARCO, Fairbanks Industrial Development Corp., Valdez.
- c. Dittman poll (Nov. 77 - Jan. 78): don't open Haul Road - statewide - 23 percent, Fairbanks - 24 percent, Anchorage - 21 percent.

7. User Fees

- a. Dittman poll: support for user fees - statewide - 56 percent, Fairbanks - 45 percent, Anchorage - 64 percent, union and non-union members - 57 percent.
- b. Also supporting some form of "user pay program" - Alaska Visitor's Association (industrial reimbursement for state winter maintenance), Anchorage Chamber of Commerce, Growth Policy and Transportation Planning Councils, North Slope Borough, conservation organizations.

8. FHWA/DOT Position

- a. No direct tolls acceptable, but, some form of "user charge" would be acceptable.
- b. Bus service would satisfy the public access provisions of the highway on the Federal-aid system.
- c. There are indications from DOT/FHWA that the above two actions would be O.K., at least during gas pipeline construction, without necessitating state repurchase of the road north of the Bridge or loss of FAS status.
- d. FHWA states, "we expect the state to impose certain restrictions on general public access."

9. Bus Service

- a. In January, the Division of Tourism sent out a letter to all the surface transportation carriers in Alaska (plus the AVA and ATC) informing them of the Governor's policy in support of a Haul Road bus service.
- b. Both the Arctic Slope Native Corporation (in conjunction with the North Slope Borough) and Westours (out of Seattle) have filed with the Alaska Transportation Commission to provide a bus service along the road.

- c. Private operators will have to make arrangements for facilities with BLM, Alyeska, Northwest, Prudhoe Bay owners and operators.

10. Facilities

- a. BLM-state-Alyeska-Northwest negotiating for use of existing facilities. State has identified seven specific camps and three airports needed for joint Departments of Transportation, Public Safety, and Fish and Game activities. Many will need major renovation and/or reconstruction.
- b. State budget does not include, however, accommodations to support private autos--service stations, rest stops, restaurants, lodging. Private sector responsibility - BLM land. Preferential sites being developed by joint state-federal-local corridor management planning effort.

11. Regulations In Effect

- a. Hunting - closed to big game hunting - five miles either side of TAPS.
- b. Sport fishing - closed to sport fishing - five miles either side of TAPS.
- c. Subsistence fishing - all waters between the Kalubik River and Bullen Point (Prudhoe Bay area).
- d. Commercial fishing - closed in the Yukon drainage except for Yukon River and a portion of the Tanana River.
- e. ORV use - BLM responsibility.

TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 638 - SB 561 May 1 - Sept. 30 (Move in/Move out)
 Title An Act Relating to the North Slope Haul Road
 Requested by Chuck Taylor, Division of Budget & Management Date June 2, 1978

II. FISCAL DETAIL

Agency Affected Department of Transportation & Public Facilities
 Program Category Affected General Government Unit
 Budget Request Unit(s) Affected DOT/PF Interior Region, State Equipment Fleet

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES			150.1			
200 TRAVEL			64.0			
300 CONTRACTUAL			67.4			
400 COMMODITIES			503.3			
500 EQUIPMENT			25.7			
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL			810.5			

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify) (WCP)			810.5			

POSITIONS

FULL TIME			5.0			
PART TIME						
TEMPORARY			30.0			

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

1. This fiscal note represents service maintenance, repair and replacement costs to provide 35,000 hours of equipment operation, to the maintenance program.
2. It also represents two (2) weeks move in, move out initial road opening costs for personal services only.

IV. DATE June 2, 1978

PREPARED BY Patrick Ryan (T.A. Johnson)
 AGENCY Department of Transportation & P.F.
 PHONE 465-3990

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

FISCAL NOTE

(STATE FORCES)

I. REQUEST

Bill/Resolution No. CS for HB838
 Title An Act Relating to the North Slope Haul Road (State Forces)
 Requested by Chuck Taylor, Division of Budget & Management Date June 2, 1978

II. FISCAL DETAIL

Agency Affected Department of Transportation & Public Facilities
 Program Category Affected General Government Unit
 Budget Request Unit(s) Affected DOT.PF Interior Region, State Equipment Fleet

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES			241.3			
200 TRAVEL			95.8			
300 CONTRACTUAL			89.1			
400 COMMODITIES			632.3			
500 EQUIPMENT			25.7			
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL			1,084.2			

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify) (G.F.)			1,084.2			

POSITIONS

FULL TIME			5.0			
PART TIME						
TEMPORARY			47.5			

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

1. This fiscal note and budget attached is for 9-1/4 months of personal services and 52,500 hr. of equipment rental during 1978-1979 fiscal year. It is anticipated that two (2) weeks will be required to move in, set up and open roadway.
2. Copy of operating budget request is attached.

IV. DATE June 2, 1978

PREPARED BY Patrick Ryan (T.A. Johnson)
 AGENCY Department of Transportation & Public Facilities
 PHONE 465-3990

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

TENTH LEGISLATURE

FISCAL NOTE

(BID CONTRACT)

I. REQUEST

Bill/Resolution No. CS for HB 838
 Title An Act Relating to the North Slope Haul Road (Bid Contract)
 Requested by Chuck Taylor, Division of Budget & Management Date June 2, 1978

II. FISCAL DETAIL

Agency Affected DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
 Program Category Affected General Government Unit
 Budget Request Unit(s) Affected DOT/PF Interior Region, State Equipment Fleet

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify) (WCF)			-0-			

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

- No budget will be required if the Haul Road is maintained by bid contract as the Contractor will be providing his own equipment.

IV. DATE June 2, 1978 PREPARED BY Patrick Ryan (T. A. Johnson)
 AGENCY Department of Transportation & Public Facilities
 Original: Legislative Finance PHONE 465-3990
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS for HB-838
Title North Slope Road FY 79 Oct. thru June (contract forecast)
Requested by J.H. Hogan Date May 10, 1978

II. FISCAL DETAIL

Agency Affected Department of Transportation and Public Facilities
Program Category Affected Transportation, General Government
Budget Request Unit(s) Affected DOT/PP Interior Region Maint. & Operations
Highways, Buildings and Communications

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES			412.9			
200 TRAVEL			56.4			
300 CONTRACTUAL			5756.5			
400 COMMODITIES			733.0			
500 EQUIPMENT			338.8			
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL			7297.6			

FUNDING (Thousands of Dollars)

GENERAL FUND			7297.6			
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME			9			
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

1. This note does not include working capital fund, Fish and Game Environmental conservation and Public Safety.
2. It is assumed that the monies needed to maintain the road by State Force is the upper limit on awarding contract.
3. All camp facilities will be maintained and built by the State and used by the contractor.

IV. DATE May 10, 1978 PREPARED BY James F. O'Sullivan
AGENCY Department of Transportation & Public Facilities
Original: Legislative Finance PHONE 465-3910
cc: Budget and Management
Prime Sponsor (First Legislator Named)

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS for HB-838
 Title North Slope Road FY 79 October thru June (State Forces)
 Requested by J. Hogan Date May 10, 1978

II. FISCAL DETAIL

Agency Affected Department of Transportation and Public Facilities
 Program Category Affected Transportation & General Government
 Budget Request Unit(s) Affected DOT/PF Interior Highways, Maint. & Operations
Buildings, Communications

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES			2645.4			
200 TRAVEL			983.9			
300 CONTRACTUAL			2172.2			
400 COMMODITIES			1052.8			
500 EQUIPMENT			348.4			
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL			7202.7			

FUNDING (Thousands of Dollars)

GENERAL FUND			7202.7			
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME			46			
PART TIME			9			
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

1. This note does not include the working capital fund Fish and Game, environmental conservation, and Public Safety.
2. This note is for the work to be done by State force. (see attached note for contract forces).
3. And additional 209,529 would be required in the CIP budget for equipment to fund additional peices needed for winter maintenance.

IV. DATE May 10, 1978 PREPARED BY James F. O'Sullivan
 AGENCY Department of Transportation & Public Facilities
 PHONE 465-3910
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

AMENDMENTS FOR SENATE CS FOR CS FOR HB 838

4. On page 3, line 2, add a new section to read:
- *Sec. 6. AS 09.50.250 is amended by adding a new paragraph to read:
- (4) is not based on gross negligence or willful misconduct and arises out of the condition of, or absence of services along, the North Slope Road designated as part of the state highway system by AS 19.10.105; the assumption of the risk that such a claim may arise is a condition of use of the road by the general public and the Department of Transportation and Public Facilities shall notify the public of this condition.

AMENDMENTS FOR SENATE CS FOR CS FOR HB 838

4. On page 3, line 2, add a new section to read:
- *Sec. 6. AS 09.50.250 is amended by adding a new paragraph to read:
- (4) is not based on gross negligence or willful misconduct and arises out of the condition of, or absence of services along, the North Slope Road designated as part of the state highway system by AS 19.10.105; the assumption of the risk that such a claim may arise is a condition of use of the road by the general public and the Department of Transportation and Public Facilities shall notify the public of this condition.

AMENDMENTS FOR SENATE CS FOR CS FOR HB 838

4.

On page 3, line 2, add a new section to read:

*Sec. 6. AS 09.50.250 is amended by adding a new paragraph to read:

(4) is not based on gross negligence or willful misconduct and arises out of the condition of, or absence of services along, the North Slope Road designated as part of the state highway system by AS 19.10.105; the assumption of the risk that such a claim may arise is a condition of use of the road by the general public and the Department of Transportation and Public Facilities shall notify the public of this condition.

A M E N D M E N T

OFFERED IN THE SENATE:

By: FINANCE COMMITTEE

To: _____ SENATE BILL No. _____

SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL No. 838 am

PAGE: _____

LINE: _____

Add a new section to read:

Section 6. AS 09.50.250 is amended by adding a new sub-section to read:

(4) arises out of the condition of, or absence of services along, the North Slope Road designated as part of the state highway system by AS 19.10.05. This does not relieve the State of liability for gross negligence or willful misconduct.

From Governor

Amendments for Senate CS for CS for HB 838

Typ printed

*1. Amend Section 1, subsection (c) to read as follows:

Added

(c) The department shall maintain the highway for use by the general public for 12 months each year beginning in June, 1981 or when the Department of ~~Public Safety~~ ^{Transportation & Public Facilities} certifies ~~that these are sufficient facilities to assure~~ ^{that} the road can be traveled by the public in reasonable safety, whichever is sooner.

*2. Amend Section 1 by deleting subsections (b) ~~and~~ ^(c) (d).

Added

3. Amend Section 2 by adding the following language on line 27 between the words "public" and "pending":

when such land becomes available to the state;

- CS -

4. Add a new section to read:

T1

Section 6. AS 09.50.250 is amended by adding a new subsection to read:

(4) arises out of the condition of, or absence of services along, the North Slope Road designated as part of the state highway system by AS 19.10.05. The assumption of these risks is a condition of use of that Road by the general public and the state shall notify the public of that condition.

That they are not the State's responsibility, it is a municipal responsibility.

To Craft + Tiltton 9:30am 6/14

Amendments for Senate CS for CS for HB 838

4. On page 3, line 2, add a new section to read:

* Sec. 6. AS 09.50.250 is amended by adding a new paragraph to read:

~~except for a~~ *is not based on gross negl or willful misconduct and*
(4) arises out of the condition of, or absence

of services along, the North Slope Road designated as part of the state highway system by AS 19.10.105; the assumption of the risk that such a claim may arise is a condition of use of the road by the general public and the Department of Transportation and Public Facilities shall notify the public of this condition.

Pete Freshlich
AAG
3684

Amendments for Senate CS for CS for HB 838

4. On page 3, line 2, add a new section to read:

* Sec. 6. AS 09.50.250 is amended by adding a new paragraph to read:

(4) arises out of the condition of, or absence of services along, the North Slope Road designated as part of the state highway system by AS 19.10.105; the assumption of the risk that such a claim may arise is a condition of use of the road by the general public and the Department of Transportation and Public Facilities shall notify the public of this condition.

COMMITTEE REPORT
SENATE

FURTHER: _____

6/10/78

Date: _____

Mr. President:

The Committee on FINANCE has had CSHB 838 am
North Slope Road

under consideration and (a majority of the committee) (the committee reports it back as follows)

() recommends it do pass () recommends it do not pass

() recommends it do pass with attached amendment(s)

() recommends it be replaced with CS for _____

and _____ () new title () same title

() AND attaches a Letter of Intent () New Fiscal Note

() reports it back ^{individual} without recommendation *amended*

() and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

Holman - no rec
John Sargent - Do Not Pass

George Holman

Chairman

COMMITTEE REPORT

SENATE

~~XXXXXX~~

6/3/78

FURTHER: FINANCE

Date: June 9, 1978

Mr. President:

The Committee on STATE AFFAIRS has had CSHR 838 am
North Slope Road

under consideration and (a majority of the committee) (the committee reports it back as follows)

() recommends it do pass () recommends it do not pass

~~()~~ recommends it do pass with attached amendment(s)

~~()~~ recommends it be replaced with SCS for CSHB 838

and _____ () new title () same title

() AND attaches a Letter of Intent ^{of do pass} () New Fiscal Note

() reports it back without recommendation

() and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

Wentworth Do pass
Ed Willis Do pass
Tom Price DO PASS

as amended

J. K. [Signature]
Chairman

An aerial photograph of a rugged, mountainous landscape. The terrain is characterized by steep, rocky slopes and a winding road or path that cuts through the terrain. The overall appearance is that of a high-altitude or mountainous region.

NORTH SLOPE BOROUGH

**Legal Powers and Options on the Haul Road
and Adjacent Federal and State Lands**

November 1, 1977

North Slope Borough Technical Report Number 1

fairly rigid regulation of the road as a controlled-access facility. There are no Alaska cases to indicate how the courts in the state might come out on the right of access issue. The statute discussed above, A.S. §19.20.060, should support a restrictive Haul Road arrangement. This would facilitate keeping the road a point-to-point transportation route and not a general access route to lands in the Borough, even if it is a public highway.

This returns to consideration of the Borough's powers over activities along the roadway and land uses made possible by the Haul Road access. This is not the same as directly regulating the road itself and is the area where the Borough has the most authority.

143 U.S.C. §1616(c) provides that areas withdrawn for utility and transportation corridors across public lands may not be selected by Natives or the state.

NORTH SLOPE BOROUGH

Legal Powers and Options on the Haul Road and Adjacent Federal and State Lands

A report submitted to the North Slope Borough Planning Department by Conrad Bagne, legal consultant, November 1, 1977.

Cover Photo: The Utility Corridor, a preliminary report by BLM

NORTH SLOPE BOROUGH
P. O. Box 69
Barrow, Alaska 99723
Phone: (907) 852-2611

MAYOR

Eben Hopson, Sr.

DIRECTOR, ADMINISTRATION AND FINANCE

Lloyd Ahvakana

ASSEMBLY

Lennie Lane, Jr., President
Edward Hopson, Sr.
Jacob Adams
Nelson Ahvakana
Joseph Akpik
Arnold Brower, Sr.
Alice Solomon

PLANNING COMMISSION

Forrest Solomon
Billy Nashoalook
Margaret Hugo
Amos Lane
Warren Matumeak

PLANNING DIRECTOR

Herb Bartel

PLANNING CONSULTANT ON THE HAUL ROAD

Earl Finkler

LEGAL CONSULTANT AND PRIMARY
REPORT AUTHOR

Conrad Bagne

Borough. The validity of Borough interests should be asserted at all times.

One last important consideration on the Haul Road is the question of the rights of adjacent landowners to demand access to the road. The right of access to a public highway is stated, in 39 Am. Jur. 2d, Highways, Streets and Bridges §178, to be a "natural easement and one of the incidents of the ownership or occupancy of land abutting thereon." This section continues:

[T]he general rule is that an abutting owner or occupant is not entitled to access to his land at every point between it and the highway but only to reasonable and convenient access to his property and the improvements on it.

A properly authorized governmental unit has the power to regulate, reasonably, in the public interest, and without illegal discrimination, the extent of an abutter's private right of access from his property to the highway or street. The cases hold or recognize, however, that such power of regulation does not extend to depriving an abutting owner completely of all access to the street or highway, at least not without compensation therefor.

This right of access may be asserted by landowners

along the Haul Road if it is said to be a public road. The use of the land and the nature of the access may still be validly regulated by the Borough. Zoning or other controls still determine use, and access may be limited to only that necessary for the permitted use. See Windsor v. Lane Development Co., 159 N.E.2d 391 (Ohio 1958); San Antonio v. Pigeonhole Parking, 311 S.W.2d 218 (Texas 1958); and "Annotation: Power to directly regulate or prohibit abutter's access to street or highway," 73 ALR2d 652.

A limited access designation would also serve to limit such rights, though how far is not entirely clear. Of course, total denial of access is always possible if compensation is provided for the access rights. As to denial of access on controlled access highways, 39 Am. Jur. 2d, Highways, Streets and Bridges §180 provides:

[T]he courts are in disagreement as to what constitutes undue limitations or unreasonable interference with the rights of an abutting owner so far as controlled-access highways are concerned.

There is no right of access in the case of a new controlled-access highway established through property where no highway previously existed.

The last part of the above section would support

which owners or occupants of abutting land or other persons have either no right or easement or only a controlled right or easement of access, light, air, or view. A.S. §19.05.130(3).

Such a designation would seem quite appropriate for the road, particularly if the state declares it a public road. This possibility should be pursued with the state.

Access roads and local service roads may also be regulated pursuant to Chapter 30 of Title 19. A.S. §19.30.151 provides for local governments to acquire control over local service roads established under this Chapter. These roads include public roads not designated on the federal aid highway system. The Haul Road itself may not fit this characterization, but roads connecting thereto might.

Chapter 20 of Title 19 may provide the additional authority to develop a master highway plan. In fact, A.S. §19.20.080 is mandatory in stating that the state and municipality shall prepare a plan. This plan is to provide for connector roadways from the municipality to the state highway. Its preparation should provide the opportunity for expression and protection of the Borough interest. It may be considered with the development of an official map within the Borough.

The ownership patterns along the road may also influence the Borough's ability to exercise control over roads being constructed to tie into the Haul Road. As discussed previously, the Borough may assert jurisdiction over all lands within its boundaries, though some controls might be found to be preempted if contrary federal regulations were asserted. The Haul Road lies within an utility corridor over federal lands. Policies on this corridor and classification under 17d(2) of ANCSA may affect options here. The Borough should attempt to control all roadways that access onto the Haul Road, under joint agreement with the state and as an exercise of its own police powers. As a recent case from Maryland held:

It may be true that a municipality may not permit access onto a state highway at a location where the state has denied one. It does not follow, however, that because the state has granted such access the municipality, in furtherance of its zoning powers, may not, in a proper case, deny it as a valid condition to the granting of a special exception or conditional use. *Exxon, Inc. v. City of Frederick*, 375 A.2d 34 (Md. 1977).

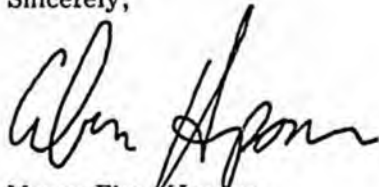
While this case may be of limited value in Alaska, the posture taken there should be pursued by the

March 15, 1978

The following legal report was prepared for the Borough in late 1977 as we attempted to analyze our powers and opportunities over land around the Haul Road. The land adjacent to the Haul Road is owned by the state and federal governments, but as this report points out, the Borough still has many rights and options relative to control and management of the Road and the surrounding area. We have now zoned a corridor 12-24 miles wide along the Road and are presently analyzing our inventory of over 30 traditional land use sites which have been identified around the corridor area. We intend to work closely with the state and federal governments to jointly plan and manage this and other important resource areas in the Borough.

This report is being printed and distributed as a Borough technical report to help further the development of legal and municipal research in Alaska. The Borough is less than six years old, but we are making progress and producing innovations and information every day. We hope that this report will be especially useful to those who seek strong and dynamic local governments in Alaska.

Sincerely,



Alan Hopson

Mayor Eber Hopson

TABLE OF CONTENTS

ABOUT THE AUTHOR 4

INTRODUCTION 5

LOCAL AUTHORITY 6

PROPRIETARY AUTHORITY 6

LEGISLATIVE AUTHORITY 10

SPECIFIC LAND AREAS IN ALASKA 13

FEDERAL LANDS TRANSFERRED TO ALASKA NATIVES 16

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976 16

FEDERAL LAND CATEGORIES 19

SUMMARY—BOROUGH CONTROLS ON ALL TYPES OF LANDS 20

SPECIFIC NORTH SLOPE BOROUGH POWERS—INTRODUCTION 21

ZONING POWERS 21

SUBDIVISION REVIEW POWERS 25

THE OFFICIAL MAP 27

TAXING POWERS AND DEVELOPMENT FEES 28

STATE COMPLIANCE WITH LOCAL LAND USE CONTROLS 31

BOROUGH AUTHORITY OVER THE HAUL ROAD 33

regulations and facilities established. This might be several years. Once opened, quite stringent use restrictions may be imposed. But what is the Borough's voice or authority in this? Is it all at the discretion of the state?

The Borough does not normally have authority over planned construction of state highways. It may specifically request, however, that it be allowed to assume "responsibilities relating to the planning of transportation corridors" within the Borough. A.S. §19.10.280. This section provides the procedures to be followed in making this request. The Borough does have authority to provide streets and transportation services and regulate their usage under its Charter or Chapter 48 of Title 29.

Roads and streets accepted or provided by the Borough pursuant to its Charter authority or under A.S. § 48.29 may be subject to such regulations the Borough determines are proper. This would include location, usage, and standards for construction. Standards for design and construction of roads may be established to ensure the roads are adequate for the intended use and will not necessitate substantial maintenance or redesign. Roads might also be limited as to type of use or nature of vehicles allowed thereon. Borough roads might be classified so as to prohibit certain types of vehicles on specified roads. This would be somewhat similar to the zoning of land for certain uses. Some of this is in the subdivision ordinance.

Chapter 20 of Title 19 (Highways and Ferries) of the Alaska Statutes provides for "cooperation by and with the State" by local governments over state highways "connecting" to other state highways. The control of local municipalities over "opening the surface of a connecting highway" is recognized. A.S. §19.20.010(b)(3). Additional Borough control may be possible under A.S. §19.20.060 which provides:

The department [of transportation and public facilities] and a municipality may enter into an agreement with each other . . . for the financing, planning, establishment, improvement, maintenance, use regulation, or vacation of controlled-access facilities or other public ways in their respective jurisdictions.

The Haul Road might be designated a "controlled access facility" to limit the ingress and egress therefrom. This would require significant cooperation with the state transportation department.

The use regulation may be "by the various classes of vehicles or traffic in a manner consistent with the definition of a controlled-access facility." A.S. § 19.20.020. The latter term is defined as:

[A] highway especially designed for through traffic, and over, from, or to

road and the roadbed are being dedicated to the public. Alyeska is acting predominantly as a contractor and is delivering a completed project. The right-of-way for the road was obtained by the state. Alyeska is not offering to dedicate anything to the state. The application of dedication concepts that state donations of land can only be for a public use to not help here. The road has not gone through a change in status in transfers from the state to Alyeska and back again since no real transfers took place. At present, the Alyeska-state agreement calls for turning over of the completed project portion of the road from the Yukon River to Prudhoe Bay in early October 1978. Delivery of the completed project is not determinative of the road's status.

The expressed intent of the state is ambiguous, but seems to support a public highway. The state still might take the position it is to be a nonpublic highway and negotiate its status with the federal government. This would have to be state initiated, and there is little the Borough can do on its own, aside from political persuasion or judicial intervention. This might also necessitate some repayments of federal monies, but is not a totally unreasonable possibility. The probability of a gas pipeline along the road may give rise to an opportunity for renegotiating and clarifying the status of the road.

The decision on the status of the Haul Road

and its use by the public is an Alaska decision. As a state decision, the citizens in the land areas near the road and made accessible by it have the greatest interest and the most at stake. The Borough is the governmental body for these people and must make their desires and needs known. The state should be urged to consider keeping the road closed or abandoning its ownership therein as in the best interest of all Alaskans. The potential maintenance costs and costs associated with the impacts of new development may far exceed any initial liability to federal funders and inhibit the state's meeting its responsibility to provide other transportation services in Alaska.

But concluding the Haul Road is a public highway does not mean regulation is impossible. As a public road, it is still subject to the Borough's and state's police powers. Though it might not be completely closed to public access forever, considerable area for control remains. The state should have the authority to keep the road closed pending completion of a gas pipeline as necessary to protect the public. This only postpones answering the real questions, but does remove some of the immediate pressure and opens up the possibility of definitively settling and/or negotiating the status of the road. See 15 U.S.C. § 719—Alaska Natural Gas Transportation Act.

The state may also keep the road closed while a plan for its utilization is developed and adequate

ABOUT THE AUTHOR

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INTRODUCTION

The completion of the Trans-Alaska Pipeline and potential opening of the adjacent Haul Road raise many issues. It is unlikely the North Slope Borough can assert its control over the Road to the exclusion of all other interests. At the same time, those other interests may not totally exclude or ignore the concerns of the Borough.

This report discusses a number of options available to the Borough in regulating the Road and development that may occur near to it because of the increased ease of access. In doing so, the jurisdiction of local governments over various types of land—federal, state, village, etc.—is considered. The report also highlights a number of decision-making processes involving such lands. The Borough should monitor and participate in such processes. The ability to cooperate and participate with others as they make decisions about how land is to be used may be more important than the power to control such decisions after they have been made.

An aggressive stance by the Borough over use and development of the Haul Road is recommended. Several changes in Borough land use control mechanisms are proposed to enable the Borough to make its presence and desires known, and ultimately to control the decisions being made. Above all, the Borough should not allow its position on the future development of the area to go unheard.

Unfortunately, the interest and authority of the Borough local government has not been adequately considered by others traditionally in the position of making decisions. This includes the federal government as well as private development interests. Hopefully, all can work together in the future for the best interests of the people of the North Slope Borough, the State of Alaska and the Nation.

and users? This necessitates an initial consideration of the legal status of the Haul Road as a public highway. The state's Department of Law has expressed the opinion that the Haul Road is a public highway as opposed to a development road under the applicable state and federal laws. This conclusion is based on an examination of right-of-way grants by DOI and BLM, gravel removal permits, funding by the Federal Highway Administration, and Alaska-Alyeska road construction agreements. The Department of Law memo concludes that as a public highway the road may not be permanently closed, but it may be substantially managed and regulated under the state's police powers. Dept. of Law Memo of 9-7-76 to R. LeResche, Dir., DPD&P.

The status of the road is important to the options available to the Borough and state in controlling it. If it is a public road, it may not be totally closed to all users. It might be closed or severely restricted if a private road. However, oil pipeline maintenance personnel would have rights to use the road for maintenance purposes regardless of its public/private status. Its status as a public or private road is not clear and is clouded by a number of ambiguous references.

The right-of-way for the road over public lands was issued pursuant to the Trans-Alaskan Pipeline Authorization Act (TAP Act), 43 U.S.C. § 1651 et seq. This Act permitted rights-of-way to

be for a public road, but did not require it. However, the permit for the road stated it was for a "public road." It was also anticipated that the road would have been a public road if the permit had been granted pursuant to the prior sec. 4722, 42 U.S.C. § 932. The permit was apparently granted according to the TAP Act, not sec. 4722, though actual issuance of a permit under the latter was not necessarily required. In early environmental litigation over the pipeline, a federal circuit court indicated the Haul Road would be a public highway and that this was the intent of the parties involved. *Wilderness Society v. Morton*, 479 F.2d 842, 882 (D. C. Cir 1973). Similar circumstances and conclusions can be drawn from gravel removal permits issued for the road to support the public road interpretation. Furthermore, the state's apparent expressed legislative intention is that this be a public highway. A.S. § 19.40.010.

The grants of federal highway monies and State/Alyeska agreements are not necessarily convincing one way or the other. The original agreement between the state and Alyeska spoke of a "highway" and a "state highway." However, an amendment to the agreement provides for opening of segments of the road to the public upon acceptance by the state unless such use would be hazardous to the public.

The Haul Road does not present the situation typically involved in development projects where a

There is also a provision to permit local management of state lands—comparable to a cession or retrocession at the federal/state level. A.S. § 38.05.027. This would permit the state to agree to local—village or municipality—management or development programs for state resources. This might further enhance local borough management and planning efforts. It might also be combined with federal retrocession of authority to the state, to establish local management programs over federal lands as well.

Finally, before any state lands may be "classified, reclassified, sold, leased or otherwise disposed of, including the renewal of a lease entered into after September 22, 1976," notice must be given to all municipalities within six miles of the property. A municipality—through its governing body, executive officer or planning agency—may request that the state consult with it. The state's legal responsibility does not, however, go beyond consulting. The administrative regulations on outright sale provide that no land "within or adjacent to" a municipality (apparently written before the 1976 amendment of A.S. § 38.05.305) may be sold until the proposed use of the land has been studied and reviewed jointly by the director and local authorized planning agencies. 11 A.A.C. 54.110. The statutory provision would apparently apply to permits under A.S. § 38.05.330 and right-of-way leases under A.S. § 38.35.010 to .230. Administra-

tive regulations of the department of natural resources provide that local zoning regulations are to be part of any contract for sale of state lands. 11 A.A.C. 54.450, and 11 A.A.C. 56.470. State land leases are also to be subjected to local zoning and a zoning violation is declared to be a violation of the lease. 11 A.A.C. 58.700.

Two cases construing A.S. § 38.05.305, prior to the 1976 rewrite, indicate that the opportunity for meaningful local input is extremely important. This provision is designed to ensure protection of rights guaranteed by the state constitution. Alaska Constitution, Article VIII, sec. 10, requires "public notice and other safeguards of the public interest" prior to the lease or disposal of state lands. *State v. Aleut Corp.*, 541 P.2d 730 (Alas. 1975) states that the opportunity for local review must be sufficiently in advance of any disposition to permit the state to fully consider and "react to community comments by modifying, delaying or canceling the sale or lease if it deems such action advisable." 541 P.2d at 739. See also *Moore v. State*, 553 P.2d 8 (Alas. 1976). *Cf.* 42 U.S.C. § 1702(d) (defining public involvement).

BOROUGH AUTHORITY OVER THE HAUL ROAD

Considering the highway itself, what is the position of the Borough vis-a-vis the federal government, state, oil companies and private landowners

LOCAL AUTHORITY

The state's police power, and its delegated exercise by respective borough or other local governments, extends over all lands within its boundaries. This includes lands of the federal government, of state and local government themselves, reservation lands (with some exceptions), and privately held property. The extent of the local control may be limited by federal or state actions, but the specifics of the situation must be examined.

The importance of local control and planning in the area of land use development and environmental protection has been historically emphasized and relied upon by state and federal governments. Protection of the public welfare has been delegated very heavily to local governments. The federal National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq., recognizes the importance of local and state governments. This emphasis is also reflected in the Environmental Quality Improvement Act of 1970, 42 U.S.C. § 4371 to 74, which states that the primary responsibility for enhancement of the national environment through control of pollution, water and land resources, transportation, and economic and regional development rests with state and local governments. 42 U.S.C. § 4371 (b)(1) and (2). Other federal acts, 16 U.S.C. § 1451 to 1464, and executive orders, e.g., E.O. No. 11752, also support this theme.

Failure to consider the role of local government in major development has been the subject of litigation on occasion. For example, in *New York v. Kleppe*—F. Supp.—9 ERC 1798 (D.C.N.Y. 1977), the court found that DOI's decision to proceed with sale of oil leases off the East Coast (Lease Sale 40) ignored the permitting and review power of local governments affecting the scope of OCS (Outer Continental Shelf) operations in violation of the National Environmental Policy Act. The court was shocked by this ignoring of local and state powers, but stopped short of a lack of due process holding or finding of bad faith on the federal government's part. NEPA provided an adequate basis for its holding.

PROPRIETARY AUTHORITY

The federal government's authority over its land may be proprietary or legislative in nature. Proprietary authority may be found in the "Property Clause" of the U. S. Constitution, Article IV, sec. 3, cl. 2. Legislative authority may extend from the reservation of authority by the federal government in the admission of a state to the union, or from a cession by a state of authority to the federal government. The federal authority may be controlling over attempts to assert state powers under the Supremacy Clause, Article VI, cl. 2, or a state may simply have given away or ceded all its authority to act.

enabling or charter authority in *Home Builders Assoc. v. Riddel*, 510 P.2d 376 (Ariz. 1973). In *City of Mesa v. Home Builders Assoc.*, 523 P.2d 57 (Ariz. 1974), a tax of \$150 on each new dwelling unit was found to be within the city's authority to set "license taxes" on businesses and professions.

The Borough might impose such a fee as a tax under its home rule authority. It might impose the fee as a part of licensing contractors, if the state does not have all such power under A.S. §8.18.011 to .171 or A.S. §43.70.010 to .120. It might be imposed as part of the police powers of the Borough and the authority to provide public facilities, including streets, sewers, water and recreation facilities. This would be a fee in the manner of a regulation and not a tax. Fees in lieu of exactions of land from a subdivision are common, for example. See Ellickson, *Suburban Growth Controls: An Economic and Legal Analysis*, 86 *Yale Law J.* 385 (1977).

The prospects for an impact "tax" or fee to be imposed on development projects along the Haul Road are mixed. The Borough could simply require a payment of a fee in lieu of dedicating park lands or school sites by subdivision developers. A processing fee may be charged applications for permits that might be required to cover the costs of administration. This latter fee could be substantial if necessary to cover costs of site inspection, calculation of impacts, and subsequent

monitoring. The use of a development tax or impact fee may be possible under the Borough's home rule authority. It would necessitate some change in the Charter to provide for this, so is not an immediate possibility.

STATE COMPLIANCE WITH LOCAL LAND USE CONTROLS

Historically, states and other political subdivisions of the state have asserted that they are immune from local land use controls. Immunity has often been absolute for any governmental function, agent of the state, or for an entity with the power of eminent domain. All of these theories or bases for immunity have been criticized as substituting "distracting surrogates for reasoned adjudication." See Note, *Governmental Immunity from Local Zoning Ordinances*, 84 *Harvard Law Rev.* 869 (1971). That note argues for something more in the nature of a balancing test between one governmental development concern and another governmental regulatory interest. A balancing of interests test is set forth in *Orange County v. City of Apopka*, 299 So.2d 652 (Fla. 1974). This is arguably the best approach. Governmental entities will be subjected to local zoning actions, unless some interest of that entity deserves paramount protection and encouragement.

There are no Alaska cases on this matter. Statutes that bear on this are few and of limited

at 2293. [emphasis added]

Or, as the U. S. Supreme Court stated some years earlier:

It is firmly settled that Congress may prescribe rules respecting the use of the public lands. It may sanction some uses and prohibit others, and may forbid interference with such as are sanctioned. *Camfield v. U. S.*, 167 U. S. 518, 525; *U. S. v. Grimaud*, 220 U. S. 506, 521; *Light v. U. S.*, 220 U. S. 523, 536; *Utah Power & Light Co. v. U. S.*, 243 U. S. 389, 404-405. It is also settled that the States may prescribe police regulations applicable to public land areas, so long as the regulations are not arbitrary or inconsistent with applicable congressional enactments. *McKelvey v. U. S.*, 260 U. S. 353, 359 (1922).

A state is free to regulate activities on and use of federally owned lands, and pass laws in furtherance thereof, until a contrary exercise of authority is made or evidenced by the federal government.

In the *Kleppe* case referred to earlier, the State of New Mexico contested the power of the federal government to regulate certain wild animals—horses and burros—found on public lands.

The state sought to enforce its own "estrays" law controlling stray burros anywhere in the state—whether on private, state or federal public lands. New Mexico argued that the federal act—*Wild Free-Roaming Horses and Burros Act*, 16 U.S.C. §§1331-1340—was unconstitutional because it was beyond Congress' authority under the Property Clause, and not authorized by a state cession of legislative authority. The U. S. Supreme Court held that the federal act was permissible under the Property Clause and that it "overrides the New Mexico Estray Law insofar as it attempts to regulate federally protected animals." 96 S.Ct. at 2294.

The state effort to assert jurisdiction over the federal lands in question in *Kleppe*, in order to control stray horses and burros, was invalid because of the asserted inconsistency with a similar federal program. The federal and state efforts were concerned with basically the same problem—controlling stray animals—and could not be administered without conflict. The federal act sought to maintain and preserve what the state act was seeking to remove and eliminate.

The federal action upheld by the Court was based on the Property Clause, on its face limited to federally owned land. This did not allow for ready extension of the federal authority to nonfederal land, except perhaps to the extent necessary to protect the federal lands. See *Camfield v. U. S.*, 167 U. S. 518 (1897). The state's position based

Hoff v. City of Ketchikan, 10 Alaska Rpts. 220(1942). In that case, Ketchikan had adopted an ordinance imposing an annual license fee upon motor vehicles in the city. It was upheld as a "license fee" for the use of city streets. The court noted that the fee may not be designed to raise general revenues, but may be based not only on the amount necessary for policing such vehicles but also upon the injury caused by them to the public highways." 10 Alaska at 227. The city's authority in this case extended from the grant of general police powers and specific authority to "provide for the licensing and regulating" of motor vehicles.

Might the Borough impose a fee upon development activities related to the Haul Road based on the impact of the proposal on the Borough? Hoff would support this, but the city there did have clear legislative authorization from the state. Absence of specific authority was fatal to an Anchorage ordinance requiring all businesses to obtain a city license.

A municipal corporation exercises only delegated powers, and has no inherent power to levy a tax by way of license or otherwise, or to exact a license fee for conducting any business or occupation. To sustain this ordinance, the City's authority must be found in some act of the Legislature which expressly or by

necessary implication vests such power in the City. If there is any fair or reasonable doubt as to the extent of power so delegated, the doubt must be resolved against the municipality. City of Anchorage v. Brady's Floor Coverage, 13 Alaska 741, 744, 105 F.Supp. 717 (1952).

Reviewing this as a license fee, the court observed:

As a regulatory license, authority for which is implied under the police power, it is necessary to find that this ordinance concerns trades, professions, business or privileges affected with a public interest which the City has the power to regulate and that there is a reasonable relation between the license fee and the cost of regulation by the City. 13 Alaska at 744.

The court-held regulation of this business—floor covering—was neither authorized nor necessary to protect the public health, safety, or welfare.

With general welfare-police power authority under Chapter 48, the specific land use control authority under Chapter 33, and as a home rule governmental authority, might the Borough adopt a fee-type ordinance imposed on development activities designed to lessen the impacts of new development? These provisions would seem broad

This does not mean that the simple existence of federal regulations will necessarily prevent application of state controls. State regulations that are more stringent may be permitted unless Congress evidenced an intent to the contrary. Analysis of federal exercise of authority to determine if there has been a preemption of legislative authority involves consideration of several factors. Concurrent state action will be allowed where there is no clear Congressional intent to displace state regulations, there is no such implied intent, or compliance with both state and federal requirements is a physical impossibility. See Northern States Power Co. v. Minnesota, 447 F.2d 1143 (8th Cir 1971) affirmed 405 U. S. 1035. Though the federal government may be exercising proprietary rather than legislative authority in regulating its own land, preemption analysis usually applied to the latter is instructive.

The Bacon and Omaechevarria cases mentioned above reflect this type of analysis. Several state courts have also dealt with this issue. In State ex rel Andrus v. Click, 554 P.2d 969 (Idaho 1976), a balancing of state and federal regulations was made in a determination that application of the state's dredge mining law to activities on federal lands were not in conflict with federal law and hence not preempted by the federal legislation. However, in Ansolabehere v. Laborde, 310 P.2d 842 (Nev. 1972), state stock watering legislation sought to be

applied to federal lands was held invalid because of federal regulations that left no room for local/state control. See also Hagood v. Heckers, 513 P.2d 208 (Colo. 1973).

In International Bridge Co. v. New York, 254 U. S. 126 (1920), the Court upheld a state's power over a bridge across international boundaries even though a part of the land under the bridge had been conveyed to the United States. This involved exercise of the federal government's commerce power, rather than only legislative or proprietary authority over its land; but the specific intent of Congress to preempt any state action was necessary before the state's jurisdiction would be denied. And in Cummings v. Chicago, 188 U. S. 41 (1903), the federal control over a river under the commerce clause, designed to ensure free movement of commerce, did not preempt local-state exercise of original jurisdiction to permit or deny construction of improvements along the river. Absent clear intent to preempt or a conflict, the original state authority may be exercised. See Mason Co. v. Tax Commission, 302 U. S. 186 (1937), as to a tax by a state. Also State v. Cline, 322 P.2d 208 (Okla. 1958), where a state court found that the federal jurisdiction over a game refuge was not exclusive.

LEGISLATIVE AUTHORITY

The federal government may also have legislative authority over land in a state. The court, in the

Cline case mentioned above, observed that aside from proprietary authority under Art. IV, sec. 3, cl. 2, the federal government may obtain legislative authority over lands within a state:

1. By excepting the place from the jurisdiction of the state upon the admission of the state into the Union.
2. By cession from the state to the federal government.
3. Pursuant to Art. I, sec. 8, cl. 17 of the Federal Constitution by a federal acquisition of land with state consent.

The federal government may acquire legislative jurisdiction over federal lands by "cession" or consent of the state to a yielding of the state's police powers. This authority is separate from the federal government's power under the Property Clause and from jurisdiction retained when a state joined the union. Cession involves the situation where a state relinquishes its sovereignty or police powers over land that has been acquired by the federal government. This is a "derivative legislative power" and may be acquired "from a state pursuant to Art. 1, §8, cl. 17 of the Constitution by consensual acquisition of land, or by nonconsensual acquisitive authority over land." *Kleppe v. New Mexico*, 96 S.Ct. at 2293. Cession or the yielding of police power by the state may be total or

partial. It may be for "any legitimate governmental purpose," even beyond the items listed in Art. 1, §8, cl. 17. *Kleppe* 96 S.Ct. at 2293, footnote 11. It may terminate upon nonuse, *Fort Leavenworth R.R. Co. v. Lowe*, 114 U. S. 525 (1885), and may be subject to reservations or conditions by the granting state, *James v. Dravo Contracting Co.*, 302 U. S. 134 (1937).

The authority may be given back to a state by "retrocession." *Alabama v. Texas*, 347 U. S. 272 (1954) and *U. S. v. Wyoming*, 331 U. S. 440 (1947). See, e.g., 16 U.S.C. §1a-3 permitting relinquishment of legislative jurisdiction over national park lands; and 25 U.S.C. §1323 allowing retrocession to the United States from a state over Indian lands.

Considering legislative authority of the federal government over its property in Alaska, there would appear to be no general cessions made by the state in the area of the North Slope Borough's jurisdiction nor significant acquisitions pursuant to Art. 1, sec. 8, cl. 17—except for the Naval Petroleum Reserve. Section 4 of the Alaska Statehood Act was amended by the Alaska Omnibus Act to specifically clarify that the federal government did not retain "absolute jurisdiction" over all public lands in the state. 48 U.S.C. prec. §21 note. A study prepared in 1969 for the Public Land Law Review Commission by the Department of Justice indicated there were no lands in Alaska claimed to

TAXING POWERS AND DEVELOPMENT FEES

The Borough also has significant taxing powers. Generally, taxation may not be used as a direct regulatory device and administrative fees are not allowed to be a guise to raise revenues. Initially, it should be noted that federal lands are generally not taxable by the state; and lands granted to Alaska natives under ANCSA are exempted from state taxation for twenty years—except as they may be developed and/or leased. See 42 U.S.C. §1620(d). Payments to the local government may be available from the federal government, to partially compensate for exempt federally acquired lands, under 31 U.S.C. §1601 to 1607. State and other local government's property is also generally exempt from local levies. A.S. §29.53.020 specifically provides that municipal, state or federally owned land is exempt from general taxation—except for private leasehold interests therein. Borough sales and use taxes are authorized in A.S. §29.53.415, and partially controlling as to home rule governments. Borough property taxes must be pursuant to A.S. §29.53.010 to .350.

It should at least be recognized that taxing of land has an effect on planning and zoning actions. A greater tax burden imposed on a parcel of property may necessitate more intensive usage in order to increase the revenue needed to pay the tax. Reassessments to keep current of changes in usage should be made as needed. Otherwise, there

would appear little the Borough could use under the authority to impose "property, sales and use" taxes as a means of controlling Haul Road-related developments.

The taxation or licensing of businesses is controlled by the state under A.S. §43.70.010-.120. This Act has been held to be predominantly a revenue-raising tax measure and not a regulatory device. See *State v. Baker*, 393 P.2d 893 (Alas. 1964). This authority has not been delegated by statute to local governments. The question remains whether it has been included in the grant of home rule authority to the Borough. The Alaska home rule system gives a municipality or borough all powers of government not expressly reserved to the state or denied to the local units. A.S. §29.13.100 lists those provisions of Title 29 required to be exercised in the manner specified by the state. The licensing and regulation of businesses is obviously not in this list since it is provided for in Title 43. It is possible the state licensing statute could be held to prevent or preempt local action in this area. However, the state has not explicitly denied this power to the Borough. Thus a tax or license fee might be imposed on the business of land development or construction under the Borough's home rule authority.

A fee, not in the nature of a tax, may be imposed under the police power as a means of regulation. This was specifically recognized by

establish some standards for streets. The completion of Title 18, transportation plan and an official map for the Borough should be diligently pursued. The need for this is obviously beyond just the Haul Road, however.

THE OFFICIAL MAP

The last mechanism in the land use control trilogy is the official map. This is not the map of the zoning ordinance, often referred to as the official zoning map, nor any map contained in the comprehensive plan. Rather, it is a map laying out the exact location of future and existing streets. It may also include park lands. The Alaska statute is silent as to exactly what is meant or included within this device. The Charter is also somewhat confusing. N.S.B. Charter §8.020. It should be possible to design an official map ordinance as that term is accepted in common practice and fit it within the Borough enabling provisions.

Four basic functions of an official map are identified by Williams, American Land Planning Law § 155.02-155.05:

1. Inventory—showing the exact location, right-of-way boundary, grades, etc., of existing streets and/or parks.
2. Future location—proposed future streets and/or parks not yet acquired.
3. Prohibition—construction on land

mapped for future street or park is prohibited.

4. Modification—administrative compromises to allow reasonable return if ban too drastic.

Williams goes on to note that this technique is not widely used because it is so drastic/strong a control and because of the high cost of preparing an exact survey. He concludes that much of the same thing for streets or parks can be obtained through subdivision control—forcing donation of rights-of-way and park lands.

Given the fact the Haul Road itself is one of the "roadways" that might set the patterns for streets and highways, the official map may be a useful device to lay out all future connections to the Haul Road. This would take considerable planning and foresight. It presents an interesting possibility when considered along with the other controls and control of roadways and street access in general. The official map ordinance necessitates detailed preparation and may be best addressed as the Borough completes its comprehensive plan—particularly the transportation element. The subdivision ordinance will allow for some protection of Haul Road connections and openings. Thus, the official map is not suggested for immediate consideration, but should be kept in mind for the future.

be subject to exclusive legislative jurisdiction of the federal government. Approximately 25 million acres were listed as subject to partial or concurrent legislative authority. See Federal Legislative Jurisdiction, App. B—Jurisdictional Status of Federal Lands, Table 3—By State and Agency (May 1969).

The amended Statehood provision limits "absolute jurisdiction and control" to native lands or lands held by the United States in trust for such natives. 48 U.S.C. prec. §21 note. However, even "absolute" control is not meant to be exclusive, and would not totally prohibit local/state laws from being applied. *Kake Village v. Egan*, 369 U.S. 60, 71 (1962):

[A]n examination of past statutes and decisions makes clear . . . that the words "absolute jurisdiction and control" are not intended to oust the State completely from regulation of Indian "property (including fishing rights)." "Absolute" in §4 carried the gloss of its predecessor statutes, meaning undiminished, not exclusive.

Indian and native lands may be trust lands, tribal or individual (allotments), or fee patent lands owned outright. Fee held lands will be treated as other private properties and is the apparent result in the ANCS Act. The state's jurisdiction over

tribal trust lands or individual allotments held in trust by the federal government is more complicated. Public Law 280, 28 U.S.C. §1360(a), provides that for certain states, including Alaska, ". . . those civil laws of such State or Territory that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory."

There is some question whether this includes local land use controls as "civil laws of such State . . . of general application." A recent decision of the Ninth Circuit, *Santa Rosa Band of Indians v. Kings County*, 532 F.2d 655 (9th Cir 1975), holds that zoning is not such a civil law. Furthermore, 28 U.S.C. §1360(b) prohibits state "encumbrance" of trust lands. Zoning has been construed in some cases to be an encumbrance and therefore prohibited. See *Santa Rosa*, supra. Finally, the regulations adopted pursuant to Public Law 280 concerning local zoning, 25 C.F.R. §1.4, state that such zoning does not apply to tribal or allotment lands held in trust by the federal government, unless approved by federal authorities.

The application of local zoning to trust lands is still unclear and the judicial decisions are mixed. The Regulations noted above have been criticized for lack of statutory support. Goldberg, *Public Law 280: The Limits of State Jurisdiction over Reservation Indians*, 22 U.C.L.A. L.Rev. 535, 586

(1975). Shifting of federal policy between assimilation and sovereignty has not helped the matter. Litigation presently before the U. S. Supreme Court may give some indication of the scope of Public Law 280 jurisdiction. See S.2046 (providing for Alaska Native Regional Tribes). At present, however, the law in this Circuit is that local zoning of trust lands is not permitted absent specific Secretary of the Interior consent under 25 C.F.R. §1.4. The latter regulation apparently makes no distinction between tribal lands and individual allotments. Further identification of any allotment lands in the Haul Road corridor should be made. The potential number or size of such allotments is not expected to be large, but may be of significance to the individuals involved.

SPECIFIC LAND AREAS IN ALASKA

Jurisdiction over several specific land holdings was provided for in the Alaska Statehood Act. Mt. McKinley National Park is stated to be under the "exclusive" jurisdiction of the United States, with certain exceptions. 48 U.S.C. prec. §21 note, sec. 11(a). And in accordance with Art. 1, sec. 8, cl. 17, for certain military lands, including "Naval Petroleum Reserve Number Four," exclusive jurisdiction was potentially reserved to the U. S. Concurrent state jurisdiction may be exercised over this area, as long as it is consistent with Congressional enactments. 48 U.S.C. prec. §21 note, sec. 11(b). An

early case reviewing the state's relationship to Petroleum Reserve No. 4 upheld the exercise of state jurisdiction over this area. In *Re Long's Petition*, 200 F.Supp. 313 (D. C. Alaska 1961), involved the state's assertion of its criminal laws over actions within the Reserve area. The court held that the State had been granted concurrent jurisdiction with the United States over the lands within the Reserve, and upheld a criminal prosecution for a burglary occurring on property within the Reserve. National defense withdrawals established by executive order of the President are also exclusively reserved to federal jurisdiction. 48 U.S.C. prec. §21 note, sec. 10.

This status of Naval Petroleum Reserve No. 4 may be changed by the Naval Petroleum Reserves Production Act of 1976, PL 94-258, 90 Stat. 303 (1976). This Act provides for renaming of Naval Petroleum Reserve No. 4 to the National Petroleum Reserve in Alaska (NPROA) and transfer of jurisdiction from the Secretary of the Navy to the Secretary of the Interior as of June 1, 1977. 42 U.S.C. §6501 et seq. Viewed as simply a transfer of jurisdiction, it may be argued that concurrent jurisdiction continues. The Act clearly prohibits any development leading to production of petroleum until specifically authorized by Congress. The Act also provided for the Secretary of the Interior to assume immediate jurisdiction of "any activities related to the protection of the environmental, fish

Are dedications and vacations separably controllable without being part of a subdivision? Street vacations may be regulated by the platting board even where no original subdivision was involved. A.S. §29.33.240(b). Does it follow the dedication of land not part of a subdivision may also be included? Certainly the Borough has the statutory authority to otherwise control the establishment of streets and roads by setting minimum improvement standards and requiring dedication. A.S. §29.48.030(1) and (12); §29.48.035(19); and §29.33.080(b)(4). Its home rule powers should enable it to do so also. The Code presently requires all streets to be dedicated to the public, N.S.B. Code §18.08.150, where a subdivision is involved. The platting ordinance might be broadened to reflect an intention to regulate all streets, or a separate ordinance might be developed. Title thirteen of the Borough Code is reserved for "streets and sidewalks" and the completion of this title should address this concern. Broadening the platting ordinance may be the first step in this direction.

Though the board may deny approval of a subdivision, it must do so in writing, stating its reasons; the act does not indicate what grounds are proper or improper. Similarly, little direction is given the board in Title 18 of the Code. No plat may be recorded nor lots sold until the subdivision has been approved by the platting board. A.S.

§40.15.010, §29.33.190, and N.S.B. Code §18.12.010. Platting approval may address dedications and making of "allowance for . . . installation of . . . sewers, water lines, drainage, and other public utility facilities and improvements." A.S. §29.33.150(3). This section states jurisdiction is not limited to the specified areas of control, so more is possible. A.S. §40.15.030, the state recording statute, speaks of "parks and other public areas" shown on a plat as being dedicated upon recording.

N.S.B. Code §18.08.210 provides for "allocation" of land for open space and school use where a parks or school plan exists. Exactions of land as a condition of subdivision approval can be an important acquisition technique that does not necessitate a large outlay of funds by the Borough. Use of fees in lieu of dedications might also be explored, approaching something like a land development tax as discussed later. Addition of a bond requirement for ensuring completion or construction of promised improvements might also be considered.

As concerns development along the Haul Road, the platting authority of the Borough should be asserted whenever a subdivision is proposed. No division and transfer is legally permitted without this local review and approval. However, where no division is involved, the platting power is of little value. The addition of the suggested language on roads to the subdivision ordinance will help to

(or did not allow) most all uses, this technique might be used. This would create the demand and put the Borough in a position to bargain. It would then be possible to tailor the development controls for each project in light of the circumstances through the contract zone. Potential problems and necessary limits on development could be provided for in the contract or covenants. Each development would be negotiated. This requires considerable time to review each project and lacks a large amount of certainty. It may be more useful for the larger, unusual project and as areas of the Borough become more developed.

SUBDIVISION REVIEW POWERS

Regulation of the subdivision or platting of land is by the planning commission acting as the platting board. A.S. § 29.33.150 and N.S.B. Charter § 8.010(b). The platting requirements are to be waived for large lot (over five acres) subdivisions with four or less lots not involving dedication of a public area or street—unless the transfers are made in anticipation of a subdivision development. A.S. § 29.33.170. All subdivisions must be reviewed; the platting requirements will be waived on an individual basis where appropriate. No subdivisions are exempt from Borough control and review. This waiver provision requires submission of "satisfactory evidence" that the criteria in section 170 are met. A shortened review process could be establish-

ed to provide for this less extensive approval and waiver of the formal plat requirements. The Code continues to follow this section. N.S.B. Code § 18.04.050.

The waiver section is designed to facilitate transfers of larger parcels of property not intended for subdivision development. An example might be transfers among family members or at the death of the original owner. Where further subdivision development is anticipated, the waiver should not be given. If a dedication is to be required, the formal procedures should be followed. Dedications of streets or other public areas should be routinely required, so the waivers may be minimal. The requirements may be waived in certain other situations found to be outside the intent of the platting act, and state recording act. A.S. § 40.19.010 to .020.

The jurisdiction of the platting board is quite traditional and examples of things that may be regulated are mostly concerned with the form and layout of the subdivision. A.S. § 29.33.150. However, the jurisdiction of the platting board is not limited only to those specified aspects of a subdivision or plat. It does extend to all activities involved in platting. A plat is generally defined as a division of land into two or more parcels or parts. Section 150 extends jurisdiction over "subdivisions, dedications and vacations of land." Again, Code and Charter provisions are similar to the state statute.

and wildlife, and historical or scenic values." The Secretary may designate areas of "significant subsistence, recreational, fish and wildlife, or historical or scenic values," and regulate exploration to ensure those areas are protected. The Act does not change the section under which the *Long* case was decided, but rather sets up a new section for control over the Alaska Reserve. Jurisdiction is not said to be exclusive or to prohibit state exercise of authority, so that concurrent jurisdiction, to the extent not inconsistent, may be argued to still be present. Congress knew of the *Long* decision when it passed the new Act, but indicated no intention to specifically avoid that interpretation. This would indicate approval of concurrent jurisdiction. Though the NPRA is withdrawn from entry under all public land laws, previously selected surface lands may be conveyed to native village corporations pursuant to ANCSA. 42 U.S.C. § 6502. This potential transfer would further support the position that state/local jurisdiction is proper and necessary.

The "significant area" designations and regulations might arguably displace some local jurisdiction if the federal controls leave no area for local control. The Secretary of the Interior, through the Bureau of Land Management, has promulgated the regulations called for in the Act. 42 Fed. Register 28720, June 3, 1977. When queried on a proposal for these regulations allowing the state to impose

more stringent regulations, the Bureau declined to accept such a proposal, responding that this was "unnecessary" given the "level of cooperative discourse provided in the regulations." The Bureau's position would seem to be that providing for state action is not needed. This does not necessarily evidence a position that state or local controls would be totally improper or not allowed. It does not fully answer whether concurrent jurisdiction may continue. Applying the conflict or preemption analysis described above, the answer is still unclear. There is no express intent by Congress to deny concurrent exercise of authority; implication of such intent seems unlikely also, as noted above. The question becomes whether state/local regulation directly conflicts with the federal controls or presents a "physical impossibility" of complying with both. As the *Northern States Power Co.* case discussed earlier notes, more stringent state controls are not the type of impossibility of concern. The Bureau may well resist state controls of a more restrictive nature, but it is Congressional intent, not BLM intent that is determinative. Thus, the state and its local governments should continue to assert their own interests and apply more stringent regulations if felt to be necessary.

BLM chose to rely on the cooperation procedures in the Act, to bring in state/local interests. Consequently, these should be pursued and used to their fullest extent by the Borough. This includes a

special task force to "conduct a study to determine the values of, and best uses for, the lands contained in the reserve." The task force is to include "representatives from the government of Alaska [and] the Arctic slope native community." 42 U.S.C. §6505(b)(1) & (2). This study is to be completed and a report submitted to Congress by April 5, 1979.

The Bureau is to consult with local agencies and native organizations before permitting or restricting use of and access to lands within the NPRA. In addition, the cooperative procedures agreement between BLM and USGS, 42 Fed. Register 4522, January 25, 1977, calls for local consultation. Two studies of NPRA are to be made "to determine the best overall procedures to be used in the development, production, transportation and distribution of petroleum resources in the reserve" and to "determine values of, and best uses for, the lands in the reserve." 42 U.S.C. §6505(a)(1) & (b)(1). Preliminary and final plans are to be prepared by BLM and USGS, and BLM is "responsible for notifying, coordinating, and consulting with other federal, state, and local agencies having statutory or regulatory responsibilities, the Arctic Slope Regional Corporation, and affected village corporations as appropriate, and other Native communities through the North Slope Borough and other interested parties regarding the plan." 42 Fed. Register 4544, cooperation agreement part A.

The USGS will not promulgate its own regulations for exploration activities; this will be covered by the cooperative plans and agreements with individual contractors. The Borough should ensure that its interests are adequately protected by participating in these plans and agreements. Compliance with local regulations may be made a part of the agreements, or similar standards incorporated into the agreements themselves. The USGS leaves surface concerns to BLM, and it views the "significant areas" identified by BLM as still available for exploration.

The Alaska Reserve Act also makes special provision for federal financial assistance to municipalities for needed public services and facilities. The need must be a "direct result of the explorations and study activities." The Secretary must also determine "that an unfair and excessive financial burden will be incurred by such communities as a result of the increased need for such services and facilities." Existing federal programs are to be used to meet this responsibility. 42 U.S.C. §6507(b) [§107 of Act].

The existence of the Reserve area and its control by the federal government is not directly relevant to the Haul Road itself. Like the other major withdrawn federal land holding in the Borough, the Arctic National Wildlife Refuge, it is outside the area immediately traversed by the Road. This discussion does, however, give some

actual zoning districts delegated to the village governing body. Any prior existing municipalities within the Borough might be treated this way also. A.S. §29.33.070(b) specifically provides for delegation of planning and zoning "administrative and enforcement responsibilities" to cities. See also N.S.B. Code §19.32.010. No specific provision is made for unincorporated villages. A general delegation of power to "hear and decide" cases under the jurisdiction of the planning commission, the platting board, and the board of adjustment is statutorily possible by ordinance under A.S. §29.33.245. The delegation may be to a hearing officer, a board or a commission. It might be possible to establish a village board or officer to hear such cases—conditional uses variances, and subdivision plats—for the limited area of concern to the village.

The other element of this section allows use of contract zoning. It is defined as a "zoning reclassification to a less restricted use when the owner of the rezoned property, either through an agreement with the assembly or a covenant in favor of the borough, places restrictions on the use of land beyond the zoning requirements generally attaching to the new district in which the property has been placed." A.S. §29.33.090(a), as amended. The Code or Charter do not specifically address this. When a parcel of property is zoned to a specific classification there may be a number of uses that are permitted in that zone while only one

or two of those uses are really wanted or desired. A change may be granted believing that a motel will be placed on the lot. However, if the zoning classification is broader, then any of the other permitted uses might be legally established. Thus, it is possible a gas station or restaurant, assuming these were also permitted uses, may be placed on this parcel of property with no need for further permission or review. Contract zoning is designed to alleviate this by providing in an enforceable contractual agreement that only a specific use will be made of the property. Hence, it is not necessary to have dozens of zones, each narrowly drawn, to ensure represented uses are actually what happens. The land is placed in a general zone that allows many uses, and by contract only one of those uses may be utilized and only in a specific manner as provided by the terms or conditions of the contract.

Utilization of contract zoning requires a landowner to request a change in the existing classification to another classification. If the land can be used in the desired manner under the present zoning, the landowner is under no compulsion to request a change and the local government has nothing to bargain with. With the limited number of districts in the Borough's zoning ordinance and broad use classification, contract zoning may not be very useful. If a zoning district were to be established along the Haul Road that prohibited

action would be in the Borough's best interest. The specified conditions could relate to expected environmental impacts, dangers to Borough's inhabitants, policies in Borough plans, or most any matter of concern to development in the area.

This would differ from the simple by right zoning classification where a specified use may be developed without the necessity of applying for a permit and meeting certain conditions precedent to development. Use of the special permit does necessitate commitment of resources to administer and issue the approvals. Some conditions may also require an ongoing monitoring to ensure compliance, which could also require time and personnel to make inspections or complaints by others as to violations might be awaited before taking any action. A bond or fee to cover cost of monitoring might be required. It is also possible to impose a time limit on the special permit, thus necessitating reapplication and review of the activity after a certain amount of time has passed.

Review of the permits is presently by appeal to the Borough Assembly acting as a Board of Adjustment. N.S.B. Code § 19.32.030(A)(3). Additional review would be by resort to the courts. Two important elements of the statutory section delegating zoning authority to the Borough are authorization to use contract zoning and a provision that zoning may "stimulate systematic development of transportation, water, sewer, school,

park and other public facilities." A.S. § 29.33.090(c)(6). Code language is similar to this latter language. N.S.B. Code § 19.04.010. It should be sufficient to provide for timing of development in accordance with the availability of public services. Efforts to develop in certain areas may be denied until public facilities and services are constructed or otherwise planned to be made available.

This would allow for establishment of broad districts or sectors within which development might be allowed and areas where it would be discouraged or not allowed. Districts might be established around Barrow and Prudhoe Bay as areas permitting development, with more specific zoning use districts then delineated within the general district. Another district or sector might be established along the Haul Road up to a distance of so many miles. Development could be allowed in this area, but prohibited outside the sector. The area might be further separated into more traditional zoning districts for various types of residential, commercial or industrial uses. The remainder of the Borough outside areas designated as development sectors would not be available for development until general policies on areas suitable for such development were modified.

This sector approach might also facilitate local decision-making for some village areas. The village land area could be classified as a development sector, and the detail and administration of

indication of the complexity of federal ownership patterns and the need for the Borough to take an aggressive position very early in the planning stages for any area.

FEDERAL LANDS TRANSFERRED TO ALASKA NATIVES

The jurisdiction of the state and local units of government extends over lands granted to Alaskan natives under the Settlement Act. These lands may be treated as any other private holding of land once patented to individual natives or groups, or village or regional corporations. The ANCS Act declares that the settlement is to be made "without establishing any permanent racially defined institutions, rights, privileges or obligations, without creating a reservation system . . . and without adding to the categories of property and institutions enjoying special tax privileges or to the legislation establishing special relationships between the United States Government and the State of Alaska." 43 U.S.C. § 1601(b). Aside from easements potentially reserved by the Secretary across native lands,¹ the only general restriction affecting the state is a prohibition on taxation of undeveloped native lands until 1991. However, lands that are leased or developed may be taxed—"municipal taxes, real property taxes, or local assessments." The tax exemption provision is somewhat ambiguous and may be interpreted in several ways. See Price, et

al., "The Tax Exemption of Native Lands Under Section 21(d) of the Alaska Native Claims Settlement Act," 6 UCLA-Alaska Law Review 1 (1976). Furthermore, easements are recognized as a taxable interest in real property in accordance with state or local law. 43 U.S.C. § 1620(d). Other miscellaneous provisions of ANCSA might be of concern in certain circumstances. National Wildlife Refuge land patented to Village Corporations include a right of first refusal to allow the United States to buy it back if offered for sale, and the land remains subject to Refuge area regulations. 43 U.S.C. § 1622(g). Lands patented in a National Forest are to include a condition that lands be managed similar to National Forest lands for 12 years. 43 U.S.C. § 1622(k).

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

As noted previously, the exclusiveness of federal jurisdiction over federal property may be determined by express or implied intent to allow or not allow local laws to be applied. This intent can be found by examining the statutory authority for federal management agencies and the major federal land classifications. Much of the public lands are under the management responsibility of the Department of the Interior's Bureau of Land Management; the second major classification of federal lands, the National Forests, are managed by

the Department of Agriculture's Forest Service. The authority and responsibility of the BLM was recently reviewed and clarified by a new organic act—Federal Land Policy and Management Act of 1976, Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743. The Forest Service's authority was also recently modified by Congress.

The BLM Act directs the Secretary of the Interior to inventory and develop land use plans for all public lands under his jurisdiction—except OCS lands and reservation lands. Of particular importance in this process is the consultation and participation of the public and state/local government. 43 U.S.C. §1712(c)(9) provides that the Secretary shall:

... coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located . . . [and] keep apprised of State, local, and tribal land use plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands . . . assist in resolving, to the extent practical, inconsistencies between Feder-

al and non-Federal Government plans, and shall provide for meaningful public involvement of state and local government officials . . . Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.

Thus the plans prepared for federal lands will address local/state concerns. The extent of the "consistency" with local plans is not well spelled out. It is clear, however, local authority has not been totally preempted. Where there is no overriding federal law or policy, local concerns should be respected. Federal law may become the controlling law, but there is room for negotiation here. Local citizen advisory councils may be established to advise on plans and management decisions, and are to include local elected officials. 43 U.S.C. §1739(a).

The Act is even stronger on following local pollution control regulations. The BLM plans are to:

provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation

stated policies and accomplishments of its goals. Zoning that would inhibit or frustrate these goals and policies is invalid and should not be consciously adopted.

Temporary zoning regulations may be established as interim controls while the community's various plans are being completed. Without adoption of formal plans, the zoning must obviously proceed on its own. The interim controls are only that—temporary—and the appropriate plans and policies must be prepared and formally adopted. As long as the plans and permanent controls are being studied and developed with reasonable deliberation and in good faith, the interim controls will stand. As time passes, however, the interim nature of the temporary controls weakens their validity. Several years to develop a plan is not unreasonable, and the time may be considerably longer as the situation increases in complexity.

The statutory grant of zoning power in A.S. §29.33.090 is very broad as is the Borough Charter. N.S.B. Charter §8.010-020. Zoning may address itself to, among other things, the use of land, structures located on the land, and distribution of population. A zone or district can be drawn on a map controlling all uses of land within that area. Certain types of uses can be allowed in the zone and all others prohibited. Limitations or requirements for the amount of land necessary for a project, density of development, and design

constraints on the height or location on the property of structures may also be included in this zoning provision. The stated uses of a zoning district are typically allowed by right if the stated requirements are met. There is no provision for discretionary review of any proposal; it is a yes or no situation. More detailed conditions and a modicum of discretion are made possible by the conditional use permit procedure.

Conditional use provisions are specifically authorized. A.S. §29.33.084(d)(3). Use variances are prohibited. A.S. §29.33.110(c). Conditional use permits are provided for in A.S. §29.33.084(d)(3) and in N.S.B. Code §2.12.160(c)(3), to be issued by the Planning Commission. The conditional or special use permit technique could be utilized to control development along the Haul Road. A zoning district would be established along the Haul Road in an area where development is desired or is anticipated. This could be up to so many miles on either side of the Road, or mapped in detail on the basis of development potential or known problems along the Road. Once mapped, development could not take place in this zone until certain specified conditions were satisfied. An application for the permit would have to be made by the land owner or developer, and this application would be reviewed by the Borough planning commission, or other authorized decision-maker, to determine if the conditions would be met and ensure the proposed

(d)(2) selections, and the Alaskan Native and State of Alaska land selections. Until these decisions are finalized, ambiguity exists. However, the Borough may rightfully apply controls regardless of ownership or classification. Modifications may be necessary, but this does not mean a "hands-off" position must be taken by the Borough. On the contrary, a most aggressive position should be asserted.

SPECIFIC NORTH SLOPE BOROUGH POWERS—INTRODUCTION

The North Slope Borough is a home-rule government and may exercise all powers not denied to it by the state. A.S. §29.08.010. The Borough's authority is also determined by its Charter. State statutes control in certain circumstances, A.S. §29.13.100, and may be looked to in other situations for guidance even though not controlling. The Charter reflects many of the prior requirements and provisions of the areawide authority statutes for an organized first-class borough. A.S. §29.33.010.

Land use policies and controls over development are accomplished through the government's spending, eminent domain, taxation and police power authorities. As concerns the Haul Road, the taxation and police power controls are the most relevant. As a home-rule borough, the North Slope Borough has considerable discretion in the exercise and design of these powers. Again, the charter

provides the most guidance here. A brief summary of the basis for and scope of the Borough's powers is presented below. This is followed by a more specific discussion and recommendation on the techniques and types of controls the Borough might best utilize in the Haul Road area. These are integrated into the existing Municipal Code provisions.

ZONING POWERS

The powers of the Borough in the area of land use planning and control are quite typical, with the exception that adoption of controls is made mandatory. The state has delegated a fairly broad range of police powers to local governments. Initially through its planning commission, the Borough Assembly is to adopt land use and zoning regulations including a zoning map. N.S.B. Charter §8.010-.020. The basic document for establishment of land use controls is the community's comprehensive plan. This plan, with its various policies and substantive elements on land use, transportation, etc., sets the framework for making land development decisions and should determine which regulations are to be adopted. Though the plan has no direct regulatory effect zoning must be adopted in "accordance" with this comprehensive plan. N.S.B. Code §19.04.010. This means the two documents must be consistent. The zoning must be designed to ensure protection of the plan's

plans 43 U.S.C. §1712(c)(8).

This provision calls for compliance, without any qualifiers. State/local pollution regulations must be followed. Pollution controls are often difficult to distinguish from other controls implementing a local land use plan. The Act is not very detailed here, perhaps the regulations will address this. The exact nature of local plans to be considered is not spelled out well either. The Act speaks of planning and management programs, as well as plans, so policies and objectives of the Borough may be asserted even though a formal comprehensive plan evidencing the policies may not yet be fully adopted.

The Act does define the term "public involvement":

[T]he opportunity for participation by affected citizens in rulemaking, decision-making, and planning with respect to the public lands, including public meetings or hearings held at locations near the affected lands or advisory mechanisms, or such other procedures as may be necessary to provide public comment in a particular instance. 42 U.S.C. §1702(d).

Also, when public lands are to be sold ("offering for sale or otherwise conveying"), the local

government in the area is to be given at least 60 days' notice "in order to afford the appropriate body the opportunity to zone or otherwise regulate, or change or amend existing zoning or other regulations concerning the use of such lands prior to such conveyance." 43 U.S.C. §1720 [§210 of Act]. This might arguably include leases and conveyances of partial interests in public lands, as the term public lands is defined in the Act to include any interest in land. 43 U.S.C. §1702(e) [§103 of Act]. The use of easements, permits and leases, among other devices, is specifically allowed as a means of managing public lands. 43 U.S.C. §1732(b). Patents or other documents of conveyance may include such terms "necessary to insure proper land use and protection of the public interest." 43 U.S.C. §1718. Specifically, the Secretary is prohibited from making any conveyance of public lands:

containing terms and conditions which would, at the time of the conveyance, constitute a violation of any law or regulation pursuant to State and local land use plans or programs. 43 U.S.C. §1718.

With the right to notice and prohibition against conveyances in violation of local regulations, the Borough should be able to stop proposed inconsis-

ent private development proposals. The local Borough regulations might be incorporated into the conveyance itself. This would give the added advantage of having the potential resort to federal enforcement of those conditions. 43 U.S.C. §1733. The Borough could still enforce its regulations and attempt to stop alleged violations. The federal threat might also include loss of the property or interest if certain conditions were violated.

Cooperation with local officials in enforcement of local regulations and contracts with local officials to allow for local enforcement of federal regulations are specifically permitted. 43 U.S.C. §1733(d) and (c)(1). Making of loans for areas impacted by mineral development is also included. 43 U.S.C. §1747. See also, 42 U.S.C. §6507(b). Consideration must be made of state land use policies in granting rights of way. 43 U.S.C. §1763. Rights-of-way must comply with "State standards for public health and safety, environmental protection and siting, construction operation and maintenance of or for rights-of-way for similar purposes if those standards are more stringent than applicable Federal standards." 43 U.S.C. §1765(a).

FEDERAL LAND CATEGORIES

The three major categories of DOI classified public lands—national parks, wildlife refuges, and wild and scenic rivers—are also governed by statutes and regulations which may affect or pre-

vent exercise of local jurisdiction. For example, the statute on Wild and Scenic Rivers provides that the jurisdiction of the state is unaffected by the Act "to the extent that such jurisdiction may be exercised without impairing the purposes of this chapter or its administration." This leaves room for state/local action with the caution that where inconsistencies arise, the federal regulations prevail. In some instances local zoning controls are to be encouraged by the Secretary of the Interior over particular areas in need of special protection. See, e.g., 16 U.S.C. §459b-4 and 36 CFR 27.1 et seq. (Cape Cod National Seashore); 16 U.S.C. §460ff-3 (Cuyahoga Valley National Recreation Area); and 16 U.S.C. §459e-2, 36 CFR 28.1 et seq. (Fire Island National Seashore). Withdrawals of land from operation of public land laws will require a public hearing. 43 U.S.C. §1714(h).

Public lands under the authority of the Department of Agriculture's Forest Service were also the subject of recent legislation. Generally, a "State wherein any such national forest is situated shall not, by reason of establishment thereof, lose its jurisdiction." 16 U.S.C. §480. The Forest and Rangeland Renewable Resources Planning Act of 1974, PL 93-378, as amended by the National Forest Management Act of 1976, PL 94-588, 16 U.S.C. §1600 et seq., imposed new responsibilities on the federal government for national forest lands. While multiple use and sustained yield, 16

U.S.C. §528 et seq., principles still apply, the Forest Service is to prepare an assessment or inventory of all forest lands, and develop resource and land management plans. The Secretary of Agriculture is specifically directed to give state and local governments "opportunity to comment upon the formulation of standards, criteria, and guidelines applicable to Forest Service programs." 16 U.S.C. §1612 [§11 of F&RRRP Act].

Conveyances for right-of-way purposes are specifically covered by Title V of the BLM Organic Act, Federal Land Policy and Management Act—43 U.S.C. §§1761 to 1771. Utilization of corridors for rights-of-way is to be encouraged, but corridors already established will apparently not be reconsidered or planned under the new Act—43 U.S.C. §1763. However, the right-of-way agreement for any pipeline, transmission line or roadway would have to comply with the new provisions. Section 1765(a) specifically provides for terms and conditions of a right-of-way agreement. Each shall contain terms and conditions which:

... require compliance with applicable air and water quality standards established by or pursuant to applicable Federal or State law; and (iv) require compliance with State standards for public health and safety, environmental protection, and siting, construction, operation, and

maintenance of or rights-of-way for similar purposes if those standards are more stringent than applicable Federal standards . . .

Similar conveyances by the Secretary of Agriculture over National Forest lands may be covered by 16 U.S.C. §§497 and 497a, rather than 43 U.S.C. §1761. The latter section specifically does not apply to roadways for commercial recreational developments. These would apparently continue to be granted pursuant to the Title 16 provisions cited above. The regulations for this section, 36 CFR 251, allow for issuance of special use permits, but make no provision for consideration of local regulations. This needs to be brought to the Secretary's consideration under the new Congressional directives given in 16 U.S.C. §§1600 et seq. and during the planning process carried on pursuant thereto.

SUMMARY—BOROUGH CONTROLS ON ALL TYPES OF LANDS

These paragraphs give a general picture of the management responsibilities of the federal government and evidences of Congressional intent as to concurrent exercise of control. Obviously, much has yet to be determined in Alaska because of the

Original sponsors: Parr, Beirne,
Bennett, et al

Offered: 6/10/78
Referred: Finance

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 838
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 TENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the North Slope Road."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 19.10 is amended by adding a new section to read:

9 Sec. 19.10.105. NORTH SLOPE ROAD. (a) The North Slope Road is
10 designated part of the state highway system, effective on the date of
11 transfer to the state under terms of the contract between the Alyeska
12 Pipeline Service Company and the state.

13 (b) The department may not give preferential access to the North
14 Slope Road to any group of users. Whenever the highway is open, it
15 shall be open to the general public in the same manner as any other
16 state highway.

17 (c) The department shall maintain the highway for use by the
18 general public for 12 months each year.

19 (d) In the event of conflict between this section and other por-
20 tions of this title, the provisions of this section shall govern.

21 (e) The appropriate departments shall conduct immediately an
22 impact study to determine the need for public protection of fish and
23 game resources and the security of the Trans-Alaska Oil Pipeline.

24 * Sec. 2. AS 38.05.035(a) is amended by adding a new paragraph to read:

25 (15) classify and make available for disposition under state
26 law land of the state along the North Slope Road which may, in the
27 director's judgment, be necessary to serve the traveling public; pending
28 classification, the director shall issue temporary-use permits for no
29 more than a 10-year period, with subsequent renewals for 10-year terms,

1 to applicants who agree to provide necessary services for the traveling
2 public; the director, with the approval of the commissioner, shall
3 determine the land to be made available under this paragraph and the
4 limitations, conditions, and terms of the permit; the permits shall be
5 offered at public auction to the highest bidder; after classification, a
6 permit holder has the rights granted under the permit and the right to
7 meet the highest bid offered at the first disposal of the land subject
8 to the permit after the expiration of the permit.

9 * Sec. 3. AS 44.33.020 is amended by adding a new paragraph to read:

10 (22) assist persons wishing to provide services to travelers
11 on the North Slope Road in obtaining the use of existing facilities and
12 the creation of new facilities.

13 * Sec. 4. AS 16.05.920 is amended by adding a new subsection to read:

14 (c) Mechanical vehicles may not be operated off the right-of-way
15 of the North Slope Road north of the Yukon River Bridge except as pro-
16 vided under federal or state law. No person may hunt within five miles
17 of the right-of-way of the North Slope Road north of the Yukon River
18 Bridge. Sport fishing from the right-of-way of the North Slope Road
19 north of the Yukon River Bridge may be permitted under regulation of the
20 Board of Fisheries.

21 * Sec. 5. AS 19.25 is amended by adding a new section to read:

22 ARTICLE 5. MAINTENANCE OF NORTH SLOPE ROAD.

23 Sec. 19.25.270. MAINTENANCE OF NORTH SLOPE ROAD. (a) It shall be
24 the general policy of the department to maintain the North Slope Road
25 under bid contract.

26 (b) The procedures of the department established under AS 19.10.-
27 170 - 19.10.250 shall be utilized in any maintenance of the North Slope
28 Road.

29 (c) If no satisfactory bid is received, the department is respon-

1 sible for maintenance for the period specified in AS 19.10.105(c).
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Original sponsors: Parr, Beirne,
Bennett, et al

Offered: 4/17/78
Referred: Finance

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

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THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

Committee

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS for HB-838
 Title North Slope Road FY 79 Oct. thru June (contract forces)
 Requested by J.H. Hogan Date May 10, 1978

II. FISCAL DETAIL

Agency Affected Department of Transportation and Public Facilities
 Program Category Affected Transportation, General Government
 Budget Request Unit(s) Affected DOT/PF Interior Region Maint. & Operations
Highways, Buildings and Communications

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES			412.9			
200 TRAVEL			56.4			
300 CONTRACTUAL			5756.5			
400 COMMODITIES			733.0			
500 EQUIPMENT			338			
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL			7297.6			

FUNDING (Thousands of Dollars)

GENERAL FUND			7297.6			
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME			9			
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

1. This note does not include working capital fund, Fish and Game Environmental conservation and Public Safety.
2. It is assumed that the monies needed to maintain the road by State Force is the upper limit on awarding contract.
3. All camp facilities will be maintained and built by the State and used by the contractor.

IV. DATE May 10, 1978 PREPARED BY James F. O'Sullivan
 AGENCY Department of Transportation & Public Facilities
 PHONE 465-3910
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

ALASKA STATE LEGISLATURE

TENTH Legislature SECOND Session

HOUSE BILL NO. 838

By PARR, BEIRNE, BENNETT, BRADLEY, BROWN, CARPENTER, CHATTERTON, COWPER, DANKWORTH, FREEMAN, GRUENING, HAYES, LETHIN, MALONE, MEEKINS, SNIDER, SWANSON AND URION

"An Act relating to the North Slope Haul Road."

North Slope Haul Road.

Introduced in the House 2-14-1978

HISTORY IN THE HOUSE

19 78	Feb. 14	Read first time and referred to Committee on State Affairs and Finance												
	Apr. 17	Reported back with recommendation that <i>State Affairs w/rep/CS How bill - has rep; idp/see to Finance</i>												
	May 30	<i>Finance rep/CS 25 2/10/78 to bill</i>												
	June 2	Read second time and <i>CS adopted, amended today</i>												
	June 2	Read third time and												
	June 2	<table border="0"> <tr> <td>PASS ed</td> <td>Effective Date</td> </tr> <tr> <td>Yeas 31</td> <td>Yeas /</td> </tr> <tr> <td>Nays 5</td> <td>Nays</td> </tr> <tr> <td>Absent</td> <td>Absent</td> </tr> <tr> <td>Excused 4</td> <td>Excused</td> </tr> </table>	PASS ed	Effective Date	Yeas 31	Yeas /	Nays 5	Nays	Absent	Absent	Excused 4	Excused		
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Absent	Absent													
Excused	Excused													
	June 2	Reported correctly engrossed												
	" 2	Signed by Speaker												
	" 2	Sent to Senate												
		<i>[Signature]</i> CHIEF CLERK OF THE HOUSE												

HISTORY IN THE SENATE

19 78	6 3	Read first time and referred to Committee on <i>SA Fin</i>												
	6 10	Reported back with <i>S.A.</i> recommendation that <i>replac'd</i> <i>w/CS 4 3 do pass, to Finance</i>												
		Read second time and												
		Read third time and												
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Excused	Excused													
		Reported correctly engrossed												
		Signed by President												
		Returned to House												
		SECRETARY OF THE SENATE												

HISTORY IN THE HOUSE

19	Received from Senate
	Concurred in Senate amendment thus adopting:
	Failed to concur in Senate amendment; asked Sen. to recede
	Senate receded from amendment
	Senate failed to recede from amendment
	FCC appointed by House
	FCC appointed by Senate
	FCC adopted
	To enrolling
	Reported correctly enrolled
	Sent to Governor
 by Governor
	Filed with Lt. Governor
	Chapter No.