

206 SHEETS - TOTAL GRANTS - A

HEW SCHEDULE

PLANNED

THREE JOINT REGIONAL ORIENTATION MEETINGS FOR STATES
(SAN FRANCISCO, DALLAS, WASHINGTON)
AFTER PROPOSED REGULATIONS ISSUED, IN MARCH

ORIENTATION MEETING FOR NATIONAL PUBLIC AND PRIVATE INTEREST GROUPS
IN WASHINGTON, D.C. IN MARCH

DEVELOP AND PUBLISH A "CITIZENS GUIDE" FOR THE GENERAL PUBLIC AVAILABLE
IN MAY

"ADMINISTRATIVE" STATE PLAN FORMAT AND GUIDELINES ISSUED, MARCH
PLAN REVIEWED AND APPROVED, JULY-AUGUST

PHASE OUT TITLE IV-A AND VI
NOW TO DECEMBER

STATE SCHEDULE

ASAP

DESIGNATE TITLE XX AGENCY
ORGANIZE FOR TITLE XX ADMINISTRATION

NOW TO JULY 1

DEVELOP COMPREHENSIVE ANNUAL SERVICES PROGRAM PLAN

NOW TO JULY 1

DEVELOP AND IMPLEMENT PROCEDURE FOR PUBLIC REVIEW PROCESS

NOW TO OCTOBER 1

DEVELOP AND INSTALL FINANCIAL CONTROL SYSTEMS
FOR PROHIBITIONS AND ELIGIBILITY

NOW TO OCTOBER 1

DEVELOP AND INSTALL CAPABILITY FOR TITLE XX REPORTING

JULY 1

PUBLISH AND MAKE GENERALLY AVAILABLE TO THE PUBLIC:
PROPOSED COMPREHENSIVE ANNUAL SERVICES PROGRAM

JULY 1 PLUS AT LEAST 45 DAYS

RECEIVE PUBLIC COMMENT ON PLAN

BEFORE OR ON OCTOBER 1

PUBLISH AND MAKE GENERALLY AVAILABLE TO THE PUBLIC:
FINAL COMPREHENSIVE ANNUAL SERVICES PROGRAM,
INCLUDING EXPLANATION OF DIFFERENCE BETWEEN
PROPOSED AND FINAL PLAN, AND THE REASONS

DURING PROGRAM YEAR

ANY AMENDMENT TO A FINAL COMPREHENSIVE PLAN IS PUBLISHED
AS A PROPOSED AMENDMENT; PUBLIC COMMENT IS ACCEPTED FOR
30 DAYS; THE FINAL AMENDMENT IS PUBLISHED WITH EXPLANATION
OF DIFFERENCE BETWEEN PROPOSED AND FINAL AMENDMENT, AND
THE REASONS

COMPREHENSIVE ANNUAL SERVICES PROGRAM PLAN

SIX-STATE SURVEY

TO ASSIST HEW IN DEVELOPING REALISTIC REGULATIONS AND GUIDELINES
FOR TITLE XX PLANNING

STATES SURVEYED

	ADMINISTRATION	
	STATE	COUNTY
OREGON	X	
VIRGINIA		X
NORTH CAROLINA		X
KENTUCKY		X
MICHIGAN	X	
NEW YORK		X

GENERAL FINDINGS

- MOST PLANNING BASED ON FEDERAL MANDATES.
- TITLE IV/VI HAS NOT REQUIRED SERVICES PLAN ON AN ANNUAL BASIS.
PRESENT FEDERAL PLAN IS STATIC DOCUMENT.
- BUDGET SERVES AS THE PLAN IN MOST STATES.
- WHERE PLANNING IS REQUIRED BY FEDS (AGING), OR SPECIFIC MONEY
IS AVAILABLE FOR PLANNING (HEALTH), IT IS DONE.

COMPREHENSIVE ANNUAL SERVICES PROGRAM PLAN

CHANGES IN PLANNING IN THE STATES AS A RESULT OF TITLE XX

- PLANNING WILL BECOME A FLUID ONGOING PROCESS, MUCH LIKE THAT USED TO DEVELOP THE BUDGET.
- STATES WILL HAVE TO LEARN TO DEAL OPENLY WITH EXTERNAL FORCES.
- MORE INFORMATION MUST BE AVAILABLE ON PROGRAMS IN ORDER TO JUSTIFY PRIORITY SETTING.
- OTHER STATE PROGRAMS WILL BE FORCED TO DEVELOP DETAILED PLANS.
- SERVICES WILL IMPROVE WITH BETTER PLANNING.

COMPREHENSIVE ANNUAL SERVICES PROGRAM PLAN

GOAL AND OBJECTIVE SETTING

- STATES ARE USING MBO, BUT THE OBJECTIVES VARY WIDELY BETWEEN STATES.
- SOME OBJECTIVES GROSSLY STATED—THEY RELATE TO WHOLE PROGRAMS OR PARTS OF PROGRAMS, RATHER THAN SPECIFIC SERVICES.
- CLIENT-ORIENTED OBJECTIVES
- CLIENT-ORIENTED OBJECTIVES WITH GOAL ACHIEVEMENT ESTIMATES
- ACTIVITY AND ADMINISTRATIVE OBJECTIVES
- BE ABLE TO MEASURE.
- BE ABLE TO GET PUBLIC AND PIGS TO RELATE TO GOALS AND GOAL MEASUREMENT.

COMPREHENSIVE ANNUAL SERVICES PROGRAM PLAN

ESTIMATED COSTS BY SERVICE, CATEGORY AND GEOGRAPHIC AREA

- STATES DO NOT BREAK DOWN EXPENDITURES ENTIRELY BY INDIVIDUAL SERVICE, BUT HAVE SOME CAPACITY TO DO SO THROUGH ADJUSTMENT OF PRESENT COST ALLOCATION PROCEDURES.
- INFORMATION ON ESTIMATED EXPENDITURES AND REPORTING ON SERVICES COSTS CAN BEST BE OBTAINED THROUGH THE BUDGETING SYSTEM CURRENTLY.
- MOST STATES CAN BREAK DOWN COSTS BY COUNTY OR DISTRICT, THROUGH EXPENDITURES FOR STAFF AND PURCHASED SERVICES.
- IN STATES WITH COUNTY-ADMINISTERED SYSTEMS, COST ALLOCATION AND REPORTING IS MORE DIFFICULT. THE MORE UNITS INVOLVED IN SERVICES DELIVERY, THE MORE DIFFICULT TO MONITOR COSTS.

COMPREHENSIVE ANNUAL SERVICES PROGRAM PLAN

NEEDS ASSESSMENT

PROGRAM INVENTORY DATA

SERVICES OFFERED IN AGENCY PROGRAM ———> TARGET GROUP/INDIVIDUALS

ANALYSIS OF REQUESTS FOR SERVICES NOT MET (IF STATE MAINTAINS DATA ON DENIED APPLICATIONS)

SERVICES OFFERED BY STATE AND LOCAL PUBLIC AND PRIVATE AGENCIES' PROGRAMS ———> TARGET GROUP/INDIVIDUALS

ANALYSIS OF SURVEYS MADE BY THESE AGENCIES OF NEEDS, IF AVAILABLE.

NEEDS ASSESSMENT DATA FROM PARTNERSHIP AND SITO PROJECTS IN YOUR STATE, IF AVAILABLE.

DATA DEVELOPED BY:

AREA PLANNING AGENCIES

STATE AGENCIES COMPILED FOR STATE BUDGET

CETA MANPOWER PLANNING COUNCILS ON PROGRAM NEEDS

STATE AND COMMUNITY PROGRAMS ON AGING IN PUBLIC HEARINGS

CONSUMER AND CITIZEN EXPRESSIONS OF NEED

CENSUS DATA - 1970

SITO SITE DEMONSTRATIONS *

HARTFORD, CONN.

HOWARD CO, MARYLAND

DULUTH, MINN.

UTAH (STATE)

AUGUSTA, MAINE (STATE)

MON VALLEY, PENN.

EAST CLEVELAND, OHIO

ARIZONA (STATE)

MAINE (STATE)

BENJAMIN BANNEKER
CENTER

LANSING, MICH.

CONTRA COSTA, CALIF.

BROCKTON, MASS.

VIRGINIA

MICHIGAN (STATE)

HONOLULU (STATE)

MASSACHUSETTS (STATE)

ANACOSTIA, WASH.,

MINNESOTA (STATE)

LUMMI INDIANS, WASH.

NEW BEDFORD, MASS.

CHATTANOOGA, TENN.

DES MOINES, IOWA

OREGON (STATE)

NEW YORK CITY

LOUISVILLE, KY.

JONESBORO, ARK.

WASHINGTON (STATE)

DELAWARE (STATE)

NO. CENTRAL ALABAMA

LOUISIANA (STATE)

DEVILS LAKE, N. DAK.

SOUTH DAKOTA (STATE)

MONTANA (STATE)

SO. DAK. STATE UNIV.

*NEEDS ASSESSMENT COMPLETED - UNDERLINED

PROGRAM SERVICES	TITLE XX	CETA	HCDA	COMMUNITY SERVICES	AGING	MENTAL HEALTH	DRUG ABUSE	ALCO HOLISM	VR	DD
Child Care	X	X	X	X		X			X	X
Protective Services	X			X	X	X	X	X	X	X
Foster Care	X			X	X	X				X
Home Services	X		X	X	X	X			X	X
Adult Services	X	X	X	X	X	X	X	X		X
Transportation	X	X		X	X					X
Training	X	X	X	X	X				X	X
Employment Services	X	X	X	X	X				X	
Information and Referral	X	X	X	X	X	X	X	X	X	X
Counseling	X	X	X	X	X	X	X	X	X	X
Meals	X			X	X					
Health Support Services	X	X	X	X		X	X	X	X	X

CETA= Comprehensive Employment and Training Act
 HCDA= Housing and Community Development Act
 VR= Vocational Rehabilitation
 DD= Developmental Disabilities

washington report for state legislatures

From the National Conference of State Legislatures

March 10, 1975

CHILD NUTRITION PROGRAMS

Latest Developments

A number of programs authorized by the National School Lunch and Child Nutrition Acts are due to expire June 30, 1975. The Administration, in the FY 1976 budget, indicated its desire to have these categorical programs replaced with a block grant approach to the States. Congressional reaction to the Administration's plan, so far, has been largely negative. Hearings have already taken place on legislation designed simply to extend, with minor changes, the basic categorical authorizations for funding child nutrition programs.

Background

The Administration will soon submit legislation which would combine all child nutrition programs into a single block grant to the States. This proposal would affect school breakfast, school lunch, special milk, day care, summer feeding, equipment assistance, supplemental feeding, and women, infants and children programs(WIC). Block grant funds, however, would be available solely for children; hence, Federal aid for pregnant and nursing women now funded under WIC and supplemental feeding would be terminated. States would be required to develop a State plan which would allow for public comment. Prior approval of the State plan by the Department of Agriculture would not be required. States, however, must publish for public review a list of accomplishments achieved under the block grant.

Under the Administration's program, States would be able to provide meals to children from families with incomes only up to 125 percent of the poverty line. Present law makes children from families with incomes up to 175 percent of poverty cutoff eligible for reduced-price meals. Termination of Federal support for the so-called non-needy is expected to save the Federal treasury about \$600 million annually. Much of the shortfall, however, is expected to be filled through State and local supplementation.

Even if the block grant proposal is not accepted by Congress, the Administration will not seek to renew school breakfast, day care, summer feeding, supplemental feeding, WIC and special milk programs. The Administration has indicated it will request funds only for the school lunch program, equipment assistance for schools and commodities to schools if the block grants are not enacted.

Earl S. Mackey, Executive Director

Carol Weissert, Editor

Affiliated with the Council of State Governments

1150 Seventeenth Street, N.W.
Washington, D.C. 20036
Phone: (202) 785-5614

The House Elementary, Secondary and Vocational Education Subcommittee has already reported its version of the legislation(H.R. 3736) to the full Education and Labor Committee. Mark-up sessions on the bill are expected to begin before mid-March. Senator McGovern has introduced his own proposal(S. 850) for extending and amending the child nutrition laws, however, the Agriculture Subcommittee has yet to schedule hearings on the measure.

H. R. 3736, introduced by Chairman Carl Perkins, and S. 850, McGovern's bill, would retain completely the categorical funding approach to child nutrition and, therefore, differ sharply with the Administration's recommendations. Both Perkins' and McGovern's bills would extend day care feeding, summer feeding, school breakfast and WIC, all of which expire June 30 of this year. Both bills would make children from families with incomes up to 200 percent of the poverty line eligible for reduced-price meals. Hence, whereas now a child from a family of four with an income of \$7,900 a year can receive a reduced-price meal, a child from a different family of four with an income of \$9,020 would be eligible under the Perkins or McGovern approach. (A comparison of the McGovern and Perkins' proposals is attached).

State Role

While the National Conference of State Legislatures' policy strongly supports a block grant approach to Federal aid, the States could hardly be enthusiastic about greater flexibility over the application of what would amount to be one-half billion dollars less of Federal child nutrition funds. Significantly, the willingness and capability of the States to administer efficiently and equitably a block grant program was doubted seriously by many members of the House Subcommittee. In the words of Chairman Perkins, "A block grant would destroy everything we have tried to build up in this area."

Staff Contact: Richard E. Merritt

75-I-12

THE NATIONAL SCHOOL LUNCH AND CHILD NUTRITION ACT
AMENDMENTS OF 1975 (S. 850, H.R. 3736)

	<u>S. 850</u>	<u>H.R. 3736</u>
A. <u>School Breakfast</u>	Permanent Extension of authority Directs the Secretary in cooperation with State Education Agencies, to carry out a program of information to the schools in furtherance of this policy.	Permanent Extension of authority Same provision
B. <u>Special Food Service</u>		
1) Day Care Feeding	Would retain Day Care as a separate program but require reimbursements and commodity donations at exactly the same level as provided in School Food Programs. Meals served to non-poor children would be reimbursed at lower rates than meals served to needy children. Includes reimbursements for suppers and supplements. "especially needy" Day Care Centers could receive extra funding. \$5 million/year authorized for equipment assistance to Day Care and Summer Feeding Programs. <u>Eligibility</u> Family Day Care Centers of 12 or fewer children (must be licensed or meet Federal Interagency Day Care Requirements of 1968)	Would terminate Day Care Food Program and bring it as well as Head Start Centers into the School Lunch and Breakfast programs. Same Provision <u>No</u> reimbursement for suppers and supplements. No similar provision. No separate equipment funding for Day Care Centers. No similar provision

THE NATIONAL SCHOOL LUNCH AND CHILD NUTRITION ACT
AMENDMENTS OF 1975 (S. 850, H.R. 3736)

	<u>S. 850</u>	<u>H.R. 3736</u>
2) Summer Feeding	2 year extension	1 year extension
	Would set maximum reimbursement rates for meals served in 1975 summer's program of 80 cents for lunches and suppers and 25 cents for supplements.	No similar provision
	Rates must be adjusted annually.	No similar provision
	Permits breakfasts to be served in the program and sets a 45 cent maximum reimbursement for this meal.	No similar provision
	State Education Agency shall determine the eligibility of institutions applying for reimbursement.	No similar provision
	Short-term residential camps for low income children (i.e. wherein children attend for less than a month) would become eligible.	No similar provision
	Proposed regulation must be published by January 1 of each year and final regulations by March 1.	No similar provision
C. <u>Special Supplemental Food Program(WIC)</u>	Would make authorization permanent, \$300 million annual authorization.	Would extend for 3 years without changes, \$200 million annual authorization.
	Would allow WIC clinics to use 25% of funds on administrative costs, which must include outreach and nutrition education (previous ceiling was 10%). Clinics could exceed 25% ceiling during first 6 months of operation or until full capacity, whichever comes first.	No similar provisions

THE NATIONAL SCHOOL LUNCH AND CHILD NUTRITION ACT
AMENDMENTS OF 1975 (S. 850, H.R. 3736)

S. 850

H.R. 3736

C. Special Supplemental
Food Program(WIC)
(Continued)

Permits mothers to remain in program until 6 months after childbirth, instead of 6 weeks. Children would remain eligible until age 5 instead of 4.

No similar provision

Creates a National Advisory Committee on Maternal, Infant and Fetal Nutrition to study and report to Congress and USDA annually on the status of the WIC program.

No similar provision

D. School Lunch

Would amend the Act making the following institutions eligible for reimbursement:
--public or licensed non-profit orphanages, homes for mentally retarded children, homes for emotionally disturbed children, temporary shelters for run-away or abused children, hospitals for chronically ill children, juvenile detention centers and homes for unmarried mothers and their infants.

Similar provision

E. Commodities Provisions

Extends for 3 years USDA authority to purchase non-surplus commodities at market prices for schools and other nutrition programs.

Same provision

Would require that 75% of the commodities or cash in lieu of commodities USDA is required to provide to schools actually be in the form of commodities rather than cash

Same provision

Would require USDA to provide schools with the same quantities of grain, oils and shortening as they received in FY 74.

Same provision

THIS PAPER HAS COME TO THE ATTENTION OF THE OFFICE OF CHILD ADVOCACY; WE
THOUGHT IT MIGHT BE HELPFUL TO YOU AND/OR YOUR GROUP IN REVIEWING TITLE XX,
SOCIAL SECURITY AMENDMENTS..... *BW m-Guire*

2/24/75

Issue: Eligibility of Children

Does a current recipient include a child whose parents' parental rights have been terminated or a child who has been placed under agency custody by a court order?

These questions may become critical in determining that the requirements of 2002(a)(4) are being met, and regulations will be necessary to make these determinations clear and uniform.

For Your Information
OFFICE OF CHILD ADVOCACY
2457 Arctic Boulevard
Anchorage, Alaska 99503

Issue: Charging of Maintenance Costs to Title XX

Regulation should specify what if any proportion of maintenance costs in a residential facility may be regarded as service expenditures under 2002(a)(7)(A). Indications are that the States may subsume large maintenance costs as services in many settings.

Issue: Foster Care

Section 2002(11)(B) as presented requires a definition of "foster care." Consensus of committee is that the definition should provide for care in the traditional facilities such as foster family homes, group homes and other social care facilities and should be available to children as well as other age groupings, i.e., the elderly.

The definition of "special need" will clearly be required in regulations.

If the definition of foster care proposed above is not the definition intended by legislation, we would recommend that the legislation be amended to incorporate foster care in group homes and other social care facilities.

Issue: Transitional Arrangements

One State has asked if any regulations will allow transitional arrangements between the July 1 beginning of their fiscal year and the October 1 effective date of Title XX. Their fiscal year planning, if transitional arrangements are not allowed, may require them to provide services in one way for one quarter and another for the three following quarters. This will have implications for decisions about adding, deleting or consolidating some services, and for related funding and staffing decisions.

Issue: Can Services be Limited to Current Recipients?

May a State limit its service program under Title XX to current recipients of assistance, Medicaid, etc. (categories enumerated in 2002(a)(4)) and not serve any others? If not, this should be addressed by regulation.

Issue: Eligibility Ceiling

May a State set its financial eligibility ceiling below the 80% of median income level noted in the Act? Regulations should address whether this is or is not possible.

Issue: Maintenance of State Effort - Title XX

Section 2003(b) requires maintenance of State and/or sub-State appropriated matching funds at the FY '73 or FY '74 level, whichever is less. The language seems clear.

The potential problem, however, is that we may have no way of knowing what the States' appropriate effort was for those years, and what portion of the State match was donated funds. It should not be assumed that we could determine this from the State legislative budgets, since often the services match comes from a number of different budget lines, and may not be identifiable in the budget. Local government or donated portions of the State match may or may not be included in the State budget. In some States such donations are "appropriated", i.e., run through the legislative approval process, so that even the work "appropriated" may be subject to misinterpretation.

One solution may be to state in the regulations that the maintenance of effort level shall be construed as one-third of the lower of FY '73 or FY '74 Federal expenditure of each State for services under the old titles, unless the State documents a claim to the contrary by a given date, subject to acceptance by the Secretary. However it is done, each State's maintenance of effort level should be nailed down early, so that we won't have to fight the battle if and when some State tries to supplant appropriated funds with donated funds.

Issue: Services Outside Institutions

Section 2002(11)(A) indicates that expenditures may be reimbursed "for the provision of service that (i) is provided by other than the hospital, facility, prison, or foster family home in which the individual is living . . ."

Our questions:

- 1) What does "other" mean?
- 2) Does it mean provided by a staff or individual not under the direct control or supervision of the institution?
- 3) Does it mean provided by a staff or individual who is not physically located in the institution?
- 4) Are there any other institutional settings, not mentioned in this subsection, which may be or should be included under the authority spelled out in this section? i.e., halfway houses, residential treatment centers, and other facilities related to treatment for alcohol and drug abusers.

Responses or definitions developed from these questions should be in regulatory form.

Issue: Maintenance of Effort

In Section 2002(b) the Act mandates maintenance of effort by the States based on their FY '73 or FY '74 expenditures. We believe it is imperative that regulations and instructions be written to state the specific data which will be needed. If services are to be dropped, added or consolidated under Title XX, what effect will this have on the maintenance of effort computation? These regulations should stipulate that the MOE level be determined before or at the time Title XX becomes effective.

Issue: Emergency Shelter

Section 2002(11)(C)

We feel that emergency shelter as a protective service should be provided not in excess of 30 days per emergency episode.

This should be a regulatory statement.

Issue: Need for a Service Plan

We are concerned that a service plan may not be required under Title XX, for the following reasons:

- 1) Unless there is an assessment of service needs for an individual, how does agency make a rational determination as to what services are to be given? To set up a service plan, you must do such an assessment. The sequence of orderly planning with an individual requires a contractual-type arrangement such as is provided by a service plan.
- 2) Federal audit will be much more easily facilitated if service plans are available.
- 3) The Act requires that someone must determine that service is needed and that the service relates to the goals of the Act. A service plan is a logical extension of this requirement.
- 4) The demands of the SSRS may implicitly demand a service plan.
- 5) Effective coordination with other human resources programs requires that someone (optimally a service worker) make a decision about what services an individual needs and refer him or her to programs where that service is available. This process would necessitate an orderly service planning effort.

If these items are appropriate concerns, a regulation might be necessary. The flexibility intended by Title XX may preclude such regulation, however. If this is the case, guides should be developed to help the States choose an effective case management system.

Issue: Availability of Training

Several questions are raised in our reading of Title XX as enacted:

- 1) Is training of assistance workers (vis service workers) covered at 75%?
- 2) Is training of provider staff covered? At what percentage?
- 3) Is training of volunteers covered at 75%?

All of these questions are of extreme importance to the continued efficient and effective functioning of State agencies. Clear guides should be prepared to address these questions.

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Issue: Citizen Involvement

Further definition is needed of how citizen participation may be accomplished. We feel that guides should be developed showing means and systems for participation. Particular attention (perhaps regulations) should be addressed to the manner in which comments received from the public by Agency which develops the plan will be utilized and taken into consideration in developing the final plan. We feel the authority for such regulations would be found in Section 2004(2)(J).

Issue: Fee Schedules Under 2002(a)(5)

We believe that equity demands that the Secretary by regulation mandate that fees may not be charged to individuals at or below the minimum income level (lower of 80% of median income of family of 4 of the State or U.S. median income). If fees are allowed in this group, the disincentives to self-sufficiency and removing oneself from welfare are greatly enhanced.

Issue: Definition of Goals (Sections 2001 & 2002)

Further definition of the goals specified in Sections 2001 and 2002 is necessary in either regulations or program guide. Program guide would be preferable in light of the spirit and intent of Title XX. States have already requested further clarification as to Congressional intent re specific services intended under the goals. However, AoA has found that general goal descriptions have been helpful to the States, and nitty gritty goal definition would inhibit flexibility.

Section 2002(a)(3), however, specifies that the Secretary cannot withhold funds when a State defines something as service.

On balance, we recommend program guides on the definition of goals which would give examples, or list types of services and/or further definition which can lend guidance but which will not seem or be restrictive. Although some States may want tighter definitions, we need to help them realize their responsibility under Title XX to set their own priorities and goals.

5

Issue: Redetermination of Eligibility

A regulation should specify intervals for the redetermination of financial eligibility for non-recipients of public assistance who are receiving services. Assistance and "medically needy" recipients are required by law to undergo these periodic eligibility redeterminations.

In addition, program guides should be developed to help the states develop systems and ways of periodically assessing the initial and/or continuing need for particular services. A periodic assessment of the need for services should be accomplished for both recipients and non-recipients of public assistance.

Issue: Further Definition of Services - Section 2002(a)(1)(E)

The broad general nature of the services listed in 2002(a)(1)(E) will lead to confusion and possible misconstruing of Congressional intent unless there is further clarification. For example, "protection services", without further definition, might be extended to a logical extreme where police and public safety activities were funded from Title XX.

Further, the reporting system required will necessitate further definition.

We believe that this further definition should be by regulation to promote uniformity (i.e., conform with major standard setting organizations) accountability through reporting systems, and clarity.

Issue: Eligibility: Determination of Income

A method should be developed for specifying median income which failed in inflationary factors. This should be specified by regulation so that there is uniformity among the states.

A definition of gross income 2002(a)(5)(B) should also be specified by regulation (i.e., traditional IRS disregard of income like VA Benefits, SSA benefits, etc. apply, or some other standard).

6

Issue: Reversion of Funds to Donors

Section 2002(a)(7)(D)(iii) seems to delete the non-reversion-to-donor rule, "if the donor is a nonprofit organization". It appears that, for example, United Way could donate funds to the State and receive them back with federal matching funds in tow.

We read this section and Section 2002(a)(7)(D)(ii) to indicate that any non-profit organization may donate funds, specify services they will provide and have funding then reverted to them. We are not sure this is correct, however.

Because of the nature of the donated funds issue and the confusion this change may bring, we believe that the terms need to be further defined in regulations so that there are no questions about the intent that donated funds can revert to non-profit donors, and can be counted for federal match.

Further, we believe that specific clarification should be made with respect to the status of Indian and native American groups as "non-profit" groups.

(7)

TRANS.

February 18, 1976

Senator Frank Ferguson
Alaska State Senate
Juneau, AK 99801

Dear ~~Senator Ferguson~~: *DEAR*

The Villages of Stebbins and St. Michael have asked me to inquire of you the status of progress on the road connecting the two communities.

The need of which can be underscored by the recent storms of the past couple of years, early freeze-up cutting off tug transportation and fuel problems being experienced throughout Rural Alaska.

Had this link been present last year, all supplies and equipment for completion of over 40 housing units would have been delivered and the critical and chronic fuel shortage being experienced presently at Stebbins would be alleviated by connection to the 2,000,000 gallon + tank farm at St. Michael.

As members of your constituency from two of your more supportive communities, positive action is requested to assure the belief that you are our most progressive and effective Senator in Juneau.

Thanking you for your attention and positive response, I remain.

Sincerely,


Alfred C. Nakak

ACN:kw

cc: Stebbins City Council
St. Michael City Council
Stebbins Native Corp.
St. Michael Native Corp.

Alaska Carriers Association, Inc.

3443 MINNESOTA DRIVE
ANCHORAGE, ALASKA 99503

TELEPHONE (907) 272-0568

REFER TO FILE:

April 6, 1976

Honorable Bill Ray
Chairman, Senate Finance Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Ray:

The Alaska Carriers Association has numerous reservations and objections to the proposed creation of a State Department of Transportation as outlined in Senate CS for CS to House Bill 63.

We are joined in our opposition by the Associated General Contractors Association and it is our understanding that organized labor is also opposing this measure.

If hearings are scheduled on this, we would appreciate advance notification so as to bring in some of our membership and to prepare further testimony. However, we can summarize here our major objections to the bill.

1. The proposal is an experimental one, raising doubts as to its workability or legality in handling federal funds.
2. The lengthy and detailed environmental provisions in the bill invite a "no-growth" concept, and deal with areas already covered under Federal Highway Administration and Environmental Protection Agency requirements. The result could be an overlapping and confusion of laws and procedures and an effective tool for advocates of a "no-growth" policy from both inside and outside our state.
3. Most of the objections to the present transportation structure in state government have been based on charges of over-staffing and poor communications between departments. Super-imposing a massive super agency on top of the present structures cannot and will not correct such a situation, if the charges are true.
4. Recognizing that Alaska's Governor has strong authority in all departments of state government, we are concerned at any further erosion of legislative control and authority. It is our feeling that the legislature is more responsive to public needs and wishes than a super agency controlled by the incumbent governor, whomever he may be.

The Honorable Bill Ray
April 6, 1976
Page Two

Attached is a commentary of Mr. James Granum, P.E., who is the head of the Engineering and Research Division of the National Highway Users Federation. Mr. Granum is nationally recognized as an authority on engineering administrative procedures, participates in the activities of the National Highway Research Board, and is well qualified to comment on the subject.

We will be pleased to submit further data and commentary on this bill if you so desire.

Sincerely,

Larry Venable
Legislative Representative

cc: Anchorage Office, Alaska Carriers Association
G. Harang, President, Alaska Carriers Association
Senator Poland
Senator Rader
Senator Chance
Senator Ferguson
Senator Butrovich
Senator Sackett

HIGHWAY USERS FEDERATION FOR SAFETY AND MOBILITY

INTER-OFFICE MEMORANDUM

Date March 9, 1976

To Larry Venable
From James O. Granum
Subject Alaska DOT

Per your telephone request, enclosed is information regarding other state DOT's. Note my letter of February 9, 1976 to Harold Gainer which describes the enclosures except for the one entitled "ACIR State Legislative Program." This was issued subsequent to the ACIR report "Toward More Balanced Transportation."

I think you will note that none of these provide for construction activities to be carried on by a department other than a DOT. I have checked our California files regarding new legislation establishing the California DOT, and find that functions of the old Department of Public Works relating to transportation have been folded into the California DOT which, however, remains in the Business and Transportation Agency, headed by the Governor's cabinet level Secretary. While we have not tried to keep track of current organizational developments in California, I do not believe that there has been any change in the basic responsibilities.

Note!!

I cannot conceive of separate DPW handling construction of highways (along with everything else) whenever Federal aid is involved. The inter-relations between planning, financing, contracting, construction, payment and audit are so complex that such divided responsibilities are almost inconceivable. Perhaps your FHWA Division Engineer could elaborate. Good luck.

JOG:ac

cc: Owen Allen

JOG

DUPERE & ASSOCIATES, INC.
510 6TH STREET
JUNEAU, ALASKA 99801
TELEPHONE 586 3553

April 19, 1976

MEMORANDUM

To: Representative Brenda Itta
Senator Frank Ferguson

From: Robert J. Dupere

Subject: North Slope Borough Road Need -- Federal Highway System

Forwarded herein is a copy of Mr. Herb Bartel's letter concerning the Federal highway needs of the North Slope Borough since you were omitted in the initial distribution.

In addition, a copy is forwarded to the Department of Highway's planning section in Juneau.


RJD

cc: Herb Bartel, North Slope Borough
Planning Division, Department of Highways, State of Alaska
(Attn: Jim Bentley)

NORTH SLOPE BOROUGH

P. O. BOX ~~546~~ 69
BARROW, ALASKA 98723

TELEPHONE 852-4865

(907-852-2611)

April 13, 1976

H. Woodrow Johansen
Interior District Engineer
2301 Peger Road
Fairbanks, Alaska 99701

Edgar A. Spruce, Jr.
Western District
P. O. Box 220
Nome, Alaska 99762

Gentlemen:

The North Slope Borough Planning Commission has by the attached resolution recommended additions to the state highway system for each village within the Borough. Nearly all the recommendations are simply a State highway link between the village and its public airport. The small maps of the villages show these additions in red and, with the exception of Barrow, those capital improvement projects that are scheduled for construction by the Borough. Additional information will be submitted for the villages of Atkasook and Point Lay. Atkasook airport site selection is just now getting underway and a request has been submitted to the Division of Aviation for assistance in this so that the final airport location would be approved by them. Point Lay has requested that the Borough relocate the village because of airport access and site development problems at the present location.

The Planning Commission has asked me to have discussions with the Highway Department on the villages' behalf before a final mileage is stated for the recommended addition. A preliminary estimate, however, indicated that approximately 24 miles are involved in the total addition to the system recommended by them.

I have also enclosed the Mayor's statement concerning the Prudhoe Bay haul road to the Growth Policy Council which is referred to in the Planning Commission's Resolution.

Please let me know what your feelings are on this request so it can be discussed further both with you and the villages.

Sincerely,



Herb Bartel
Planning Director

H. Woodrow Johansen
Edgar A. Spruce, Jr.
April 13, 1976
Page 2

cc: John L. Umlauf, Director, Transportation Planning Division
Patrick P. Ryan, Director, Division of Aviation
Eben Hopson, Mayor, North Slope Borough
Oliver Leavitt, Assembly President, North Slope Borough
Bob Ahgook, Mayor, Anaktuvuk Pass
Jacob Adams, Mayor, Barrow
Marx Sims, Mayor, Kaktovik
Thomas Napageak, Mayor, Nuiqsut
David Stone, Sr., Mayor, Pt. Hope
Ben Neakok, Mayor, Point Lay
David Bodfish, Sr., Mayor, Wainwright
Barbara H. Shaffer, Special Assistant to the Governor, Nome
Growth Policy Council
✓ Bob Dupere, Dupere & Associates
Bill Tegoseak, City Manager, Barrow

Enclosures

NORTH SLOPE BOROUGH
PLANNING COMMISSION

RESOLUTION SERIAL NO. 76-1

ADDITIONS TO THE STATE OF ALASKA HIGHWAY SYSTEM

WHEREAS, the North Slope Borough Planning Commission in preparing a comprehensive plan has found that:

1. Meeting transportation needs for the villages has been one of the highest priorities of the Borough's Capital Improvement Program which projects road construction expenditures of six million, seven hundred thousand (\$6,700,000) by the end of fiscal year 1979/80;
2. The Borough's Local Service Roads and Trails Plan submitted by the Planning Commission to the Highway Department in September 1975 does not meet needs for certain high standard roads;
3. High standard public roads linking the village airport and port facility with the village center are needed because of load weights being hauled and requirements for dependable transportation;
4. The need for a high standard public road linking the village with its airport and port facility has Planning Commission priority over the need for expenditure of State funds on the Prudhoe Bay Haul Road;
5. The North Slope Borough Mayor in his statement to the Governor's Growth Policy Council at a Public Hearing in Barrow concerning the Prudhoe Bay Haul Road expressed the need to make additions to the State Highway System for each village before the Haul Road is opened for public use;
6. Over two million dollars (\$2,000,000) is now being spent by the North Slope Borough for road construction in the villages and one half million dollars (\$500,000) has been spent from the Borough's operating budget for road and equipment maintenance in the village of Barrow;
7. Assistance from the Alaska Department of Highways is needed for Borough road and construction and maintenance funds to be used most efficiently;
8. No mileage is included on the State Highway System serving the villages of the North Slope and no highway construction projects are included in the plan entitled Five Year Highway Construction Program January 1976,

NOW, THEREFORE, BE IT RESOLVED that the North Slope Borough Planning Commission recommends the additions to the State Highway System which are attached hereto, as Exhibit #1.

INTRODUCED: April 5, 1976

ADOPTED April 5, 1976


Chairman

April 5, 1976

NORTH SLOPE BOROUGH ROAD TO BE INCLUDED IN
STATE SECONDARY HIGHWAY SYSTEM

(EXHIBIT #1)

<u>COMMUNITY</u>	<u>DESCRIPTION</u>
Point Hope	Road from airport to new townsite
Point Lay	Road from airport to new townsite
Wainwright	Road from airport to center of village and marine staging area
Barrow	Barrow airport to NARL airport, Outer loop airport, Block A, Browerville Fresh water lake road NARL airport to future marine facility
Atkasook	Airport to new townsite
Nuiqsut	Airport (existing) to village New airport to village
Anaktuvuk Pass	Airport to village
Kaktovik	DEWline airport to village

MAYOR'S ADDRESS TO THE GROWTH POLICY COUNCIL.

ON THE DISPOSITION OF THE FAIRBANKS--PRUDHOE HAUL ROAD

March 15, 1976

TONIGHT MY REMARKS ABOUT THE DISPOSITION OF THE HAUL ROAD ARE MY OWN PERSONAL REMARKS AND DO NOT REFLECT AN OFFICIAL POLICY POSITION OF THE NORTH SLOPE BOROUGH. OUR ASSEMBLY HAS NOT YET MADE OFFICIAL BOROUGH POLICY ABOUT THE HAUL ROAD.

MY PERSONAL FEELING IS THAT THERE ARE MANY EXISTING TRANSPORTATION DEFICITS TO OVERCOME THROUGHOUT OUR BOROUGH WHICH SHOULD BE OVERCOME BEFORE THE STATE BEGINS TO THINK ABOUT SPENDING MONEY TO OPERATE AND MAINTAIN A PUBLIC HIGHWAY BETWEEN FAIRBANKS AND PRUDHOE BAY.

FOR INSTANCE, THERE ARE 24 MILES OF ROADS IN OUR BOROUGH THAT OUGHT TO BE INCLUDED IN THE STATE'S SECONDARY HIGHWAY PROGRAM. FOR A NUMBER OF REASONS, THE STATE'S SECONDARY HIGHWAY MAINTENANCE PROGRAM - SO IMPORTANT TO OTHER AREAS OF RURAL ALASKA - HAS NEVER BEEN EXTENDED TO OUR BOROUGH COMMUNITIES, AND I WOULD THINK THAT THE STATE'S GROWTH POLICY WOULD BE TO TAKE CARE OF EXISTING PROBLEMS IN THE ARCTIC BEFORE CREATING NEW ONES.

IT IS MY FEELING THAT THE ECONOMICS OF HAUL ROAD OPERATION AND MAINTENANCE ARE HIGHLY QUESTIONABLE. I FEEL THAT, EVEN IF WE NEEDED THE ROAD TO BE OPENED FOR SOME GOOD REASON, THE STATE WOULD NOT BE ABLE TO AFFORD IT.

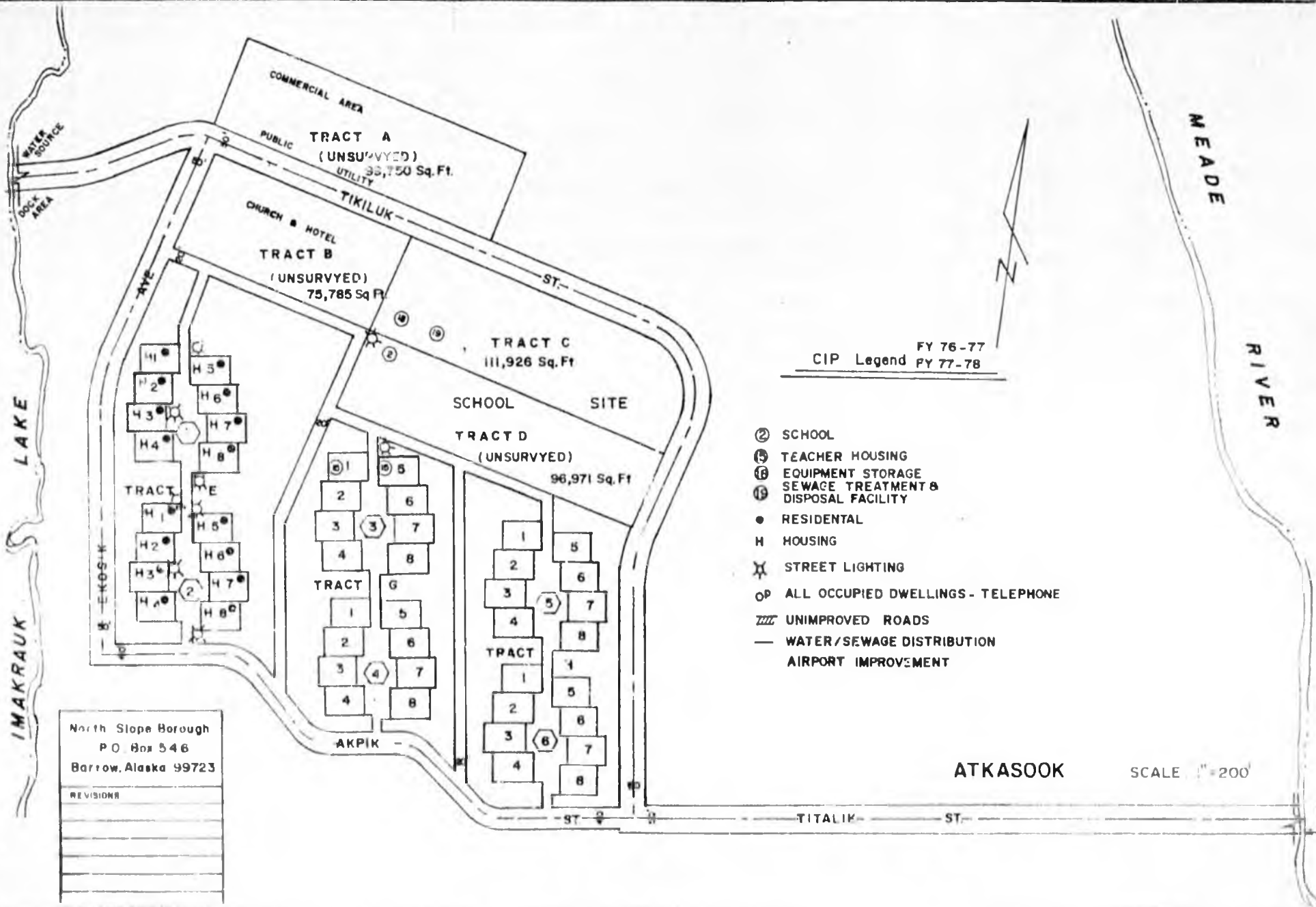
IN ADDITION TO THE NEED TO EXPAND THE STATE'S SECONDARY HIGHWAY PROGRAM TO INCLUDE OUR BOROUGH VILLAGES, WE HAVE NEED FOR A DOCK FACILITY HERE AT BARROW. WE ARE PLANNING TO BUILD A MARINE FREIGHT FACILITY AT POINT BARROW, BUT WE CANNOT HANDLE THE COST OF THIS FACILITY BY OURSELVES. WE FEEL THAT SUCH A DOCK WOULD ENABLE US TO LOWER OUR COST OF LIVING AND INCREASE OUR STANDARD OF LIVING. AS IT IS, OIL DEVELOPMENT IS HEATING UP OUR ECONOMY BUT, WITHOUT A MARINE FACILITY, WE CANNOT BENEFIT FROM THE MILLIONS OF TONS OF SHIPPING THAT SAIL PAST BARROW EACH YEAR. THIS TYPE OF DEVELOPMENT APPEARS TO BE THE KIND OF THING THAT THE GROWTH COUNCIL SHOULD BE CONSIDERING BEFORE THE HAUL ROAD GETS THE ATTENTION IT IS CURRENTLY RECEIVING.

THE QUESTION OF OPENING THE HAUL ROAD FOR PUBLIC USE RAISES OTHER QUESTIONS ABOUT NEW PRESSURES ON OUR CARIBOU HERDS, AND ABOUT NEW, NON-TRADITIONAL COMMUNITY DEVELOPMENT AT PRUDHOE BAY AND ALONG THE ROAD. MY FEELING IS THAT, UNTIL WE BECOME A UNIFIED MUNICIPALITY, WE DON'T WANT TO ENCOURAGE SUCH NEW COMMUNITY DEVELOPMENT. BECAUSE OF PRESENT INDUSTRIAL POLICIES AT PRUDHOE BAY TO DISCOURAGE PERMANENT SETTLEMENT THERE, THE POLITICAL AND ECONOMIC DANGER FROM SUCH NEW COMMUNITY DEVELOPMENT APPEARS FAIRLY REMOTE. BUT, A PUBLIC HIGHWAY TO FAIRBANKS WOULD ACCELERATE THESE DANGERS.

IN SUMMARY, I DON'T FEEL THAT THE STATE SHOULD OPEN THE ROAD FOR PUBLIC USE. I OPPOSE IT FOR THE SAME REASONS THAT OUR PEOPLE IN THE KOTZEBUE REGION HAVE DISCOURAGED MAJOR HIGHWAY DEVELOPMENT IN THEIR REGION. OUR HOME-RULE GOVERNMENT HERE WAS ORGANIZED AS PART OF OUR LAND CLAIMS EFFORT TO CONSOLIDATE INUPIAT SOCIAL AND ECONOMIC CONTROL OVER OUR LAND AND OUR COMMUNITIES. I FEEL THAT THE GROWTH POLICY COUNCIL SHOULD PLACE HIGH IMPORTANCE UPON THE DEVELOPMENT OF HOME-RULE IN RURAL ALASKA, AND ENCOURAGE STATE GROWTH POLICY TO RESTRICT ANY DEVELOPMENT THAT WOULD RESULT IN THE POLITICAL WEAKENING OF NATIVE HOME-RULE. THE HAUL ROAD IS POTENTIALLY SUCH A DEVELOPMENT.

IT IS MY FEELING THAT GOVERNOR HAMMOND AGREES WITH MY ATTITUDE AND THAT HE NEEDS SOME EXPRESSION OF PUBLIC SUPPORT TO REINFORCE HIS DISPOSITION NOT TO OPEN THE HAUL ROAD FOR PUBLIC USE. I HOPE THAT WE HERE IN BARROW CAN PROVIDE PART OF THE REINFORCEMENT HE NEEDS.

#



North Slope Borough
 P.O. Box 546
 Barrow, Alaska 99723

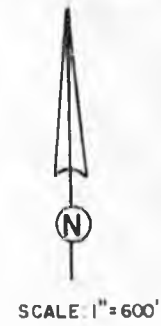
REVISIONS

FY 76-77
 CIP Legend FY 77-78

- ② SCHOOL
- ⑤ TEACHER HOUSING
- ⑥ EQUIPMENT STORAGE
- ⑧ SEWAGE TREATMENT & DISPOSAL FACILITY
- RESIDENTIAL
- H HOUSING
- ✱ STREET LIGHTING
- ⊙ ALL OCCUPIED DWELLINGS - TELEPHONE
- |||| UNIMPROVED ROADS
- WATER/SEWAGE DISTRIBUTION
- AIRPORT IMPROVEMENT








ATKASOOK SCALE 1" = 200'

ANAKTUVUK PASS
 TOWNSITE PLAT
 Land Use Survey
 US Survey 4480 (unapproved)



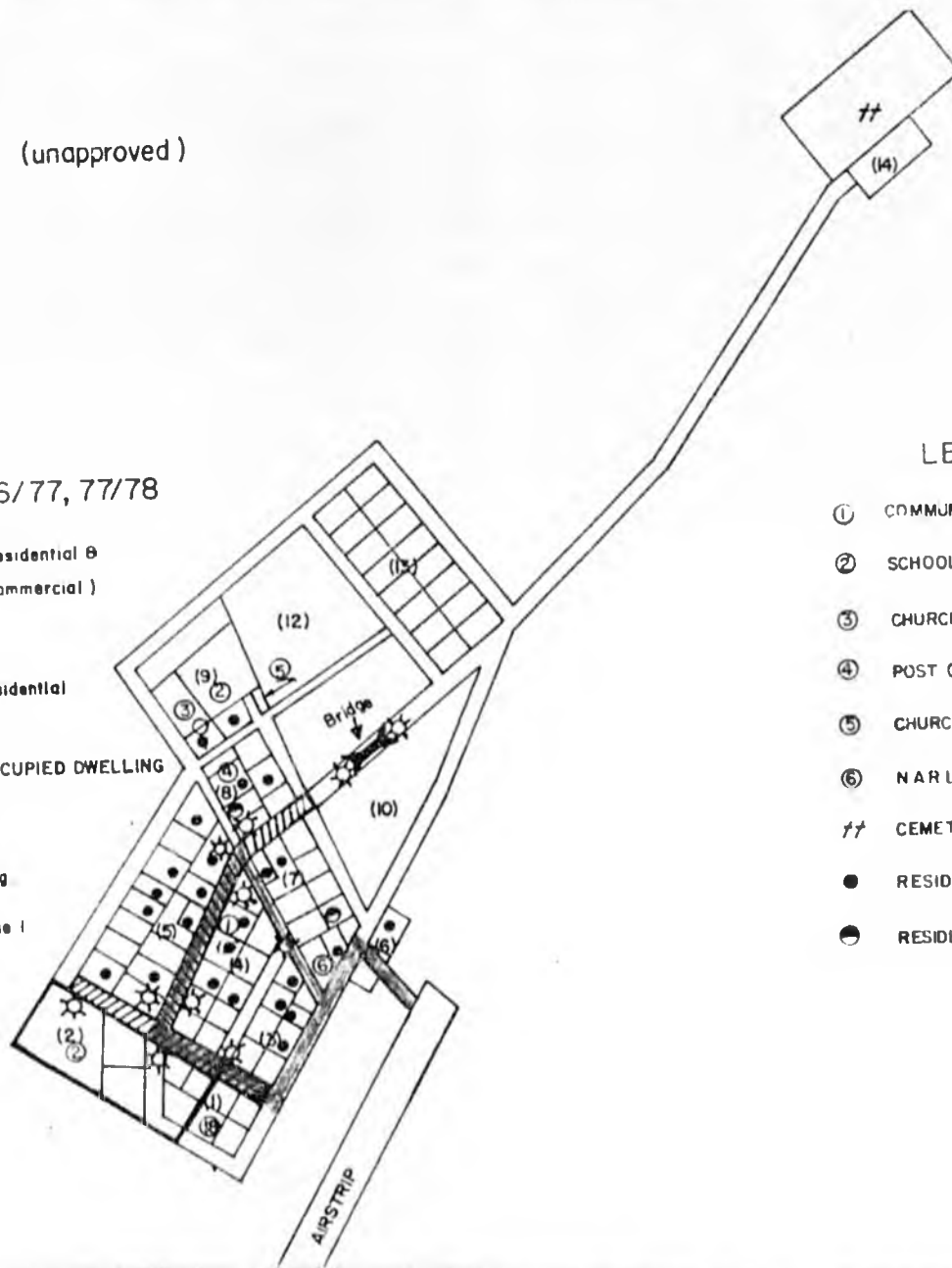
LEGEND

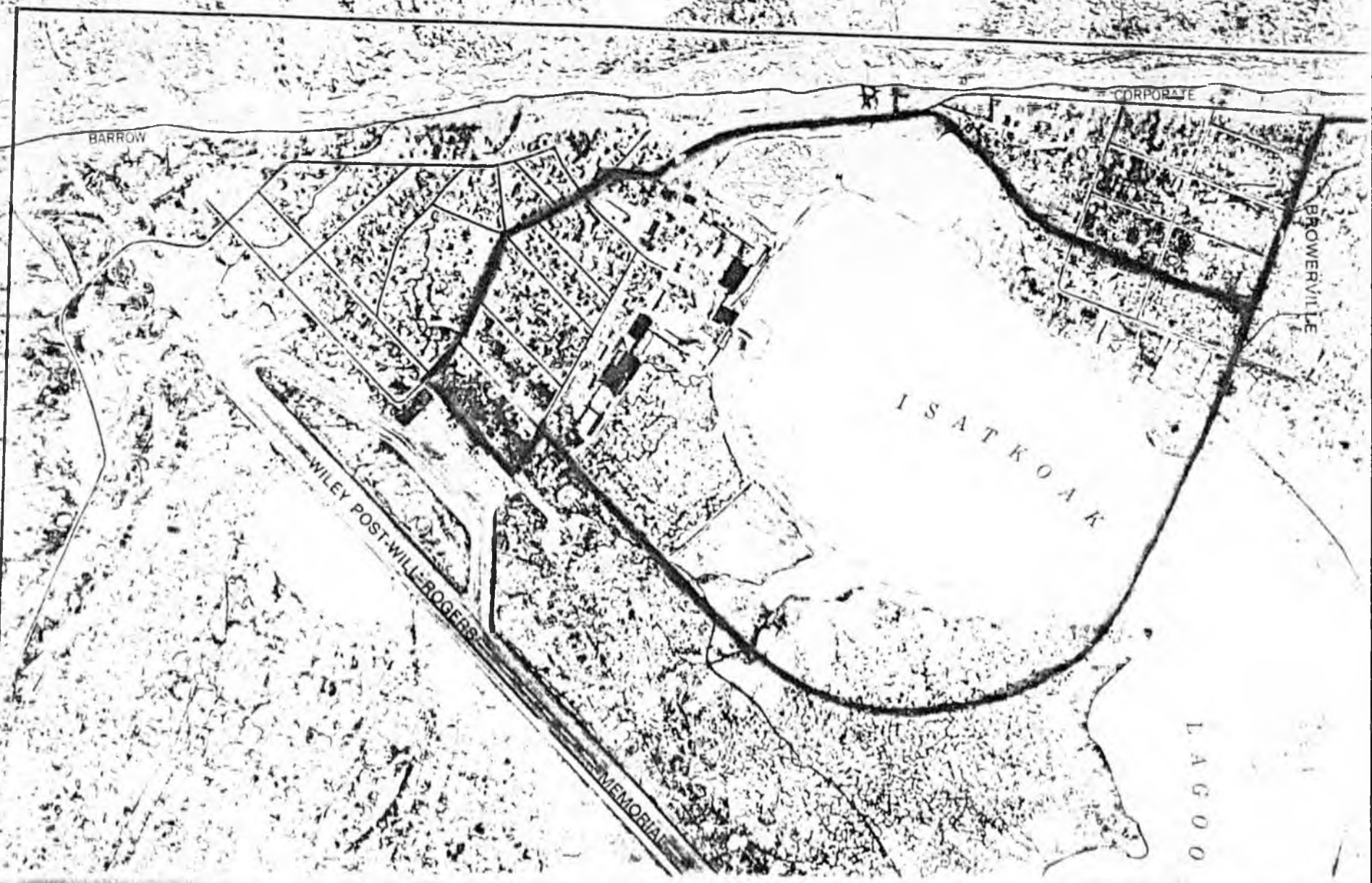
CIP Projects FY 76/77, 77/78

-  Electric Distribution - Residential & (Commercial)
-  STREET Lighting
-  Fire Extinguisher - Residential
-  TELEPHONES - ALL OCCUPIED DWELLING
-  AIRSTRIP EXTENSION
-  Equipment Storage Bldg
-  UNimproved Roads, Phase I

LEGEND

- ① COMMUNITY HALL
- ② SCHOOL
- ③ CHURCH
- ④ POST OFFICE
- ⑤ CHURCH MISSION HOUSE
- ⑥ N A R L
- †† CEMETERY
- RESIDENTIAL - SINGLE FAMILY
- RESIDENTIAL - Commercial





BARROW

CORPORATE

BROWERVILLE

ISATKOAK

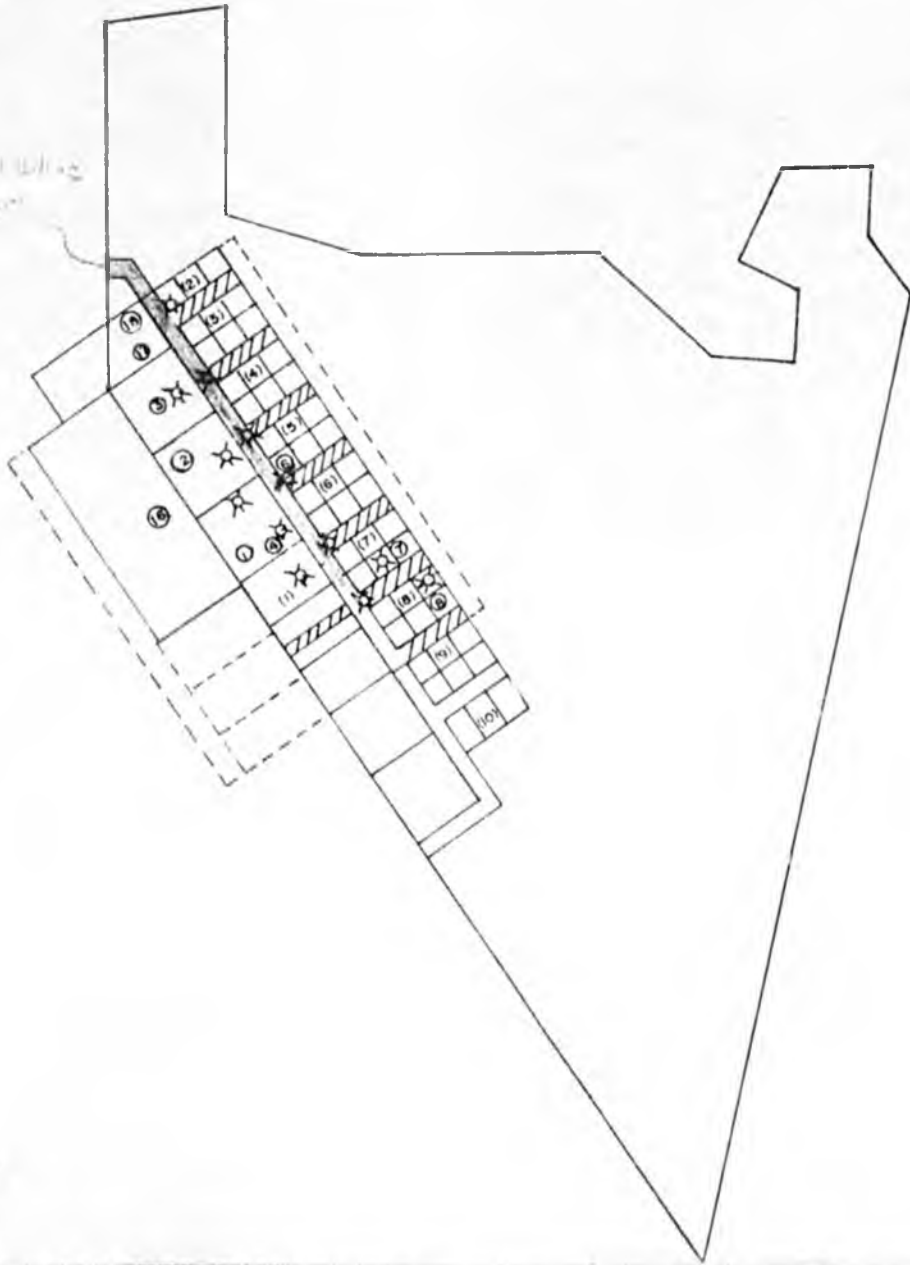
WILEY POST-WILL ROGERS

MEMORIAL

LAGOON

DRY LAKE

To Building
Airport



KAKTOVIK
Townsite Plat
US Survey 4232
LAND USE SURVEY



SCALE 1" = 600'

Legends

- ① COMMUNITY HALL
- ② SCHOOL
- ③ CHURCH
- ④ POST OFFICE
- ⑤ COFFEE SHOP
- ⑦ STORE
- ⑧ CLINIC
- ☙ CEMETERY
- COMMERCIAL

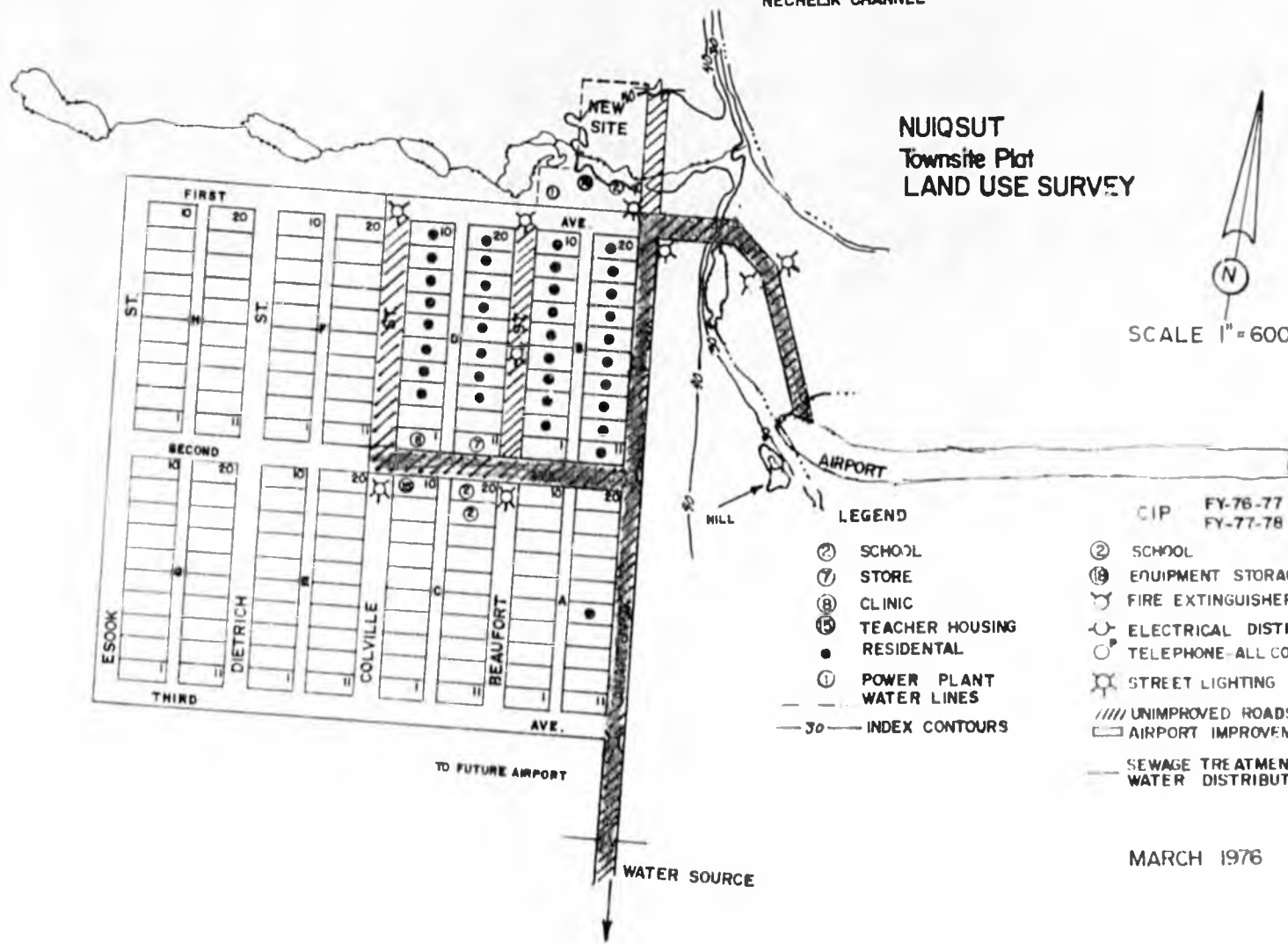
- CIP FY 76-77
- ② SCHOOL
- ⑬ TEACHER HOUSING
- ⑭ VOC ED
- ⑰ KAK ELECTRICAL GENERATION
- ⑱ EQUIPMENT STORAGE BLDG
- ✱ STREET LIGHTING
- ⊖ ELECTRICAL DISTRIBUTION - ALL OCCUPIED DWELLINGS
- ☼ FIRE EXTINGUISHERS - ONLY RESIDENTIAL
- ⊕ TELEPHONE - ALL BUSINESS, PUBLIC & RESIDENTIAL PLACES
- ▨ KAK COMMUNITY ROADS - IMPROVED
- ▩ " " " " - PROPOSED

NECHELIK CHANNEL

NUIQSUT Townsite Plat LAND USE SURVEY



SCALE 1" = 600'



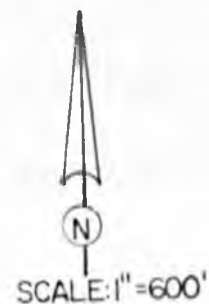
LEGEND

- ② SCHOOL
- ⑦ STORE
- ⑧ CLINIC
- ⑬ TEACHER HOUSING
- RESIDENTIAL
- ① POWER PLANT
- WATER LINES
- 30- INDEX CONTOURS
- ② SCHOOL
- ⑬ EQUIPMENT STORAGE BLDG
- ☹ FIRE EXTINGUISHERS-RES
- ⊕ ELECTRICAL DISTRIBUTION
- TELEPHONE-ALL COMMUNITY DWELLINGS
- ☼ STREET LIGHTING
- //// UNIMPROVED ROADS
- ▭ AIRPORT IMPROVEMENTS
- SEWAGE TREATMENT
- WATER DISTRIBUTION

CIP FY-76-77
FY-77-78

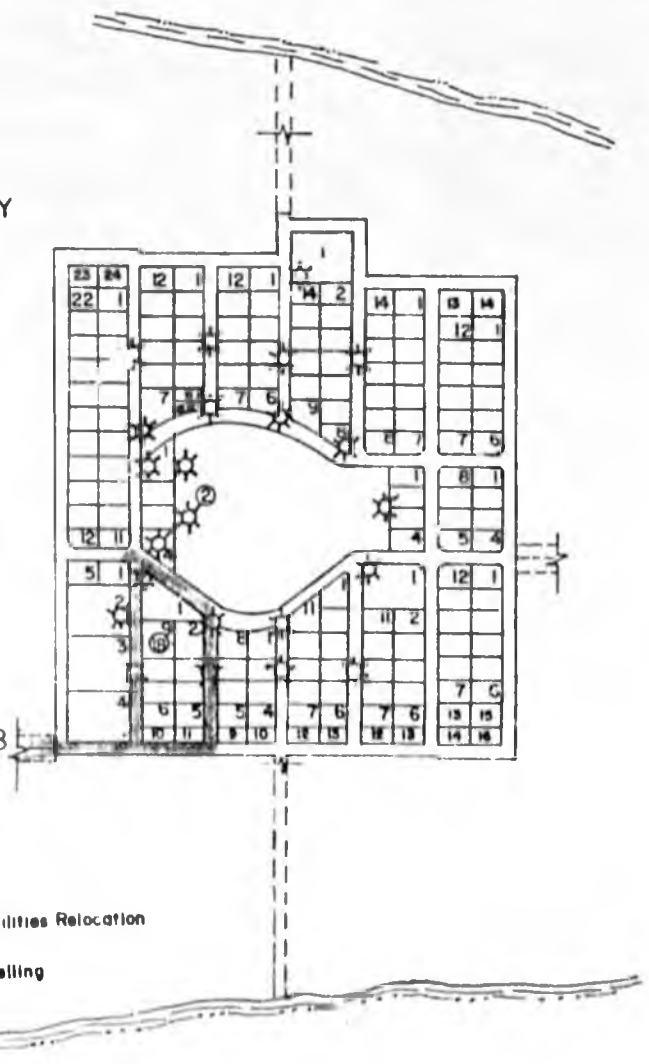
MARCH 1976

POINT HOPE
Townsite Plat
LAND USE SURVEY



LEGEND
CIP FY 76/77 & 77/78

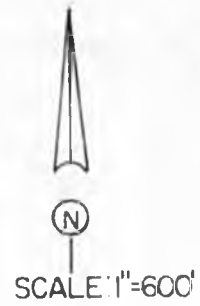
- RD From old to New Site
- ☆ STREET LIGHTING
- 2 ED Facilities
- IB Equipment Storage Bldg
- H₂O Distribution System
- Sewage Treatment & Disposal Facilities Relocation
- ☪ FIRE EXTINGUISHER
each residential dwelling



- ① Community Hall
- ② SCHOOL
- ③ CHURCH
- ④ POST OFFICE
- ⑤ CHURCH MISSION HOUSE
- ⑥ NARL
- ☪ CEMETERY
- RESIDENTIAL - SINGLE
- RESIDENTIAL - Commercial

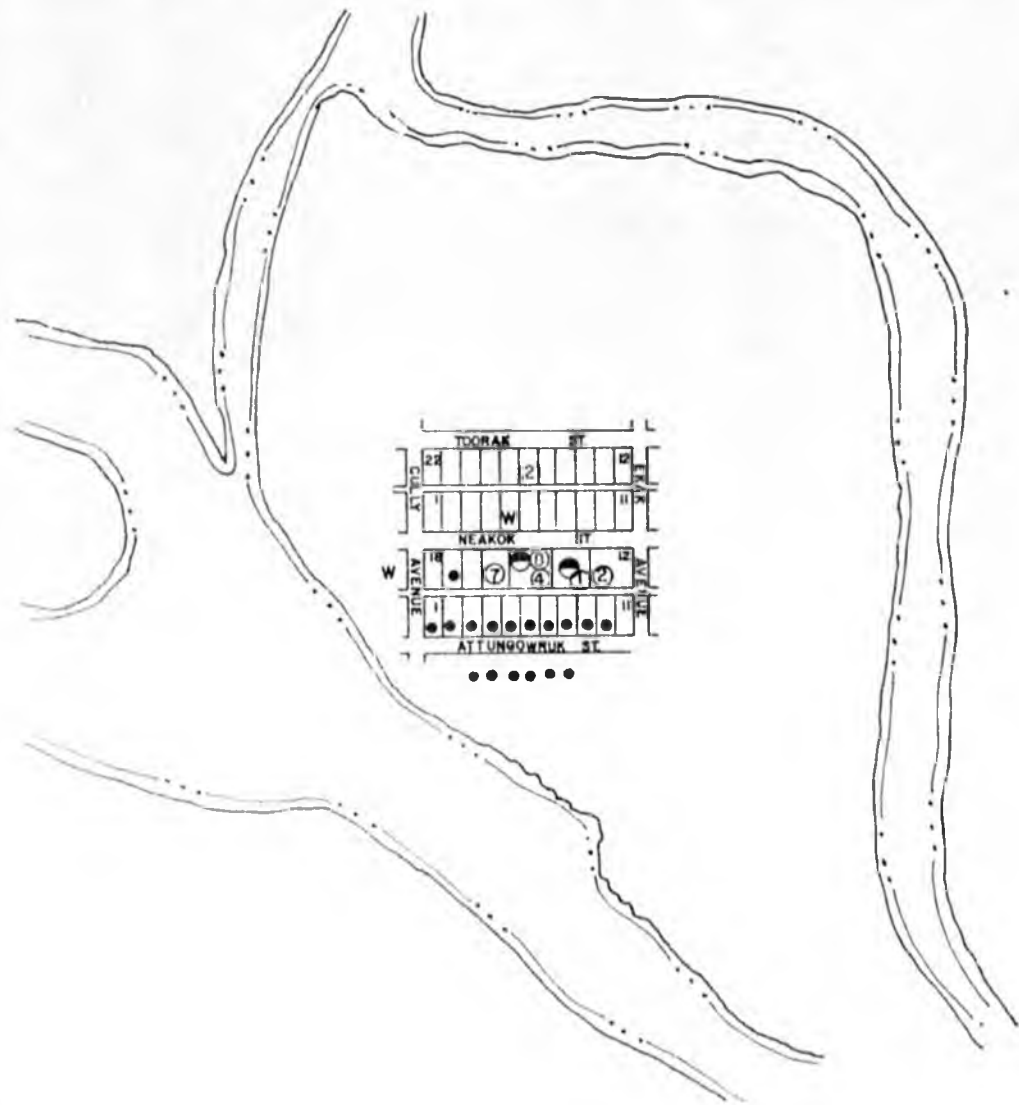
North Slope Borough P O Box 546 Barrow, Alaska 99723
REVISIONS

POINT LAY
Townsite Plat
LAND USE SURVEY



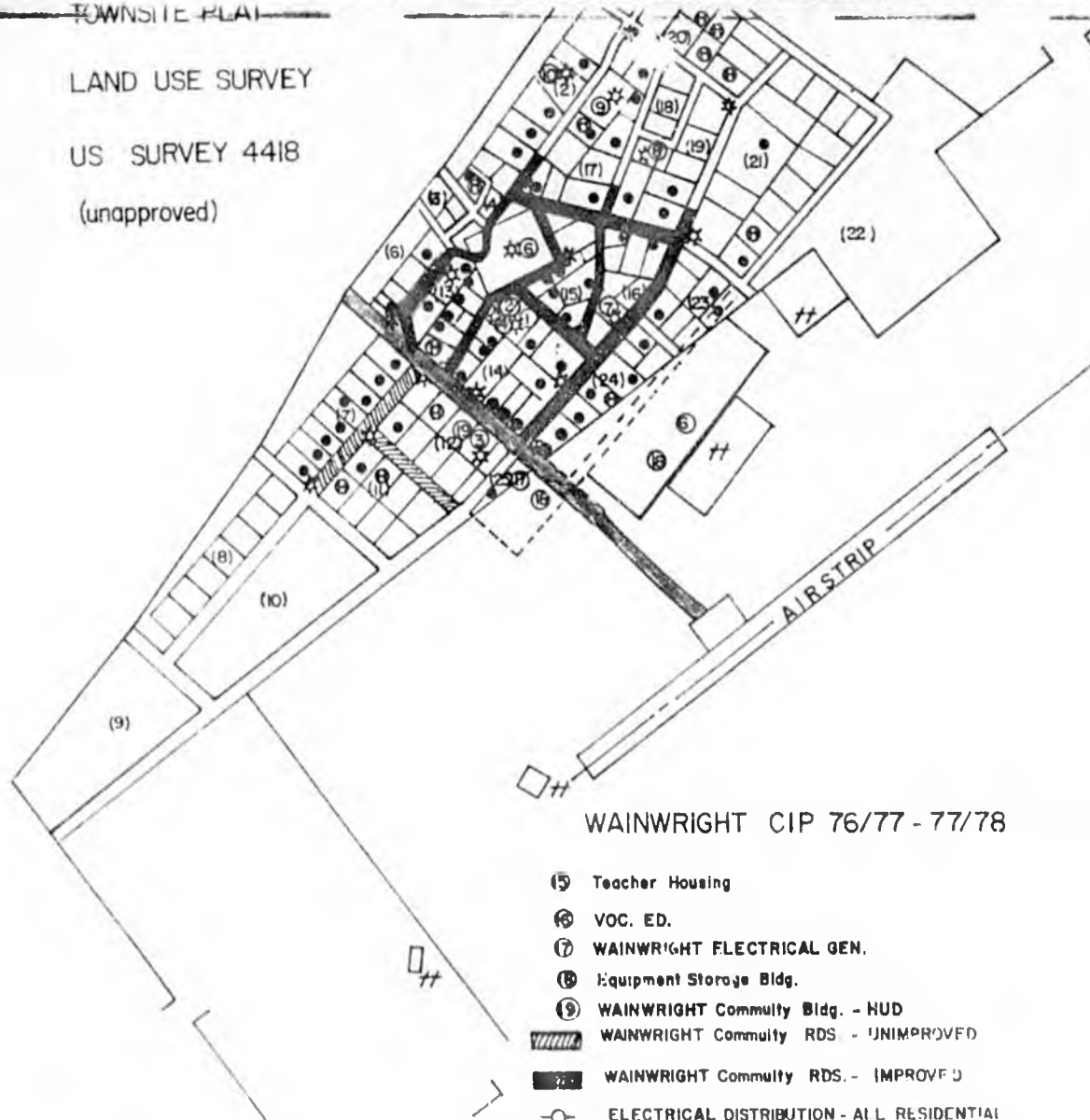
Legend

- ① COMMUNITY HALL
- ② SCHOOL
- ④ POST OFFICE
- ⑦ STORE
- ⑧ Clinic
- RESIDENTIAL - Single Family
- RESIDENTIAL - Commercial
- W= Windmill
- CIP FY 1976 -77 & FY 1977-78
- 1976 -1977 New Townsite Selection & Planning
- ☪ Five Extinguisher each residential Dwelling
- 1977-1978 Construction of New Townsite
Including
- SCHOOL
- Teacher Housing
- Electric Generation & Distribution
- ⊛ STREET Lighting
- Water Supply



TOWNSITE PLAN

LAND USE SURVEY
 US SURVEY 4418
 (unapproved)

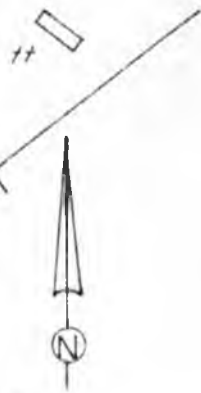


WAINWRIGHT CIP 76/77 - 77/78

- (5) Teacher Housing
- (6) VOC. ED.
- (7) WAINWRIGHT ELECTRICAL GEN.
- (8) Equipment Storage Bldg.
- (9) WAINWRIGHT Community Bldg. - HUD
- ▨ WAINWRIGHT Community RDS - UNIMPROVED
- ▩ WAINWRIGHT Community RDS - IMPROVED
- ELECTRICAL DISTRIBUTION - ALL RESIDENTIAL, Business, & Public Places
- ☆ STREET LIGHTING
- ^P TELEPHONE - ALL RESIDENTIAL, Business, & Public Places

H - HOUSING
 ☒ - FIRE Extinguishes all Residential

- LEGEND**
- ① ARMORY
 - ② CITY JAIL SCALE 1" = 600'
 - ③ EPA WATER PLANT
 - ④ POST OFFICE
 - ⑤ WAINWRIGHT CO-OP STORE GARAGE
 - ⑥ SCHOOL
 - ⑦ OLD CHURCH
 - ⑧ P.H.S.
 - ⑨ CHURCH
 - ⑩ N.A.R.L.
 - COMMERCIAL RESIDENTIAL
 - ▨▨ CEMETERY



WARREN G. MAGNUSON, WASH., CHAIRMAN

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J. GLENN BEALL, JR., MD.

United States Senate

COMMITTEE ON COMMERCE
WASHINGTON, D.C. 20510

FREDERICK J. LORDAN, STAFF DIRECTOR
MICHAEL PERTSCHUK, CHIEF COUNSEL

May 8, 1975

✓ 11.2. T
17.9 (Stevens)
with file

Honorable George Hohman
Alaska State Senator
Pouch V
Juneau, Alaska 99811

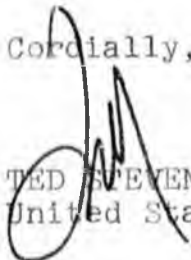
Dear George:

Please find enclosed a copy of a letter which I received from William T. Coleman, Jr., Secretary of the Department of Transportation, concerning the availability of Federal funds for an experimental intra-village transportation program.

If I can be of any further assistance in this matter, please feel free to contact me.

With best wishes,

Cordially,


TED STEVENS
United States Senator

Enclosure



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

MAY 6 1975

Honorable Ted Stevens
United States Senate
Washington, D.C. 20510

Dear Senator Stevens:

This is in reply to your March 26 letter enclosing Alaska State Senator George Hohman's March 19 letter to you regarding the availability of Federal funds for an experimental intra-village transportation program. Mr. A. B. Virkler Legate acknowledged your letter on March 31.

Enclosed is a copy of the regulations for the Rural Highway Public Transportation Demonstration Program which was established by Section 147 of the 1973 Federal-Aid Highway Act. As stated in this Section, the purpose of the program is ". . . to encourage the development, improvement, and use of public mass transportation systems operating vehicles on highways . . . to enhance access of rural populations to employment, health care, retail centers . . .", etc.

As such, the thrust of this program is to demonstrate alternative methods of providing transportation service using conventional highway vehicles such as buses, automobiles, jeeps, and taxis. The scope of this program does not envision the development or demonstration of experimental vehicle types.

We recognize that there are transportation needs which cannot be met by traditional ground transportation systems. Other Department of Transportation programs, especially in the area of research and development, are addressing this issue and exploring possible solutions.

Sincerely,

SIGNED BY

WILLIAM T. COLEMAN, JR.
William T. Coleman, Jr.

Enclosure

themselves that any proposals submitted under the November guidelines comply with this issuance.

Changes from the original guidelines include the addition in § 820.3 of definitions for a small urban area and operating expenses, a change in geographic scope in § 820.5, a provision in § 820.7 (b) regarding operating expenses, a provision in § 820.7(c) to give preferences to certain private bus operators, the addition of public notice and hearing requirements in § 820.9(b)(2), provisions in § 820.9(d) for the Washington office to make final selections after considering the results of public hearings, the addition of a new § 820.15, which requires that projects allow effective utilization of services by elderly and handicapped persons, and a new § 820.17, which provides that proposals shall be submitted by 60 days from the date this issuance is published.

Section 147 now limits the participation of Federal funds for operating expenses to monies available from the General Fund. For FY 1975, General Fund monies account for \$2,895 million, or 30 percent of the total FY 1975 appropriation of \$9.65 million. Applicants should be aware that consideration of proposals requesting project participation in excess of 30 percent for operating expenditures must necessarily be minimal.

Project selection criteria are contained in this issuance. Emphasis will be on selection of a range of innovative projects of different sizes, types, and geographical locations.

The funding commitment of local, State, or other Federal agencies to participate in the program and to continue it after the expiration of the demonstration period will be critical to project selection.

Since these regulations relate to a grant program, notice and public procedure thereon are unnecessary and they may be made effective in fewer than 30 days after publication in the FEDERAL REGISTER.

Additional information not contained here may be obtained from the Federal Highway Administration division office in each State, the Urban Mass Transportation Administration regional office, or the State transportation agency.

In consideration of the foregoing, Subchapter I of Chapter I of Title 23, Code of Federal Regulations, is amended by adding a new Part 820, to read as set forth below.

See—

820.1	Purpose
820.3	Definitions
820.5	Geographic scope
820.7	Eligible project expenditures
820.9	Responsibilities
820.11	Content of applications
820.13	Project selection criteria
820.15	Effective utilization by Elderly and Handicapped persons
820.17	Submission date

Authority: Pub. L. 93-87, § 147; Pub. L. 93-613, § 103; 49 CFR 1.48(c) and 1.60(c).

§ 820.1 Purpose.

(a) The purpose of this part is to prescribe policies and procedures for ad-

ministering the Rural Highway Public Transportation Demonstration Program, Section 147 of the Federal-Aid Highway Act of 1973, as amended, through delegation of authority by the Secretary of Transportation, authorizes the Federal Highway Administration (FHWA) and the Urban Mass Transportation Administration (UMTA) to carry out demonstration projects to encourage the development, improvement, and use of public mass transportation systems operating vehicles on highways for transportation of passengers within rural areas and small urban areas, and between such areas and urbanized areas, in order to enhance access of rural populations to employment, health care, retail centers, education, and public services.

(b) The program is intended to:

(1) Increase the mobility of those persons in rural areas who do not have reasonable access to alternate forms of transportation and are often deprived of mobility where public transportation is inadequate or nonexistent.

(2) Encourage the various programs or agencies which provide transportation or social services to develop a coordinated approach to the organization and financing of public transportation.

(3) Develop the results of the demonstration into a useful guide for rural areas needing public transportation, and

(4) Develop the technical, organizational, and economic information needed for future decisions regarding national programs for rural transportation.

§ 820.3 Definitions.

As used herein—

"Applicant" means a public agency or nonprofit public purpose organization, preferably with State or areawide responsibilities, or an Indian tribe on a Federal or State reservation.

"Operating expenses" means costs directly related to system operations and shall include expenses for driver salaries, fuel, and maintenance.

"Program" means the Rural Highway Public Transportation Demonstration Program authorized by section 147 of the Federal-Aid Highway Act of 1973, Pub. L. 93-87, August 13, 1973, as amended.

"Rural areas" means all areas of a State not included in either an urbanized area designated by the Bureau of the Census or an urban place designated by the Bureau of the Census as having a population of 5,000 or more.

"Small urban area" means an urban place as designated by the Bureau of the Census, having a population between 5,000 and 50,000 and not within any urbanized area.

"State agency" means the State department of transportation, or State highway department if a State department of transportation is not established, except that some other agency designated by the Governor may be approved by the FHWA and UMTA to be the State agency.

§ 820.5 Geographic scope.

Projects approved under this part must serve rural residents and may include

Title 23—Highways
CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION
SUBCHAPTER I—PUBLIC TRANSPORTATION
PART 820—RURAL HIGHWAY PUBLIC TRANSPORTATION DEMONSTRATION PROGRAM
Guidelines

These regulations provide guidelines for administering the Rural Highway Public Transportation Demonstration Program. Section 147 of the Federal-Aid Highway Act of 1973 as amended by section 103 of the Federal-Aid Highway Amendments of 1974 permits the Federal Highway and Urban Mass Transportation Administration, by delegation of the Secretary of Transportation, to carry out demonstration projects for public mass transportation in rural areas and small urban areas.

On November 6, 1974, administrative guidelines were issued to implement the Rural Highway Public Transportation Demonstration Program. The November guidelines were revoked on February 11, 1975. The guidelines in this issuance incorporate changes necessary to implement the Federal-Aid Highway Amendments of 1974. Applicants should aware

service by which passengers are transported to small urban areas, within small urban areas, and between these areas and urbanized areas when such service will enhance the mobility of rural populations.

§ 820.7 Eligible project expenditures.

(a) Projects eligible for Federal funds under this part include, but are not limited to: (1) Highway traffic control devices; (2) the construction of passenger loading areas and facilities, including shelters; (3) fringe and transportation corridor parking facilities to serve bus and other public mass transportation passengers; (4) the purchase of passenger equipment other than rolling stock for fixed rail; and (5) the payment from the General Fund for operating expenses.

(b) Program funds shall not be used to provide operating subsidies for existing operations, nor for overhead and administrative costs incurred by State agencies. Reasonable expenses for operating costs that are an integral part of new demonstration projects, as well as project supervision, monitoring, and evaluation costs, are eligible items of expense, if properly distributed as project costs. Payments for operating expenses shall not exceed 30 percent of the program funds requested for the project. Exception to the 30 percent requirement may be made if excess general funds are available and good cause is shown.

(c) Nothing herein shall be interpreted to prohibit participation by private transportation companies in demonstration projects through contractual arrangements with the applicant. To the extent intercity bus service is provided under the program, preference shall be given to private bus operators who lawfully have provided rural highway passenger transportation over the routes or within the general area of the demonstration project.

(d) Nothing herein shall be interpreted to prohibit the demonstration period from extending beyond the two fiscal years for which program funds are authorized.

(e) Each proposal and the associated funding request shall present a fully developed demonstration that does not depend on future program funds for completion.

§ 820.9 Responsibilities.

(a) Each applicant:

(1) Shall submit a proposal to the appropriate State agency except that Indian tribes on Federal or State reservations may submit proposals directly to the FHWA division office in the State. Twelve (12) copies are requested, and

(2) May implement projects under contractual agreements with the State agency.

(b) The State agency or Indian tribe shall:

(1) Forward each proposal received by it with comments and recommendations, through the FHWA Division Engineer to the FHWA regional office. Ten (10) copies are requested,

(2) For each project selected pursuant to paragraph (d)(1) of this section and prior to the obligation of any funds, publish a public notice which shall include the name of the applicant, the area to be served by the proposed undertaking, and adequate description of the proposal, and the time, date, and place of a public hearing which shall be held within 60 days after publication of the notice within the proposed service area. The public notice shall be published at least two times, one of which shall be at least 30 days prior to the hearing, in a newspaper having general circulation in the vicinity of the proposed undertaking. The hearing shall be held at a place and time generally convenient for persons affected by the proposed undertaking. Provision shall be made at the hearing for submission of written statements, exhibits, and oral statements. A verbatim written transcript of the oral proceedings at the hearing shall be made and such transcript together with copies of exhibits, copies of the published notice and written statements, shall be forwarded to the Washington office through the FHWA division office and the FHWA regional office.

(3) Administer projects approved under this part within the State or reservation, respectively.

(4) Enter into an agreement with the FHWA governing each project, and

(5) Make program funds available either directly for State- or tribal implemented projects or through individual contracts with local applicants.

(c) Regional representatives of the FHWA, UMTA, and the Secretary of Transportation will:

(1) Review the applications, recommend not more than ten (10) proposals worthy of demonstration for each region, and transmit seven (7) copies of each recommended proposal to the FHWA Washington office.

(2) Forward one copy of all proposals not recommended to the Washington office, and

(3) Seek the advice and comment of regional representatives of other Federal agencies, including the Departments of Health, Education and Welfare; Labor; Agriculture; and Commerce; and the Office of Economic Opportunity, as appropriate.

(d) The Washington office of the FHWA and UMTA will:

(1) Make a preliminary selection of projects to be funded for FY 1975 from the first-year appropriation of \$9.65 million and any additional amount should a supplemental appropriation be enacted, and from applications to be submitted in FY 1976 based upon the program appropriation for FY 1976, and

(2) Make a final selection of projects to be funded after considering the results of public hearings held for preliminarily selected projects.

§ 820.11 Content of applications.

Each application should include as appropriate:

(a) A concise statement of what the project is designed to demonstrate and

the expected results and benefits, including system provisions to accommodate the elderly and handicapped.

(b) A summary of project activities, including how and where the demonstration will be conducted, changes to be made in existing services, and new services to be provided.

(c) Identification of organizations participating.

(d) Description of the area, available transportation facilities, and proposed transportation improvements.

(e) Data establishing need for the proposed project.

(f) Statements of commitment by agencies or organizations providing or needing transportation to use one area-wide service funded by the demonstration.

(g) Commitment of other Federal, State, or local funds or programs to share in the costs of the system.

(h) Summary of project costs and breakdown of funding sources.

(i) Description of how service provided will be monitored and evaluated and how service may be changed as a result of that evaluation, and

(j) Demonstration time schedule and plans for continuation of the service past the demonstration period.

§ 820.13 Project selection criteria.

(a) Emphasis will be on the selection of a range of projects—different sizes, types, and geographical locations.

(b) The following criteria, not necessarily in order of importance, will be applied by the FHWA and UMTA in selecting demonstration projects for implementation:

(1) Innovative features that have potential for nationwide application.

(2) The commitment of local, State, or other Federal programs to participate in the demonstration.

(3) The likelihood of continuation of the project after the expiration of the demonstration.

(4) Provision for the local transportation needs in a realistic and prudent manner.

(5) Quality of proposed monitoring and evaluation along with the ability to modify operations as a result of that evaluation.

(6) Commitment of other local agencies providing or needing transportation services to purchase, share, or use the one area-wide service funded for demonstration.

(7) Reasonableness and justification of estimated demand.

(8) Extent to which the proposal recognizes the transportation needs of economically deprived rural people.

(9) Appropriateness of proposed equipment needs, costs, and level of service.

(10) Provisions for service to elderly and handicapped persons.

(11) Compatibility of system with possible existing supplemental operations, e.g., taxicabs, where the vehicles, drivers, radios, and organization are already available and can provide feeder service.

(12) Extent to which currently operating rural transportation services, manpower, and equipment are utilized.

(13) Degree of management capability to administer the grant and to operate a transportation system.

(14) Suitability of proposed promotion techniques to reach potential riders.

§ 820.15 Effective utilization by elderly and handicapped persons.

All projects must be planned, designed, constructed, and operated to allow effective utilization by elderly or handicapped persons who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, including those who are non-ambulatory wheelchair-users and those with semiambulatory capabilities, are unable without special facilities or special planning or design to utilize such facilities and services effectively. Except for compelling reasons shown, in no case may a project including rolling stock fail to include at least one vehicle which can be effectively utilized by wheelchair-users.

§ 820.17 Submission date.

Proposals shall be sent to the appropriate agency in each State by June 10, 1975.

Effective date: April 11, 1975.

*J. E. HIRTEN,
Acting Urban Mass
Transportation Administrator.*

*NORBERT T. TIEMANN,
Federal Highway Administrator.*

[PR Doc.75-0503 Filed 4-10-75, 8:45 am]

March 19, 1975

Honorable Ted Stevens
United States Senate
411 Russell Building
Washington, D. C. 20510

Dear Ted:

I am encouraged by your assistance in several matters that are of importance in my efforts to aid rural Alaska. Thank you for your continuing help.

Last year, there was some information on federal money which is available for an experimental rural bus program. I am interested in looking at the possibility of setting up a pilot program of inter-village transportation, using hovercraft or rolleigon vehicles, which would not require the great expense of building conventional roads. I feel that there are great possibilities for improving travel in the interior.

I would appreciate any information which you could provide concerning the federal experimental bus program; for example, is there any money available, what the state requirement for participation is, and what needs to be done.

The latest telecommunications proposal by the State is for a "telecommunications authority" that would be able to borrow an estimated five million dollars for the State to provide ground stations to the bush. Any thought you might have on this would be appreciated.

Thanks once again for your help.

Sincerely,

Senator George Hohman

GH:pt

ACV

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United States Senate

COMMITTEE ON COMMERCE
WASHINGTON, D.C. 20510

FREDERICK J. LORDAN, STAFF DIRECTOR
MICHAEL PERTSCHUK, CHIEF COUNSEL

March 27, 1975

Honorable George Hohman
State Senator
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Hohman:

As Senator Stevens is currently in Alaska, I am responding to your letter of March 19 concerning possible Federal funding for an experimental rural transportation program.

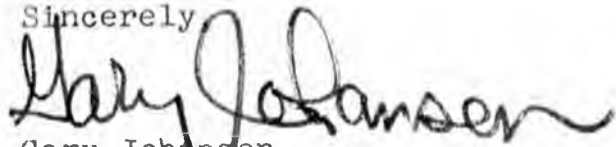
On your behalf, the Department of Transportation has been contacted regarding the availability of Federal monies to sponsor an experimental inter-village transportation system using air cushion or rolleigon vehicles. As soon as a definitive reply is received to that inquiry, you shall again be contacted.

I also thought you might be interested in and am forwarding for your information a copy of S. 274, a bill the Senator introduced which exempts air cushion vehicles used in land transportation from the Jones Act. A copy of the Senator's remarks regarding this legislation as printed in the Congressional Record is enclosed for your attention.

I noted your remarks concerning the State's most recent telecommunications proposal. I know that the Senator is aware of the State proposal and is currently giving it his study. I shall bring your letter to his attention when he returns to Washington.

With best wishes,

Sincerely



Gary Johansen
Staff Attorney for
TED STEVENS
United States Senator

Enclosure

Received 1-22
E E

AIR SERVICE PROBLEMS IN THE
ALASKA RURAL BUSH AREAS

As a member of the Alaska Transportation Commission, I'm aware that scheduled air service to many villages in Alaska is seriously lacking in both quality and quantity. This was brought out recently at meetings I attended in Bethel, Alaska, on February 1 and 2, 1973, and again on September 13, 1974, for the purpose of hearing a plea for better air service by the presidents of 52 village councils of the Lower Yukon and Kuskokwin Rivers. These 52 village council presidents (AVCP) represent over 15,000 citizens in this area, have organized themselves into a geographic and political body to speak for the residents of the area in matters of general welfare to that area.

The AVCP has presented very cogent reasons for asking the Commission to take immediate steps to inquire into and try to resolve problems surrounding the scheduled air transportation confusion that exists in this area and, indeed, the whole state of Alaska.

First and most important, we must try to identify the areas of jurisdiction and the responsibility of authority given to us by law, and secondly formulate a policy consistent with the public interest and welfare.

We must concern ourselves with two spheres of authority that confront us at this point, both being federal matters:

1. The jurisdiction of the Civil Aeronautics Board (CAB) to regulate interstate, foreign, and overseas air commerce (including intrastate on an interstate route).

2. The transportation of U. S. mail, regulated and paid by the Postal Service.

The Alaska Transportation Commission is charged by state statute for authorizing and regulating (among other things) intrastate air transportation including routes, rates, aircraft size and bases of operation. This also includes those air carriers certificated by the CAB when the nature of the carriage is purely intrastate with regard to persons and property, except mail.

This creates an overlapping of authorities wherein the CAB certificated carriers are also granted authority from the Commission, but those air carriers who engage in purely intrastate commerce do not need the authority or comply with the regulations of the CAB; however, those Alaska air taxi operators who interline or subcontract with the federal interstate carriers can be exempted from the CAB certification, after proper application to the CAB.

HISTORICAL BACKGROUND

The U. S. Congress, in 1938, created and has amended progressively the Civil Aeronautics Act, that, among other things, developed the Civil Aeronautics Board and air commerce regulations for the then Territory of Alaska. These regulations were separate from the regulations of the then 48 states. They awarded so-called "grandfather" certificates to those individuals in Alaska companies who applied and qualified to engage in air commerce, giving them exclusive rights to operate over regular and irregular routes within the territory. These authorities were originally confined to geographic boundaries because of the limited range and size of the aircraft then used. It must be noted here that the Territory of

Alaska did not involve itself with transportation laws and only after statehood were state air certificates required.

At that time (and even today in isolated cases) the post office entertained competitive bids for all areas of the territory for the transportation of mail along star routes, soliciting bids from operators of vehicles, including airplanes, boats, and dog sleds. During World War II, the Army, Navy, and other U. S. government agencies spent over \$4,000,000 in the development of air fields, navigational aids, and communications in the war effort giving the small Alaskan certificated air carriers the opportunity to develop with better aircraft, re-aligning routes and entering the scope of interstate and foreign air commerce.

The U. S. Congress, because of growing demand by smaller communities and political considerations, granted subsidy to some of the larger local air carriers and also set, and still does, the amount the post office had to pay for the carriage of air mail, enhancing the carrier's viability and service to the communities where post offices were located. Because of this dependability of payment and better equipment, some of the carriers grew larger through mergers and expansion, but some continued to stay small keeping their routes and services at a static level.

Those Alaska carriers involved with subsidy begun in 1954 were Alaska Airlines, Inc., Alaska Coastal, Cordova, Kodiak, Northern Consolidated, Pan American, Reeve and Wien. Western Alaska Airlines was awarded a route and started to receive subsidy in 1960.

Since that time, Alaska Airlines is the surviving carrier through merger with Alaska Coastal and Cordova. Kodiak and Western Alaska merged to form Kodiak Western. Pacific Northern Airlines merged with Western Airlines and that surviving carrier is Western, who no longer serves intra-Alaska. Pan American was suspended from the southeastern route and subsidy in 1958. Reeve continued to receive subsidy until 1957. Wien and Northern Consolidated merged in 1958 and the surviving carrier is Wien Air Alaska. Reeve Aleutian Airlines continues to serve on an unsubsidized basis the Aleutian Chain and parts of the Bristol Bay area. The three surviving federally subsidized carriers who serve most of the bush areas in the state of Alaska are now Alaska, Wien and Kodiak Western.

STATUS QUO

As indicated above, Kodiak Western now serves several bases, mainly Kodiak and the Bristol Bay area, transporting passengers, property and mail to many small points in that area. The balance of Alaska is served by Wien Air and Alaska Airlines, the latter serving mainly the bush points of Southeast Alaska and the former, the rest of Alaska, excluding the Aleutian Chain.

Alaska Airlines, for example, is authorized to serve a total of 77 points, but scheduled into only 61 of these points, leaving 16 points authorized but not served. Of the remaining 61 points in their certificates, they have subcontracted 48 of these points to air taxi operators and now only serve 13 points with their own equipment.

Wien is authorized into 144 points on their certificate, however, they have subcontracted out 79 of these points to air taxi

operators, are not serving 15 authorized points, leaving a total of 50 points served by their equipment.

The matter of subcontracting by Wien and Alaska is now one of the two remaining issues to be considered by the Civil Aeronautics Board in their Alaska Investigation, Bush Phase. The Board by order has requested all those air taxi operators who have subcontracts with Wien and Alaska, or have applied for mail routes in this state, re-affirm that they wish to pursue their applications. The other issue is that Wien and Alaska may request the Board to have certain points suspended from their mail routes and the Board will determine which course to follow.

Wien and Alaska receive subsidy from the CAB of approximately \$2,100,000 each per year to serve these bush points, and Kodiak Western receives approximately \$125,000 annually. Mail revenues for 1973 were: Wien \$5,300,000, Alaska \$2,500,000, and Kodiak Western \$158,000. High density routes such as Seattle-Anchorage and Anchorage-Fairbanks and Anchorage-Bethel routes are not considered to be eligible for subsidy pay because they produce revenue approximating the rate of return the Board has determined that an air carrier should make. The Bush Investigation was started in 1969 and there is still no end in sight. I believe that Wien and Alaska have tried to act prudently in their desire to give the service to the bush, however, for the last five years, this cloud of the investigation by the CAB has hung over their heads.

The advent and sophistication of jet equipment has demanded that Wien and Alaska keep pace with the times. In order to survive in the air transportation business, Wien and Alaska have

looked more to the long haul, large volume traffic points and concentrated their equipment investment to large jet equipment to handle this traffic. The smaller bush points are not productive enough to give a break-even rate of return when you consider that the pilots and personnel of Wien and Alaska are unionized and enjoy a higher wage standard than do the personnel of the small air taxi operators.

One of the problems that the airlines face is that it is hard to mix a large jet capacity of mail and freight to be handed off to a small single engine airplane on any given route. For example, a route between Anchorage and Bethel is conducted with Boeing 737's using the latest sophisticated navigational aides, highest qualified crews and lower landing minimums than are used by small single engine aircraft. It is easy to visualize any given period of days of inclement weather in the Bethel area, wherein a jet can make many trips from Anchorage to Bethel bringing tons of mail and express to be carried out to the native villages, but weather prohibits the small plane from carrying it out and you immediately have a tremendous backlog to be dealt with when the weather clears. This happens frequently and is one of the causes of complaint by the village residents beyond Bethel when they are not served first.

It appears to me that since 1969, service to the bush areas has deteriorated at the expense of the village residents. They and the airlines have been caught in the middle of a bureaucratic web of federal policies. I would suggest a possible solution to the problem or at least one to be explored for its

validity. I do not suggest it may be the best solution, but a legislative inquiry would at least open up the issue for meaningful dialogue.

I would propose that the Legislature would explore the means to acquire a grant in the U. S. Department of Transportation, the CAB or some federal agency to be given to the state of Alaska, through the Alaska Transportation Commission, to be used for subsidy payments to those qualified air carriers who wish to apply and after proper hearing are awarded route authorities in the bush areas beyond the mainline airports. This grant could be on a matching fund basis with the state legislature participating and as in other grants (such as airports and highways) to the state, I would envision the matching basis to be 90 - 10. I would propose the grant to be in the amount of about \$300,000 to be matched by \$30,000 by the state government. After proper application by the carrier, the Commission's hearing process would determine the amount for any given segment or route, taking into consideration the facilities available at the points to be served, the nature of the terrain, weather factors, and proposed service offered as to financial ability, quality and expertise of personnel and rates to be charged. The carrier so authorized could then apply to the U. S. Postal Service and negotiate with them the amount paid for the carriage of mail on each route. I believe that once a carrier is authorized and is conducting a reliable schedule that the post office would use the service.

Four other states are seeking some form of subsidy for commuter carrier service to small communities. Minnesota has

proposed legislation that would pay communities 2/3 of their costs of maintaining air service. Wisconsin will begin a one year commuter subsidy test project this spring. North Dakota will seek state funds for a three year commuter airline demonstration project at the next meeting of its legislature in 1975. The state of Kentucky is also presenting their legislature a commuter airline demonstration project.

Minnesota has proposed legislation for state participation in subsidizing air service to small communities. The state will reimburse communities for 2/3 of funds spent to maintain air service. The communities themselves would directly aid the carriers. State funds would come from aviation fuel taxes, registration fees and airline property taxes. The Minnesota proposal attempts to fill the void in air service in the western part of the state.

Wisconsin Department of Transportation received a grant / from the Upper Great Lakes Regional Commission to study development of the area. The first phase of the study sought to determine indicators of whether a small community could support third level air service. Communities that had air service, those that had lost it and those which had never had service were studied. In the spring, test commuter service will be operated for one year to determine if the indicators were correct. If commuters serving the test cities in Wisconsin lost money, they will be subsidized by the state transportation department from the grant money.

North Dakota has proposed a state funded three year commuter airline demonstration project. The commuters would serve nine cities and provide schedules coinciding with regional and

trunk airline connection. Subsidy needs for the project are estimated at \$1,000,000 for the first year, \$418,607 the second year, and \$211,424 the third year. By the fourth year, the service is expected to be self-sustaining. As in the Wisconsin plan, subsidy would be given directly to the commuter rather than to the community. The project requires approval by the state legislature which does not meet again until 1975.

The Kentucky plan is to develop air service on a regularly scheduled basis for the movement of passengers, mail and cargo by a commuter air carrier between five or more airport terminals in the Commonwealth of Kentucky. Their Department of Transportation would be authorized to reimburse any airport board for direct financial aid or benefits and services in lieu thereof which the airport board has expended for development of its commuter air service. Their total annual subsidy expenditure for the route system is \$127,000 per year.

Most of the lower 48 states do not have transportation commissions and statutes regulating air commerce as does the state of Alaska. They would use the various city/county airport authorities to be the agencies to transmit and administer funds to the carriers.

Admittedly, I have not had an opportunity to give great detail to my proposal because of the press of everyday business that goes on within the Commission and the lack of personnel to do research on the subject, however, I would hope that this proposal would accomplish several things. It would relieve the CAB of their responsibility of providing service to areas of which they have no

intimate knowledge and frankly an area that they seem to care little about. It would relieve Wien and Alaska the responsibility of acquiring small aircraft and pilots and personnel to provide the service to the small communities. It would enable an air taxi operator or as I would call them, commuter airlines, to become totally involved with the area and problems with the people they would service. It would provide the Transportation Commission the ability to be more responsive to the villagers' problems and the ability to act quickly to cure any deficiencies in service.

The Transportation Commission stands ready and willing to be administratively responsible in implementing and carrying out this proposal.

The Alaska Transportation Commission, since 1969, is composed of three commissioners who are appointed by the Governor and confirmed by the Legislature. Their tenure of office is for six years with a term expiring every two years. They do not serve at the pleasure of the Governor but may be removed for cause by the Governor after opportunity for hearing is afforded the commissioner. This has given stability to the Commission and gives the public and carriers alike a continuity of regulation and philosophy. I am enclosing a list of the commissioners appointed and terms of office since 1966 which shows the alarming rate of turnover until 1972. Any meaningful analysis of the air transport regulatory scene must be premised on the political environment in which regulation, itself, exists. It has been generally recognized that a basic flaw in the regulatory scheme is the demand for long term policy decisions by short term political appointees. Thus, an unfolding industry such as air transport, in contrast to surviving

or retracting industries, is subject to everchanging policies dictated not only by its own unpredictability and general economic fluctuations but the contrasting philosophies of political parties in power.

It appears to me that the state has done a good job in providing the marine highway system in Southeastern Alaska. In implementing this system, it has afforded the people in Southeastern Alaska a subsidized viable network of surface transportation augmented by scheduled air service and air taxi operators to those areas not covered by the marine highway system. The state is expanding that service and now I believe that the legislature should consider the plight of the people of rural interior Alaska who have no means of transportation other than air. I do not consider subsidy as being given to the carrier selected but rather the people and the area so that better service and lower fares may be implemented. It appears to me that the people in the bush areas of Alaska, who can afford it least, pay the most for their transportation and commodities. For example, if you ship a package weighing fifty pounds from Anchorage to Toksoon Bay, it costs \$3.60 by parcel post which goes by air as contrasted to the cost of \$14.18 for the same fifty pound package to be delivered by air freight by the air carrier.

As stated above, both Wien and Alaska receive a subsidy for providing service to the villages, however, because the CAB permits it and because of the lack of small equipment demands, these carriers have subcontracted a majority of their routes to air taxi operators. Both Wien and Alaska are responsible for the

delivery of mail and the performance over these routes that they subcontract. For example, if a sack of mail is mislaid or lost and the post office has determined that there is negligence, they will fine Wien or Alaska upwards to \$1,000 for each case of mishandling of the mail. If the mishandling has been the fault of the subcontracting air taxi operator, Wien or Alaska may go to them for reimbursement.

The method of payment by Wien and Alaska to the various air taxi operators under contract varies in a great degree. On some routes they pay more than what their mail pay amounts to for that particular route and in other cases, they pay the amount paid to them by the post office for the transportation of mail. Without going into each individual contract, it appears that usually Wien and Alaska pay more than they receive for carrying the mail but less than their combined subsidy and mail pay.

The last order of the CAB law judge in the Alaska Bush Case has not been in effect long enough to get a response from Wien and Alaska to see if they wish to suspend some of their bush routes. The CAB cannot force Wien or Alaska to give up their routes until they have a public hearing and it is proved that they have not been serving these points or caused to have these points served through subcontracting agreement. After giving the certificates on these routes, as the CAB has done, it is not within the law, without public hearing and lengthy legal proceedings to take these routes away from these carriers unless they desire their deletion.

There has been much dialogue on the federal level regarding service to small communities in the last five years and recently,

the CAB has allowed a flow-through concept of subsidy between Frontier Airlines, a federal local service carrier, and Air Midwest, Inc., a small commuter airline. This was a result of a lengthy legal proceeding that encompassed about one year before the CAB.

We must also consider what will happen to Wien and Alaska if they are suspended from their bush routes. It is apparent at this time that the cost of doing business in Alaska has accelerated to a point that if Wien and Alaska were not given the subsidy amount from the federal government, whether or not they operate their bush routes, it could drive these carriers into near bankruptcy. One of the reasons for subsidy is quoted from the CAB policies:

"The subsidy portion shall be determined on the basis of the need of each air carrier for compensation sufficient to ensure their performance of service to enable the air carriers to maintain and continue the development of air transportation to the extent and of the quality required for the commerce of the United States, the Postal Service and the national defense."

It appears to me that any deterioration of subsidy amounts to Wien and Alaska would not conform to the stated aim of the CAB.

In the past, those studies affecting air transportation for the state have been under the auspices of agencies other than the ATC, or some institution or person. As an example, the 1971-72 Legislature selected George Benesch, a private attorney and former transportation commissioner, to draft a new transportation code for the ommission. The draft is offered to the Legislature, the Commission and other parties. It was dissected by the Commission after many meetings with the carriers, attorneys, and legislative staff

Page 14

personnel. To my knowledge, it did not get to a legislative committee. I understand that the amount paid was \$30,000 for the draft. I submit that if this grant had been given to the ATC, it would have been better spent and something of substance would have been presented.

I realize that this presentation will pose more questions than positive positions, but if it produces any meaningful dialogue to help the bush areas and Alaskans in the bush, it will be of some use.

I feel that if we can support and subsidize a ferry system for the people of Southeastern Alaska, we at least should try to solve some of the air transportation problems of the people in the interior areas of this state.



Quentin L. DeBoer, Commissioner
Alaska Transportation Commission

ALASKA TRANSPORTATION COMMISSION

(July 1, 1966 - February 15, 1974)

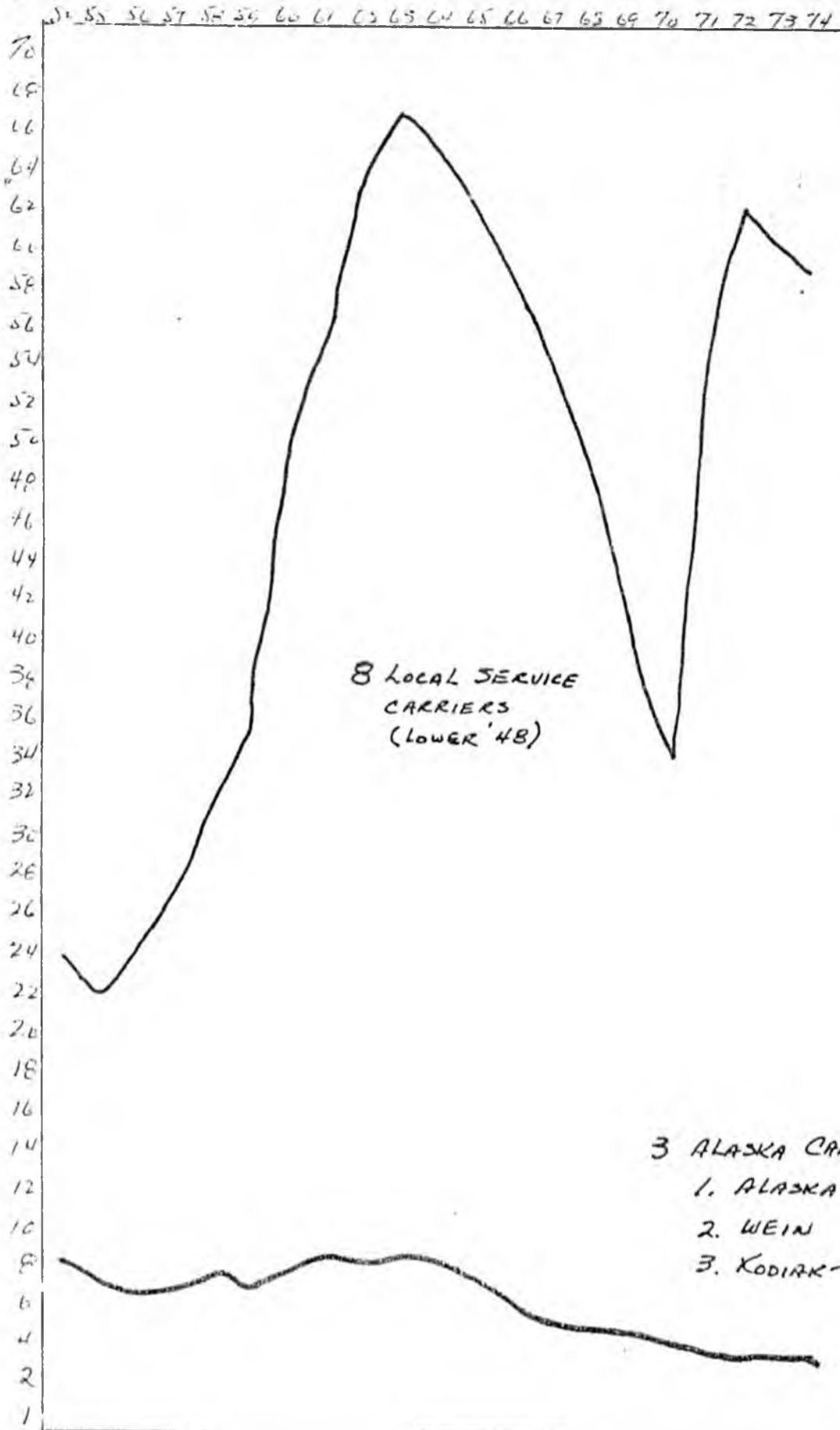
QUENTIN L. DEBOER	1/10/66	- 2/28/67
GEORGE W. EASLEY	8/1/66	- 1/21/67
WM. L. BURNS	1/16/67	- 7/15/69
NEIL G. HARPER	2/23/67	- 6/30/69
THOMAS H. McCAHILL	6/27/69	- 10/21/69
WILLIAM MUNZ	10/?/69	- 10/?/69
DENNIS L. MARVIN	7/1/69	- 11/1/70
GEORGE L. BENESCH	10/27/69	- 2/19/72
JAMES "JAKE" JOHNSON	1/5/70	- Present Time
ROBERT C. ROCKER	2/8/71	- Present Time
LAWRENCE E. CAMPBELL, JR.	3/16/72	- 11/15/72
QUENTIN L. DEBOER	11/27/72	- Present Time

YEAR

ESTIMATED SUBSIDY
ACCRUED - BY CARRIER
GROUPS

SOURCE: 1973 CAB
SUBSIDY REPORT

\$ Million



8 LOCAL SERVICE
CARRIERS
(LOWER '48)

3 ALASKA CARRIERS
1. ALASKA
2. WEIN
3. KODIAK-WESTERN

TUITION
GRANTS

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, GOVERNOR

POUCH K - STATE CAPITOL
JUNEAU 99811

May 11, 1976

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

Re: Constitutionality of
state's tuition grant
program

Dear Governor Hammond:

Since we issued our March 16, 1976 opinion which concluded that a proposal for the state to enter a contract for educational services with Alaska Methodist University was impermissible under the Alaska Constitution, considerable interest and discussion has been focused on the constitutionality of the state's tuition grant program, AS 14.40.776-14.40.801. Of special significance have been two carefully written and researched legal opinions directed at that precise issue and reaching opposite conclusions. The Legislative Affairs Agency has issued an opinion to the effect that the tuition grant program violates Article VII, Section 1 of our constitution. On the other hand, Ely, Guess & Rudd, a private firm representing Sheldon Jackson College, has concluded that the tuition grant program is valid under both our state constitution and the First Amendment to the United States Constitution. You have now

The Honorable Jay S. Hammond
May 11, 1976
Page Two

asked that we provide you with our opinion on the matter, concurrently advising the Commissioner of Administration whether further payments of state funds for the tuition grant program would be consistent with our constitution.

BACKGROUND

The present tuition grant program was established by the legislature in 1972 to equalize tuition rates paid by students attending private postsecondary educational institutions in the state with those rates paid by students at the University of Alaska and state community colleges. The private colleges, as the result of increasing costs and decreasing endowments, had been required to raise their tuition rates to levels above those charged by the state-subsidized University of Alaska. Students were becoming unable or unwilling to pay the higher charges.

The tuition grant program was designed to help reverse or at least reduce this increasing cost/decreasing revenue trend by making available to each Alaska resident attending one of the private colleges in the state a grant equal to the difference between the tuition rate charged by the private college and that charged by the state institution located in the same city. By equalizing the tuition payments in this manner, it was hoped that cost would not be a factor in the student's decision of whether to attend one of the state's private or public institutions; that the decision of

The Honorable Jay S. Hammond
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where to go to college would be made based on where he desired to go, not on where he could afford to go. The program has apparently been moderately successful. Alaska Methodist University, although now closing its doors, has been able to operate for the past several years in the face of constant financial difficulties. Sheldon Jackson College has recently enjoyed increasing enrollments and relative financial stability, receiving in excess of \$600,000 through the tuition grant program in the current school year. To date, these are the only two educational institutions which have benefited from the program.

DISCUSSION

The tuition grant program, like the direct loan program discussed in our earlier opinion, must be measured by two basic legal standards. First, it is necessary to analyze whether or not the Federal Constitution bars a program of this nature. Second, even assuming the program is valid from a federal Constitutional viewpoint, the Alaska Constitution must be considered separately, for, as we noted in our opinion, our constitution contains particular limitations on aid to education beyond those contained in the federal document.

In that earlier opinion which concerned the state contracting with A.M.U., we reviewed the various criteria applied by the courts in determining whether a program

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violated federal Constitutional restrictions. The key question in the analysis is whether an educational program violates the Establishment Clause of the First Amendment because a given educational institution of higher learning is "religious" in nature. 1/ The basic criteria for that analysis include whether the institution imposes religious restrictions on admissions, requires attendance at religious activities, requires instruction in and adherence to a particular theology or doctrine, requires that its personnel have a particular religious affiliation, adheres to a stated sectarian purpose, or is under direct control of a particular sectarian organization. 2/ Under the federal Constitution, not all state aid to private colleges is barred. Only that aid which goes to institutions "in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission" 3/ is barred by the

1/ The U.S. Supreme Court has now recognized a significant distinction between church-affiliated institutions at the elementary-secondary level and the postsecondary level which, in certain situations, will lead to the conclusion that state aid to church-related colleges is valid even though similar aid to parochial elementary-secondary schools would violate the Establishment Clause. *Tilton v. Richardson*, 403 U.S. 672 (1971), *Hunt v. McNair*, 413 U.S. 734 (1973).

2/ *Tilton, supra*, *Horace Mann League v. Board of Public Works*, 220 A.2d 51 (Maryland, 1966), and *Weiss v. Bruno*, 509 P.2d 973 (1973).

3/ *Hunt, supra* at 743.

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Establishment Clause. Stated another way, are the institution's "operations . . . oriented significantly towards sectarian rather than secular education"? 4/

The major benefactor of the tuition grant program, were it to continue, would be Sheldon Jackson College. There is, of course, an issue as to the religious nature of that institution. We have received certain information from the Legislative Affairs Agency and Ely, Guess & Rudd, counsel for the College, about the operations of that school. On the basis of those facts, which in light of our subsequent analysis there is no reason to challenge, we would be able to conclude that Sheldon Jackson is not an "instrument of the church for purposes of indoctrination or proselytizing."
5/ Therefore, were it not for our subsequent conclusion that the tuition grant program violates the Alaska Constitution, we would have little reluctance in concluding that state aid to Sheldon Jackson or other nonreligious schools in the form of tuition grants is valid.

However, Alaska's constitution does go beyond the federal prohibition to religious institutions, providing in

4/ Id. at 744.

5/ Americans United for Separation of Church and State v. Bubb, 379 F. Supp. 872, 880 (D. Kansas, 1974). This case, decided after the Tilton/Hunt distinction between secondary and higher education was acknowledged by the Supreme Court, upheld in a detailed and carefully reasoned opinion, the constitutionality of a Kansas tuition grant program quite similar to our own as it was applied to some 19 church-related colleges operating in the state.

Section 1 of Article VII that:

No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

Under this constitutional provision, the question of whether or not Sheldon Jackson or any other school is "religious" is basically irrelevant, for even if it is not, it is certainly a private educational institution. The relevant question under the Alaska Constitution is whether or not the tuition grant program constitutes a "direct benefit" to a private school. We believe that it does.

There are essentially two basic positions on the issue of when an institution is benefited by an expenditure of public funds. The first position, generally referred to as the "child benefit theory" 6/, approaches various state-supported programs which provide a benefit to an institution from the standpoint of whether the benefit is primarily to the institution or to the students of the institution. The alternative analysis looks beyond the child to determine whether or not the institution receives a benefit from the state program. 7/

6/ See, for example, the U. S. Supreme Court's opinion in Everson v. Board of Education, 330 U.S. 1, 7 (1947).

7/ See, for example, the dissenting opinion of four Justices in Everson, id.

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The Alaska Supreme Court has confronted the choice between these alternatives directly. In 1961, the Court in Matthews v. Quinton, 362 P.2d 932 (Alaska 1961), rejected the "child benefit theory," inquiring instead whether or not the state-supported program (in that case bussing of parochial school students) also provided a benefit to the private school. In holding that the furnishing of transportation to parochial school students at public expense did constitute such a direct benefit to the school, the Alaska Court in essence adopted the dissenting opinion of the United States Supreme Court decision in Everson v. Board of Education, 330 U.S. 1 (1947). In Everson, the majority had held such transportation to be consistent with the federal Constitution. The dissenters disagreed, and their views were found most persuasive by the Alaska Supreme Court. In holding transportation of students a direct benefit to the institution, the Alaska Court stated:

Payment of transportation is no more, nor is it any the less essential to education, whether religious or secular, than payment for tuitions, for teachers' salaries, for buildings, equipment and necessary materials. 8/ (emphasis added)

8/ Everson, id. at 47-49.

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If the Alaska Court viewed bus transportation as a direct benefit to a private institution, it would follow that the state's tuition grant program, which provides partial payment of tuition to private institutions, would be an even more direct benefit to the private school. While under that program, the applicant for the grant is the student 9/ and the check is made payable to the student as well as the institution 10/, those facts are insufficient to alter the result, since the student, by law, is required to apply the grant to his tuition expenses. 11/ As we indicated in our earlier opinion concerning A.M.U., the Matthews opinion compels the conclusion that "any financial aid to a private institution such as AMU, whether provided directly or as an incidental effect from a student benefit program, would violate Section 1, Article VII of the Constitution."

Alaska is not alone in taking a "restrictive view" 12/ of its constitution's proscription against aid to private educational institutions. The highest courts of numerous other states have held various state programs, including

9/ AS 14.40.791 and 14.40.796

10/ AS 14.40.786(a)

11/ AS 14.40.776(a)

12/ Roberts v. State, 458 P.2d 340, 342, N.Y. (1969).

tuition grants 13/, bussing of parochial students 14/, furnishing of text books for parochial students 15/, and other forms of aid to private schools 16/ to be invalid under similar state constitutional provisions. Many of these decisions were rendered after the Alaska Supreme Court's decision in Matthews, and would, we believe, support that Court's adherence to its original view of what constitutes a "direct benefit" under Article VII, Section 1. Under that view, the tuition grant program would be invalid. 17/

13/ Rogers v. Swanson, 219 N.W.2d 726 (Nebraska, 1974); Weiss v. Bruno, 509 P.2d 973 (Washington, 1973); Klinger v. Howlett, 305 N.E. 2d 129 (Illinois, 1973); Miller v. Ayres, 191 S.E.2d 261 (Virginia, 1972); Hartness v. Patterson, 179 S.E.2d 907 (South Carolina, 1971); Almond v. Day, 89 S.E.2d 851 (Virginia, 1955).

14/ Epeldi v. Engelking, 488 P.2d 860 (Idaho, 1971); Spears v. Honda, 499 P.2d 130 (Hawaii, 1969); McVey v. Hawkins, 258 S.W.2d 927 (Missouri, 1953); Visser v. Nooksack Valley School District No. 506, 207 P.2d 198 (Washington, 1949).

15/ Gaffney v. State Department of Education, 220 N.W.2d 550 (Nebraska, 1974); Dickman v. School District No. 62C, Oregon City, 366 P.2d 533 (Oregon, 1961).

16/ Synod of Dakota v. State, 50 N.W. 632 (South Dakota, 1891) (contracting for services)..

17/ At least three of these cases, Spears, supra; Epeldi, supra; and Dickman, supra relied, in part, on the Alaska court's refusal, in Matthews, to adopt the "child benefit" theory.