

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984

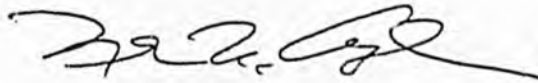
3110 SSA HJR 28 - HJR 77 8672

Rep. Adelheid Herrmann
March 22, 1983
Page 2

Thank you for your kind consideration. If you have any questions per this letter, please contact us.

Sincerely,

CALISTA CORPORATION

A handwritten signature in black ink, appearing to read "N. Angapak", written in a cursive style.

Nelson N. Angapak
Executive Vice President

NNA:slb

ALASKA FEDERATION OF NATIVES, INC.

411 W. 4th Avenue, Suite 1A • Anchorage, Alaska 99501 • Phone 907-274-3611



March 15, 1983

Representative Adelheid Herrmann
ALASKA STATE LEGISLATURE
Pouch V
Juneau, Alaska 99811

Dear Adelheid:

The Alaska Federation of Natives, Inc. supports House Joint Resolution No. 28. We believe that the mandate of Congress should be funded and accomplished by the Bureau of Land Management, Department of the Interior so that Alaska Natives can receive their allotments. This process is important so that Native corporations can receive clear title to all of their land as intended by Congress.

Thank you for your interest and support of Alaska Native affairs.

Sincerely,

Janie Leask
President



THE ALASKA NATIVE FOUNDATION

411 WEST 4th AVENUE, SUITE 314 ■ ANCHORAGE, ALASKA 99501 ■ PHONE (907) 274-2541

83-133

March 10, 1983

Rep. Adelheid Herrmann
Alaska State Legislature
Pouch V (MS 3100)
Juneau, AK 99811

Dear Ms. Herrmann:

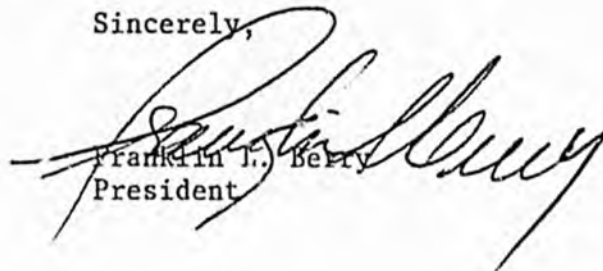
HJR No. 28 relating to the processing of Alaska Native Allotments certainly receives the full endorsement of the Alaska Native Foundation.

The ANF, through the assistance and involvement we have with villages, has been aware of the tremendous delays involved with the entire process. It concerns us that many village corporations may be denied title to their lands without a speedy process on the individual allotments.

Please keep me informed of any progress in the matter.

Keep up the advocacy. . .

Sincerely,


Franklin J. Berry
President

:ds

Rural Alaska Community Action Program, Inc.

10 March 1985

Representative Adelheid Herrmann
State Capitol
Pouch V
Juneau, Alaska 99811

Dear Representative Herrmann:

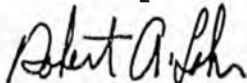
I am writing to express wholehearted support for HJR 28, relating to the processing of Native allotments.

As your proposed resolution so capably states, Congress charged the Bureau of Land Management with responsibility for processing Native Allotments over 10 years ago, and Alaska Native applicants have been waiting all that time can ill afford to wait any longer to receive clear title to their land.

Years ago, RuralCAP was involved in helping Alaskan Natives deal with the complicated allotment application process. Those efforts, as well as our continued close connection to rural residents, have made us keenly aware of the serious impacts of this unreasonable delay, both on individuals and village corporate landowners.

We must not accept inadequate funding as an excuse for putting the legal rights of Alaskans on the back burner. Hopefully, passage of this resolution will help correct this injustice. A formal statement of position on this issue by the State Legislature on behalf of its citizens is long overdue. We strongly endorse and encourage passage of HJR 28 as that positive step forward.

Sincerely,



Robert A. Lohr
Executive Director



REPRESENTATIVE DON CLOCKSIN

Alaska House of Representatives

ASSISTANT MINORITY LEADER

1527 H STREET
ANCHORAGE, ALASKA 99501
(907) 278-4188

WHILE IN JUNEAU:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3704

May 2, 1983

Mr. Daniel Alex
President
Alaska Native Land Managers Association
840 K Street, Suite 202
Anchorage, Alaska 99501

Dear Mr. Alex:

Thank you for your letter expressing appreciation for my support of HJR 28 relating to the processing of native allotments.

Although I am a co-sponsor, please note that Rep. Adelheid Herrmann is the prime sponsor of this legislation.

Thank you again for writing.

Sincerely,

A handwritten signature in dark ink, appearing to be "Don Clocksin".

Representative Don Clocksin

DC:blg

cc: Alaska Native Land Managers Association Members
Representative Adelheid Herrmann —
Representative Albert Adams
Representative John Fuller
Representative Peter Goll
Representative Vern Hurlbert
Representative Anthony Vaska
Representative Fred Zharoff
Representative Ben Grussendorf
Representative Mike Davis
Representative Niilo Koponen

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

POUCH M
JUNEAU, ALASKA 99811
PHONE:

April 7, 1983

The Honorable Bill Ray
State Senator
Alaska State Legislature
Pouch "V"
Juneau, Alaska 99811

Dear Senator Ray:

I am responding to your March 15, 1983 correspondence about Native allotment issues in Haines.

~~Mr. Jacquot is correct. BLM Native allotment adjudicative process for the Haines area has taken too long. However, as you are probably aware, the same situation exists in many areas of the state.~~

During the creation of the Chilkat Bald Eagle Preserve and Haines State Forest Resource Management Area, the Department of Natural Resources committed itself to establishing a process whereby the state might quit-claim its interest in land back to the federal government on selected allotment claims, for subsequent reconveyance to the allottee. Until just recently, however, this process was not legally possible. The recent U.S. District Court approval of specific procedures now allows the federal government to receive such state land reconveyances.

Recently members of my staff have been working with individual allotment applicants in Haines including Mr. Jacquot, in an attempt to identify more precisely which allotments fall into this reconveyance category (see the attached article from the Lynn Canal News). I have also attached my recent letter to Mayor Halliwill on the subject.

At the present time the most significant remaining obstacle is BLM's lack of funding to support surveys. The allotments must be surveyed before the state can reconvey its land to the federal government. The Governor's representative in Washington, John W. Katz, is pressing the federal government to provide necessary survey funds for BLM. It is estimated

The Honorable Bill Ray
April 7, 1983
Page 2

that survey costs for the Haines area will amount to about \$250,000 (see attached letter).

Please note that the State never made a commitment to fund surveys of individual Native allotments in the Haines area. This responsibility remains with BLM, although the State might choose to assist in this effort. The Department strongly supports state efforts, such as Representative Herrmann's proposed joint resolution on federal funding for allotment survey and adjudication, to expedite the federal process.

The Department is doing everything it can to facilitate adjudication of the Haines area allotments. My staff has been in touch with Mr. Jacquot on a regular basis. I believe he is now satisfied with the State's efforts on behalf of himself and other allottees.

Thank you for providing the opportunity to comment.

Sincerely,



Esther C. Wunnicke
Commissioner

Attachment

cc: Representative Herrmann
Curt McVee, State Director, BLM

LAW OFFICES OF
ALASKA LEGAL SERVICES CORPORATION
615 "H" STREET, SUITE 100
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-9431

March 14, 1983

Ms. Beth Robinson
c/o Representative Adelheid Herrmann
Pouch V
Juneau, AK 99811

Dear Ms. Robinson:

In response to your request for information regarding the need for the federal government to allocate additional funds for processing Native Allotments, I am enclosing several newspaper articles. I believe that the figure 30 years is probably the best current estimate. The 70 years which you mentioned was an estimate made by a BIA employee in a letter to an applicant. I have spoken with that individual and have been informed that he now believes the true figure to be closer to 30 years.

You should be aware that this time period is derived from an estimate of the time required to survey the allotments. It assumes that the applicants' entitlement to the allotments will be adjudicated at a faster rate. While this is true with respect to the "easy" cases -- such as those subject to automatic approval under section 905 of ANILCA -- those allotments which the BLM intends to deny must go through a "Pence" hearing. The Office of Hearings and Appeals of the Department of the Interior has only been able to complete about six hearings per year. If there were a thousand of these, you can see that it would take a considerably longer period of time to finish processing the applications. Similarly, there are between 50 and 100 Aguilar applicants who will have to go through a lengthy procedure.

I have also enclosed for your information an article regarding the potential impact of allotments on such major state projects as the Fairbanks-Anchorage intertie. On a lesser scale, I have included an article dealing with an allotment in the small boat harbor in Bethel. While all allotments are not so strategically placed, these demonstrate the potential problems which may result from a failure to process the allotments in a timely manner.

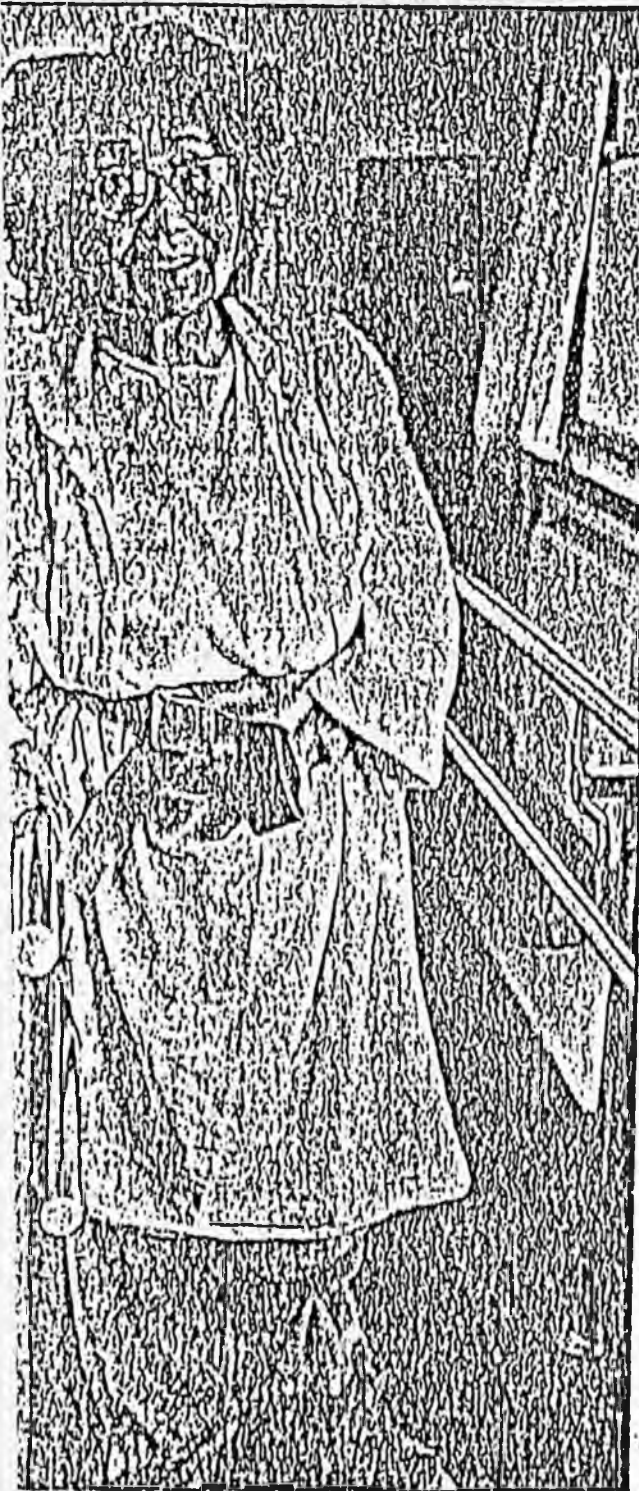
If I can be of further assistance, please do not hesitate to contact me.

Sincerely,
ALASKA LEGAL SERVICES CORPORATION

Craig J. Tillery

Craig J. Tillery

CJT/bh
Enclosures



Red tape slows land transfers

by A.J. McClannahan
Times Writer

Eighty-one-year-old Mildred Sparks of Haines, a Tlingit woman hospitalized with a stroke, doesn't have 30 years to wait for title to about 100 acres of land.

But that's how long she and other native people might have to wait for land they are to get under the 1906 Allotment Act, say U.S. Bureau of Land Management officials.

They say the long wait can be blamed partly on priorities set by Congress, the amount of money allocated to the agency and difficulties such as a short surveying season in Alaska.

The problem affects 9,300 or so individuals who want title to about 14,000 parcels of land — generally from 40 to 160 acres each. But it doesn't stop there.

The native allotment issue also puts a cloud over conveyances of millions of acres of lands to the state and native corporations. It could affect planned road systems, airports — just about anything.

That's partly because of uncertainty over exactly where the natives' land is and whether their claims conflict with land selections by the state and others.

Most applications for native allotments were filed in 1970 and 1971. The Alaska Native Claims Settlement Act repealed the 1906 act, but allowed for the processing of applications pending on or before Dec. 18, 1971.

Sparks is concerned because she has been waiting years to get her land, and in the meantime can do little with it because she doesn't have title to it.

"They can't do this. They can't

there," said her husband William Sparks.

Applications are reviewed by the Bureau of Land Management, and many are subject to an adjudication requirement — which means that BLM must investigate whether the claim is valid and is properly described in the application. And that process all comes before the land is even considered for surveying.

The situation is not without hope, said BLM state director Curtis McVee. There is more money in the agency's budget for the coming fiscal year to deal with the adjudication process. So far, fewer than 10 to 15 percent of the claims have gone through that first step.

Adjudication would help the state and native corporations by at least partially clearing the cloud over their conveyances. Some of the natives, however, still would have to wait many years to get title to their land because of the time-consuming process of surveying it.

That's the process that could take about 30 years, given current surveying processes, BLM says.

Pumping more money into BLM could help reduce that amount of time, said BLM public affairs officer George Gurr, but there are other variables that will have an influence, such as weather and finding enough trained people to do the surveys.

It's really a matter of priorities, he said, which means Congress and the Department of Interior must decide they want to stress settlement of native allotments.

The issue has a long history, and has been frustrating for everyone involved, said Irene Rowan,

Federation of Natives land director.

"I don't think we can afford to wait 20 or 30 years to have the native allotment problems solved," she said.

Neither does Craig Tillery, Alaska Legal Services attorney.

Although natives could have filed for title to parcels of up to 160 acres any time after the 1906 act, few knew about it and so almost no claims were made for decades, Tillery said.

It wasn't until the Bureau of Indian Affairs and the Rural Alaska Community Action Program made efforts in the late 1960s to alert people to the Allotment Act that most claims were made.

Accuracy has been another problem.

Many of the applications have mistakes. An individual's land has been known to be 10 to 20 miles from where it is listed, said Julie Gibbons, BLM real estate specialist.

In fact, she estimated that about half the applications have such mistakes. And that's one reason why "interim conveyances," such as are made to the state and native corporations, can't be used. The land cannot be conveyed to the individuals until it actually has been surveyed.

The surveying season in Alaska is short — generally only from late May to late September — which is the time it is most difficult to contact natives who are still leading a subsistence lifestyle. Often they are at a fish camp during the summer months, Gibbons said.

"That guy isn't going to stay there to go with us if he's not to

So far only about 750 of the allotments have been surveyed. With current technology, BLM probably will be able to survey only 400 to 700 annually, Gibbons said.

New technology would help. Already electronic equipment and helicopters are being used to survey large parcels. But that system doesn't work for small amounts of land.

The allotment issue is one of the biggest problems facing the state as far as getting its land from the federal government, according to Reed Stoops, director of research and development for the Department of Natural Resources.

He said he thinks more money would help a lot.

Just surveying the parcels generally costs the government from \$8,000 to \$10,000 for each parcel, Gurr said.

"Money solves a lot of problems," said Vern Wiggins, co-chairman of the Alaska Land Use Council. The council was created under the Alaska National Interest Lands Conservation Act of 1980 to work on federal programs in Alaska.

And as for the natives, they can't do much with the land until they know they have it. Even getting loans for putting improvements on the land usually depends on having title to it.

But Tillery also has not given up hope.

"I don't think it will take 30 years. Allotments are too big a problem to take that long. Under the present system they would take 30 years, but I believe that the parties will get together and work it out, so that it's resolved," he

41228

Welcome 1982 AFN Convention

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Times

Alaska's Oldest Statewide Newspaper

VOLUME XIX, NUMBER FORTY-TWO

ISSN 0049-4801

USPS 644-040

October 20, 1982

INSIDE: Banquet plans
Page 7
OCT 25 1982
LIBRARY

Allotment conveyance may take 20 years

By LINDA LORD-JENKINS
Tundra Times

Last week the good news for Native land allotments was that the "Fanny Barr" class action suit against the United States had been settled, in favor of the allotment seekers.

The bad news this week is that, at the present rate of land surveying, it will take 20 years to clear up all the allot-

ment petitions awaiting resolution in Federal Bureau of Land Management files.

One skeptical allotment watcher said cryptically after hearing of the Fanny Barr settlement, "Your children and children's children will be in college before all these allotments are conveyed, they're in such a mess."

The Fanny Barr decision

centered on the allotment petitions filed by an unknown number of Alaska Natives with volunteers during an early-1970s allotment drive.

Under terms of the settlement, any Alaska Native who filed an allotment form with a Rural CAP volunteer or employee before the Dec. 18, 1971 deadline and who believes that the request never

was passed on to the BLM or DIA, should write a letter to the District Court Clerk stating that that had happened.

Their letter must be received by the court clerk by Nov. 22 and would put into effect a process in which the petitions would be investigated and acted upon by the government.

The bad news is the length

of time necessary to survey each land petition and the limited amount of financial and staff resources available to conduct those surveys.

Frances Elckbush, chief of the Division of Cadastral (land surveying) Studies for BLM, estimates that if the land surveys are conducted at this year's rate, 40 years will

(Continued on Page Eleven)



Struggling in the shadow

AROUND ALASKA

No money, long process stall conveyances

(Continued from Page One)
 pass before all the surveys are conducted.

If the surveys are conducted at the rate planned for next year, Eickbush said 20 years could elapse.

The cadastral office has altered and made more efficient the methods it uses to conduct surveys for the coming years. Eickbush said that his surveyors plan on surveying 500 parcels in the Point Hope, Galena, Anvik, and Eagle-Northway areas in the coming year.

Until this year, the surveyors tended toward a more scattered approach and surveyed parcels throughout the state as those parcels were cleared for survey by the BLM's adjudication office.

The regional survey method will allow the cadastral office to get 'more for its money' by focusing on general areas and saving travel costs and time.

In nine years, the cadastral office has conducted surveys on 1,663 parcels of land. Allotment requests have been filed by about 9,000 people who are seeking about 13,381 land parcels.

Under the 1906 Land Allotment Act, petitioners can seek up to 160 acres of land divided in up to four different parcels.

Eickbush says that it takes from one to four days to sur-

Another problem fouling up the works in the allotment conveyance procedure is the State of Alaska which filed blanket appeals to thousands of Native allotment petitions after the passage of the Alaska National Interest Lands Act (ANILCA), according to one attorney.

Don Mitchell, a former Alaska Legal Services Corp. attorney who worked on ANILCA passage in Washington D.C., and now works for the Alaska Federation of Natives, said that ANILCA stipulated that allotments which were not appealed by anyone within 180 days of ANILCA's passage would be cleared to survey and no challenge could be filed.

The State violated the intent of the ANILCA legislation, however, when it filed blanket appeals to the 4,000

to 5,000 allotments on day 180 of the appeal deadline, he says.

ANILCA also required that the agency appealing the allotment specify his, her or its reasons for objections but the state obviously couldn't nor did it specify in each case, he says.

No one, however, has taken the State to court over this matter, Mitchell said.

More than 8,000 people filed allotment petitions during the 1970s allotment drive — an amazing number of requests which were brought about by the efforts of the Rural Alaska Community Action Program under the direction of Byron Mallott, then John Shively.

Many of the allotments were filed with volunteers from the villages who were trained by RurAL CAP employees.

Unfortunately, says Shively who now works with NANA Development Corp., in such a massive effort, with so many volunteer workers, problems will crop up and more than 100 petitions were found in three villages several years after the allotment drive was ended and the deadline for filing allotment petitions was long past.

The allotments couldn't be filed after the signing of the Alaska Native Claims Settlement Act on Dec. 18, 1972.

Three groups of petitions were found in the attic of a building which formerly

housed a Nome RurAL CAP office; in the home of a volunteer in Quinhagak, and others were sent back to the village of Akiachak with the promise that RurAL CAP or BIA workers would follow to help straighten them out. The workers never showed up and the petitions were kept in village files for years.

When the petitions were brought to light, the Alaska Legal Services filed a class-action suit on behalf of Fanny Barr, one of the Shishmaref petitioners whose request was lost in an attic, and others.

MOVING FUR

SALE

ALL MUST GO

YOUR SHAREHOLDERS

ment-Act; petitioners can seek up to 160 acres of land divided in up to four different parcels. → Eickbush says that it takes from one to four days to survey an average parcel depending on the type of terrain to be surveyed.

Each survey costs about \$8,000 to just survey with the total field examination, adjudication and paperwork running about \$30,000 per allotment for all parcels, he estimates.

The age-old problem of lack of funds also crops up daily in the office. According to testimony presented at many hearings on the allotments for the past four decades, Congress rarely has funded the allotment process to anywhere near the amount needed to sufficiently carry it out.

Previous allotment officers testified that requests for additional money were generally ignored.

The reason that Rural CAP became involved in the allotment drive was because neither the BIA or BLM had sufficient money to go out to work on the allotment requests.

Today is no different.

Eickbush says that his office requested \$15 million for the current federal budget year but received only \$8 million for the year. That \$8 million must also pay for office surveys of Alaska state land withdrawals, village withdrawals and many other programs so the piece of the "budget pie" remains insufficient to get the job done.

Eickbush said that if more money were to be allocated -- and with the federal budget belt-tightening the way it is, that doesn't look likely -- he would contract with private surveyors to do the work.

ALL MUST GO

MANY FURS ON DISPLAY



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Francis

510 L' St. SUI
530 Fourth Av

BLM

Paul Johnson 271-3248
(Arch)

in charge of
allotment conveyance

Craig Tillery
ALSC (Arch)

Bob Arnold
Dep. Comm., DNR

what is definition of "parcel" and
"allotment"
160 acres total

how many "active" and "closed" cases
does "cases" mean allotment application

why are cases closed?

how many protests - how many are
still active?

How many claims have been surveyed,
how many pending?

ask
for statistical
info.



HJR

42

SENATE STATE AFFAIRS COMMITTEE

Bill Number HJR 42 Title TAIWAN Date received _____

Fiscal Position Note	Paper	Date requested	From	Amount	Date Rec'd	
					Note	Paper

CONTACTS	Backup list

HEARING INFORMATION

NOTES:

FINAL ACTION _____ DATE _____

We contacted Stevens, Murkowski & Young.

Stevens contacted the State Department. They stressed that they have no control over a state wanting to establish a sister state relationship with Taiwan, but they wanted to extend a serious warning to us.

It is imperative that the language in the resolution in no way be provocative toward China. Sara Ann Smith from the State Department (202-632-7710), said that Taiwan has approached many U.S. states to solicit resolutions of this kind and that they attempt to have those states refer to them as "The Republic of China" or "RSC." This reference is highly inflammatory language and may create difficulties with U.S. relations toward China. They suggested that the resolution refer to them as "The People of Taiwan" or "The Province of Taiwan."

Further, that the resolution emphasizes people to people contact, cultural exchange and general goodwill. The resolution should avoid any political references.

The states of Virginia, Miss., Illinois, Arkansas, S. Carolina, Colorado, Kentucky and Hawaii have these resolutions. They highly suggest that you use these for models.

Although the State Department will not officially try to influence you, they continue to stress the problem with these resolutions inhibiting a formal U.S. relationship with China.

Sen. Stevens has sent a telegram to this office also warning of this.

This top memo is from House State Affairs staff!

Summary of U.S.State Dept. 1982 report to Senate & House Foreign Relations Committees on Human Rights Practices in Taiwan

Political history since 1949 - the political power and most positions of power in the government remain with the Nationalist Party, the Kuomintang, who were elected on mainland China before 1945. Native Taiwanese - about 85% of population - do not have significant power, and are structurally prevented from gaining it.

What is referred to in the report as the "taiwanese independence movement" is a loose movement to return control of the government to elected Taiwanese. This movement is considered sedition.

Martial Law - Martial law was imposed in 1949 and operated ever since. It is the means by which the Nationalist Party retains control and is the crucial fact for human rights in Taiwan. Martial law means that political crimes and other major crimes can and are tried in military, rather than civilian, courts. Cases in these categories are then reviewable only by the Ministry of Defense.

These are the observations on human rights conditions as listed in the State Dept. report:

Political murders - murders of a mother and twin daughters of an opposition figure and of a U.S. born Taiwanese professor in 1980 and 1981 "are believed to have been politically motivated".

Torture - Just last May, five policemen were tried and convicted for illegal arrest and causing bodily harm to a taxi driver beaten and then drowned while under arrest. "Physical violence...(is) a practice many believe police resort to frequently."

Arrest and warrants - Arrest is without warrant in many cases. Individuals may be held up to seven months and possibly more at prosecutor's request. Recently, attorneys were allowed to be present for interrogation of their clients, but that may only mean sitting behind a soundproof window - watching, but not hearing. There is no protection against self-incrimination.

For many minor crimes police not only arrest, but also prosecute and punish. Police are now trying to get the power to put certain of those detained in military prisons for "educational punishment" for crimes against "social peace" - all without trial.

"Monitoring of telephone calls(is)widely believed to exist", and in a recent case there was evidence of monitoring of international calls.

Political prisoners - There are, by government admission and the count of international organizations, approximately 100 political prisoners in Taiwan. 20 of them have been imprisoned over 30 years. sedition, which is defined as any opposition to basic government policy, especially the contention that the present government represents all of mainland China, is punishable in military courts under martial law. Native Taiwanese who say that their island should be self-governing are committing sedition and are commonly and frequently tried as such. Political candidates are known to be routinely monitored for such sentiments.

COPY

International security surveillance- Although authorities deny it, it is widely accepted that activities of students in the U.S. and other countries' universities who are Taiwanese are followed by the security service.

Censorship - Police may legally seize, ban and/or suspend publication licenses of publishers of printed material they think "confuses public opinion and affects the morale of the public and armed forces." This practice is very common. Major U.S. magazines such as Newsweek have been banned in recent past. Foreign correspondents' credentials have been revoked for reporting the wrong things.

Public assembly - Public assembly for political purposes is banned, except in recent years 15 day election periods have been created in which rallies are allowed but closely monitored.

Religious freedom - Churches have been warned against involvement in opposition political groups or groups which discuss Taiwanese independence. Authorities have made it clear that they intend to take control of religious educational institutions. In 1980 a confrontation with the Presbyterian church came to a head with the conviction of the church's general secretary and others in the church for their harboring a sedition defendant who sought help.

Travel freedom - Permission to leave the country for a trip or to study may be delayed or withheld for security reasons or because the person has criticized the political establishment. 20,000 people (about 2% of applicants) were denied travel permits in 1980 - over 300 for security reasons alone.

TAIWAN

More than thirty years of dynamic economic development contrasts sharply with the pace of political development in Taiwan, where the ruling authorities have emphasized stability rather than change. Nonetheless, the authorities have created an array of democratic institutions from village to province level, with candidates inside and outside the dominant Nationalist Party. Actual power, however, remains in the hands of the small leadership group elected in mainland China before 1945, which came to Taiwan after World War II and controls the Nationalist Party (Kuomintang), the military, and the executive bureaucracy. A high degree of political control is exercised through the security apparatus, which operates under martial law provisions enacted in 1949 and which the authorities justify by the threat of military action or subversion from mainland China.

The enhancement of human rights is publicly endorsed by the authorities but remains incompletely realized in Taiwan. Although individuals may run for elective office, coordinated opposition activity is greatly restricted. The publication of opposition political views is closely controlled and the activities of outspoken oppositionists are monitored, both at home and, apparently, abroad. Native Taiwanese, descendants of Chinese who migrated from the mainland mostly in the eighteenth century and who now constitute 85/percent of the population, dominate the economy but are under-represented within the ruling elite. Recent evidence suggests that torture and other forms of physical intimidation are still occasionally used by police, but probably are not officially condoned.

Nineteen eighty-two saw the continuation of a slow trend toward improvement in the human rights situation in Taiwan. Publication and public expression of oppositionist sentiment have become gradually freer, although there are still strict limits to what is acceptable. The authorities continue to recruit qualified Taiwanese to fill important economic and political, military, and security posts, a process which will contribute to an increased share of political power by the Taiwanese. With the rise of a prosperous middle class, popular concern about human rights is increasing. Despite Taiwan's diplomatic isolation and concern about the island's future after the passing of the current President, Chiang Ching-kuo, the outlook for continued improvement in human rights appears favorable.

1. Respect for the Integrity of the Person, Including Freedom from:

a. Killing

No killings for political reasons have been substantiated in Taiwan in 1982, or indeed in recent years. However, the murder in February 1980 of the mother and twin daughters of jailed oppositionist Lin Yi-hsiung and the suspected murder in July 1981 of a Taiwan-born US resident, Professor Chen Wen-cheng, are widely believed to have been politically motivated.

b. Disappearance

In recent years, there have been no credible reports of persons being abducted or secretly arrested by the security services. There are no known terrorist organizations operating on the island.

Under martial law, which has been in effect in Taiwan since 1949, civilians who commit certain offenses, including sedition, may be tried in military court. Opposition to basic policy (such as expressing views contrary to the authorities' claim to represent all of China, or supporting an independent legal status for Taiwan) is considered seditious and thus punishable under martial law.

The authorities occasionally transfer "important" civilian cases (involving such crimes as homicide, kidnapping, and armed robbery) to the military courts. The authorities state that the military courts' swifter and generally more severe justice acts as a deterrent to potential criminals. Sentences are reviewed only within the Ministry of National Defense. In May 1982, the case of Li Shih-ko, who confessed to carrying out Taiwan's first armed bank robbery and murdering a policeman, was referred to the military courts for action. Li's trial on May 18 lasted less than two hours and the sentence, death, was carried out eight days later.

Neither civil nor martial law provides the defendant with protection from self-incrimination. Following the July 1982 revision of the criminal procedures code, suspects may for the first time have a lawyer present during interrogation. However, the authorities have indicated that the lawyer's role is to protect his client from mistreatment, rather than to provide legal counsel during questioning. In some cases, windows have been installed in police station interrogation rooms in order that lawyers (or family members) may see the suspect without hearing the questioning.

g. Invasion of the Home

Physical invasion of the home without a warrant is not a common practice in Taiwan, but does occur on occasion. The Code of Criminal Procedure requires that searches be authorized by warrants, signed by a prosecutor or, during a trial, by a judge. However, exceptions to this rule, previously few in number, were substantially increased by the revision of the code in July 1982. When making warrantless arrests, police may also make necessary searches of person or property without prior authority. Other types of violations of the home, such as monitoring telephone calls, are widely believed to exist.

2. Respect for Civil and Political Rights, Including:

a. Freedom of Speech and Press

The Constitution guarantees freedom of speech and the press. These rights are limited, however, by the enforcement of martial law restrictions. Individuals are not free publicly to question the regime's basic political policy of anti-communism and claim to sovereignty over all of China. Persons who speak favorably of communism or the People's Republic of China, or persons (usually native Taiwanese) who question the legitimacy of Taiwan's mainland authorities by suggesting support for Taiwan independence or self-determination, can expect to be charged with sedition and tried in a military court.

Information brought to light during the investigation of the death of Professor Chen Wen-cheng in 1981 suggests that the security authorities closely monitor political expression, both at home and overseas. During questioning by the security

c. Torture

Taiwan law specifically prohibits the use of torture. The Code of Criminal Procedure states that an accused shall be "frankly" examined, but that no violence, threat, inducement, fraud, or other improper means shall be used. This language is repeated in the Military Trial Law.

The death in police custody of a Taipei taxi driver, Wang Ying-hsien, in May 1982 focused public attention on the use of physical violence by police in interrogating criminal suspects, a practice many believe police resort to frequently. Wang was picked up on suspicion of robbing a bank and died while in police custody. The actual robber was captured a few hours later and Wang's daughter challenged the police account of Wang's death. The autopsy report, released on August 20, confirmed that Wang was beaten but ruled that his death was caused by drowning in the Keelung River. Although his death was officially declared a suicide, five policemen were tried and convicted for illegally arresting Wang and causing him bodily harm.

d. Cruel, Inhuman, or Degrading Treatment or Punishment

Imprisonment is the usual form of punishment for both political and nonpolitical offenders. According to the authorities, nine executions were carried out in 1981, seven of convicted murderers, and two of persons convicted of robbery.

Taiwan's civilian prisons are severely overcrowded. In April 1982 the press reported that civilian prisons, built to accommodate 11,251 prisoners, were then holding 17,162 or 5,901 over capacity. Prisoners are forced to share cramped living quarters and have fewer opportunities for work, exercise, and family visits. Overcrowding was partially responsible for severe rioting which broke out in the juvenile section of Mainghu Prison in March 1982.

Conditions in the military prisons administered by the security police, where political prisoners are confined, are reportedly less crowded. Prisoners receive the same food as soldiers and have work and recreation opportunities. Although conditions for the Kaohsiung-incident prisoners have reportedly improved since their arrest in 1980, six non-Nationalist Party legislators charged in July 1982 that these prisoners continue to be denied access to regular work programs and recreational activities, are prohibited certain amenities accorded other prisoners, and are subject to special rules which keep them separate from one another. A few of the Kaohsiung-incident prisoners are alleged to still suffer from the effects of pretrial mistreatment.

There is no known discrimination in the treatment of prisoners because of class, race, sex, or religion.

e. Arbitrary Arrest and Imprisonment

Taiwan's law of habeas corpus requires that, following an individual's arrest, the arresting authorities notify in writing the individual and his designated relative or friend within 24 hours of the reason for his arrest or detention. The Code of Criminal Procedure specifies that the authorities may detain an accused for up to two months during investigation prior to the filing of the formal indictment, and for up to three months during trial. During the investigation phase,

however, the prosecuting officer may apply to the court for one extension or two months. The period of detention may also be extended during the time the accused is on trial. In recent cases, including the Kaohsiung incident, the authorities generally have followed the requirements of the above provisions, with exceptions occurring more frequently in the military system.

Major changes in the Code of Criminal Procedure, affecting the rights of criminal suspects, were enacted by the Legislative Yuan in July 1982. Suspects were granted the right to legal counsel during the investigation phase, including the right to have a lawyer present during interrogation by police. This was viewed by legal experts as a positive step in the protection of arrestees' rights. However, despite the opposition of the legal establishment, the press, and many legislators, the authorities also forced passage of changes which allow police to arrest without a warrant anyone they suspect of committing a crime for which the punishment would be five years or more in prison. Police power was further augmented to allow police to call in suspects or witnesses for questioning without a formal summons. The authorities justified the new police powers by insisting that the revisions would only legalize long-standing police practices.

The authorities deny holding political prisoners. They have stated that at the end of 1975 there were 254 persons in prison on sedition charges. Some persons have been released and others arrested since that time, but this is the most recent figure made public by the authorities. In December 1982 the authorities disclosed that 92 prisoners convicted of sedition and related offenses are currently being held in the Green Island military prison, compared with 115 reported to be there by Amnesty International in February 1980. Nearly 20 of these, originally arrested for communist activities, have been imprisoned for more than 30 years and were excluded from a general amnesty in 1975. Many of these prisoners, all in their fifties and sixties, are reported to be in poor health.

Many minor crimes in Taiwan are handled under a statute which empowers the police not only to arrest but also to prosecute and punish offenders. This law sometimes has been used against political activists. A substitute law, long sought by legal reformers, was put forward by the authorities in October 1981 but quickly withdrawn after being publicly criticized by lawyers and legislators. Critics complained that the law was even harsher than the one it was meant to replace, particularly provisions for "educational punishment" in military prisons for those accused by police of disturbing "social peace." In March 1982 the authorities reintroduced the "educational punishment" provisions as a separate "hoodlums" law. Although they withdrew it again in the face of heavy criticism, the authorities have indicated that they still intend to enact a police powers law incorporating "educational punishment."

f. Denial of Fair Public Trial

Taiwan's legal system is based on European and Japanese models which do not incorporate trial by jury. Under a 1980 judicial reorganization, district and high courts were shifted from the control of the Executive Yuan to the Judicial Yuan, for the first time formally separating the courts from the prosecution function. It is generally held in Taiwan legal circles that the change has given the judiciary greater independence of action.

tions and enter three-year senior high and vocational school programs. Entry into Taiwan's extensive system of higher education is also based on competitive exams, and departures from a strict merit system are almost nonexistent. In 1982, more than 20 percent of college-age youth were enrolled as undergraduate or graduate students.

Senator

Murkowski's office
is following this ^{resolution} ~~bill~~.

Suzy.



COORDINATION COUNCIL FOR NORTH AMERICAN AFFAIRS

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TEL. (206) 682-4586 OR 682-4967

June 14, 1983

The Honorable Victor Fisher
Senator
State of Alaska
Pouch V
Juneau, AK 99811

Dear Senator Fisher:

Further to my letter to you on June 9, 1983, I did talk with your able assistant this morning regarding proposed Alaska-Taiwan Sisterhood resolution in the Senate and learned from her that you are reluctant to proceed with that resolution in this session because you are concerned about the human rights and martial laws situation on Taiwan.

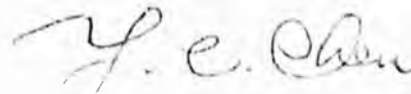
With a view to promoting your better understanding on that subject, I would like to present our views as following:

- (1) The ROC is still facing the belligerency of the Chinese Communist regime which, as is widely known, claims Taiwan as an integral part of its domain. The Communists have an article in the "constitution" specifically calling for the liberation of Taiwan. The Communist regime has established a "Taiwan office" under its "state council" to execute this policy. In recent years, while the PRC has taken a somewhat conciliatory attitude toward Taiwan, it has strengthened its political campaign and subversive activities against the ROC. Internationally, it has stepped up its campaign to isolate the ROC and thereby facilitate its ultimate goal of taking over Taiwan by force, if necessary. The PRC has also actively supported the violent subversive activities of the Taiwan Independence Movement. Despite the PRC's well-known opposition to Taiwan independence, the PRC's interests are aligned with the independence movement since an overthrow of the present government is beneficial to unification as it is to independence. In the light of such Communist schemes, the ROC government has no choice but to maintain the state of siege and protect its democratic system, and the freedom and human rights of its people.

- (2) In Taiwan, there are only four kinds of crimes--sedition, illegal sales of military supplies, robbery and damaging transportation equipment during wartime--for which the offenders will be tried in the military court. This shows that the martial law enforced in Taiwan exerts little influence over the lives of the public by and large. Many people in Taiwan are not aware of the existence of the martial law, and according to the poll, 88.9 percent of the population thinks that the martial law should be kept. As a matter of fact, the people in Taiwan are enjoying a harmonious and prosperous life. They are not only endowed with fundamental human rights but also possess the real democratic freedom. Therefore, none of the atmosphere of the state of curfew ever appear on the island.
- (3) There have been many criticisms and suggestions in the press and legal periodicals in Taiwan for further improvements of the legal system. In the future, if the United States would guarantee to provide Taiwan adequate defensive weapons and other security arrangements and if the PRC would be willing to compete with Taiwan peacefully and to forego the threat of the use of force and subversive activities, then the ROC on Taiwan would live in a more secure environment. Under those circumstances, one could expect that the ROC's constitutional rule and legal system would rapidly move to a higher stage of development.

Mr. Senator, you know our purpose for seeking Sister-State relationship with your great State is primarily for promoting people-to-people friendship, and potential mutual trades, not involve our basic interests for subsistence. I appreciate your understanding about our Sister-State ideal and our country as a whole.

Sincerely,



Y. C. Chen
Director

YCC/11

Enclosure: "To Free China" By Aleksandr Solzhenitsyn
cc: Honorable Bill Sheffield, Governor
Honorable Jay Kerttula, Sen. President
Honorable Robert Ziggler, Senator

ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS COMMITTEE

SENATOR VIC FISCHER, CHAIRMAN

POUCH V, JUNEAU 99811

(907) 465-4954



MEMORANDUM

TO: Senator Vic Fischer

FROM: David Dye *DZ*
Committee Aide

DATE: June 15, 1983

SUBJ: SJR 23 -- Establishment of a sister state relationship with
Taiwan

On the advice of Representative Abood's staff, I contacted Senator Stevens' office regarding this resolution. Bill Phillips, a senior staffer, advised me that Senator Stevens does not support making Taiwan a sister state because such action might be interpreted by our other Asian trading partners as a preference for Taiwan -- a special relationship which others might not enjoy. Senator Stevens has stated these concerns in a letter to Rep. Abood in which he was also mindful of the great trade potential between Alaska and the People's Republic of China.

I also contacted Mr. Don Ferguson at the Taiwan desk of the U.S. State Department. He stressed that the language in the resolution should in no way be provocative toward the People's Republic. For instance, use of the term "Republic of China" to refer to Taiwan is considered highly inflammatory and could damage U.S. relations with the People's Republic. He also said that Taiwan officials have approached a number of state legislatures with these resolutions and he counseled extreme caution in considering them. Senator Ziegler's staff is aware of this problem and has submitted a draft committee substitute which has eliminated the "provocative" language.

Mr. Ferguson was very diplomatic about not trying to influence the Alaska Legislature but he did stress that these resolutions can cause problems in maintaining the United State's formal relationship with China.

Senator Vic Fischer
Page 2
June 15, 1983

At the suggestion of one of your constituents, I also contacted Nick Rizza in the San Francisco office of Amnesty International. That organization is very concerned about the long term detention of prisoners of conscience by the Taiwan government. There are approximately 120 such prisoners, 20 of whom have been jailed for more than 30 years for non-violent expression of political beliefs. One trade unionist has been imprisoned since 1950. Another "communist" was recently released after having been imprisoned since 1949 for tacking up a poster. There is also concern about secret executions.

Several Alaska human rights organizations have been following the progress of HJR 42, the identical House resolution, and are likely to have representatives at future hearings.

Given the sensitive foreign policy implications of this resolution, I suggest that the State Affairs Committee give it careful scrutiny before passage is considered.



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Dec. 16, 1983

The Hon. Vic Fisher
Senator
Alaska State Senate
Pouch V, State Capitol
Juneau, AK 99811

Dear Senator Fisher:

For your information, I am enclosing herewith a copy of the China Post article, which is self explanatory.

The proposal put forward by Mr. C.T. Koo is widely believed to be one of the best ways to better balance the two-way trade between our two countries. It is hoped that with continual mutual efforts and due deliberation, a good result beneficial to both side can be brought about.

Wishing you a merry Christmas and a happy New Year,

Sincerely,

Y.C. Chen
Director

CYC/cl
Encl: as noted

Views and quotes from local press

Alaskan oil

At the joint business conference of the USA-ROC and the ROC-USA Economic Councils, C. F. Koo, chairman of the ROC-USA Economic Council, appealed to the U.S. to sell Alaskan oil to the Republic of China. This would be a good way to improve the

structure of ROC-US trade and narrow the trade gap between the ROC and the U.S.

We hope that Mr. Koo's appeal will receive a response from the U.S. government and that the appeal will pave a new way for ROC-US trade. Economic Daily News, Nov. 30

(of the Republic of China)
on Taiwan



To Free China

By Aleksandr Solzhenitsyn

An Address Delivered in Taipei
Republic of China
October 23, 1982
(Translated from the Russian)

To Free China

By Aleksandr Solzhenitsyn

For 33 years, Taiwan, I believe, has attracted, by its specific fate, the attention of many people throughout the world. I myself felt that way long ago. Three score countries have already fallen under the yoke of Communism. Scarcely one of them has been fortunate enough to retain even a tiny patch of its independent national territory, where its state authority could continue to develop despite the disruption, and through comparison show the world the difference between itself and Communist disorganization. In Russia, such a patch of land could have been Wrangel's Crimea. But lacking any external support and abandoned by its unfaithful former allies, it was soon crushed by the Communists. But in China, thanks to a wide Strait, a fragment of the former state became the Republic of China on Taiwan, which, for a third of a century, has proved to the world what heights of development could have been reached if the whole of China had not fallen under the yoke of Communism. Today, the Republic of China on Taiwan differs from the other in its development, its industrial achievements and the well-being of its population, thereby proving how logically the forces of a nation can be guided, if they are not in inimical hands.

It would seem that the population of our planet should clearly perceive such an instructive comparison and should have its eyes opened to

see how peoples who escape Communism flourish and how those who fall victim to Communist tenets perish by the millions. The history of Communist destructions in the Soviet Union, Poland and Cambodia are now known to all. The history of the millions destroyed in China, Vietnam or North Korea is yet to be revealed in detail, but many signs allow us to judge this history even now.

But NO! It is Free China which has had to endure and suffer from the greatest injustices and ignoble attitudes of other countries. The United Nations, long degraded to an irresponsible side show, disgraced itself by expelling from membership the 17 millions of Free China. The majority of countries on our planet treacherously expelled your country from the U.N., whose delegates, adding insult to injury, whistled, jeered and shouted. The majority of Third World countries behaved like madmen who don't know the price of freedom but are themselves waiting for the kick of the boot.

For centuries the Western World has known very well the price of freedom. But with years passing and well-being achieved, it is less and less prepared to pay for it. The Western people value their state systems but are less and less inclined to defend them with their own bodies. From decade to decade, the West has become increasingly senile and unable to defend itself. The betrayal of one country after another had already begun before the Second World War. Afterward, no scruples were felt in abrogating the whole of Eastern Europe just for the sake of the West's own well-being. How easy it was to betray the government of Mikolaychik; how easy it was to withdraw support from one's ally, Chiang Kai-shek. And soon we shall witness how one country will betray another for the price of surviving just a little longer. Should it be surprising that the majority of the frightened Western countries are even afraid to sell you weapons for fear of angering Peking. That's how much their drive and con-

cern for freedom is worth. Meanwhile, threatened Europe should understand your position better but is so cowardly that it fails to recognize that the Republic of China and other countries of Asia are themselves endangered. Just recently, the former premier of Japan declared that the arming of Free China would destabilize the Far East! What more can be said?

They are all obsessed with the search for self-protection and the quest for a stand-in. So there emerged an attractive myth—that there are "bad" and "good" Communisms. And out of such a myth grew the image of Communist China as a good-natured peacemaker! But should that be surprising—when in South Korea, which herself survived a Communist assault, there exists a myth that actually the Soviet Union is not directly hostile to them, not so much an enemy, not like North Korea. The South Koreans have also been doing their utmost to curry favor with Peking. Now they are hesitating about whether to give a defecting Red Chinese aircraft to Free China.

No, it is not out of shortsightedness, not out of stupidity, that such myths are believed, but out of despair, out of the loss of spirit.

In a particular relationship to you is the United States of America. Up to this day, the United States provides the only outside guaranty restraining the Communists from attacking your island. But how difficult it becomes for the United States to remain faithful to Taiwan; how much has already been lost on the way! The Americans have also succumbed to the general world trend to leave the Republic of China to its perils, to abandon it to its fate. America moved to abrogate its diplomatic relations with the R.O.C. For what? For what fault of hers? Only to follow the futile Western dream of gaining an ally in Communist China. America has restricted its connections with you, curtailed its military support and is denying you much of what you need.

What pressures have been exerted upon American presidents, urging surrender of Taiwan! Not all of them could bear the strain. Here we have a former president, just back from a visit to China, where he flattered his hosts by saying that "a strong Communist China is a guarantee for peace" and that America seems to be interested in a strong Red China. Such people in former years have governed the United States and there is no guarantee that another such person might not succeed President Reagan.

The United States is highly heterogeneous. There are many currents, of which the capitulatory tides are quite powerful. Extremely powerful circles are leaning toward betrayal of a free country in favor of a friendship with a totalitarian one. They gladly picked up the hypocritical offer from Communist China on "peaceful unification." Many American journalists cry from the rooftops that Peking is now "bound by promises" to effect unification peacefully. They wanted to forget, and therefore successfully forgot, how many times the Communists have already cheated. The experience of "governments in concert with Communists" in postwar Eastern Europe has taught no lesson. This hopeless experiment now is being conducted in Cambodia. Similarly, according to Kissinger's agreement, North Vietnam was "bound by a ceasefire"—until it set the day for the seizure of South Vietnam. And leading American newsmen reached such heights of stupidity as to write that the United States doesn't make mistakes. If Red China "breaks its promise" and seizes Taiwan by force—then—only then—America would be freed from obligations and could again start to deliver arms...to whom, then?...Yes, such delirium appears on the pages of leading American newspapers, and they don't realize what they are doing!

And thus the influential circles in the United States want to force Taiwan to accept capitulatory negotiations, to relinquish voluntarily its freedom and power.

What, then, does Communist China want from you? Certainly, it is eager to grab your blossoming economy, to plunder and devour it. After all that has happened in the 20th century, only shortsighted simpletons can trust Peking's promises that it will totally preserve your economic and social system, and even your armed forces along with some elements of freedom. But the main issue is not to take away your wealth, to steal the fruits of your hard work. The main thing is that the Communist system does not tolerate any deviation in anything or anywhere. Not even the wealth of your island is important. What matters is the deviation from their system. Communist China hates you for your economic and social superiority. For them it is not permissible that other Chinese should know that there can be a better life without Communism. The Communist ideology does not tolerate any islets of freedom. And so, with all their might, the Communists want to cut off the sale to you even of defensive arms, to try to weaken your defense capability, to disturb your balance of power in the Straits—and thus to bring closer the day of intrusion into your island.

In order to nurture the apathy of the United States, Red China plays speculatively on the negotiations between Peking and Moscow on matters of China-Soviet rapprochement. Such rapprochement is not make-believe. It is a very realistic perspective. Both governments have long had common roots, a fact which everybody seems to forget. As far back as 1923, a Soviet agent Grusemberg, alias "Borodin," prepared a Communist coup, and it was he who promoted Mao Tse-tung and Chou En-lai to the highest positions in the party.

All that I am telling you—because of the deadly danger in which you find yourself—is understood well by many, if not yet by all. The threat is understood better here than in South Korea, where the young generation, the students, have quite forgotten the brief horrors of

Communist intrusion, so that the present freedom seems to them not enough. But they will remember and revalue their present "nonfreedom" when, after a command "hands back," they are driven under armed guards into concentration camps.

It seems to be fashionable in the West to demand from all who stand in the forefront of defense, under machine-gun fire, to demand the widest democracy, and not just simple, but absolute democracy, bordering on total dissoluteness, on state treason, on the right to destroy their own state and country—such freedom as Western countries tolerate. Such is the price the West demands from each menaced country, including yours. But it seems that on your island the logical limits are known and will sustain your struggle.

There is another danger stalking you. Your economic successes, your living standards and well-being are of a two-fold nature. These are the bright hope of all the Chinese people. But they also can become your weakness. All prosperous people tend to lose the awareness of danger, an addiction of the good living conditions of today, and consequently lose their will for resistance. I hope and I urge you to avoid such a weakening. Don't permit the youth of your country to become soft and placid, to become slaves to material goods, until finally they will prefer captivity and slavery to the struggle for freedom. That for 33 years you lived peacefully does not mean that you might not be attacked in the following three years. You are not a serene, care-free island; you are an army, constantly under the menace of war.

You are 18 millions, about as many as there are Jews in the world, and your problem is of the same dimensions. But the Jewish problem attracts the attention of all states and has become one of the central problems of contemporary times. Comparing this with the uniqueness of your position, I don't perceive why the fate of

Taiwan should not command the equal attention of the world.

But in today's world betrayal from weakness reigns supreme, and it is only your own strength upon which you can really rely. But there is also one bigger and brighter hope: the peoples of the enslaved nations, who will not endure indefinitely but who will rise in one menacing hour—menacing to their Communist rulers.

In your books you write that your island is a "bastion of national recovery." So be it! Not only defense, not only self-preservation should be your goal—but help, but the liberation of your compatriots suffering on the mainland, and first of all, through free and courageous radio broadcasts.

It may seem, since no one comes to mind, that you have no firm, reliable allies, although they might appear in the hour of destruction. But you have the most formidable ally in the world: one billion Chinese people. Their sympathy is your moral and spiritual support. Just a few days ago, you had an encouraging signal from your compatriots through the act of defection of a Red Chinese air force pilot. Often I think of still anonymous prisoners of the Chinese Gulags whose true story might not be told until the 21st century.

All the oppressed people, including the peoples of the Soviet Union, cannot rely on outside help, only on their own strength. At the best, the whole world would watch indifferently, but possibly with a great deal of relief, if the mad rulers of China and the USSR should unleash war among them, I hope that won't happen. But in any case, let us testify here and now to the mutual amicability and trust between the Chinese and Russian peoples, to the absence of contradictions amongst them; even more, let us hope for a union of our long suffering compatriots against both Communist governments. Whatever might happen be-

tween these two self-interested, anti-national governments, let us preserve mutual understanding, mutual compassion and friendship; let's not allow them to blind our eyes and deaden our ears through fruitless national hatred.

We don't know how long the plague of Communism will affect our world. One hundred and thirty-five years ago, who would have told the leaders of the then great empires that the tiny group of utopians—Communists who organized themselves in Europe—would conquer them all with iron and blood, and force to their knees their might and pride? They would not even have smiled at such a prophecy. Such forces could not then be seen anywhere. The strength of the Communists was based on their drive and their cruelty; the weakness of the West was rooted in the absence of the will to fight.

We don't know what whimsical zigzags human history will follow. I have already expressed a supposition that world Communism will outlive both Soviet and Chinese Communist regimes and spread over other countries, many of which are still eager to experience Communism. But in our two countries national common-sense shall finally prevail!

Anyway, both our peoples have suffered too much, lost too much! They are already moving along the way of liberation and recovery! □

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Report on

Martial Law

and

Political

Development

in the Republic of China
in Taiwan

By Thomas A. Metzger

Report on

Martial Law

and

Political

Development

in the Republic of China
in Taiwan

A written testimony presented at the hearing on the "Martial Law on Taiwan and United States Foreign Policy Interests" before the Subcommittee on Asian and Pacific Affairs of the Committee on Foreign Affairs, House of Representatives, ninety-seventh Congress, second session, May 20, 1982.

Report on Martial Law and Political Development in the Republic of China in Taiwan

by *Thomas A. Metzger*
Professor of Chinese History,
University of California, San Diego

In discussions of martial law as it exists in the Republic of China in Taiwan (R.O.C.) today, one often finds the following argument:

1. Martial law in the R.O.C. is severe and has a broad scope. Most people in Taiwan feel oppressed by it, just as the Poles feel oppressed by their system of martial law.
2. The R.O.C. faces no serious external or internal force threatening its survival and so lacks any excuse for perpetuating martial law.
3. Martial law in the R.O.C. is part of a repressive political system that has undergone no significant democratization and has made no major contributions to the well-being of the people of Taiwan. The great progress that has occurred on that island since the Kuomintang arrived there in 1945 is to be credited only to the hard work and ingenuity of the people of Taiwan, not to the policies of the Government set up by the Kuomintang.
4. Even if there has been a little democratization, the pace of democratization has been unreasonably slow.
5. If the pace of democratization in Taiwan were quickened, efforts to solve a number of international problems would be facilitated. The more democratic the R.O.C. becomes, the more easily will it be able to arrive at a satisfactory settlement with the P.R.C.
6. Unless the pace of democratization in Taiwan is quickened, the U.S. should reduce still more its

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remaining commitment to the security of the R.O.C.

This argument, however, is not sound. There are many reasons why we Americans have found it difficult to evaluate Taiwan's political development. For one thing, our political scientists have not provided us with handy concepts that we could use to sum up the nature of Taiwan's Government. As Su Nan-ch'eng, the Mayor of Tainan said in 1978 when, as a moderate dissident, he was interviewed for a dissident publication: "If you want to use current political theory to understand our political structure, I can guarantee that you won't get anywhere."¹ The R.O.C. is today classed as an "authoritarian" government, but it is very different from most others in this category. Moreover, ever since the Kuomintang was defeated by the Communists in 1949, many American China experts have had a low opinion of it and have developed the view that only the Communists should be taken seriously by the U.S. The Kuomintang deeply believes that China must be saved from Communism, but for many American intellectuals, anti communism is associated with McCarthyism, and an empathetic approach to the P.R.C. has become common.² In this climate of opinion, many Americans have overlooked massive human rights violation in Communist China while objecting strenuously whenever the R.O.C. put any limits on political dissent. Finally, we Westerners have had trouble understanding the political culture of the Chinese. Yet this political culture has greatly affected their political development.

I

Turning now to the first of the six points above, I find convincing the evidence that martial law in Taiwan is applied only to a tiny percentage of the criminal cases and has no serious effect on the vast majority of the people. In 1976, only .29% of all criminal cases were handled on the basis of martial law.³ As Professor Hundah Chiu has pointed out, the R.O.C.'s martial law resembles the "state of siege" in civil law countries,⁴ and it is free of oppres-

sive measures like curfews that affect daily living. Despite the tenseness following the Kao-hsiung Incident of December 10, 1979, Taiwan's political and intellectual life has in recent years been becoming steadily more open and pluralistic. Martial law serves to fix the parameters of political dissent, but these parameters have become broader, not narrower, in the last decade, as discussed below. I am personally acquainted with a large variety of people in and from Taiwan, including native Taiwanese, and have found that among them, only those few who are radically and actively opposed to the Government feel seriously troubled by the R.O.C.'s martial law. Martial law is seen by many as needed to counter the threat of Communism, and in the Legislative Yuan, which has a good number of *tang-wai* (outside the Kuomintang) members, and which can request the President to terminate martial law, there has been no significant movement toward such a request. Needless to say, Taiwan entirely lacks any popular movement like Poland's Solidarity demanding the end of martial law.

II

Second, the R.O.C. faces external and internal forces that seriously threaten its security and survival. As Professor A. James Gregor will establish in his testimony on May 20 before the Subcommittee on Asian and Pacific Affairs, threats of such a magnitude have in many modern nations been regarded as calling for the imposition of martial law or equivalent regulations, such as the "emergency regulations israel inherited from the British High Commissioner in 1948" and still maintains.⁵

One cannot say that there is no serious threat of a military invasion of Taiwan. One can only say that this invasion is unlikely within the very next months. The P.R.C. has made the take-over of Taiwan one of its three main goals in the 1980s; has repeatedly insisted (as late as July 4, 1981) that it may use force to realize this goal; and now confronts a relatively small state which not only is without any military ally but also is having great difficulties keeping up the technological credibility of its defenses.

Recently a group of top China experts was called together by the Council of Foreign Relations to analyze the Chinese situation, including the military threat posed by the P.R.C. to the R.O.C. Among them, Richard H. Solomon could conclude only that the R.O.C.'s "short term" security had not yet been compromised.⁶ Yet any nation has to worry about its long-term security as well. Robert A. Scalapino, an especially objective observer, stated that under "present circumstances, the use of force to 'liberate' the island is completely unfeasible," but that if one asks whether the P.R.C. will ultimately use force, "no answer to this question is possible now." Added Scalapino: "There are ways in which PRC actions could strike at Taiwan's security and, more particularly, its economic and political stability, short of all-out warfare. A blockade or a single attack upon a Taiwan merchant ship, for example, might have a serious effect on the island's morale or political stability."⁷

The nervousness generated by this possibility of Communist aggression mingles with complex domestic feelings that could affect the stability of the Government. Most important, the Government is faced by a small group of revolutionaries who hate it just as the P.L.O. hates Israel. Their American friends regard them naively as brave and able citizens who have spoken out for democracy. Some of these people, though, have decided that the time in Taiwan is ripe for a bloody revolution, even though the overwhelming majority of the people in Taiwan abhor the thought of violent revolution and want peaceful, legal change.

For example, after the magazine of the extreme dissidents, *Mei-li-tao* (Formosa), was banned in late 1979, their sympathizers in the U.S. republished the four issues of *Formosa*, adding in a foreword that "More than thirty years ago, the February 28, 1947 revolution was crushed, but the torch of the struggle has been passed down without interruption, and through alternating legal and illegal forms of struggle, it has been kept alive."⁸ Bombings, in the U.S. as well as Taiwan, have illustrated the "illegal forms of struggle." In the November 28, 1976 issue of

T'ai-tu (Taiwan Independence), these revolutionaries took credit for the bombing that blew off the left hand of Hsieh Tung-min a native Taiwanese who then was Governor of Taiwan. In a 1981 report of the State of California's Bureau of Organized Crime and Criminal Intelligence, "Organized Crime in California: 1980," it was stated: "A group of U.S. based Taiwanese extremists (often referred to as the Taiwan Independence Movement) seek the removal of the Nationalist Chinese government as the controlling force in Taiwan. In our 1979 assessment, we predicted the movement would become more violent. In 1980, at least five bomb incidents in Southern California were the suspected work of Taiwanese extremists. The targets included private residences and one airline company. These bombings resulted in one death" (pp. 1-2).

The revolutionary intentions of the extreme dissidents were also made clear in some of the testimony at the trial of those dissident leaders held responsible for the Kao-hsiung riot of December 10, 1979, even though these intentions were expressed ambiguously as the defendants denied they were guilty of sedition. I am referring here to testimony freely offered in an open court setting, not to the controversial confessions made before this public, open trial. On March 21, 1980, the defendant Yao Chia-wen admitted that in formulating "five principles" to guide the dissident movement, he adopted the idea of *peo-li pien-yuan* (at the margin of violence). He explained: "We do not want to use violence, but if someone violates our rights, we must use violence to protect ourselves; we cannot hesitate to use violence to resist" (*Chung-yang jih-pao*, March 22, 1980, p. 2).

To understand this statement, we have to remember that for Yao Chia-wen, "rights" included the right to hold political demonstrations in defiance of Government orders limiting them. No one denies that on December 10, 1979, the riot in Kao-hsiung occurred after the dissidents refused repeatedly to obey the Government order to hold their rally in front of their magazine offices. Yao Chia-wen's idea of justified violence is revealed

also by the following exchange at his trial:

- Prosecutor : "Did the Iran upheaval excite you people very much?"
Yao Chia-wen: "It excited us a lot."
Prosecutor : "Do you mean then that it showed that one could use the masses to overturn the Government?"
Yao Chia-wen: "No. It just showed that the Iranian army could not keep down the masses" (*Chung-yang jih-pao*, March 22, 1980, p. 2)

Shih Ming-te's interrogation in open court was on March 20, 1980. He expressed clearly the extreme dissidents' hatred for the Government and their refusal to see that, whatever the shortcomings of Taiwan's political system, it was superior to Communist totalitarianism. Thus Shih Ming-te dismissed the danger of a Communist take-over as *i-pao i-pao* (replacing one tyranny with another) (*Chung-yang jih-pao*, March 21, 1980, p. 2).

In evaluating the internal threat to political stability in Taiwan, moreover, we should realize that although the Kao-hsiung defendants were extremists from whom moderate dissidents disassociated themselves, many Chinese intellectuals refuse to recognize the vast difference between Kuomintang shortcomings and Communist totalitarianism. Instead of criticizing their Government realistically, noting its successes as well as its failures, they insist on approaching politics with a lofty, utopian standpoint from which the difference between the two Chinese governments is only one of "degree." During the December, 1980 election campaign, for instance, I visited K'ang Ning-hsiang's campaign headquarters in Taipei and found a cartoon which, displayed on a sidewalk bulletin board, depicted dissenters imprisoned in both the R.O.C. and the P.R.C. and so suggested that in these two states, dissenters are identically treated. As is typical of them, the K'ang Ning-hsiang people did not realize that this claim of theirs was refuted by the simple fact that they were able to make it in the public way. (K'ang went on

to win the election and is a respected politician in Taiwan today.)

Still more basically, if one looks at all the political writings of Taiwan's two most distinguished political critics in the 1950s, Hsu Fu-kuan and Yin Hai-kuang, one finds only contempt for the Kuomintang, not one word of approval for any of its policies. Yet in those very years, the Kuomintang was initiating many of the economic and social policies that have since borne such amazing fruit.

This tendency toward one-sided political criticism has deep traditional roots, since the Chinese intellectual has traditionally had the self-image of one who "protests against" (*chien*) the abuses of government and so disassociates himself from "hypocrites" (*hsiang-yuan*) who praise the government. Whatever its roots, however, this tendency toward one-sided, exaggerated criticism of the R.O.C.'s Government has not helped the cause of political stability. Thankfully, political criticism in Taiwan has recently become more sober and sophisticated, as illustrated by magazines like *Chung-kuo lun-t'an* (Chinese Forum).

III

With regard to the third point above, I think that it is mistaken to hold that the R.O.C.'s Government is an essentially repressive system which has failed to carry out significant democratization, and which deserves no credit for Taiwan's many successes in recent decades.

Taiwan today is a mix of dictatorial and democratic tendencies. Democratic tendencies are evident, first, in the Kuomintang's ideological commitment to democratization. This promise to democratize, based on Sun Yat-sen's "Three Principles of the People," is pounded daily into the minds of the people by the media and the educational system and so has become an important political factor.

Second, this promise is connected to the pluralism of intellectual life. Virtually anything can

be said and published in Taiwan today with the exception of two taboos, advocating Communism or advocating that the R.O.C. give up its quest to offer China an alternative to Communism, that is, advocating the establishment of Taiwan as an independent nation. The magazines are full of nearly all kinds of intellectual trends, ranging from Pragmatism, Freud, and the Frankfurt School to Confucian metaphysics and American social science.

Publications lambasting the Government can be openly bought. True, some go a bit too far and are banned, such as Chang Fu-chung's and Lin Cheng-chieh's *Hsüan-chü wan-sui* (Elections Forever!), an account of the 1977 riot in Chung-li. Yet one can openly buy Hsü Fu-Kuan's *Hsueh-shu yü cheng-chih-chih chien* (Between the Worlds of Scholarship and Politics, *T'ai-wan Hsüeh-sheng shu-chü*, 1980), which, as the work of one of modern China's most prestigious scholars, establishes a powerful critique of the Kuomintang and on p. 259 even questions the constitutional legitimacy of the Government. Similarly, the editor of another collection of Hsü's political writings, *Ju-chia cheng-chih ssu-hsiang yü min-chu tzu-yü jen-ch'üan* (Confucian Political Thought and Democracy, Freedom, and Human Rights), notes that Hsü "put hope" in Communist leaders like Chou En-lai, who sought to "reduce the suffering of the people" (*Pu-shih nien-tai ch'u-pan-she*, 1979, p. 23). Although thus contradicting the official view of the "Communist bandits," this book also was sold openly. My own *Escape from Predicament*, which includes an unbalanced, rather favorable view of Mao's leadership, was pirated and sold openly in Taipei until I bought up the last ten copies.

It should be added that banned books often circulate anyway, and that the authors of banned books often continue to prosper. Lin Cheng-chieh is today an elected, non-Kuomintang member of the Taipei City Assembly, but Chang Fu-chung was convicted and sent to jail for his part in the 1979 Kao-hsiung riot. Their respective fates precisely illustrate how the Government sets up rather broad parameters of dissent, uses mild sanctions for minor infractions, and uses the criminal law for actions seen

as threatening destabilization. By definition, a gradually democratizing country is not yet fully democratic and so still limits dissent more than the U.S. does. But in Taiwan the limits are demonstrably broad and are perceived as tolerable by many if not most of the people.

A third aspect of democratization is considerable respect for law. Even the dissidents have offered testimony on this. Interviewed by a dissident in 1978, one year before he was arrested for his part in the Kao-hsiung riot, the lawyer Yao Chia-wen was described by his interviewer as extremely successful in helping dissidents engage in political work by protecting them legally. Yao emphasized that his work helping dissident candidates in the elections had neither hurt his prosperous business as a lawyer nor in any other significant way involved him in difficulties with the Government. Could a civil rights lawyer in the American South one decade ago have been similarly free of harassment?

To be sure, equal justice under the law is not an ideal perfectly realized in Taiwan. Yao Chia-wen in this same interview also said that while the dissidents' slightest infraction provoked prosecution, Kuomintang people could commit minor crimes with impunity. Yet even if true, this very claim showed that the Government respected the law enough to leave alone any dissident who followed the law.⁹ Such a degree of respect for the law is taken for granted in the U.S. but is a sign of progress in a gradually democratizing society.

A fourth aspect of democratization is the developing election system. True, most of the seats in the two key organs of power—the National Assembly and the Legislative Yuan, are still not filled by persons elected by the voters in Taiwan. But with the election of December 6, 1980, about 12% of the seats in the National Assembly and 35% of the seats in the Legislative Yuan were thus filled by voters in Taiwan. Thus the precedent for fully democratizing these two organs has been established.

Candidates bitterly critical of the Kuomintang

often run for office and win. In the December 6, 1980 elections for these two organs, roughly 26 such dissidents ran and 10 won, including Chou Ch'ing-yü, the wife of Yao Chia-wen (the Kao-hsiung defendant), and the prominent K'ang Ning-hsiang, a moderate dissident.

Nearly all important local and provincial offices are democratically filled through elections. The campaigning activities of all candidates are still restricted by law, but ballot counting, since at least 1977, has generally been honest, and the dissidents have repeatedly won 30% to 35% of the vote. The 1980 elections apparently marked the first time that the Kuomintang did not use the educational system to spread propaganda in favor of its candidates. Again, the basic neutrality of the educational system is taken for granted in the U.S., but the differentiation of cultural from political organizations is a major structural change in a gradually democratizing society.

A fifth aspect of democratization is the powerful role played by native Taiwanese in Taiwan: they dominate the booming economy; they constitute 60% or more of the Kuomintang membership; whether as Kuomintang members or dissidents, they run for and fill nearly all elective offices; they affect military policy because they dominate at least the lower military ranks; and they are increasingly occupying the most important offices, as illustrated by the current head of the Garrison Command, which administers martial law (Ch'en Shou-shan), the Governor of Taiwan (Li Teng-hui), and the Vice President (Hsieh Tung-min).

All in all, although dictatorial tendencies persist, including, no doubt, some manipulation of the law on behalf of elite interests, these five tendencies constitute a major chapter in the democratization of the Chinese political process.

Still better known, however, is the Kuomintang's contribution to Taiwan's excellent economic development, which cannot be credited only to the hard work and ingenuity of the people of Taiwan. Thus

Simon Kuznets, who won the Nobel Prize for his work on economic growth, and who was amazed by Taiwan's economic development, ascribed the latter partly to "the complex of policies and policy actions — by the government, by other decision-making institutions, and by voluntary social and economic groups . . ."¹⁰

The important role played by the R.O.C.'s Government can be quickly seen when we outline the nature of Taiwan's economic success and the factors that brought it about. This success has consisted not just of rapid growth of per capita GNP but also of rapid growth combined with containment of the ills of growth, namely, inflation, instability, unemployment, ecological damage, and a growing gap between rich and poor. The R.O.C.'s GNP grew in 1950-1980 at an average rate of 9.2%, compared to 4.8% in the P.R.C. Unemployment was virtually eliminated by the 1960s. Inflation after the 1950s and before 1980 was around 3%, except for the 1974 and 1979 oil crisis. Most strikingly, income distribution became fairer, a most unusual occurrence in developing countries.

Clearly, all this was possible because the R.O.C.'s leaders neither cut their country off from world capitalism by turning to the socialist model of wealth redistribution and collectivization, nor adopted a *laissez-faire* policy toward the forces of the international free market *a la* Milton Friedman. Instead they combined access to world capitalism with a complex of governmental policies modulating the economy.

Altogether, some nine policies and other factors were responsible for Taiwan's economic success. First, Taiwan enjoyed both the disadvantages and the advantages (cheap labor) of the typical backward country. Second, American aid was crucial for capital formation until 1963, when domestic savings took over. Third, population policy helped reduce the birth rate. Fourth, land reform in 1949-1953 eliminated landlordism and increased agricultural productivity. Fifth, the Government built up a large public sector while still emphasizing the private.

Sixth, it carefully nursed the private sector along. Beginning in 1953, it created a series of economic plans. Import substitution was the rule until 1961, when export growth became the main goal. Working with business leaders, the Government repeatedly switched from one export sector to another, from canned mushrooms to textiles in the late 60s, to electrical machinery in the 70s, and then to petrochemicals. It could encourage these shifts by using monetary, fiscal, and credit tools, and it habitually balanced its budget, stemming inflation and encouraging savings. Seventh, from the start it poured money into education, thus creating a skilled labor force that could move from one job to another learning new techniques and so enabling Taiwan to stay ahead of world market trends instead of pathetically depending on world demand for a single crop or mineral product. Eighth, the content and the quality of education were enhanced by Taiwan's ideological climate, which increasingly minimized taboos and allowed students access to all traditional learning and much cosmopolitan learning, in contrast to the Communist policy of cutting off nearly all such access. Ninth, the tendencies toward democratization, noted above, also facilitated the flow of information and the employment of the talented. At the same time, the Government, partly in a dictatorial way, provided the political stability vital for economic development, and outstanding leadership was supplied by President Chiang K'ai-shek and, later, by his son, President Chiang Ching-kuo.

IV

We turn now to the fourth point on the list above. Granting that the R.O.C.'s Government has greatly benefited the people of Taiwan by implementing a variety of successful economic and social policies while also carrying out significant democratization, some might nevertheless argue that the pace of democratization has been unreasonably slow. This point may be valid to some extent only if in making it one realizes that, whatever the pace, democratization in China can be carried out only gradually. The difficulties of democratization in China are too great to permit the kind of immediate

and total democratization that the Kuomintang's extreme critics often demand, and certainly a violent revolution in the name of immediate and full democratization would be catastrophic.

First, as is well known, democratization in any historical setting has proved to be a long, difficult process. Even the history of the U.S. has been repeatedly marred by tyrannical, unjust, and corrupt tendencies. As the great legal scholar Roscoe Pound said in about 1948, "It is wholly unreasonable to expect the administration of justice in China to be one hundred per cent perfect. Certainly American administration of justice is far from perfect, although it has had three centuries to develop in colonial and independent America . . ." ¹¹

Second, democratization has proved particularly difficult throughout most of the non-Western world. Professor A. James Gregor's testimony will indicate that in this framework of comparison, the R.O.C.'s record is good.

Third, one has to add the difficulties of democratizing while simultaneously mobilizing people in order to cope with the external and domestic threats to security noted above.

Fourth, one has to consider the ways in which China's inherited political culture has impeded democratization. The fact that mainland China turned to totalitarianism while Taiwan turned only slowly toward democratization cannot be blamed simply on the shortcomings of China's leaders. Although differing on the details, most specialists have agreed that democratization was impeded by inherited cultural or intellectual patterns. According to the recent work of an astute Hong Kong thinker, Lao Su-kuang, the disaster of Chinese Communism arose out of an irrational utopianism that in turn grew out of the frustrations suffered by the early Chinese modernizers, whose inherited culture prevented them from dealing realistically with the practical problems of their time. ¹² In this inherited culture, one can find also other tendencies incompatible with what we Americans usually regard

as democracy, such as the authoritarianism inherent in the family system, and the intellectual's self-image as a utopian, moralistic, and distrustful critic of the government, discussed above. Similarly, Western scholars studying the concept of democracy advanced by key modernizers, such as Yen Fu, Liang Ch'i-ch'ao, and Sun Yat-sen, have noted that these ideological pioneers unconsciously filtered out key aspects of democracy as it had developed in Great Britain and the U.S. Emphasizing democracy as a totally moral community based on absolute moral knowledge and uniting the interests of the state and the individual, they filtered out the Western vision of democracy as a morally imperfect way of modulating the interplay of interests between individuals lacking absolute moral knowledge as well as any desire to become one with the state.

Therefore it is certain that as the Chinese in Taiwan pursue their ideal of democracy, they will build a political system somewhat different from what we regard as normal and desirable. If we then want to criticize them, we should remember not only that democratization in a non-Western culture is bound to be a slow process but also that the Chinese goal of political pluralism differs from ours. Trying to understand this complex Chinese situation is difficult, but one of the worse things we can do is automatically to side with the Chinese dissenter who believes that only tyrannical Chinese leaders stand in the way of China's immediate and total democratization. The more thoughtful among the dissenters have themselves granted that inherited cultural tendencies, not only governmental policies, impede democratization. That was the whole point of the famous liberal Yin Hai-kuang's major work, *Chung-kuo wen-hua-te ch'ian-wang* (A Reappraisal of Cultural Change in Modern China), published in 1966 in Taipei by *Wen-hsing shu-ch'u*.

V

I will now try to turn to questions asked of the witnesses to the May 20, 1982 hearing which the above remarks have not touched on, while also dealing with points five and six on the list above.

"What would happen if Taiwan ended martial law? . . . If democratization occurred on Taiwan, . . . would it in any way make less likely what happened with the Shah in Iran?" In my view, Taiwan and the Shah's Iran are as different as two countries could be, as is obvious from the above discussion of Taiwan's successful modernization. Moreover, democratization is already under way in Taiwan. The question, as I see it, really refers to the pace of democratization. Martial law is one of the main factors limiting that pace. It should be ended as soon as hastening democratization does not endanger the security of the state, but identifying that moment is a judgment call we Americans are not equipped to make.

Would "a more democratic regime in Taipei . . . be more confident and able to respond to Peking's offer of exchanges in mail, family visits, culture, commerce, etc.?" This question presupposes that it is desirable for Taipei to respond positively to these offers. Taipei, however, is determined to keep Communism out of Taiwan. Why, then, cannot Taipei keep Communism out but let traffic with Communist China in? I think the answer is that in China, the process of politics is more ideological and less pragmatic than in the U.S. This is a point that I found was obvious to some Chinese Communists too. Talking with me, they agreed that any nation's activities depend on its *ssu-hsiang* (official way of thought). The R.O.C.'s way of thought, the Three Principles of the People, is vastly different from the Marxist and includes the proposition that Communism is evil. Once legal traffic between the Mainland and Taiwan began to flow, many in Taiwan would not understand why they should oppose Communism. Taiwan would then become susceptible to Communist propaganda, and a Communist takeover would soon follow. This is the legitimate fear that many have in Taiwan.

Would "Beijing . . . see democratization on Taiwan as threatening Beijing's vital interests?" I think so. If democratization took the route of turning Taiwan into an independent nation, Peking would certainly object. If democratization continues within the Kuomintang framework, Peking, I gather,

will perceive it as just another aspect of Taiwan's successful modernization, which indeed serves as a source of embarrassment in Peking.

"If democratization occurred on Taiwan, would it have a helpful impact elsewhere in Asia, China and the world?" I think democratization has already begun in Taiwan and is already seen by many Chinese as one of China's main sources of hope. The analysis cited above, that developed by the Hong Kong thinker Lao Ssu-kuang, is perhaps typical. According to him, the Mainland situation can be improved only as new tides of thought enter the Mainland from Taiwan and the overseas Chinese communities. Whether or not his view is on the mark, it seems obvious that so far as Chinese interests go, successful modernization in one part of China (Taiwan) is better than successful modernization nowhere in China. Moreover, competition with Taiwan may push the sluggish Communist bureaucracy in the direction of reform.

What is the "U.S. foreign policy interest" in Taiwan? Some suggest that the U.S. should be fearful of being closely identified with a Government in Taiwan that allegedly resembles that of the Shah and so may put the U.S. in the unfortunate position of backing an unpopular regime about to fall. As I have already tried to point out, however, the Taipei Government, although vulnerable to certain domestic pressures, does not resemble the Shah's; has begun to democratize; enjoys a great deal of popular support; and so will not fall unless faced by an intolerable conjuncture of Communist aggression and dwindling U.S. support.

While the R.O.C. does not resemble the Shah's regime, it also bears no resemblance to Poland's police state. As I have argued, it does not fit into any of the ready-made categories of political science and has to be understood on its own complex terms as the one part of China where the processes of economic and political modernization are being carried out with increasing success.

Morally speaking, therefore, the U.S. should do

everything it can to help the R.O.C. maintain its security. Closer relations between the U.S. and the R.O.C., moreover, are bound to further democratization in the R.O.C., since many or most of the elite there are to varying degrees committed to democratization and naturally associate it with the American model of political development (even if they unconsciously diverge from aspects of the American model). Moreover the U.S. also has important economic interests in Taiwan.

On the other hand, as everyone knows, the U.S. interest in Taiwan is shaped by strategic and diplomatic considerations, not only moral and economic ones. As illustrated by the recently published *The China Factor*, a book edited by Richard H. Solomon and sponsored by the Council on Foreign Relations, many American experts currently favor a strategic and diplomatic policy putting primacy on ties between Peking and Washington even at the risk of gradually attenuating the U.S.'s residual commitment to the security of Taiwan. President Reagan's China policy has grown out of this consensus and is now leading precisely to the weakening of this commitment, thus perhaps forcing Taiwan to succumb to Communist influence.

Such a tragedy, however, must be averted. Moreover, there is a school of global strategy which offers an alternative to the strategic outlook developed in *The China Factor*. This school is well represented in Ramon H. Myers, ed., *A U.S. Foreign Policy for Asia: The 1980s and Beyond* (Stanford, Hoover Institution Press, 1982). I hope that before it is too late, Congress will carefully investigate our policy toward the R.O.C. and explore all its moral, strategic, and economic implications.

Firmly implementing the Taiwan Relations Act requires, I think, four steps: selling the R.O.C. defensive arms; selling them the high quality defensive arms they need to counter the P.R.C.'s numerical advantage; carrying out the Taiwan Relations Act simply as a U.S. law, implementation of which is not contingent on consultation with a foreign power; and not leaning toward the P.R.C.

position on the reunification of China. The Reagan Administration has now already decided to carry out only the first of these four steps and even seems to be considering the ending of all arms sales. I think, though, that a careful review of the moral, strategic, and economic factors will show that the Administration's policy is mistaken, and that the U.S. ought to carry out the Taiwan Relations Act in a vigorous way.

HJR

74

ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS COMMITTEE

SENATOR VIC FISCHER, CHAIRMAN

POUCH V, JUNEAU 99811

(907) 465-4954



MEMORANDUM

TO: Senate State Affairs Committee

FROM: Senate State Affairs Committee Staff

RE: HJR 74 President Ronald Reagan meets the Pope

DATE: April 24, 1984

This resolution resolves that the Alaska State Legislature welcomes the meeting in Fairbanks between President Ronald Reagan and Pope John Paul II.

Senator Vic Fischer

Introduced: 3/27/84
Referred: State Affairs

BY THE RULES COMMITTEE
BY REQUEST

1 IN THE HOUSE

HOUSE JOINT RESOLUTION NO. 74

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 Relating to the meeting of Pope John
6 Paul II and President Ronald Reagan in
7 Fairbanks, Alaska.

8 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 WHEREAS two great world leaders, Pope John Paul II and President
10 Ronald Reagan, intend to meet in Fairbanks, Alaska, in May of 1984; and

11 WHEREAS it is with great pride that the Legislature of the State of
12 Alaska, and all other Alaskans, applaud the meeting of Pope John Paul II
13 and President Ronald Reagan to address their mutual humanitarian concerns;
14 and

15 WHEREAS the Legislature of the State of Alaska admires Pope John
16 Paul's principles of cooperation and tolerance in promoting better under-
17 standing among all nations; and

18 WHEREAS the legislature commends the sharing of the ideals of Pope
19 John Paul II with our President; and

20 WHEREAS it is a great privilege and honor for all Alaskans to host
21 this historic meeting in our Golden Heart City of Fairbanks;

22 BE IT RESOLVED by the Alaska State Legislature that, with our high
23 regard for Pope John Paul II and all that he represents in his efforts
24 toward furthering world peace, emphasis of the importance of the family,
25 and his untiring dedication to promoting understanding among nations,
26 religions, and peoples, we proudly welcome the meeting of Pope John Paul II
27 with President Ronald Reagan in Fairbanks, Alaska.

28 COPIES of this resolution shall be sent to His Holiness Pope John Paul
29 II and to the Honorable Ronald Reagan, President of the United States.

HJR

77

SENATE STATE AFFAIRS COMMITTEE

Date received May 14, 1984

Bill Number HJR 77 Title Dept. of Admin. /Gen Services & supply

Fiscal Note	Position Paper	Date requested	From	Amount	Date Rec'd Note	Rec'd Paper
<u>4/26/84</u>			<u>Admin</u>			
<u>4/30/84</u>	<u>Letter fm Governor</u>					

CONTACTS

Backup list

HEARING INFORMATION

NOTES:

FINAL ACTION _____ DATE _____



Official Business

Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chair • P.O. Box V
Juneau, Alaska 99811
(907) 465-4954

Sen Bill Gray

MEMORANDUM

TO: Senate State Affairs Committee

FROM: Senate State Affairs Committee Staff

RE: HJR 77 Adopting a permanent plan for distributing federal surplus property.

DATE: May 21, 1984

HJR 77 replaces the temporary state plan for distributing surplus federal property with a permanent state plan.

A permanent plan must be in place by June 30, 1984 for the state to continue receiving federal surplus property (beginning page 1, line 27).

This resolution has a zero fiscal note.

et seq.) property under the control of a department or agency of the United States that is usable and necessary for purposes of education (including educational activities which are of special interest to the armed services), public health or civil defense, and other purposes authorized by federal law;

(2) warehouse property acquired under (a)(1) of this section; and

(3) distribute the property to tax-supported medical institutions, hospitals, clinics, health centers, school systems, colleges, schools, and universities in the state, to other nonprofit medical institutions, hospitals, clinics, health centers, schools, colleges and universities exempt from taxation under § 501(c)(3) of the United States Internal Revenue Code of 1954, including future amendments, to civil defense organizations of the state established under state law, to organizations or institutions engaged in educational activities which are of special interest to the armed services, and to other types of institutions or activities eligible under federal law to acquire the property.

(b) The Department of Administration may receive applications from the eligible institutions listed in (a)(3) of this section, including the state government and its political subdivisions, for the acquisition of federal surplus real property, investigate the applications, get an expression of views on the applications from the health or educational authorities of the state, make recommendations on applicants, needs for the property, the merits of its proposed program of use, and the suitability of the property for these purposes, and otherwise assist in the processing of applications for acquisition of real and related personal property of the United States under § 203 (k) of the Federal Act.

(c) The Department of Administration may adopt the regulations and prescribe the requirements and take other action considered necessary to administer AS 44.71.020 — 44.71.040 to assure maximum use and benefit to eligible institutions and organizations in the state.

(d) The Department of Administration may take the action, make the expenditures and enter into contracts, agreements and undertakings in the name of the state, including cooperative agreements with federal agencies providing for use by and exchange between them of the property, facilities, personnel and services of each by the other, require the reports and make the investigations required by law or regulation of the United States in connection with the disposal of real property and the receipt, warehousing, and distribution of personal property received by the department from the United States.

(e) The Department of Administration may act as clearinghouse of information for eligible institutions and organizations referred to in (a) of this section and other institutions eligible to acquire federal surplus real property, locate real and personal property available for acquisition from the United States, ascertain the terms and conditions

under which the eligible institution information in re acquire federal surplus

(f) The Department departments or agencies of operation, operations necessary to meet the Federal Act, and information which may require and the rules and regulations allocation, transfer

(g) The Department necessary to carry out eligible purposes comply with Administration purposes of this request, act as his performed under

(h) The civil division the state may be 44.71.020 — 44.71.040 done without ad employ the assistance vice necessary to (§ 2 ch 163 SLA

The department negotiate contract of surplus real federal government sioner of the state application to the Administration for property may accept

Sec. 44.71.030 functions of the 44.71.040 shall to pay for personal under AS 44.71.0 authorized under of surplus property is transferred to publish the fees to department for property.

§ 44.71.020

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STATE GOVERNMENT

§ 44.71.030

under which the property may be obtained, receive requests from the eligible institutions and organizations, and transmit to them available information in reference to the property, and aid and assist them to acquire federal surplus property under AS 44.71.020 — 44.71.040.

(f) The Department of Administration shall cooperate with the departments or agencies of the United States and shall file a state plan of operation, operate in accordance with it, and take the action necessary to meet the minimum standards prescribed in accordance with the Federal Act, and make the reports in the form and containing the information which the United States or its departments or agencies may require and shall comply with the laws of the United States and the rules and regulations of its departments or agencies governing the allocation, transfer, use or accounting for property donated to the state.

(g) The Department of Administration may perform functions necessary to carry out the transfer of federal surplus personal property for eligible purposes under Public Law 659, 1954, as amended, and to comply with regulations of the Federal General Services Administration in connection with the Federal Act. In carrying out the purposes of this subsection the department may, upon the governor's request, act as his representative in connection with the function to be performed under AS 44.71.020 — 44.71.040.

(h) The civil defense organization, officials, and contacts throughout the state may be used to assist in carrying out the purposes of AS 44.71.020 — 44.71.040 to the extent that this is feasible and can be done without adversely affecting civil defense. The department may employ the assistants and other workers in the surplus property service necessary to carry out the purposes of AS 44.71.020 — 44.71.040. (§ 2 ch 163 SLA 1957; am § 19 ch 143 SLA 1968)

The department is authorized to negotiate contracts for the acquisition of surplus real property from the federal government, and the commissioner of the state agency submitting application to the Department of Administration for the acquisition of the property may accept the transfer of property to it and obligate the agency and its funds to the extent necessary to comply with the terms and conditions of such transfers. The commissioner of the initiating department may delegate this function to any officer within the department. 1962 Op. Att'y Gen., No. 20.

erty to it and obligate the agency and its funds to the extent necessary to comply with the terms and conditions of such transfers. The commissioner of the initiating department may delegate this function to any officer within the department. 1962 Op. Att'y Gen., No. 20.

Sec. 44.71.030. Financing surplus property service. (a) The functions of the Department of Administration under AS 44.71.020 — 44.71.040 shall be, to the fullest extent possible, self-supporting. Funds to pay for personal services and all other expenses necessary to operate under AS 44.71.020 — 44.71.040 shall be obtained from appropriations authorized under AS 44.71.020 — 44.71.040 and fees charged to users of surplus property. However, no charges may be made when property is transferred for civil defense purposes. The department shall establish the fees to be charged. Charges may be made to reimburse the department for direct costs incurred on behalf of users of surplus property.

(b) The charges or fees imposed by the department for the acquisition, warehousing, distribution or transfer of federal surplus property for educational, public health, or civil defense purposes, including research, and for purposes eligible under federal law are limited to those reasonably related to the costs of care and handling in respect to acquisition, receipt, warehousing, distribution or transfer by the department. In the case of real property, the charges and fees shall be limited to the reasonable administrative costs of the department incurred in transferring the property. A reasonable reserve may be considered as a proper cost.

(c) There is a special revolving fund in the state treasury. All fees and other money collected from users and receiving agencies shall be deposited in this fund. Administrative costs and incidental expenses shall be paid from this special fund. (§ 4 ch 163 SLA 1957)

Cross reference. — For provisions as to special funds, see AS 37.05.155.

Sec. 44.71.040. Authorization to accept property. The governing board, or the executive head of a department, instrumentality, or agency of the state government or of a town, city, school district or other political subdivision may, by order or resolution, give an officer or employee of it continuing authority to get, certify, and accept the transfer to it of property under AS 44.71.020 — 44.71.040, and to obligate the authority for which he acts and its funds to the extent necessary to comply with the terms and conditions of the transfers. This authority of an officer or employee remains in effect until the order or resolution is revoked and written notice of revocation is received by the Department of Administration. (§ 5 ch 133 SLA 1957)

The department is authorized to negotiate contracts for the acquisition of surplus real property from the federal government. — See same catchline in note to AS 44.71.020.

But state agency should be bound thereon. — This section contemplated that the Alaska Surplus Supply Service

(now the Department of Administration) would negotiate the contract, but that the territorial (now state) agency making application for the acquisition of the property, acting through a duly authorized officer or employee, should be bound on the contract. 1962 Op. Att'y Gen., No. 20.

Chapter 74. Management and Disposition.

Article

1. Equipment Maintenance and Operation of Supply Depots (§§ 44.74.010 — 44.74.060)
2. Transfer to Political Subdivisions (§§ 44.74.070 — 44.74.090)
3. Department of Fish and Game Working Capital Fund (Repealed)

Article 1. F

Section

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20. Use of fund
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Sec. 44.74.010 established in Highways. (§

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Section

70. Transfer of subdivision

STATE OF ALASKA 1984 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: Joint Resolution

Title: Adopting a Permanent State Plan of Operations for Federal Surplus Prop.

Sponsor: Governor's Office

Requestor: Governor's Office

Date of Request: April 25, 1984

FISCAL DETAIL

Agency Affected: All Departments

Program Category Affected: General Services

BRU, Program or Subprogram(s) Affected:

State and Federal Property

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert J. Link

Division: General Services & Supply

Phone: 465-2250

Date: April 25, 1984

Approved by Commissioner: Lisa Rudd

Agency: DEPARTMENT OF ADMINISTRATION

Date: 4-26-84

Distribution (by Agency preparing fiscal note):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

8/11D2/0426-01

Rev. 3-20-84

Fiscal note 4/26/84

BILL SHEFFIELD
GOVERNOR



HS 77

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 30, 1984


The Honorable Joe Hayes
Speaker of the House
Alaska House of Representatives
Pouch V
Juneau, AK 99811

Dear Representative Hayes:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a resolution that provides for legislative adoption of a permanent plan of operation governing the Department of Administration's receipt and handling of federal surplus property. 40 U.S.C. 484(j)(4) requires adoption of such a plan by the legislature, and a memorandum from the United State General Services Administration sets June 30, 1984 as the final date for the effectiveness of the temporary plan that was approved under that statute. That date becomes the deadline for adoption of the permanent plan.

To assure that Alaska does not lose its eligibility for federal surplus property, I urge your prompt action on this measure.

Sincerely,


Bill Sheffield
Governor

Governor's transmittal ltr 4/30/84

Public Law 94-519
94th Congress

An Act

To amend the Federal Property and Administrative Services Act of 1949 to permit the donation of Federal surplus personal property to the States and local organizations for public purposes, and for other purposes.

Oct. 17, 1976
[H.R. 14451]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484) is amended as follows:

Federal surplus
property.
Donation to
States and local
organizations.

(1) Subsection (j) is amended to read as follows:

"(j)(1) Under such regulations as he may prescribe, the Administrator is authorized in his discretion to transfer, without cost (except for costs of care and handling), any personal property under the control of any executive agency which has been determined to be surplus property to the State agency in each State designated under State law as the agency responsible for the fair and equitable distribution, through donation, of all property transferred in accordance with the provisions of paragraphs (2) and (3) of this subsection. In determining whether the property is to be transferred for donation under this subsection, no distinction shall be made between property capitalized in a working-capital fund established under section 2208 of title 10, United States Code, or any similar fund, and any other property.

"(2) In the case of surplus personal property under the control of the Department of Defense, the Secretary of Defense shall determine whether such property is usable and necessary for educational activities which are of special interest to the armed services, such as maritime academies, or military, naval, Air Force, or Coast Guard preparatory schools. If the Secretary determines that such property is usable and necessary for said purposes, the Secretary shall allocate it for transfer by the Administrator to the appropriate State agency for distribution, through donation, to such educational activities. If the Secretary determines that such property is not usable and necessary for such purposes, it may be disposed of in accordance with paragraph (3) of this subsection.

"(3) Except for surplus personal property transferred pursuant to paragraph (2) of this subsection, the Administrator shall, pursuant to criteria which are based on need and utilization and established after such consultation with State agencies as is feasible, allocate such property among the States in a fair and equitable basis (taking into account the condition of the property as well as the original acquisition cost thereof), and transfer to the State agency property selected by it for distribution through donation within the State—

"(A) to any public agency for use in carrying out or promoting for the residents of a given political area one or more public purposes, such as conservation, economic development, education, parks and recreation, public health, and public safety; or

"(B) to nonprofit educational or public health institutions or organizations, such as medical institutions, hospitals, clinics, health centers, schools, colleges, universities, schools for the mentally retarded, schools for the physically handicapped, child

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26 USC 501.

care centers, radio and television stations licensed by the Federal Communications Commission as educational radio or educational television stations, museums attended by the public, and libraries serving free all residents of a community, district, State, or region, which are exempt from taxation under section 501 of the Internal Revenue Code of 1954, for purposes of education or public health (including research for any such purpose).

The Administrator, in allocating and transferring property under this paragraph, shall give fair consideration, consistently with the established criteria, to expressions of need and interest on the part of public agencies and other eligible institutions within that State, and shall give special consideration to requests by eligible recipients, transmitted through the State agency, for specific items of property.



"(4) (A) Before property may be transferred to any State agency, such State shall develop, according to State law, a detailed plan of operation, developed in conformity with the provisions of this subsection, which shall include adequate assurance that the State agency has the necessary organizational and operational authority and capability, including staff, facilities, means and methods of financing, and procedures with respect to: accountability, internal and external audits, cooperative agreements, compliance and utilization reviews, equitable distribution and property disposal, determination of eligibility, and assistance through consultation with advisory bodies and public and private groups. The chief executive officer shall certify and submit the plan to the Administrator. In the event that a State legislature has not developed, according to State law, a State plan within two hundred and seventy calendar days after the date of enactment of this Act, the chief executive officer of the State shall approve, and submit to the Administrator, a temporary State plan. No such plan, and no major amendment thereof, shall be filed with the Administrator until sixty days after general notice of the proposed plan or amendment has been published and interested persons have been given at least thirty days during which to submit comments. In developing and implementing the State plan, the relative needs and resources of all public agencies and other eligible institutions within the State shall be taken into consideration. The Administrator may consult with interested Federal agencies for purposes of obtaining their views concerning the administration and operation of this subsection.

"(B) The State plan shall provide for the fair and equitable distribution of property within such State based on the relative needs and resources of interested public agencies and other eligible institutions within the State and their abilities to utilize the property.

"(C) (i) The State plan of operation shall require the State agency to utilize a management control system and accounting system for donable property transferred under this section of the same types as are required by State law for State-owned property, except that the State agency, with the approval of the chief executive officer of the State, may elect, in lieu of such systems, to utilize such other management control and accounting systems as are effective to govern the utilization, inventory control, accountability, and disposal of property under this subsection.

"(ii) The State plan of operation shall require the State agency to provide for the return of donable property for further distribution if such property, while still usable, has not been placed in use for the purpose for which it was donated within one year of donation or ceases to be used by the donee for such purposes within one year of being placed in use.

"(iii) The State plan shall be practical, to select proper eligible institution within recipient, to arrange shipment directly to the recipient.

"(D) Where the State agency service charges from part of reasonable indirect costs of such charges shall be set so such charges shall be fair and equ formed by the State agency packing, crating, removal, di

"(E) The State plan of agency may impose reasonable restrictions on the use of property of this subsection and shall in and restrictions in the case item of other property having If the Administrator finds that require special handling; appropriate conditions on the donee

"(F) The State plan of property which the State agency recipients shall be disposed of

"(i) subject to the thirty days after notification to another State destruction where the estimated cost of its destruction exceeds the estimated proceeds

"(ii) otherwise pursuant to such terms and conditions by the Administrator.

Notwithstanding sections 1113 and 1114, the Administrator, from the proceeds of the State agency for such property as he shall

"(5) As used in this subsection, the term "State" means any State, political subdivision, government or economic agency, instrumentality (including a corporation, partnership, or any Indian tribe on a State reservation in the States, the District of Columbia, the Virgin Islands, Guam, and

(2) Subsection (k) is amended

(A) in the first sentence by striking the word "subsec

(B) in subparagraph (1) by striking the word "personal property"

(C) in subparagraph (2) by striking the word "armed forces";

(D) by striking out the word "and";

(3) Subsection (n) is amended

W 94-519—OCT. 17, 1976

television stations licensed by the Federal Commission as educational radio or educational stations, museums attended by the public, and all residents of a community, district, State, exempt from taxation under section 501(c)(3) of the Code of 1954, for purposes of education (including research for any such purpose).

locating and transferring property under fair consideration, consistently with the provisions of need and interest on the part of eligible institutions within that State, consideration to requests by eligible recipients, State agency, for specific items of property, may be transferred to any State agency, according to State law, a detailed plan of conformity with the provisions of this subsection adequate assurance that the State agency has land operational authority and capability, means and methods of financing, and accountability, internal and external audits, compliance and utilization reviews, equitable disposal, determination of eligibility, and consultation with advisory bodies and public and executive officer shall certify and submit report. In the event that a State legislature acting to State law, a State plan within two calendar days after the date of enactment of such plan, or a temporary State plan. No such plan, hereof, shall be filed with the Administrator. General notice of the proposed plan or other interested persons have been invited to submit comments. In developing the State plan, the relative needs and interests of other eligible institutions within the community shall be given due consideration. The Administrator may require the recipient agencies for purposes of obtaining information and operation of this

provide for the fair and equitable disposal of such State based on the relative needs of public agencies and other eligible institutions to utilize the property. The State plan shall require the State agency to develop a control system and accounting system for property under this section of the same types for State-owned property, except that approval of the chief executive officer of such systems, to utilize such other accounting systems as are effective to govern control, accountability, and disposal of

such property shall require the State agency to dispose of such property for further distribution if it has not been placed in use for the purpose within one year of donation or ceases to be used for such purposes within one year of being

“(iii) The State plan shall require the State agency, insofar as practicable, to select property requested by a public agency or other eligible institution within the State and, if so requested by the recipient, to arrange shipment of that property, when acquired, directly to the recipient.

“(D) Where the State agency is authorized to assess and collect service charges from participating recipients to cover direct and reasonable indirect costs of its activities, the method of establishing such charges shall be set out in the State plan of operation. Such charges shall be fair and equitable and shall be based on services performed by the State agency, including, but not limited to, screening, packing, crating, removal, and transportation.

“(E) The State plan of operation shall provide that the State agency may impose reasonable terms, conditions, reservations, and restrictions on the use of property to be donated under paragraph (3) of this subsection and shall impose such terms, conditions, reservations, and restrictions in the case of any passenger motor vehicle and any item of other property having a unit acquisition cost of \$3,000 or more. If the Administrator finds that an item or items have characteristics that require special handling or use limitations, he may impose appropriate conditions on the donation of such property.

“(F) The State plan of operation shall provide that surplus property which the State agency determines cannot be utilized by eligible recipients shall be disposed of—

- “(i) subject to the disapproval of the Administrator within thirty days after notice to him, through transfer by the State agency to another State agency or through abandonment or destruction where the property has no commercial value or the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale; or
- “(ii) otherwise pursuant to the provisions of this Act under such terms and conditions and in such manner as may be prescribed by the Administrator.

Notwithstanding sections 204 and 402(c) of this Act, the Administrator, from the proceeds of sale of any such property, may reimburse the State agency for such expenses relating to the care and handling of such property as he shall deem appropriate.

“(5) As used in this subsection, (A) the term ‘public agency’ means any State, political subdivision thereof (including any unit of local government or economic development district), or any department, agency, instrumentality thereof (including instrumentalities created by compact or other agreement between States or political subdivisions), or any Indian tribe, band, group, pueblo, or community located on a State reservation and (B) the term ‘State’ means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.”

(2) Subsection (k) is amended—

- (A) in the first sentence of paragraph (4), immediately following the word “subsection”, by adding “, except with respect to personal property transferred pursuant to subsection (j)”;
- (B) in subparagraph (4)(C), by inserting “or” immediately after the semicolon;
- (C) in subparagraph (4)(D), immediately following the words “armed forces”, by striking out “; or” and inserting in lieu thereof a period; and
- (D) by striking out subparagraph (4)(E).

(3) Subsection (n) is amended to read as follows:

40 USC 485, 512.

“Public agency.”

“State.”

"(n) For the purpose of carrying into effect the provisions of subsection (j), the Administrator or the head of any Federal agency designated by the Administrator, and, with respect to subsection (k) (1), the Secretary of Health, Education, and Welfare or the head of any Federal agency designated by the Secretary, are authorized to enter into cooperative agreements with State surplus property distribution agencies designated in conformity with subsection (j). Such cooperative agreements may provide for utilization by such Federal agency, with or without payment or reimbursement, of the property, facilities, personnel, and services of the State agency in carrying out any such program, and for making available to such State agency, with or without payment or reimbursement, property, facilities, personnel, or services of such Federal agency in connection with such utilization. Payment or reimbursement, if any, from the State agency shall be credited to the fund or appropriation against which charges would be made if no payment or reimbursement were received. In addition, under such cooperative agreements and subject to such other conditions as may be imposed by the Administrator, or with respect to subsection (k) (1) by the Secretary of Health, Education, and Welfare, any surplus property transferred to the State agency for distribution pursuant to subsection (j) (3) may be retained by the State agency for use in performing its functions. Unless otherwise directed by the Administrator, title to property so retained shall vest in the State agency."

Report to Congress.

(4) Subsection (o) is amended to read as follows:
 "(o) The Administrator with respect to personal property donated under subsection (j), and the head of each executive agency disposing of real property under subsection (k), shall submit during the calendar quarter following the close of each fiscal year a report to the Senate (or to the Secretary of the Senate if the Senate is not in session) and to the House of Representatives (or to the Clerk of the House if the House is not in session) showing the acquisition cost of all personal property so donated and of all real property so disposed of during the preceding fiscal year. Such reports shall also show donations and transfers of property according to State, and may include such other information and recommendations as the Administrator or other executive agency head concerned deems appropriate."

40 USC 484 note.

SEC. 2. Except to the extent that the Administrator of General Services, in the case of specific items or categories of property, has determined otherwise, no term, condition, reservation, or restriction imposed pursuant to subsection (j) (5) of section 203 of the Federal Property and Administrative Services Act of 1949 (as in effect prior to the date of enactment of this Act), on the use of any item of personal property donated pursuant to subsection (j) (3) or (j) (4) of section 203 prior to the effective date of this Act as provided in section 9(a), shall remain in effect beyond the thirtieth day after such effective date. This section shall not be deemed to terminate any civil or criminal liability arising out of a violation of such a term, condition, reservation, or restriction which occurred prior to such effective date if a judicial proceeding to enforce such liability is pending on such effective date, or is commenced within one year after such date.

40 USC 484.

SEC. 3. Section 202 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483) is amended by adding the following new subsections:

"(d) Notwithstanding any other provisions of law, Federal agencies are prohibited from obtaining excess personal property for purposes of furnishing such property to grantees of such agencies, except as follows:

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SEC. 4. Section 402...
 Services Act of 1949

"whenever the head of the executive agency concerned determines that it is in the interest of the United States to do so" and inserting in lieu thereof "whenever the head of the executive agency concerned, or the Administrator after consultation with such agency head, determines that return of the property to the United States for such handling is in the interest of the United States".

40 USC 483c.

Sec. 5. Notwithstanding any other provision of law, and except as the Administrator of General Services may otherwise provide on recommendation of the head of an affected Federal agency, excess personal property acquired by a Federal agency pursuant to the authority of section 202 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483) and furnished to and held by a grantee of such agency prior to the effective date of this Act (as provided in section 9(b)) under grants made pursuant to programs established by law shall be regarded as surplus property. The Administrator of General Services upon receipt of a certification by the head of an agency that the property is being used by the grantee for the purposes for which it was furnished shall transfer title to the property to the grantee. The grantor agency shall survey Federal property acquired from excess sources in the possession of its grantees and shall notify the Administrator of General Services, not later than two hundred and forty days from the date of enactment of this Act, of those items of property which are being used by each grantee for the purpose for which it was furnished, and those items which are not being used by each grantee. If the property is not being so used, the Administrator shall transfer such property to an appropriate State agency, upon its request, for distribution in accordance with subsection 203(j) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(j)). Property not so transferred shall be otherwise disposed of pursuant to the provisions of that Act."

Repeal.
42 USC 3193.
Transfer of
personnel,
records, etc.
40 USC 484c.

Sec. 6. Section 514 of the Public Works and Economic Development Act of 1965 (88 Stat. 1162) is repealed.

Sec. 7. (a) So much of the personnel, property, records, and unexpended balance of appropriations, allocations, and other funds as are, in the judgment of the Director of the Office of Management and Budget, employed, used, held, available, or to be made available in relation to those personal property functions which the Secretary of Health, Education, and Welfare was authorized to perform under section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484) immediately prior to the date of enactment of this Act and which under this Act become vested in the Administrator of General Services shall be transferred to the General Services Administration at such time or times as the Director shall direct.

(b) Such further measures and dispositions as the Director of the Office of Management and Budget deems necessary to effectuate transfers referred to in subsection (a) of this section shall be carried out in such manner as the Director shall direct.

Sec. 8. Title VI of the Federal Property and Administrative Services Act of 1949 is amended by adding after section 605 the following new section:

"SEX DISCRIMINATION

40 USC 476.

"SEC. 606. No individual shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity carried on or receiving Federal assistance under this Act. This provision shall be enforced through agency provisions and rules similar to those already estab-

lished with respect to racial an of the Civil Rights Act of 1964, and will not prejudice or remedy to any individual alleging discrimination.

SEC. 9. The provisions of this Act after the date of enactment of this Act, and biennially thereafter.

SEC. 10. Not later than this Act, and biennially thereafter, the Comptroller General of the United States shall submit reports which cover the two-year period ending on the date of the report. Each report shall contain (1) a full and independent audit of the extent to which the needs set forth in the distribution program have been met, (2) the extent to which the needs of the various public agencies have been met, and (3) such recommendations as the Comptroller General, respectively,

Approved October 17, 1976

LEGISLATIVE HISTORY:

HOUSE REPORT No. 94-1429 (H. R. 1323)
SENATE REPORT No. 94-1323
CONGRESSIONAL RECORD, Vol. 102, Pt. 1, p. 10000
Aug. 24, considered and passed
Sept. 28, considered and passed
Sept. 29, House agreed to

Executive agency concerned determines that it is in the best interest of the United States to do so" and inserting in lieu of the executive agency concerned, or the action with such agency head, determines to the United States for such handling in the United States".

Any other provision of law, and except as otherwise provided in this Act, the Administrator of General Services may otherwise provide or direct of an affected Federal agency, excess of an affected Federal agency, excess of a Federal agency pursuant to the Federal Property and Administrative Services Act (50 USC 453) and furnished to and held by the grantor agency prior to the effective date of this Act (as under grants made pursuant to programs regarded as surplus property. The Administrator upon receipt of a certification by the grantor agency that the property is being used by the grantee for purposes for which the property was furnished shall transfer title to the grantee. The grantor agency shall survey Federal sources in the possession of its grantees under the Federal Property and Administrative Services Act, not later than 180 days after the date of enactment of this Act, from the date of enactment of this Act, which are being used by each grantee for purposes for which the property was furnished, and those items which are not being so used, shall be transferred to an appropriate Federal agency for distribution in accordance with the Federal Property and Administrative Services Act. Property not so transferred shall be subject to the provisions of that Act."

Public Works and Economic Development Administration, personnel, property, records, and unexpended appropriations, allocations, and other funds as are available, or to be made available in connection with the functions which the Secretary of the Department of the Interior was authorized to perform under the Federal Property and Administrative Services Act immediately prior to the date of enactment of this Act become vested in the Administrator and shall be transferred to the General Services Administration at such times as the Director shall direct. The provisions of this section shall be carried out in accordance with the provisions of that Act."

and dispositions as the Director of the Department of the Interior deems necessary to effectuate the provisions of this section shall be carried out in accordance with the provisions of that Act."

DISCRIMINATION

no person shall on the ground of sex be excluded from the benefits of, or be subjected to any discrimination in the performance of any activity carried on or receiving any benefit under this Act. This provision shall be enforced in accordance with the rules similar to those already established with respect to racial and other discrimination under title VI of the Civil Rights Act of 1964. However, this remedy is not exclusive and will not prejudice or remove any other legal remedies available to any individual alleging discrimination."

lished with respect to racial and other discrimination under title VI of the Civil Rights Act of 1964. However, this remedy is not exclusive and will not prejudice or remove any other legal remedies available to any individual alleging discrimination."

SEC. 9. The provisions of this Act shall become effective one year after the date of enactment of this Act.

SEC. 10. Not later than thirty months after the effective date of this Act, and biennially thereafter, the Administrator and the Comptroller General of the United States shall each transmit to the Congress reports which cover the two-year period from such effective date and contain (1) a full and independent evaluation of the operation of this Act, (2) the extent to which the objectives of this Act have been fulfilled, (3) how the needs served by prior Federal personal property distribution programs have been met, (4) an assessment of the degree to which the distribution of surplus property has met the relative needs of the various public agencies and other eligible institutions, and (5) such recommendations as the Administrator and the Comptroller General, respectively, determine to be necessary or desirable.

Approved October 17, 1976.

LEGISLATIVE HISTORY:

- HOUSE REPORT No. 94-1429 (Comm. on Government Operations).
- SENATE REPORT No. 94-1323 (Comm. on Government Operations).
- CONGRESSIONAL RECORD, Vol. 122 (1976):
 - Aug. 24, considered and passed House.
 - Sept. 28, considered and passed Senate, amended.
 - Sept. 29, House agreed to Senate amendments.

42 USC 2000d.

Effective date. 40 USC 484 note.

Reports to Congress. 40 USC 493.



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GOVERNMENTAL OFFICE

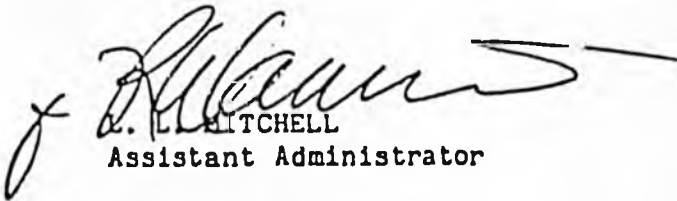
Honorable William Sheffield
Governor of Alaska
State Capitol
Juneau, Alaska 99801

Dear Governor Sheffield:

The Federal Property and Administrative Services Act of 1949, as amended, which governs the transfer for donation of Federal surplus personal property to the States, requires that each State submit a permanent plan of operation for its State Agency for Surplus Property (SASP). The Director of your State agency was advised on January 5, 1982, (copy enclosed) that the deadline for submission of permanent plans is June 30, 1984. We are bringing this matter to your attention at this time as failure to submit the required plan could necessitate our deferring further allocations of property to your State.

Your review of this matter and a reply by November 15, 1983, assuring us that we will receive the permanent plan prior to June 30, 1984, will be appreciated.

Sincerely,


D. L. MITCHELL
Assistant Administrator

Enclosure

OFFICE OF
MANAGEMENT & BUDGET

SEP 09 1983

GOVERNMENTAL
COORDINATION



FPRS DONATION PROGRAM
MEMORANDUM NO. DPD- 4-82

Date : JAN 5 1982

Reply to
Attn of : DPDA

Subject: Legislative State Plans of Operation

To : 1A 2A WA 4A 5A 6A 7A 8A 9A 10A
Directors of State Agencies for Surplus Property

RECEIVED 10DPU

2/16
FEB 16 1982

— SACHS	— JOHNSON
— BOERS	— SCHAEFER
— GRIST	— HAYES
— FURRIDGE	— POLLEY
	— SEITZ

1. Purpose. To inform all regional offices and Directors of State Agencies for Surplus Property of the need to replace temporary plans of operation with legislative State plans of operation.

2. Applicability. The information contained in this memorandum applies to all regional offices and State Agencies for Surplus Property.

3. Background. The Federal Property and Administrative Services Act of 1949, as amended, Section 203(j)(4)(A), provides that the legislature of each State must develop a plan of operation for its State Agency for Surplus Property before the State can participate in the donation program. These plans were to be approved by the chief executive officer of the State and filed with the Administrator of General Services for acceptance no later than 270 calendar days after October 17, 1976. The act further provides that a temporary State plan of operation could be filed with the Administrator, as an interim enabling device, in cases where a State found it impractical to prepare and submit a legislatively developed plan within the 270 day period. At this time, all but five State agencies (Oklahoma, South Carolina, South Dakota, Tennessee, and Wisconsin) are continuing to operate with temporary plans. It has been brought to our attention by the General Accounting Office that these temporary plans should be replaced with legislatively developed plans as soon as possible.

During recent congressional hearings on the implementation of Public Law 94-519, the General Services Administration proposed that the Federal Property Act be amended to provide for executive development and approval of permanent State plans, eliminating the need for legislative development. It was believed that this change would simplify and expedite completion of the required permanent plans. Congressional members attending the hearings indicated that they do not favor such a change as they believe consideration of the relative needs of all public agencies and other eligible institutions will only occur if the plans are legislatively developed.

4. Procedures. Regional offices will take immediate action to ensure that all States within their area of responsibility, that have not already done so, proceed with the development of legislative plans of operation.

a. If the State has enacted a Uniform Administrative Procedure Act, it is suggested that the State's Attorney General determine whether or not the temporary State plan of operation, which is currently used as the authority to operate the State agency, may be considered as having been promulgated and approved by the legislature as an act of the legislature. If this is the case, a letter from the Attorney General stating that fact should be submitted through the regional office to the Central Office for final acceptance.

JAN 5, 1982 MEMO

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DIVISION OF
GENERAL SERVICES & SUPPLY

b. In the event the above opinion cannot be obtained, we suggest the legislature pass a resolution adopting the present plan under which the State agency is operating. A certified copy of the resolution as enacted by the legislature should be submitted through the regional office to the Central Office for final acceptance. For your information, copies of the resolutions prepared and passed by the legislatures of the States of Tennessee and South Dakota adopting their temporary plans of operation as legislative plans are included with this memorandum as Enclosures 1 and 2.

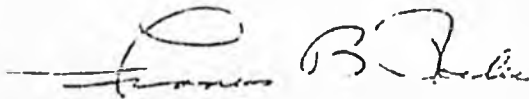
c. If a State determines that it cannot use either of the methods outlined in paragraphs a and b above to convert its temporary plan, it will be necessary for the State's legislature to develop a new plan in accordance with the procedures set forth in Section 203(j)(4) of the Federal Property Act.

5. Required Completion Date. Legislatively developed plans of operation for all States must be received at the Central Office for review and acceptance by the Administrator of General Services no later than June 30, 1984.

6. Codification. This memorandum will not be incorporated into the Donation Handbook, PRM P 4025.1.

7. Cancellation. This memorandum will be canceled effective October 1, 1984.

8. Coordination. Questions pertaining to the instructions contained in this memorandum should be directed to Mr. Don Crouch, Donation Division, (703) 557-0756.



FRANCIS B. ROCHE
Assistant Commissioner
Office of Personal Property

Enclosures

cc: AR

4/84 1 Fire truck valued at \$10,500.00, issued to DOT/PF, Yakutat for \$500.00.

Issued to Northwest Arctic School District the following:

Item	Value	S/H
4/84 1 Truck	\$ 3,984.00	\$30.00
1 Dump truck	10,250.00	30.00
1 Dump truck	4,943.00	30.00
1 Tractor	29,963.00	30.00

4/84 1 Mobile Enforcement Testing Facility valued at \$379,767.00, issued to the Alaska Vocational Technical Center for \$3,000.00.

12/83 { 1 Power Saw valued at \$3,151.00, issued to the Municipality of Anchorage for \$300.00.
 2 Containers valued at \$4,684.00 each, issued to the Municipality of Anchorage for \$25.00 each.

The following items were issued to the City of Elim:

Item	Value	S/H
1 Tractor	\$26,851.00	\$537.02
1 Generator motor	22,021.00	440.42
1 Tractor	26,389.00	527.78
1 Tractor	26,851.00	537.02
1 Dump truck	25,945.00	518.90
1 Scraper	31,508.00	630.16
1 Scraper	33,349.00	666.98

(Totals) \$ 192,914.00 \$ 3,858.28

11/83 1 Barge valued at \$150,000.00, issued to Metlakatla Indian Community for \$500.00.

10/83 { 1 Truck valued at \$8,338.00, issued to the Adult Corrections Agency for \$300.00.
 2 Aircraft engines valued at \$10,500.00 each, issued to the Transportation Museum of Alaska, Inc. for \$500.00, each.

9/83 Miscellaneous equipment including crane, D7 CAT, rock crusher, 2 1/2 yard power shovel, tractor, and a vehicle totaling \$99,164.02, issued to the City of Hyaburg for \$500.00.

8/83 1 Truck valued at \$24,285.00, issued to the Dept. of Corrections in Palmer for \$800.00.

1 Truck valued at \$6,000.00, issued to the Municipality of Anchorage for \$500.00.

1 Welding unit valued at \$6,500.00, issued to the Municipality of Anchorage for \$200.00.

The following items were issued to the City of Newhalen for \$2,000.00:

ITEM	VALUE
7/83 { 1 Cargo truck	\$4,720.00
1 Cargo truck	3,000.00
1 Cargo truck	2,467.00
1 Dump truck	11,101.00
1 Cargo truck	7,169.00
1 Grader	19,724.00
1 Trailer	1,254.00
1 Track vehicle	8,005.00
1 Tractor	33,023.00
1 Tractor	33,023.00

123,486.00

2000 ÷ 123,486 =
 1.6%!

SAMPLE ISSUES DONATED

State of Alaska
Permanent Plan of Operations

1. AUTHORITY

The Department of Administration, State of Alaska, is authorized by Sections 44.71.020 - 44.71.040 of the Alaska Statutes to acquire, warehouse, and distribute surplus property to all eligible donees in the State, to enter into cooperative agreements pursuant to the provisions of Federal Property Management Regulations (FPMR) 101-44.026, and to undertake actions and provide additional assurances as set forth in the plan.

Sixty (60) calendar days prior to submission of this plan to the Administrator of General Services (GSA), general public notice of the proposed plan was published and interested parties were given a period of thirty (30) calendar days in which to submit comments. These comments, together with a delineation of the relative needs and resources of all public agencies and other eligible donees were taken into consideration in the development of this plan.

2. DESIGNATION OF THE STATE AGENCY

The plan shall be administered by the State and Federal Property Management Section, Division of General Services and Supply, Department of Administration. The Section, hereinafter called the State agency, has complete responsibility and authority to carry out the requirements of acquiring, warehousing, and distributing Federal surplus property in the State of Alaska, pursuant to the provisions of Federal Property and Administrative Services Act of 1949, as amended (the Act). The Section is administered by the Property Manager, State and Federal Property, and supervised by the Section Supervisor. Staffing structure is shown in Attachment A, physical facilities are described in Attachment B.

PERMANENT PLAN

3. INVENTORY CONTROLS AND ACCOUNTING SYSTEMS

A. Inventory Controls

(1) Immediately upon arrival at the warehouse, property will be moved into the receiving area for check-in. If personnel are not immediately available, the property will be held in a protected area until it can be checked in. Shipping documents, and the applicable SF 123 and its attachments, will be used to check and identify property. Overage and shortage reports and SF 123's will be prepared in accordance with the requirements of the Federal Property Management Regulation (FPMR) 101-44.115 and mailed to the GSA regional office. Upon verification of the description, condition, and quantity of the property, a warehouse property tag will be prepared and attached to the item, or the item will be otherwise physically marked or binned, to identify it as follows:

- (a) Application number
- (b) Item number
- (c) Description, including serial number, if known.
- (d) Unit of issue
- (e) Unit service and handling charge

(2) Following verification of received information, stock records will be prepared on all items having an individual acquisition cost of \$10.00 or more. All action, including receipt, issue and inventory status, will be recorded on this card. The stock record card will be retained in file for three years after the property has been issued.

(3) A complete physical inventory of all material in possession of the State agency will be taken annually. Shortages and overages will be listed on the annual inventory report. This report will be used to record inventory adjustments and must be approved by the supervisor before posting to stock cards. Adjustments will be made only when all reasonable efforts have been exhausted to determine the reason for variance. A letter to this effect, signed by the supervisor, will be attached to the completed inventory documents.

B. Accounting Systems

A State approved double entry accounting system will be used. It will include a chart of accounts, a general ledger with accounts for all assets, liabilities, income and expense and journals for all original record of transactions. It will identify and separately account for funds accumulated from service charges. Monthly and fiscal year-end reports will be provided for management visibility and program control.

4. RETURN OF DONATED PROPERTY

- A. When a determination has been made that property has not been put in use by a donee within one year from the date of receipt of the property, or when the donee has not used the property for one year thereafter under the terms and conditions of the Application Certification and Agreement Form signed by the Administrative Officer or other authorized representative of the donee as a condition of eligibility and repeated on the reverse side of each Issue Document, the donee, if property is still usable as determined by the State agency must:
- (1) Return the property at its own expense to the State agency warehouse, (or)
 - (2) Retransfer the property to another eligible donee as directed by the State agency, (or)
 - (3) Make such other disposal of the property as the State agency may direct.
- B. The State agency will periodically emphasize this requirement when corresponding and meeting with donees and when surveying the utilization of donated property at donee facilities. Property returned by a donee will be received into inventory stock control for reissuance to other donees.

5. FINANCING AND SERVICE CHARGES

- A. A revolving fund, established by legislative action, finances the acquisition and distribution of surplus federal property. This fund is maintained by the collection of service and handling charges and is designed to pay the actual expenses of current operations, to purchase necessary equipment, and to maintain a working capital reserve.
- B. Service charges will be based on the prorated preceding fiscal year expenses incurred by the agency, including but not limited to the following major cost areas: personnel, transportation, utilities, fuels, telephone, warehousing and storage, compliance, insurance, printing, supplies and travel. Service charges will be assessed at a rate designed to cover all costs involved in the acquisition and distribution of surplus property.

The service charges will be fair and equitable in relation to the service performed. Emphasis will be placed on keeping the service charge to a minimum but at the same time providing the necessary service and to operate the agency on a sound financial basis. Other factors considered in determining service charges include original acquisition cost, present value, screening cost, quantity, condition, desirability of property, transportation cost, loading and unloading cost, packing and crating, administrative cost, repair and

rehabilitation, utilization and compliance audits, and delivery to donees when required.

As a general guide based on the above listed factors and following exceptions, the following schedule is to be used in determining service charges:

<u>Percent</u>	<u>Original Acquisition Cost</u>
0 - 40	\$ 0 - 200
0 - 20	\$ 201 - 4,000
0 - 15	\$ 4,001 - 15,000
0 - 10	\$15,001 - upward

(not to exceed \$10,000 per any one item)

Exceptions - special or extraordinary cost may be added to the service charge if not calculated as part of the above. Any such costs which are anticipated will be discussed with the donee prior to issue and/or shipment. Consideration may be given to:

- (1) Rehabilitated property - direct costs for rehabilitating property.
- (2) Overseas property - additional direct costs for returning the property to the United States.
- (3) Long-haul property - charges for major items with unusual loading, unloading, or hauling costs.
- (4) Special handling - for dismantling, packing, crating, shipping, delivery, and other extraordinary handling charges.
- (5) Screening - extraordinary costs incurred in screening.

- C. If the working capital reserve should reflect an excessive amount, service charges will be adjusted downward until an even balance is realized. In the event the program is terminated, assets will be converted to cash and will be divided among the participating donees of the preceding twelve months, based on a proration of the amount of service charges paid by each donee during that period.
- D. Minimum service charges may be assessed in cases where the State agency provides minimum services and no direct costs are involved. These charges reflect the basic costs of document processing as well as the administrative costs of the State agency.

When the self-service donee screens and picks up his own property, the optional minimum charges will be not less than \$50.00, plus \$2.00 for each line-item beyond one. If the donee is notified of the availability of property by a special notice issued by the Agency, there shall be an additional charge of \$5.00.

When the donee picks up property at the holding agency, the normal service charge may be reduced to reflect the savings realized by the Alaska Surplus Property Management Section by not having to transport the property.

When an item issued to a self-service donee is subject to Federal restrictions and mandatory compliance inspections, there shall be added to the minimum charge the estimated cost of such inspections. Subject to Federal regulations, compliance reviews may be made by having the donee submit a written report stating that the property is in use and what it is being used for, thus eliminating mandatory on-site visits. In this event, there shall be an additional charge of only \$10.00 multiplied by the number of such reports required.

When services of special screening or consultation are requested by the self-service donee and performed by the Agency, the charge for such services shall be \$20.00 per hour for each employee assigned to provide such special service, calculated to the nearest half-hour increment, with a minimum of one half-hour per person assigned. Travel, per diem and other direct costs may be added to the charge.

- E. Service charge funds remitted by donees will be used for the operation of the Agency and the benefit of the participating donees, and for no other purpose. All service charges will be used only to fund the cost of State Agency operations and, subject to State law, to improve or acquire office and warehousing facilities, purchase necessary equipment and supplies, and to repair and rehabilitate equipment, including purchase of replacement parts.

6. TERMS AND CONDITIONS ON DONABLE PROPERTY

- A. (1) The State agency will require each eligible donee, as a condition of eligibility, to file with the agency an Application Certification and Agreement Form outlining the certifications and agreements, and the terms, conditions, reservations and restrictions under which all Federal surplus personnel property will be donated. Each form must be signed by the Chief Executive Officer of the donee agreeing to these requirements prior to the donation of any surplus property. The certifications and agreements, and the terms, conditions, reservations and restrictions will be printed on the reverse side of each State agency issue document. The issue documents are included in part 14, "Forms", of this plan.
- (2) The following periods of restriction are established by the State Agency on all items of property with a unit acquisition cost of \$3,000 or more, and on all passenger motor vehicles.
 - (a) All passenger motor vehicles: 18 months from the date the property is placed in use.
 - (b) Items with a unit acquisition cost of \$3,000 or more: 18 months from the date the property is placed in use.

- (c) Aircraft (except combat type) and Vessels 50 feet or more in length, with a unit acquisition cost of \$3,000 or more: 60 months from the date the property is placed in use. Such donations shall be subject to the requirements of the Conditional Transfer Document, Enclosures 14.3 and 14.4.
 - (d) Aircraft, combat type: restricted in perpetuity. Donation of combat type aircraft shall be subject to the requirements of a Conditional Transfer Document, Enclosure 14.2.
- (3) The State agency may reduce the period of restriction on items of property falling within the provisions of Paragraph 6a (2), (b) and (c) at the time of donation for good and sufficient reason such as the condition of the property, or the proposed use (secondary, cannibalization, etc.), but in no case shall the period of restriction be less than the 12 months from the date the property is put into use.
 - (4) The State agency, at its discretion and when considered appropriate, may impose such terms, conditions, reservations and restrictions as it deems reasonable on the use of donable property other than passenger motor vehicles and items with a unit acquisition cost of over \$3,000 or more.
- B.
- (1) The State agency may amend, modify, or grant release of any term, condition, reservation, or restriction it has imposed on donated items of personal property in accordance with prescribed standards provided that the conditions pertinent to each situation have been affirmatively demonstrated to the prior satisfaction of the State agency and made a matter of public record.
 - (2) The State agency will impose on the donation of any surplus item of property, regardless of unit acquisition cost, such conditions involving special handling or use limitations as the General Services Administration may determine necessary because of the characteristics of the property.
 - (3) The State agency will impose on all donees the statutory requirement that all items donated must be placed into use within one year of donation and be used for one year after being placed in use, or returned to the State agency, while the property is still usable, or otherwise handled in accordance with the provisions of Part 4 of the plan.

7. NONUTILIZED DONABLE PROPERTY

- A. (1) All property in the possession of the State agency for 18 months, which cannot be utilized by eligible donees shall be reported to the General Services Administration for disposal authorization in accordance with FPMR 101-44.205. In accordance with this regulation the State agency shall:

- (a) Transfer the property to another State or Federal agency, OR
 - (b) List the property for public sale by (or with approval of) the GSA, OR
 - (c) Abandon or destroy the property (on receipt of GSA approval).
- (2) In the event of disposal by transfer to another agency or by public sale, the State agency may seek such reimbursement as is authorized in accordance with FPMR 101-44.205.

8. FAIR AND EQUITABLE DISTRIBUTION

The State agency will make property available to the eligible donees in the State on a fair and equitable basis. When eligible donees indicate an interest in property it will be distributed on a fair and equitable basis, considering their need, resources and ability to utilize the property.

- A. Advisory bodies and public and private groups may submit information to assist the Alaska Surplus State agency in determining the relative needs and resources of donees, utilization of property by donees, and distribution of property to fill existing needs.

This information may be communicated in writing or orally at any time by the bodies or groups. Once the State agency knows of these bodies or groups and their areas of interest, the Agency will contact the appropriate bodies or groups, either in writing or orally, when deemed necessary to carry out the intent of the program.

Such bodies and groups will be invited to submit expressions of need and interest to the Agency, which will in turn forward such submissions to GSA.

Factors considered in determining relative needs, resources and ability to utilize the property will include:

- (1) Relative needs

In considering the request of potential recipients, the criteria for determining the relative needs will include:

- (a) Size and type of program conducted.
- (b) Contemplated use and frequency of use.
- (c) Economic condition of agency, activity or institution.
- (d) Critical or urgent need.
- (e) Geographical location (urban, suburban or rural).
- (f) Interest and expression of need on the part of the donee in the property available.

(2) Relative resources

In considering the request of potential recipients, the criteria for determining relative resources will include:

- (a) Funding source and availability (grants, donations, taxes, etc.).
- (b) Feasibility of acquisition from other source(s).

(3) Ability to utilize.

In considering request of potential recipients, the criteria for evaluating ability to utilize property will include:

- (a) urgency of the need
- (b) When item can be put in use.
- (c) Length of time in contemplated usage.
- (d) Availability of funds to repair or maintain property in use.
- (e) Ability of the donee to select and remove property from the distribution center or Federal activity on a timely basis.
- (f) Type and quantity of property received by the donee to date, and proper utilization of such prior acquisition(s).

- B. (1) The State agency operates a distribution center to serve the eligible donees in the distribution of available property. To insure that eligible donees located a greater distance from the distribution center will receive equity in the distribution of desirable items, all donees are invited to submit a listing of major items needed such as, vehicles, construction equipment, materials handling equipment, machine tools, generators, air compressors, business machines, boats, aircraft, large electronic and scientific type items, etc. The agency employees will be guided by these requests in their research and selection of property. This equipment (major items) will be distributed on the basis of need, resources, and ability to utilize the property as outlined in Section A. above. The distribution center is open for donees to visit seven and one half hours per day, five days a week, excluding recognized State holidays.
- (2) Small miscellaneous items will be available on a supermarket plan, with quantity limits to any one donee depending upon the total quantity on hand.

(3) Periodically, special notices will be mailed to donees listing property available for distribution.

a) Frequency of such notices will be determined by agency workload and accumulations of available inventory.

C. The State agency will recommend to General Services Administration the certification of donee screeners determined to be qualified and needed in accordance with FPMR 101-44.116. The State agency will, insofar as practical, economical, and considering equitable distribution among its donees, select that property requested by the donees, and agency will arrange for direct pickup or shipment of the property to the donee if requested to do so.

D. Donees that experience a local disaster or loss of property due to fire, flood, tornado, etc. will temporarily be given priority for all requested items of property. Special efforts will be made to locate and distribute needed property to them.

E. Where competing requests are received for property items, the State agency will make a determination as to the recipient based on the evaluation of the criteria in paragraph A. above.

9. ELIGIBILITY

A. (1) The State agency will attempt to contact and instruct all known potential donees in the State on the procedures to follow to establish their eligibility for participation in the Federal surplus property program. In establishing a listing of the potential donees, the State agency will use the following standards and guidelines set forth in FPMR 101-44.207 as well as the following guides:

(a) Public agencies

1. Listing of cities, towns, and villages.
2. Listing of boroughs, judiciary, State departments, divisions, councils, commission, institutions, etc.
3. Listings of local departments, divisions, commissions, councils, etc.

(b) Non-profit, tax-exempt units.

1. State departments and others for listings of all local units approved or licensed by them.
2. Existing listing of entities now eligible to participate in the Federal surplus property program.
3. Inquiries, letters, telephone calls, etc., received relative to eligibility.

- (2) Contacts will be made by letter, telephone, informational bulletins supplemented when necessary by news releases, and attendance at general meetings and conferences with above groups to discuss the surplus property program.
- (3) In order to establish eligibility, each entity will be required to file with the State agency:
 - (a) An Application Certification and Agreement Form signed by the chief executive officer accepting the terms and conditions under which property will be transferred.
 - (b) A written authorization signed by the chief administrator or executive head of the donee activity, or a resolution of the Governing Board designating one or more representatives to act for the applicant, obligate any necessary funds, and execute issue documents.
 - (c) Assurance of Compliance with GSA Regulations under Title VI of the Civil Rights Act of 1964, Section 605 of Title VI of the Federal Property and Administrative Services Act of 1949, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended, and Section 303 of the Age Discrimination Act of 1975.
 - (c) The full legal name of applicant (donee), address and telephone number and their status as a public agency or non-profit tax-exempt educational or public health unit.
 - (e) Details and scope of their program including their different activities and functions.
 - (f) Financial information, if necessary, to help in evaluation of their relative needs and resources.
 - (g) Proof of donee's tax-exemption under Section 501 of the Internal Revenue Code of 1954 (for non-profit units only).
 - (h) Proof that the applicant is approved, accredited or licensed (when applicable) in accordance with FPIR 101-44.207.
 - (i) In addition to the above requirements, the agency will request listing as to the types and kinds of equipment, vehicles, machines or other items they need.

- (4) All approvals of eligibility will be up-dated as follows:
- (a) In sequence with expiration of any license required by donee (possible annual, semi-annual, etc.).
 - (b) Every three years, if there is no license required or if license expiration period exceeds three years.

10. COMPLIANCE AND UTILIZATION

All items having an acquisition cost of \$3,000 or more and passenger motor vehicles will be marked or coded in the stock records file in a manner that provides obvious identification. Separate warehouse issues will be prepared for each item with an acquisition cost of \$3,000 or more, and passenger motor vehicles; an additional statement, pointing out utilization requirements will be typed on the face of the issue document advising the donee that this item must be placed in use within one year and used for a period of 18 months thereafter.

All passenger motor vehicles, and any other motor vehicle requiring licensing by the Department of Motor Vehicles will be licensed, with the State agency shown as lien holder. When the vehicle has been utilized in accordance with all instructions and restrictions, and the period of restriction has expired, the State agency will release the cleared title to the donee.

At least once during the period of restriction, State agency personnel will review all issues of items with an acquisition cost of \$3,000 or more and all passenger motor vehicles, to determine whether or not these items are being utilized in accordance with the purposes for which they were acquired. At the same time, a review will be made of other items issued to make certain that Federal surplus property items are being used as indicated on the applicable issue document(s).

Also, during the review the State agency representative will insure that the donee is complying with any special handling conditions or use limitations imposed by GSA on items of Federal surplus property in accordance with FPMR 101-44.108. The review will include a survey of the donee's compliance with the statutory requirement that all items of Federal surplus property acquired by the donee be placed into use within one year of acquisition and used for one year thereafter. Written reports on utilization and compliance reviews will be made a part of the applicable donee file. Whenever there is any indication of misuse, noncompliance, or alleged fraud, the proper steps will be taken to correct the discrepancy, including a report to the F.B.I. if appropriate. GSA will be notified of all findings/indications of noncompliance, or apparent misuse/fraud. The State agency may take action to prosecute cases of fraud or misuse and will assist GSA and other Federal and State agencies in investigating such cases.

While on-site compliance review is planned for performance by personnel of the State agency, compliance letters/forms may be used to satisfy this requirement except for items with an acquisition cost of \$3,000 or more and/or for passenger motor vehicles. Exceptions to on-site compliance reviews may be made by GSA if the State Agency can show that such reviews are physically or economically unfeasible to perform.

11. AUDIT

A. Internal

An internal fiscal audit of the State agency will be conducted every two years with a full report of findings, recommendations, and corrective actions taken, submitted to the Commissioner of the Department of Administration and a copy to GSA.

B. External

An external audit, with primary emphasis on program operations and fiscal accounting will be conducted by the Legislative Budget and Audit Committee every two years, on the year(s) alternate to the internal audit schedule.

This (external) audit will examine the State agency's conformance to the State Plan of Operations, applicable State statutes and Regulations, and requirements of Public Law 94.519 and 41.CFR 101.44.

Audit results will be submitted to the Commissioner, Department of Administration, as will response(s) to recommendations and corrective action taken. A copy of the external audit report, recommendations, corrective actions and other correspondence pertinent to the audit, will be forwarded to GSA.

GSA representatives may review State agency operations periodically and may, for appropriate reasons, conduct its own audit of the State agency following due notice to the Governor of the reasons for such audit. Financial records and all other books and records of the State agency shall be made available to all authorized Federal agencies/representatives.

12. COOPERATIVE AGREEMENTS

The Department of Administration is authorized under Alaska Statute 44.71.020 (d) to enter into cooperative agreements with any Federal agency authorized by law, for the utilization by such Federal agency, with or without payment or reimbursement, of the property, facilities, personnel and services of the State Agency in carrying out any such program, and for making available to the State Agency with or without reimbursement, property, facilities, personnel or services of such Federal agency in connection with such utilization.

13. LIQUIDATION

If and when a determination is made to liquidate the State agency, advance notice will be given to GSA in accordance with the specific requirements of FPMR 101-44.202(c) (14) with the reason for liquidation; schedule of time to effect the closure; and report to GSA of the property on hand for retransfer, destruction, or sale. At liquidation, physical assets will be converted to cash, and the proceeds will be used first to satisfy all liabilities. Any remaining funds will be distributed to donees on a pro-rata basis as determined by donee participation during the previous twelve month period. Records and accounting information will be retained for two years after closure.

14. FORMS

Enclosure 14.1, copy of Terms, conditions, reservations and restrictions on reverse of warehouse Issue/Invoice.

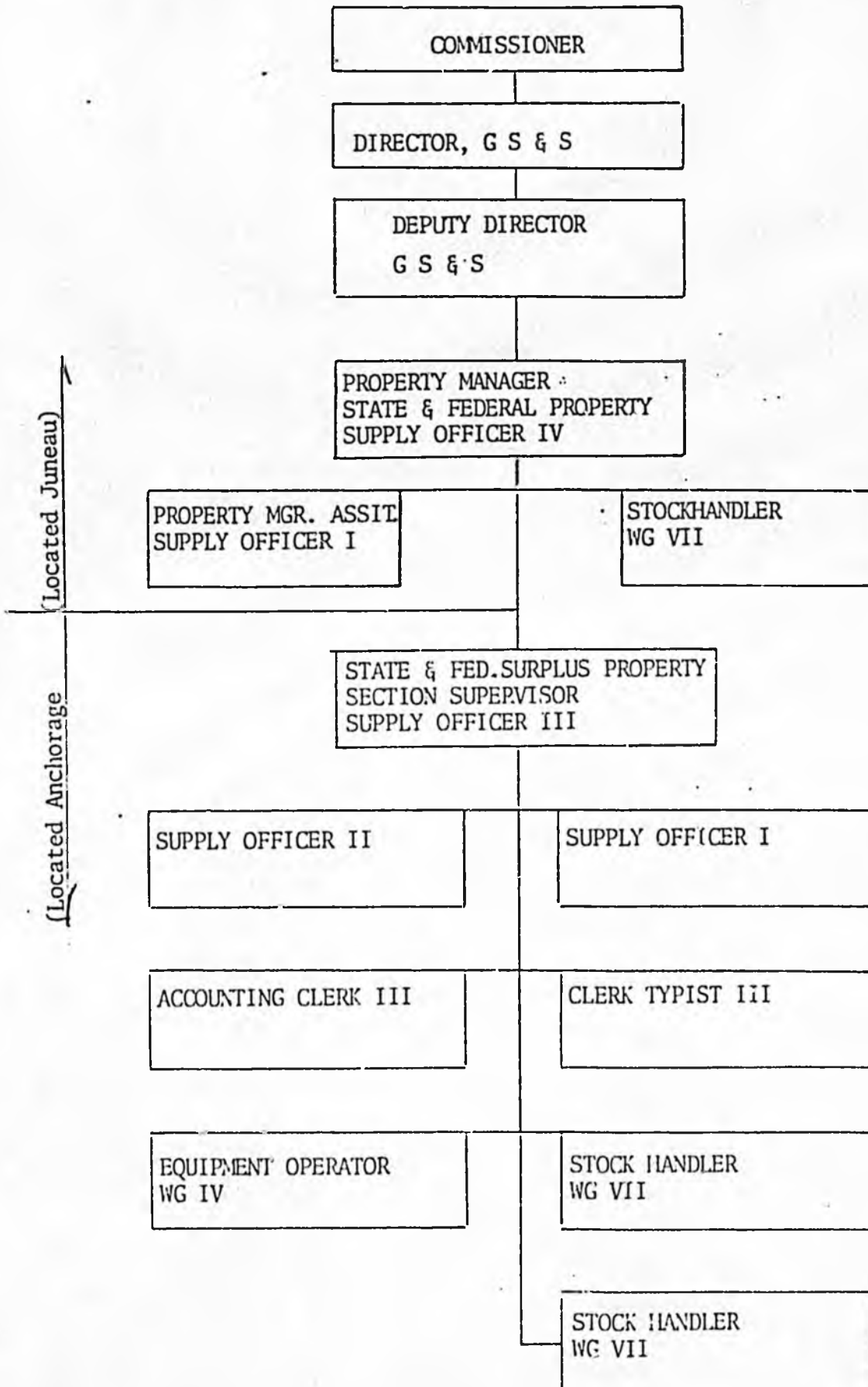
Enclosure 14.2, Conditional Transfer Document - Combat Type Aircraft.

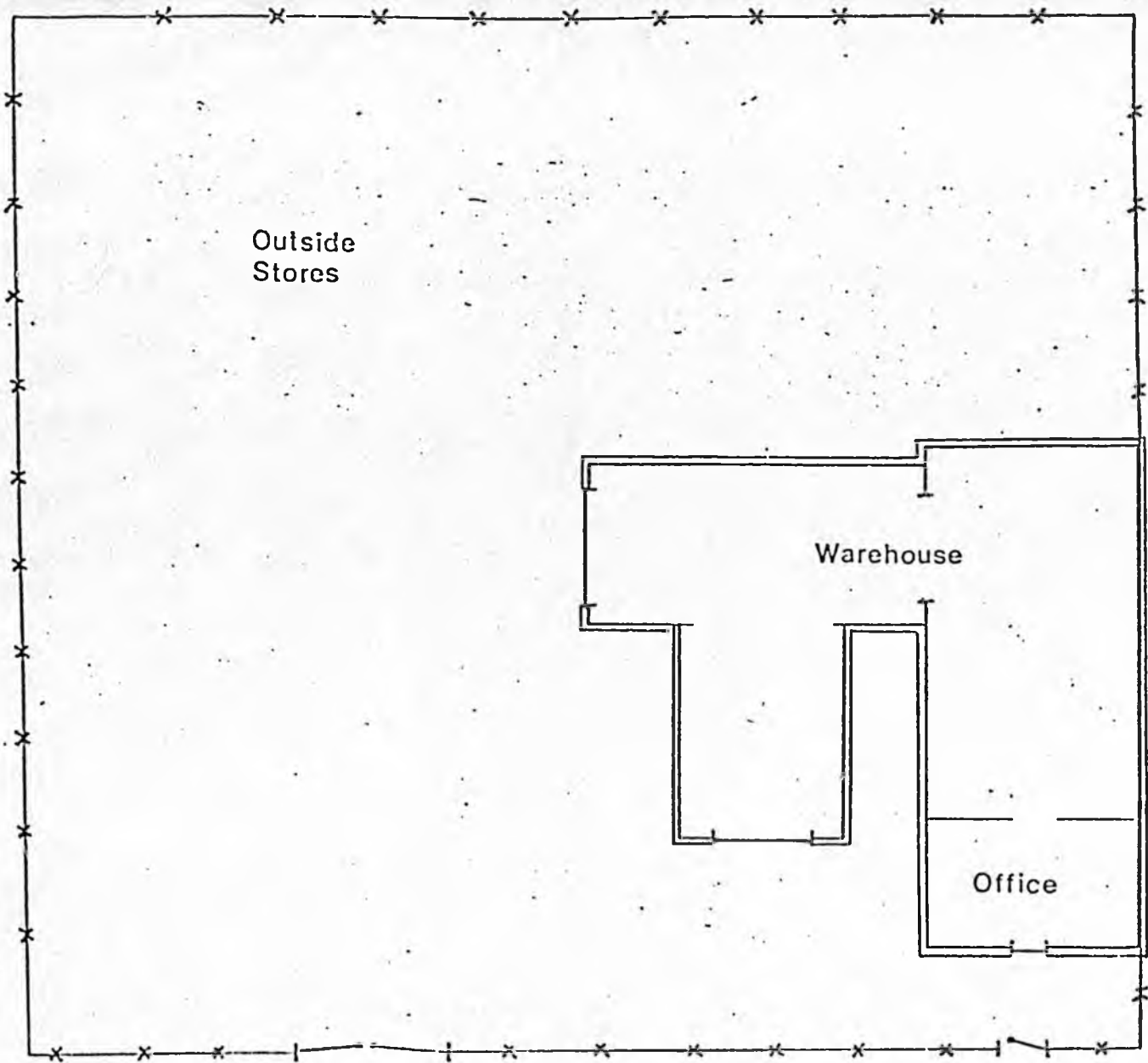
Enclosure 14.3, Conditional Transfer Document - Noncombat Type Aircraft.

Enclosure 14.4, Conditional Transfer Document - Vessel.

15. RECORDS

Copies of Form 123 allocations, warehouse issue sheets, invoice documents, log books, and all other official records of the agency will be maintained for three years. Documents concerning items subject to restriction will be maintained for three years, or for one year beyond the expiration of the restriction period whichever is longer. Records for property in compliance status will be maintained for one year after the case is closed.





- Buildings & Grounds owned by State of Alaska
- Inside Storage - - 9,000 sq ft
- Outside Storage - - 50,000 sq ft