

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

3549 HRES, HB 248 - HB 273

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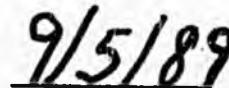


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Date

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Bradley
3/21/85 ✓

Original sponsors: Shultz, Sund,
M.M. Miller and Marrou

IN THE HOUSE

BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 248 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to leases on certain land formerly described as university-grant land; and providing for an effective date."

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

* Section 1. (a) A person and the assignee of a person who was a lessee of university-grant land on June 17, 1983, and whose lease is, on the effective date of this Act, managed by the Department of Natural Resources may request the commissioner of natural resources to issue a quitclaim deed conveying the land.

(b) Except as provided in (c) of this section, a lessee who holds a lease of former university-grant land under AS 38.05.070 may purchase the land for the lower of

(1) the appraised fair market value of the land under the lease as specified in Appendix F of the Settlement Agreement between the Department of Natural Resources, the Department of Revenue, the Department of Administration, and the University of Alaska and its Board of Regents as trustee for the University of Alaska as ratified in ch. 22, SLA 1983; or

(2) its appraised fair market value on June 17, 1983, as determined under AS 38.05.085(b).

(c) A lessee who holds a lease of former university-grant land that was subject to reappraisal under AS 38.05.085(a) may purchase the land for the lower of

(1) the appraised fair market value of the land under the lease as the value has been determined under Paragraph 15 of the Settlement

1 Agreement between the Department of Natural Resources, the Department of
2 Revenue, the Department of Administration, and the University of Alaska and
3 its Board of Regents as trustee for the University of Alaska as ratified in
4 ch. 22, SLA 1983; or

5 (2) its appraised fair market value under the lease on June 17,
6 1983, as determined under AS 38.05.085(b).

7 (d) A lessee on the effective date of this Act who was a lessee on
8 June 17, 1983, and who would have been entitled to rights under former
9 AS 38.05.058 before its repeal may exercise those rights in a purchase
10 under (b) or (c) of this section.

11 (e) A lessee who holds a lease of former university-grant land that
12 is classified as agricultural land may purchase the land under (b) or (c)
13 of this section subject to AS 38.05.321(a).

14 (f) The commissioner of natural resources shall advise each lessee
15 who may have rights under this section of the enactment of this section.

16 (g) A lessee of former university-grant land who does not give the
17 commissioner of natural resources notice of an intent to purchase within
18 180 days after receiving the notice of rights provided for in (f) of this
19 section may purchase the former university-grant land for its appraised
20 fair market value at the time the notice of an intent to purchase is given.

21 (h) A purchase of land under this section extinguishes all rights and
22 claims arising out of the lease against the state by a lessee.

23 * Sec. 2. This Act takes effect immediately in accordance with AS 01.-
24 10.070(c).

ATTACHMENT #1

STATE - UNIVERSITY / LEASES

BACKGROUND:

University Trust Lands were Leased by the State, Division of Lands, during the period 1960 to 1975, as Long Term 55yr., Renewable Leases. From 1975-1977 Lessees of All State Land, (Mental Health, School, University, etc.), were appealing absorbitant rental increases, resulting in the Legislature passing New Lease, Amendment Laws in 1977, 1978, (repealing the former Disposal/Lease Laws), providing an option to "Request Conversion, prior to January 1, 1979", of State Leases in effect on or before June 23, 1977, under the "New Laws"; thereby, was to follow an executed Lease amendment. At that time All Leases of State-owned land, including Mental Health, School, Municipality, etc., were amended, and Leaseholder's were permitted to buy their lands at the amended Lease Appraisal Valuation.

With rare exception, by early 1978, University Land Leases were not amended, even though the Lessees filed Lawful "Conversion Requests", (nor allowed to be sold to an applicant) because the University objected, "At its meeting February 15-16, 1978, the Board of Regents declined to approve conversion of Leases", although dictated by the State Statutes.

The University filed a lawsuit on April 23, 1979 vs the State, "alleging mismanagement", also filing a Lis-pendens on all University Trust Land, (including Leased Land, and "some" other land, not belonging to the University). They sought an injuction to stop Lease Conversions, (Amendments), Lease Renewal, or any Disposal thereof, seeking ultimate management of all University Lands. The State sought to enjoin the Lessees as defendants in the Suit; But failed to show the Court how Third Party Lessee's would be damaged. In February, 1981, the Supreme Court ruled that the "State, not the University, owned th Land and could dispose of it only by law, and only the Legislature makes the Law".

XXX On March 11, 1982, the State and University entered into a tentative, (without prejudice), "Settlement Agreement", subject to ratification by the Legislature. Whereby: Compensation for Damages by the State would be paid; Leases were agreed to be binding, and management would be continued by the State, until transfer was requested by the University; Lease Conversion, (Amendments) could finally be completed; All University Lands would be conveyed to the University by the State, except any "unduly encumbered land, including any Lease's" the University elected not to retain, which would be replaced by other State land. Legislative concurrance and the Governors approval finally occurred on June 17, 1983, thru passage of SB 41. During this time Leaseholders complained to Legislators of their ongoing plight, and the Unversity decided to give up ALL Leased Land to the State, and to speed up the schedule of reconveyance of Leases. Thru all this time the Lis-pendens has remained, until the final reconveyance.

XXX In the meantime, following the March 11, 1982, tentative "Settlement Agreement", the Division of Lands started processing University Lease (Amendments), which still remained unexecuted by the Lessor and Lessee, subsequent to the "Conversion Request" Agreement (to Amend), previously entered into by the Lessee and the State prior to 1-1-79. The old 1977, 1978 paperwork was dug out, completely ignoring a Lease Conversion Amendment to the 1977, 1978 Lease Conversion Laws enacted in 1981, (SLA 113, Sec.44.), and made effective retroactively to July 18, 1978. THREE different Conversion Law provisions could now apply; per the "REQUEST" Agreement, Stipulating Provisions/Instructions on back.

(1) 1977 Conversion Law created "New" lease, (rental) based on last appraisal prior to 1-1-75 brought forward to 1-1-76 @ 10% a year, or, if leased after 1-1-75 @ the original lease rate.

(2) 1978 Conversion Law "Amends" lease, (rental) based on last appraisal prior to 1-1-75 brought forward to 1st quarter following request @ 10% a year, or, if leased after 1-1-75 "at the original leased rate". (SLA 182, Sec.21. "If leased after 1-1-75 a New lease is the fair market value brought forward to conversion date @ 10% per year).

(3) 1981 (SLA 113, Sec.44., Retroactive to 7-18-78) Conversion Law "Amends" lease, (rental) based on last appraisal prior to 1-1-74 brought forward to 1st quarter following request @ 10% a year, or, if leased after 1-1-74 @ 10% per year to date of request.

XXX "A YEAR" is compounded; XXXX "PER YEAR" is straight Annual Interest.

The Division of Lands, offered only ONE provision to all University Land Lessee's, which included AGREEING to NOW execute a Lease Amendment (@ approximately Double the current rental rate), unnecessarily back-dating the Amendment, retroactively to 1979, or earlier; Also, demanding the immediate payment of a retroactive Compounded rental rate increase, (Lessee's had never been notified of any "additional", accruing, rental-billing, prior to this demand). The Lessee's were forced to pay-up, or supposedly "lose their rights" under the provisions of the "Amended Lease Law" now in effect.

ISSUES:

Since the Lessee's were innocent Third Parties to the lawsuit between the University and the State, and the land was in limbo, the Lessee's feel the inequity they suffered was a gross injustice, which they had no control over. The only thing Lessee's could do during this period, was pay the Lease expenses, and the Taxes, and pray for a just outcome. In the interim: Lessee's lost the opportunity to utilize their Residency Credits, for purchase of their Leased Land; They had to forestall plans for building, improving, or even retiring. Some have died; and some just gave up!

Since it has been the policy of the State to dispose of lands to its citizens, allowing a preference right to Leaseholders; due to the forestated circumstances, it is respectfully requested the State agree "It is in the best interest of the State" to offer to sell its Equity in these leased lands to the present Lessee's, under an equitable, applicable Preference Right Statute, such as AS 38.05.035(b)2.

ANALYSIS OF HB 248

- Sec. 1 (a) Would allow a person who leased University Grant land on June 17, 1983 and whose lease is managed by the Commissioner of Natural Resources when this bill takes effect, to request the Commissioner to issue a patent to the land.
- Sec. 1 (b) ^e The person who holds a lease of former University Grant land under AS 38.05.07 (c) or .085 (a) (allows a lease to be issued for up to 55 years and sets out rules for reaching a fair appraisal price) may buy the land for the lower of the Appraised . r market value as set out in the Settlement Agreement between the Department of Natural Resources, Revenue, Administration and the University of Alaska or the appraised value on June 17, 1983 under AS 38.085 (b) (under this law the Director of the Division of Land had to have the property appraised)
- Sec. 1 (d) A person who holds a lease on the land when this bill becomes law and who leased the land on June 17, 1983 and who would have been entitled to rights under the former AS 38.05.085 before its repeal, may exercise the purchase rights outlined above. (Sec. 1 (b) and (c)).
- Sec. 1 (e) A person who holds a lease of former university grant land that is classified as agricultural may purchase it subject reservations by the State of all interests except agricultural rights.
- Sec. 1 (f) The Commissioner of Natural Resources is responsible for advising lessee's who may have rights under this law when it is enacted.
- Sec. 1 (g) A lessee of former university grant land who does not give the Commissioner notice of intent to purchase with 180 days after receiving notice may purchase the land at its appraised fair market value at the time the notice of intent to purchase is given
- Sec 2. Provides Act takes effect immediately.

FOLLETT & ASSOCIATES

4141 B Street, Suite 402, Anchorage, Alaska 99503 (907) 562-4279



Richard H. Follett, MAI
Eric G. Follett, MAI

February 18, 1985

Ms. Bev Aleck
2524 Redwood
Anchorage, Alaska 99504

Regarding: Former University of Alaska Lands leased
by the State of Alaska.

Dear Ms. Aleck:

The following letter sets forth the terminology, definitions and appraisal practices used in valuing real estate, when the property is affected by a lease. The eighth edition of The Appraisal of Real Estate, published by the American Institute of Real Estate Appraisers states, "The bundle of rights Theory holds that total real property ownership, or title in fee, includes several distinct rights, each of which can be separated from the bundle and conveyed by the fee owner to other parties in perpetuity or for limited time periods. When a right is separated from the bundle and transferred, a partial, or fractional property interest is created.

"Lease practice is one practical application of the Bundle of Rights Theory. An owner of the total bundle (a lessor) may convey to a tenant (a lessee) rights to use and occupy a property for a fixed time period. In return, the tenant assumes an obligation to pay an agreed upon periodic rent."

It goes on to say that, "A leasehold interest is said to have value when contract rent is less than market rent, which is the amount a property could earn in a competitive real estate market. Market rent is not profit from a business operated on the premises. It is the rent the real estate could command in the market. In a perfectly negotiated lease, contract rent would probably not differ from market rent. When market rent exceeds contract rent, the leasehold interest acquires value."

Under the Canons and Regulations of the American Institute of Real Estate Appraisers, it would be unethical for an appraiser to render an opinion of market value for a property, and not take into consideration the effect of any leases on that property. If the tenant had a favorable lease at below market rent, whereby a leasehold interest existed, the market value of the property would be of the leased fee estate, which can be found by deducting the value of the leasehold interest from the total property value in fee simple. It would be unethical for the appraiser to merely value the property in fee simple and not take into account a favorable lease creating a leasehold interest by the lessee.

REAL ESTATE APPRAISERS • CONSULTANTS • MARKET ANALYSTS

At this point it may be helpful to define some of the terms used in this letter: (1)

Lessor - One who holds title and conveys the right to use and occupy a property under a lease agreement.

Lessee - One who possesses the right to use or occupy a property under lease agreement.

Lessor's Interest - Leased Fee Interest - The present (discounted) value of the contract (lease) rents in addition to the present (discounted) value of the reversion (a leased fee).

Lessee's Interest - The market value of the property less the value of the lessor's interest.

Leasehold Value - The value of the leasehold interest; that is, the right to the use, enjoyment and profit existing by virtue of the rights granted under a lease instrument. The value of the leasehold interest is the present (discounted) worth of the rent saving, when the contractual rent at the time of appraisal is less than the current market rent.

Reversion - The returning of an item of real estate to its grantor, such as the return of the future use of real estate to a lessor at the expiration of the lease controlling it.

In the case of the University of Alaska Lands, which were leased by the State of Alaska, these properties all have an existing valid lease which must be taken into consideration when an appraiser estimates the current market value of the property. The State of Alaska is the lessor and owns the leased fee interest, which is the right to receive rent and to get the property back at the end of the lease.

The individual leaseholders own the leasehold interest, which is the right to use the property for a specific period of time, and may include improvements to the property or subleasing.

(1) Definitions are from the Appraisal Terminology and Handbook, published by the American Institute of Real Estate Appraisers.

Most of the University Land Leases were made in the early 1970's, and contain a clause allowing the lease payment to be increased to market rent upon reappraisal every five years. They were 55 year leases with an option to renew the lease for an additional 55 years at market rent.

In the late 1970's the State offered a conversion program whereby the lessees could convert the lease to a level payment, 25-year lease, after which the lease payment could be increased on every ten year anniversary, but the lease payment could not be greater than 150% of the payment during the previous 10 year period.

In all the instances reviewed by the appraiser, this created a substantial leasehold interest for the lessees.

The State of Alaska is now offering to sell the properties to the leaseholders. Since the properties are affected by valid leases, and the lessees have a saleable leasehold interest, the market value of the portion of the property owned by the State of Alaska is the leased fee interest.

In the Addenda of this letter, is an example analysis of a leased property which has been patterned after an actual leasehold under consideration. The assumptions in this example are as follows:

Current Land Value: \$280,000 (160 acres @ \$1,750/acre)
Beginning of Lease: 7/23/74
End of Lease: 7/23/2029
Lease Term: 55 years
Option: Additional 55 years at market rent.
Lease Rate: 25-year level payment at \$950 per quarter beginning 1/23/78. The lease rate may increase up to 50% of the previous period every 10 years.

A survey of land leases in the market indicates that land lease rates for this type property would be about 8% of value annually. This would indicate a quarterly lease payment of \$5,600 ($.08 \times \$280,000 \div 4 = \$5,600$). The lessee has a substantial leasehold advantage of \$4,650 per quarter (\$5,600 less \$950 equals \$4,650). A typical investor would expect this property to increase in value approximately 70% every 10 years. For example, a property valued at \$20,000 today would be worth \$34,000 ten years hence. Thus, the lease advantage will increase over time, since the lease payment is level for 25 years and then only can be increased 50% every 10 years.

The lease goes to market rent at the beginning of the option period during the 55-year option. Therefore, the lessee's leasehold interest is calculated for only the initial 55 year term of the lease.

The underlying logic for estimating the market value of the leasehold interest, or the leased fee interest, is that a person would not pay a dollar today for a dollar received in the future. The difference in the amount paid is reflected by the discount rate, or interest rate.

Addendum A represents the calculations for a leased fee interest where the property is leased under the above terms and conditions, except the lease payment is at market rent and can be increased every 10 years. It shows that the present value of the discounted lease payments at 12% interest, plus the present value of the reversion of the property at 12% interest equals the present value of the property in fee simple. This calculation is used to check the assumptions and discount rates to make sure the discounted cash flows of the model equals the current fee simple market value of the property.

Addendum B shows the calculations for the leased fee interest using the discount rates from the model and applying the terms and conditions of the lease to this property. This example shows the leased fee interest has a current value of \$50,733. This is the State of Alaska's Leased Fee Interest. Subtracting this amount from the value in fee simple of \$280,000 indicates that the leasehold interest is worth \$229,267.

As a check against these calculations, the appraiser can also estimate the value of the leasehold interest directly. It is based on the discounted cash flow of the rental advantage from the lease. During each time period, the rental advantage between market rent and the rent stated in the contract is discounted to present value.

Addendum C summarizes these calculations, indicating a total leasehold interest based on the above lease information and assumptions, of \$228,470. Adding the estimated value of the leased fee interest yields a total property value estimate of \$279,203, ($\$228,470 + \$50,733 = \$279,203$) which is very close to the current market value of the property (\$280,000).

It is the appraiser's hope that the example outlined in the Addenda will help clarify the University Land Leasehold situation and help identify the proper procedure to estimate the current market value of a property involving a lease. This paper shows the method of valuing both a Leased Fee Interest and the Leasehold Interest.

It is interesting to note that in this example, if the lease continues, the State of Alaska will receive a total of \$294,262 in lease payments, plus the right to get back the property (the reversion) at the end of the lease, at which time the property will have appreciated to an estimated value of \$2,970,000.

Alternately, if the State of Alaska sells its Leased Fee Interest for \$50,733 (see Addendum B), and puts the money in an account receiving 10% interest compounded monthly, the investment would grow to \$4,265,000 by the end of the lease (7/23/2029).

I would like to reemphasize that when a property is appraised for "Fair Market Value" and there is an existing lease, the appraiser must analyze the lease, and appraise the Leased Fee Interest (sometimes called Leased Fee Estate).

If we can be of any further help to you regarding the analysis of leases, please call us.

Sincerely yours,
FOLLETT & ASSOCIATES



Eric G. Follett, MAI

ADDENDUM A

Leased Fee Interest Calculations - at Market Rents

As a check of the model, if we apply a market rent to the lease of a \$280,000 property. The Present Worth of the lease payments and reversion should equal today's market value of the property.

Annual market rent would be 8% of land value (8% x \$280,000 = \$22,400), or \$5,600 quarterly. An investor would also expect land values to increase 70% every 10 years, which would also increase the rent 70% every 10 years.

1st Period - 1/23/85 to 1/23/95

The Present Worth Factor for 40 quarters at 12% interest is 23.808 (from Compound Interest Tables).
The lease rate is \$5,600.

$$\$5,600 \times 23.808 = \$133,326$$

2nd Period - 1/23/95 to 1/23/2005

The Present Worth Factor for 40 quarters, deferred 40 quarters at 12% interest is (31.107 - 23,808) = 7.299
The lease rate can be increased by 70% to \$9,520.

$$\$9,520 \times 7.299 = \$ 69,486$$

3rd Period - 1/23/2005 to 1/23/2015

The Present Worth Factor for 40 quarters, deferred 70 quarters at 12% interest is (33.344 - 31.107) = 2.237.
The lease rate can be increased by 70% to \$16,184.

$$\$16,184 \times 2.237 = \$ 36,204$$

4th Period - 1/23/2015 to 1/23/2025

The Present Worth Factor for 40 quarters, deferred 120 quarters at 12% interest is (34.030 - 33.344) = .686.
The lease rate can be increased 70% to \$27,513.

$$\$27,513 \times .686 = \$ 18,874$$

5th Period - 1/23/2025 to 7/23/2029

The Present Worth Factor for 18 quarters, deferred 160 quarters at 12% interest is (34.155 - 34.030) = .125.
The lease rate can be increased 70% to \$46,771.

$$\$46,771 \times .125 = \$ 5,846$$

Present Worth of Market Lease Payments \$263,736

Present Worth of Reversion

The estimated land value in year 2029 is \$2,970,000, which reflects a 70% increase in land value every 10 years, simple interest.

Present Worth Factor for \$1.00 received after 178 quarters at 12% annual interest is .0052

$$\$2,970,000 \times .0052 = + 15,444$$

Total Indicated Present Value of Lease Payment and Reversion \$279,180

The model checks, since this is equal to the current value of the property in fee simple interest.

ADDENDUM B

Leased Fee Interest Calculations - Based on the Lease Terms

The "converted" lease states the quarterly rent on this property is \$950 until 1/23/2003. The payment can then be increased up to 50% every 10 years.

1st Period - 1/23/85 thru 1/23/2003

The Present Worth Factor for 72 quarters at 12% interest is 30.246. The current lease rate is \$950 per quarter.

$$\$950 \times 30.246 = \$28,734$$

2nd Period - 1/24/2003 thru 1/23/2013

The Present Worth Factor for 40 quarters, deferred 7 quarters at 12% interest is $(33.080 - 20.246) = 2.834$. The lease rate can be a maximum of \$950 plus 50%, or \$1,425.

$$\$1,425 \times 2.834 = \$4,038$$

3rd Period - 1/24/2013 thru 1/23/2023

The Present Worth Factor for 40 quarters, deferred 112 quarters at 12% interest is $(33.949 - 33.080) = .869$. The lease payment can be a maximum of \$1,425 plus 50%, or \$2,137.50

$$\$2,137.50 \times .869 = \$1,857$$

4th Period - 1/24/2023 thru 7/23/2029

The Present Worth Factor for 26 quarters, deferred 152 quarters at 12% interest is $(34.155 - 33.949) = .206$. The lease payment can be a maximum of \$2,137.50 plus 50%, or \$3,206.25.

$$\$3,206.25 \times .206 = \$660$$

Present Value of Lease Payment \$35,289

Reversion

At the end of the 55 year lease the leaseholder has the option of renewing the lease for another 55 years, but the lease payment can be increased to market rent. Thus, the appraiser assumes that the leaseholder would no longer have a leasehold interest at that point, and the value of the Leased Fee Interest would equal the value of the Fee Simple Interest. The estimated value of the property in the year 2029 is \$2,970,000, which reflects a 70% increase in land value every 10 years.

Present Value of Reversion

Present Worth Factor for \$1 received after 178 quarters at 12% annual interest is .0052.

$$\$2,970,000 \times .0052 = \$15,444$$

Total Estimated Market Value of Leased Fee Interest \$50,733

Note: This represents the market value of the State of Alaska's Leased Fee Interest in the property.

ADDENDUM C

Leasehold Interest Calculations

Based on Lease Terms and Investor Expectations in Market

Period - 1/23/85 thru 1/23/95

PW of the rental advantage of \$4,650 (\$5,600 - \$950)
per quarter for 40 quarters discounted at 12% interest.
The Factor is 23.808

\$4,650 x 23.808 = \$110,708

Period - 1/23/95 thru 1/23/2003

Present Worth of the Rental Advantage of \$8,570
(\$9,520 - \$950) discounted at 12% interest for
32 quarters, deferred 40 quarters. The Factor
is 30.246 - 23.808 = 6.438

\$8,570 x 6.438 = \$ 55,174

Period - 1/23/2003 thru 1/23/2005

Present Worth of the Rental Advantage of \$8,095
(\$9,520 - \$1,425) discounted at 12% interest for
8 quarters, deferred 72 quarters.
The Factor is 31.107 - 30.246 = .861

\$8,095 x .861 = \$ 6,968

Period - 1/23/2005 thru 1/23/2013

Present Worth of the Rental Advantage of \$14,759
(\$16,184 - \$1,425) discounted at 12% interest
for 32 quarters, deferred 80 quarters.
The Factor is 33.080 - 31.107 = 1.973

\$14,759 x 1.973 = \$29,125

Period - 1/23/2013 thru 1/23/2015

Present Worth of the Rental Advantage of \$14,046
(\$16,184 - \$2,138) discounted at 12% interest
for 8 quarters, deferred 112 quarters.
The Factor is 33.344 - 33.084 = .264

\$14,046 x .264 = \$ 3,711

Period - 1/23/2015 thru 1/23/2023

Present Worth of the Rental Advantage of \$25,375
(\$27,513 - \$2,138) discounted at 12% interest
for 32 quarters, deferred 120 quarters.
The Factor is 33.949 - 33.344 = .605

\$25,375 x .605 = \$15,357

Period - 1/23/2023 thru 1/23/2025

Present Worth of the Rental Advantage of \$24,307
(\$27,513 - \$3,206) discounted at 12% interest
for 8 quarters, deferred 152 quarters.
The Factor is 34.030 - 33.949 = .081

\$24,307 x .081 = \$ 1,972

Period - 1/23/2025 thru 1/23/2029

Present Worth of the Rental Advantage of \$43,565
(\$46,771 - \$3,206) discounted at 12% interest
for 18 quarters, deferred 160 quarters.
The Factor is 34.155 - 34.030 = .125

\$43,565 x .125 = \$ 5,455

Total Discounted Present Value of Leasehold Interest \$228,470

Add: Leased Fee Interest +50,733

TOTAL of Leasehold and Leased Fee Interests \$279,203

Note: This is equal to the value in Fee Simple of \$280,000, which provides a check against the assumptions and calculations.

APPRAISER'S QUALIFICATIONS

ERIC G. FOLLETT, MAI

American Institute of Real Estate Appraisers, Designation — MAI



EDUCATION

College: B.S. in Mathematics, University of Washington, 1973

Courses: American Institute of Real Estate Appraisers:

AIREA Course IA - Seattle Pacific, 1974

AIREA Course IB - University of Portland, 1977

AIREA Course II - University of Colorado, 1978

AIREA Course IV - Litigation - U. of Portland, 1980

BUSINESS EXPERIENCE

Appraiser - FOLLETT & ASSOCIATES, Anchorage, AK, 1/77 to present

Appraiser - ERICKSON & ASSOCIATES, Anchorage, AK, 4/75 to 7/81

Programmer/Analyst - SAFECO INSURANCE CO., Seattle, WN, 3/73 to 4/75

SCOPE OF ASSIGNMENTS

Appraisals of commercial property, office buildings, medical buildings, industrial buildings, residential, special use properties and vacant land. Feasibility studies, and Consulting. Qualified as an expert witness. Assignments located in Municipality of Anchorage, Matanuska-Susitna Borough, Kenai Borough, Valdez, Cordova, Seward, Kodiak, Bethel, Dutch Harbor, Juneau, Haines, Sitka, and numerous "Bush Communities".

MAJOR ASSIGNMENTS (over \$1,000,000)

Jewel Lake Shopping Center & Bowling Alley, Anchorage
Alaska Hospital & Professional Building, Debarr Rd., Anchorage
Eastgate Shopping Center, Boniface Parkway, Anchorage
"Alyeska" Office Building Complex, Bragaw Street, Anchorage
Viewpoint Subdivision - 128 Lots
Bowling Alley and Bar, Sitka, Alaska
Vagabond Mobile Home Park, Anchorage, Alaska
Medical Clinic, Anchorage, Alaska
"Cottonwood Village" Condominiums - 104 Units
Wasilla Business Park, Wasilla, Alaska
Apartment Complex - 24-units, Kenai, Alaska

TYPICAL CLIENTELE

All major Banks in Alaska
Carr-Gottstein Properties
Jack White Company
Area Realtors
Bureau of Land Management
Hines Investments
State of Alaska Division of Parks

Alaska State Housing Authority
Calista Native Corporation
Kuskokwim Management Corp.
Parker Drilling Company
Union Oil Company
Professional Contractors
U.S. Postal Service

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CSHB 248
Title: University grant land leases

FISCAL DETAIL

Agency Affected: Natural Resources
Program Category Affected: NRMEC

Sponsor: Shultz
Requestor: _____
Date of Request: _____

BRU, Program or Subprogram(s) Affected: _____
Land and Water Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
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-

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

No fiscal impact.

Prepared By: Ned Farquhar
Division: Commissioner's Office

Phone: 465-2400
Date: 22 March 1985

Approved by Commissioner: Anna D. Arnold, Deputy
Agency: Natural Resources

Date: 22 March 1985

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84




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Signature of Camera Operator


Date

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**STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 256
 Title: Economic Development of the State
 Sponsor: Ringstad
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Natural Resources
 Program Category Affected: NRMEC
 BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
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-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

No fiscal impact.

Prepared By: Ned Farquhar
 Division: Commissioner's Office

Phone: 465-2400
 Date: March 21, 1985

Approved by Commissioner: Thomas D. Amund, Deputy
 Agency: Natural Resources

Date: March 21, 1985

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

Alaska State Legislature

Representative John Ringstad
District 20-B
P.O. Box 1848
Fairbanks, Alaska 99707
(907) 456-8336



While in Juneau
Pouch V
Juneau, Alaska 99811
(907) 465-4998

House of Representatives

HB 256, an act establishing the economic development policy of the state, is a general policy statement, addressing the need for a stable, diversified economic base, and declaring Alaska's commitment to foster such development through the state's cooperation with the private sector.

Alaska sorely lacks an economic development policy.

This fact has hit us hard, with the sudden decline in revenues we are currently facing. It had been anticipated, that by the time the oil revenue dollars started falling off, Alaska would be well on the road to a stable, diversified economy. The oil revenues are now on the decline, and looking at the world-wide market situation and pricing structure for oil, this is a long-term situation.

HB 256 reflects Alaska's need and desire to further its economic viability. This confirmation is a long-term commitment towards the goal of diversifying our economy, thus creating more jobs for the citizens of this great state, and allowing them the opportunity to continue to make Alaska their home. Further, HB 256 will serve as a signal to domestic and foreign businesses of our commitment to economic development.

Passage of HB 256 will confirm this intent. This legislation is a general policy statement and is not intended to favor any industry or project.

I've been asked about the need for this legislation as a statute rather than a resolve. Billy Berrier, Director of Legal Services, has stated that a resolve does not have the weight or intent that a statute carries. Further, the intent of a resolution only holds for a particular Legislature. Our goal must be a long-term, continuous commitment to develop Alaska's economy.

I ask for your support, and thank you for your consideration of HB 256.

THE AftI-DITTMAN POLL

of Alaska business leaders

The AftI-Dittman Poll is a regular monthly feature of Alaska Construction & Oil and Alaska Analysts/Dittman Research. Each month several hundred Alaska businessmen and businesswomen are contacted and asked their opinions on questions of statewide importance. The statewide totals are combined and published in the weekly business newsletter Alaska from the Inside (AftI) and in Alaska Construction & Oil. The respondents included in the sample are representative of their fields of activity and are located throughout the state.

QUESTION

"Overall, do you feel state government regulations and policies are most likely to encourage or discourage well-planned, responsible resource development?"

RESULTS

	Encourage	Discourage	Undecided
Construction and Timber	22%	78%	—
Petroleum and Mining	13%	85%	2%
Finance and Services	42%	56%	2%
TOTAL	24%	74%	2%

ANALYSIS

Nearly three-quarters (74%) of Alaska's business leaders interviewed in November feel state government regulations and policies *discourage* well-planned and responsible resource development.

The percentage of respondents agreeing varies widely by industry. Petroleum and Mining respondents are the most adamant, with 85% answering "discourage."

A review of the respondents' comments offered during the poll shows that the Alaska Department of Fish and Game was the most frequently mentioned example of a state agency that discourages resource development. The comments also indicated two main reasons for respondents' concern about government policies:

- (1) It is difficult to justify the expense and time required to design a well-planned development and take it through the permitting process when the likelihood of success is always in doubt.
- (2) The state employees who work in regulatory agencies are more likely to have regulatory ("protective") mentalities which may blind them to the benefits of resource development.

COMMENTS

"Mainly in the permit area — the Department of Fish and Game stops more projects than any agency. They are always on the side of the Sierra Club and SEACC. No development is their policy."

"It took 16 years to get a water-use permit for mining and I have a coal prospecting permit applicant that is nine years old and still pending."

"The tendency in state government is to over-regulate. There can only be one result of that tendency — operating costs are increased both by the requirements for compliance and the cost of processing paper."

"It takes too much time and effort to get permission for access. It discourages people before they even start."

"Regulations are built around a negative attitude."

"Definitely encouraged — a marked improvement noted in both words and deeds!"

"Until the Department of Fish and Game is restricted from making unilateral and arbitrary decisions concerning resource development, we will be unable to encourage development no matter how well-planned and responsible!"

CALENDAR

ENERGY-SOURCES TECHNOLOGY CONFERENCE & EXHIBITION — Sponsored by the American Society of Mechanical Engineers at Loews Anatole Hotel, Dallas, TX, (214) 247-1747, Feb. 17-22.

TRAINING SESSIONS ON DRILLING AND BLASTING TECHNIQUES — Explosives Services Corp. of Issaquah, Wash., (206) 392-7112, is conducting a five-day training session on drilling and blasting techniques in Ketchikan, Feb. 18-Feb. 22; and in Anchorage, Feb. 25-March 1.

INTRODUCTION TO MICROCOMPUTERS — A short course presented by the Society of Mining Engineers of the American Institute of Mining, Metallurgical and Petroleum Engineers, Hilton Hotel, New York, NY, (303) 973-9550, Feb. 23-24.

FINANCE FOR THE MINERALS INDUSTRY — A symposium that is part of the annual meeting events for the Society of Mining Engineers of the American Institute of Mining, Metallurgical and Petroleum Engineers; Hilton Hotel, New York, NY, (303) 973-9550, Feb. 24-28.

STATE OIL AND GAS LEASE SALE NO. 46A — Anchorage Westward Hilton Hotel, Anchorage, Feb. 26.

AGC 66TH ANNUAL CONVENTION/CONSTRUCTOR EXPOSITION — The Associated General Contractors of America 1985 convention, San Francisco, CA, Feb. 27-March 5.

ALASKA SUPPORT INDUSTRY ALLIANCE — Conference on marginal oil field development, Captain Cook Hotel, Anchorage, March 2.

FOURTH ANNUAL ALASKA CONSTRUCTION SUPPLY AND EQUIPMENT SHOW — Exhibits and technical sessions, Sullivan Arena, Anchorage, (907) 346-2424, March 21-22.

ARCTIC '85: CIVIL ENGINEERING IN THE ARCTIC OFFSHORE — A national special conference of the American Society of Civil Engineers at the Sheraton Palace Hotel, San Francisco, CA, (713) 772-0876, March 25-27.

34TH ANNUAL VEHICLE MAINTENANCE/MANAGEMENT CONFERENCE — Sponsored by the University of Washington, College of Engineering, at Kane Hall, Seattle, WA, (206) 543-5539, March 25-28.

ALASKA TRANSPORTATION FORUM — University of Alaska-Fairbanks, April 15-16.

CABLE HARVEST TECHNIQUES — Holiday Inn-Downtown, Spokane, WA, (509) 838-6101, April 15-19.



United Way
of King County

Thanks to you.

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of Alaska business leaders

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CABLE HARVEST TECHNIQUES — Holiday Inn-Downtown, Spokane, WA, (509) 838-6101, April 15-19.



United Way
of King County

Thanks to you.



Resource Development Council for Alaska, Inc.

807 "G" Street, Suite 200, Anchorage, Alaska 99501-3440
Box 100516, Anchorage, Alaska 99510-0516 - 907/276-0700

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Paula P. Easley

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Senator Frank Murkowski
Congressman Don Young
Governor Bill Sheffield

March 5, 1985

Representative Dick Shultz
Pouch V
Juneau, AK 99811

Dear Dick:

I was glad to see your name listed as a cosponsor of HB 256. This is an important bill for the state of Alaska and the Resource Development Council. Your support is significant and is creating support for the bill by those who know you and your record.

We and others have been pushing for this sort of state economic development policy for several years. With this bill Alaska can have the statutory guidelines for economic development envisioned in our constitution.

I am aware that HB 256 is tentatively scheduled to be heard in your committee March 20. I appreciate the priority you have given this. You can be sure that the Resource Development Council will have testimony prepared to support this bill and encourage its timely passage in the House.

Please let us know if there is any background or related information we can provide to aid your committee in reviewing this bill.

Thank you again for your support.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL
for Alaska, Inc.

Paula P. Easley
Executive Director

cc: Michael Abbott, RDC Legislative Coordinator

Doug

Testimony of the Resource Development Council on HB 256
Before the House Resource Committee

March 22, 1985

Good morning. My name is Beverly Ward and I am representing the Resource Development Council for Alaska of which I am a member of the board of directors. We appreciate the opportunity to comment on HB 256.

The economic development policy outlined in this bill is a positive addition to the Alaska Statutes. We encourage the passage of this bill in its present form.

Our objectives regarding this legislation are very simple. We want to see that there are statutory mandates for economic development. The tenets of this bill are broadly supported by Alaskans from every region. Our goals, within the context of this legislation, are not to influence specific regulatory or development proposals, but to create guidelines for all branches of government.

Specifically, HB 256 mandates purposeful development of Alaska's natural resources to further its goals of a sound economy, stable employment and a desirable quality of life. It also mandates state involvement as a catalyst for responsible economic development.

None of the provisions of this bill are new to any discussion of economic development. This bill simply places them within a framework which allows Alaska to measure itself against its own economic development goals.

Thank you for the opportunity to present the comments of the Resource Development Council.



Resource Development Council for Alaska, Inc.

807 "G" Street, Suite 200, Anchorage, Alaska 99501-3440
Box 100516, Anchorage, Alaska 99510-0516 - 907/276-0700

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EX-OFFICIO MEMBERS

Senator Ted Stevens
Senator Frank Murkowski
Congressman Don Young
Governor Bill Sheffield

March 5, 1985

MAR 12 1985

Representative John Ringstad
Pouch V
Juneau, AK 99811

Dear John:

We are so pleased to see HB 256 introduced with you as sponsor. This is an important bill for the state of Alaska and the Resource Development Council. Your sponsorship is significant and is creating support for the bill by those who know you and your record.

We and others have been pushing for this sort of state economic development policy for several years. With this bill Alaska can have the statutory guidelines for economic development envisioned in our constitution.

I am aware that HB 256 is tentatively scheduled to be heard in House Resources March 20. You can be sure that the Resource Development Council will have testimony prepared to support this bill and encourage its timely passage in the House.

Please let us know if there is any background or related information we can provide to aid its passage.

Thank you again for your support.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL
for Alaska, Inc.

Paula P. Easley
Paula P. Easley
Executive Director

cc: Michael Abbott, RDC Legislative Coordinator



Fairbanks North Star Borough

Mayor: B.B. Allen

February 12, 1985

FEB 19 1985

Representative John Ringstad
Alaska State Legislature
Pouch V
Juneau AK 99811

Dear John:

Based on the advice of several people including Harold Heinze, President, ARCO Alaska, Inc., Bob Bettisworth, Dr. Earl Beistline, Dr. William Wood and others, we have formed a statewide Resource Policy Coalition to address the needs of resource development throughout our state.

At our initial meeting, the first resolution we adopted was a policy statement on economic development. I would like for you and other members of the interior delegation to review the policy statement in hopes that you will do whatever is necessary to establish this as a statement of the State of Alaska's policy on economic development.

This policy statement on economic development has been supported by the Alaska Municipal League, Alaska Conference of Mayors, Fairbanks North Star Borough, Greater Fairbanks Chamber of Commerce, City of Seward, Alaska Mining Association and several others. I think it is important that members of the interior delegation, representing the area where most of the resources are located, provide the leadership by introducing and supporting the resolution for the development and processing of those natural resources.

If you have questions regarding this matter, please do not hesitate to contact me.

Sincerely yours,

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

B.B. ALLEN
Borough Mayor

BBA:al

enclosure

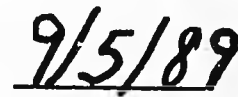


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Signature of Camera Operator


Date

HB

267

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : 03-19-86

REQUEST

Bill/Resolution No. : HB 267
 Title : State Park Camping Fees

 Sponsor : House Resources
 Requestor : House Finance
 Date of Request : 03-20-86

FISCAL DETAIL

Agency Affected : Natural Resources
 BRU : Park Management, Management & Admin.

 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		31.4	38.3	38.3	38.3	38.3
TRAVEL						
CONTRACTUAL		9.0	6.0	6.0	6.0	6.0
SUPPLIES		42.0	15.4	15.4	15.4	15.4
EQUIPMENT		5.0	5.0	5.0	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		87.4	64.7	64.7	59.7	59.7

CAPITAL						
---------	--	--	--	--	--	--

REVENUE		250.0	420.0	440.0	180.0	520.0
---------	--	-------	-------	-------	-------	-------

FUNDING : (Thousands of Dollars)

GENERAL FUND		87.4	64.7	64.7	59.7	59.7
FEDERAL FUNDS						
OTHER						
TOTAL		87.4	64.7	64.7	59.7	59.7

POSITIONS :

FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME		1	1	1	1	1
TEMPORARY		-0-	-0-	-0-	-0-	-0-

ANALYSIS : Attach a separate page if necessary

See Attached

Prepared by: Neil Johannsen/Sharon Barton *NJB* Phone: 762-4505
 Division: Parks and Outdoor Recreation/Management Date: 03-20-86

Approved by Commissioner: *Wm D. Jensen, Deputy* Date: 3/20/86
 Agency: Natural Resources

Distribution (by Agency preparer's fiscal note):

- Legislative Finance
- Legislative Sponsor
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- Impacted Agency(ies)

Attachment to Bill Analysis
State Park Campground Fees

The bill would authorize camping fees for developed campgrounds in the state the state park system. Fees would be charged on a daily, per vehicle basis in those campgrounds that offer the highest level of facilities and that are economical in terms of administering the program. The cost of implementing the proposed fee system is \$87.4 in FY 87. These funds would provide for the installation of "iron rangers" at self-service fee payment stations at the entrances of state-operated campgrounds. The "iron ranger" is a heavily built iron deposit box that is designed to receive envelopes, providing a very high degree of security. The fiscal note would provide a part-time Accounting Technician for the Division of Management; the Division of Parks and Outdoor Recreation will add time to existing positions for employee overtime to perform the revenue collection tasks, compliance checks, communication with campground hosts, and field accounting functions.

The Division of Parks and Outdoor Recreation would implement the fee collection system through the use of the "Iron ranger" and the use of volunteer camp hosts to insure compliance. The U.S. Forest Service, National Park Service, British Columbia Provincial Park Service and numerous state park systems have found self-collection "iron rangers" vandal proof and to have a very high (80%) public compliance. The contractual service funds would be used to build instructional signs at fee stations and to fund additional vehicle mileage involved with collection, cash deposits, and compliance checks. Supplies funding is needed to purchase the building materials for the self-service collection stations, printing of collection envelopes and field accounting forms. Equipment funds will be used to purchase the safes for remote ranger stations.

The fiscal note reflects the high first year costs of a camping fee program, but assuming that the Division of Parks and Outdoor Recreation does not have a fee system functioning until July 15 and in only nine campgrounds, the expected revenue is \$250.0. This revenue will increase substantially over the five-year period forecasted. The investment-return ration becomes substantial following initial start-up costs. Within 4 years, an investment of about \$60,000 will return revenues of nearly half a million dollars.

We were also asked to comment on the possibility of contracting for state parks management. It would be possible to have fourteen parks under contract management within the first year. The state would realize a savings in the operating budget of \$200.0. However, it would realize reduced revenues of approximately the same amount

Introduced: 3/6/85
Referred: Resources
and Finance

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2

HOUSE BILL NO. 267

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the levy and collection of fees
7 for the use of state park facilities; and providing
8 for an effective date."

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

10 * Section 1. AS 41.21 is amended by adding a new section to read:

11 Sec. 41.21.023. FEES FOR THE USE OF STATE PARK CAMPSITES. (a)

12 The department may establish and collect fees for the use of state
13 park developed campsites. When setting these fees, the department
14 shall consider

15 (1) the cost to the state of operating the facility;

16 (2) the fees charged for the use of a similar facility by a
17 nongovernmental entity;

18 (3) the cost of administering a fee collection program for
19 the facility; and

20 (4) the public interest.

~~21~~ *delete* (b) A person who fails to pay a fee established under this
~~22~~ section is guilty of a misdemeanor punishable under AS 41.21.950.

23 (c) In this section

24 (1) "developed campsite" means a campsite having access to
25 the following public facilities: restrooms, a picnic table, an out-
26 door cooking facility, and an approved water source;

27 (2) "state park" has the meaning given in AS 38.04.910(8).

28 * Sec. 2. AS 28.10.411(e) and AS 41.35.045(b) are repealed.

29 * Sec. 3. This Act takes effect immediately in accordance with

1 AS 01.10.070(c).

Original sponsor: Resources Committee

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 267 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the levy and collection of fees
7 for the use of state park facilities; and providing
8 for an effective date."

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

10 * Section 1. AS 41.21 is amended by adding a new section to read:

11 Sec. 41.21.023. FEES FOR THE USE OF STATE PARK CAMPSITES. (a)

12 The department may establish and collect fees for the overnight use of
13 state park developed campsites. When setting these fees, the
14 department shall consider

15 (1) the cost to the state of operating the facility;

16 (2) the fees charged for the use of a similar facility by a
17 nongovernmental entity;

18 (3) the cost of administering a fee collection program for
19 the facility; and

20 (4) the public interest.

21 (b) In this section

22 (1) "developed campsite" means a campsite having access to
23 the following public facilities: restrooms, a picnic table, an out-
24 door cooking facility, and an approved water source;

25 (2) "state park" has the meaning given in AS 38.04.910.

26 * Sec. 2. AS 28.10.411(e) and AS 41.35.045(b) are repealed.

27 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
28 10.070(c).

Attachment to Bill Analysis
State Park Campground Fees

The bill would authorize camping fees for developed campgrounds in the state park system. Fees would be charged on a daily, per vehicle basis in those campgrounds that offer the highest level of facilities and that are economical in terms of administering the program. The cost of implementing the proposed fee system is \$87.4 in FY 86. These funds would provide for the installation of "iron rangers" at self-service fee payment stations at the entrances of state-operated campgrounds. The "iron ranger" is a heavily built iron deposit box that is designed to receive envelopes, providing a very high degree of security. The fiscal note would provide a part-time Accounting Technician for the Division of Management; the Division of Parks and Outdoor Recreation will add time to existing positions for employee overtime to perform the revenue collection tasks, compliance checks, communication with campground hosts, and field accounting functions.

The Division of Parks and Outdoor Recreation would implement the fee collection system through the use of the "Iron ranger" and the use of volunteer camp hosts to insure compliance. The U. S. Forest Service, National Park Service, British Columbia Provincial Park Service and numerous state park systems have found self-collection "iron rangers" vandal proof and to have a very high (80%) public compliance. The contractual service funds would be used to build instructional signs at fee stations and to fund additional vehicle mileage involved with collection, cash deposits, and compliance checks. Supplies funding is needed to purchase the building materials for the self-service collection stations, printing of collection envelopes and field accounting forms. Equipment funds will be used to purchase the safes for remote ranger stations.

The fiscal note reflects the high first year start-up costs of a camping fee program, but assuming that the Division of Parks and Outdoor Recreation does not have a fee system functioning until July 15 and in only nine campgrounds, the expected revenue is \$108.6. This revenue will increase substantially over the five-year period forecasted. The investment-return ration becomes substantial following initial start-up costs. Within 4 years, an investment of about \$60,000 will return revenues of near half a million.



ALASKA VISITORS ASSOCIATION

P.O. BOX 10-2220
ANCHORAGE, AK 99510
(907) 276-6663

Telex:
Within Alaska 25 147
Lower U.S. 090 25 147
Canada 0305 25 147
International 314 25 147

1983-84 EXECUTIVE OFFICERS

President
ROBERT H. BRENNAN
Princess Tours
Seattle, Washington

**Vice President
Administration**
RAL WEST-HARDWICK
Alaska West Associates
Anchorage, Alaska

**Vice President
Government Relations**
CHRIS VON IMHOF
Alyeska Resort
Girdwood, Alaska

**Vice President
Marketing**
DEAN WEIDNER
Travel Alaska Tours
Seattle, Washington

Secretary
DENNIS BRANDON
Sheffield Enterprises
Anchorage, Alaska

Treasurer
A. K. "KIRK" LANTERMAN
Westours, Inc.
Seattle, Washington

Executive Director
DALE FOX

PAST PRESIDENTS GEORGE SUNDBORG 1950

ROBERT E. ELLIS
1951-1952

EDWARD D. COFFEY
1952-1955

MARSHALL CRUTCHER
1955-1956

BEN CRAWFORD
1956-1957

EVERETT PATTON
1957-1959

ROBERT A. BAKER
1959-1960

ROBERT E. ELLIS
1960-1962

ROBERT GIERSDORF
1962-1963

E.E. SWOFFORD
1963-1964

H. JACK MUSIEL
1964-1966

JAMES JOHNSON
1966-1967

FRANK DOWNEY
1967-1968

BILL SHEFFIELD
1968-1969

JOHN MONROE
1969-1970

RONALD LATIMORE
1970-1971

JOHN STEVENS
1971-1972

LEN LAURANCE
1972-1973

E. AL PARRISH
1973-1974

A.E. "BUD" HAGBERG
1974-1975

CHUCK WEST
1975-1977

CHARLES CONWAY
1977-1978

JIM BINKLEY
1978-1979

MARTHA EDWARDS
1979-1980

ROLF KLUG
1980-1981

DAVE PALMER
1981-1982

CHRIS VON IMHOF
1982-1983

April 16, 1984

Honorable Robert Bettisworth
Alaska House of Representatives
State Capital
Pouch V
Juneau, Alaska

Dear Rep. Bettisworth:

I am pleased to inform you that the AVA Board of Directors last week voted to support passage of House Bill 486, relating to user fees for parks facilities. As sponsor of the measure, I'm sure you understand how private industry feels about unfair competition the state currently participates in around Alaska.

The state will benefit from this legislation and AVA lends it support to efforts to getting the bill passed.

Sincerely,

Dale Fox,
Executive Director

cc: Neil Johannsen

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF PARKS AND OUTDOOR RECREATION

February 19, 1985

Re: Legislation for Campground Fees

225A CORDOVA STREET
ANCHORAGE, ALASKA 99501
PHONE (907) 276-2653

MAILING ADDRESS
POUCH 7001
ANCHORAGE, ALASKA 99510

The Honorable Bettye Fahrenkamp
Alaska State Legislature
Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

We recently discussed the concept of generating additional revenue for the state by charging fees for the use of state park campgrounds in Alaska. I'm hoping to see a bill introduced into this year's legislative session to authorize state park campground fees. My staff and I have compiled some facts, figures, and projections which I'd like to share with you.

The History of Fees in Public Campgrounds

The federal government began collecting fees in national parks over 50 years ago. Today, Alaska is the only state to not charge for the use of recreational facilities. Of the country's 50 state park systems, only Alaska has no campsite fee program. Here in Alaska, the U.S. Forest Service, National Park Service, U.S. Fish and Wildlife Service and Municipal campgrounds all charge fees for camping. And, of course, private campgrounds charge.

In 1976, there was a \$10.00 annual entrance fee established in the Alaska State Park System. This program was terminated two years later by legislation dealing with motor vehicles [AS 28.10.411(e)] which stated that any vehicle with an Alaskan license plate need not pay State Park fees. To have a campsite fee program in Alaska's 100 state parks will require legislation.

Why Should We Charge Fees Again?

In a few words -- declining revenues and increasing demands. In 1982, there were 2.2 million visitors to our state park system; in 1983, 4.3 million; and last year, about 5 million! Information from other agencies charging fees shows that people desire well-developed, well-maintained camping facilities and they are willing to pay for them. Managers have also found a decrease in vandalism and a number of positive management spin-offs which occur when campsite fees are charged. Although government-operated campgrounds are seldom fully self-supporting, nationwide approximately 10% are. At a minimum, we can reduce the government subsidy of this popular, but nonetheless expensive, program. Developed campgrounds are very expensive to develop and operate. They are also very popular.

How Do People Feel About Campground Fees?

Surprisingly, more than half of facility users will pay without hesitation. The Forest Service here in Alaska reports 77% compliance at more remote facilities and 92% compliance where a volunteer campground host is on the premises. My field staff tells me that many visitors, especially those from Outside, are amazed that no fees are charged in Alaska State Park campgrounds. Owners of private campgrounds are very much in favor of the charge. They are tired of the free competition. Last year, the Alaska Visitors' Association supported a previous attempt at legislation authorizing campsite fees.

How Much Would Be Charged and At Which Facilities?

Fees would be approximately \$6.00 per overnight use of a campsite for residents, and approximately \$8.00 for non-residents. At first, only those campgrounds with substantial improvements would be included, with a graduated fee being charged for facilities with running water and modern restrooms. A "season pass" should also be made available at between \$50.00 and \$75.00 per year. Many of the less-developed, more primitive campgrounds would remain free. But generally, the fancier the campground, the higher the fee.

How Would The Fees Be Collected?

The "iron ranger" self-registration fee station has been very successful for other agencies through the years. This is essentially a simple, slotted iron container located near the park entrance into which fees are deposited by visitors who will be overnighting at the campground. The fee station is self-operating and does not require staff. The station issues a camping permit which is placed on each vehicle dashboard. Park staff can then readily determine who has paid while on routine patrol. At larger facilities, a volunteer campground host will welcome each visitor, assisting with nearby facility locations and assuring general compliance with the campsite fee program.

How Much Revenue Would Be Generated and How Soon?

If legislation is passed in the 1985 session, the program could be started in May of 1986 at selected sites. Estimating a visitation rate for this year (1986) of nearly 7 million, initially \$400,000 to \$500,000 could be realized, increasing considerably each year. Indiana State Parks, for example, now collects 80% of their operating costs through fees and concession revenues.

Along with this proposed camping fee, I hope to work through existing regulations and statutes to generate revenue from programs such as public use cabins, guides and outfitters permits, concessions and tours of historical sites. I feel that with tourism being one of the largest job and revenue producing industries in Alaska, State Parks should be an active member of that

The Honorable Bettye Fahrenkamp
February 19, 1985
Page 3 -

industry. And with a declining revenue curve, it is encumbant on me to formulate economic strategies which make money and save money while serving the public.

Sincerely,

A handwritten signature in cursive script, appearing to read "Neil C. Johannsen", with a long horizontal flourish extending to the right.

Neil C. Johannsen
Director

enclosure

cc: Esther C. Wunnicke, Commissioner, DNR

NCJ:clk



Province of
British Columbia
Ministry of
Lands, Parks
and Housing

FORUM

SELF REGISTRATION IN PARKS A SUCCESS

Will B.C. campers voluntarily register and pay for campground use when there isn't an official there to ask for their money? The answer is an overwhelming "yes", as the Parks and Outdoor Recreation Division showed this year in 52 provincial parks.

Two years ago, the division launched a pilot program of self-registration fee collections in seven parks, then increased it to 11 parks in 1979 and 52 this year. The objective was to monitor both the response of campers and the effectiveness from an operations standpoint. It has proven to be an entirely valid system for both users and operators.

B.C. was the first Canadian province to use the self-registration system, but credit for its organization goes to the U.S. Forest Service, which pioneered it in the early 1970's.

The principle behind self-registration is simple: the responsibility for registering and paying camping fees falls to the camper rather than park staff. The advantage to campers is obvious: convenience. They can now pay their fee when they arrive instead of waiting for a collector to come around at a specified time. They can also pay in advance for as many nights as they wish. Assuming they do (and statistics now show this to be an entirely valid assumption), fee collectors are now free to work in other areas of park operations to improve service to the public.

The implementation of the system is also fairly simple: as campers enter the campground, a sign advises them that attendants do not collect fees. Campers are asked to select a site, then go to the self-registration station and pay. At these fee stations, strategically located in the campground, envelopes are provided, the camper fills in the registration information, puts the fee in the envelope, seals it, and deposits it in a vault, first tearing off the receipt stub. During the evening, park staff check each vault to ensure payment has been received.

During the two year period, the average voluntary compliance rate was over 80% and, when additional information, instruc-

tions, or reminders were given, the average was a stunning 96%! This rate is as high as that achieved with traditional methods of fee collection. Based on B.C.'s experimental program, Yoho National Park started a similar system in the summer of 1979. Their volunteer compliance averaged 92% — another indication of the system's viability and people's basic honesty!

To get public reaction to the new system, the division monitored some of the 20,000 camping parties who participated in the 1978 pilot program. At that time, users did not show any strong objections to the system. They were undecided as to whether or not there was a decrease in contact with staff and it was generally felt there were no problems with change, foreign currency (American) or the instructions. They did, however, remark on the appearance of the fee station, because it did not blend with park environment. This response was welcomed because the fee stations and vaults were designed to be easily identified.

As with most new concepts, improvements are an integral part of their success. The self-registration system was no exception. Several recommendations were made by field staff and improvements and modifications were made.



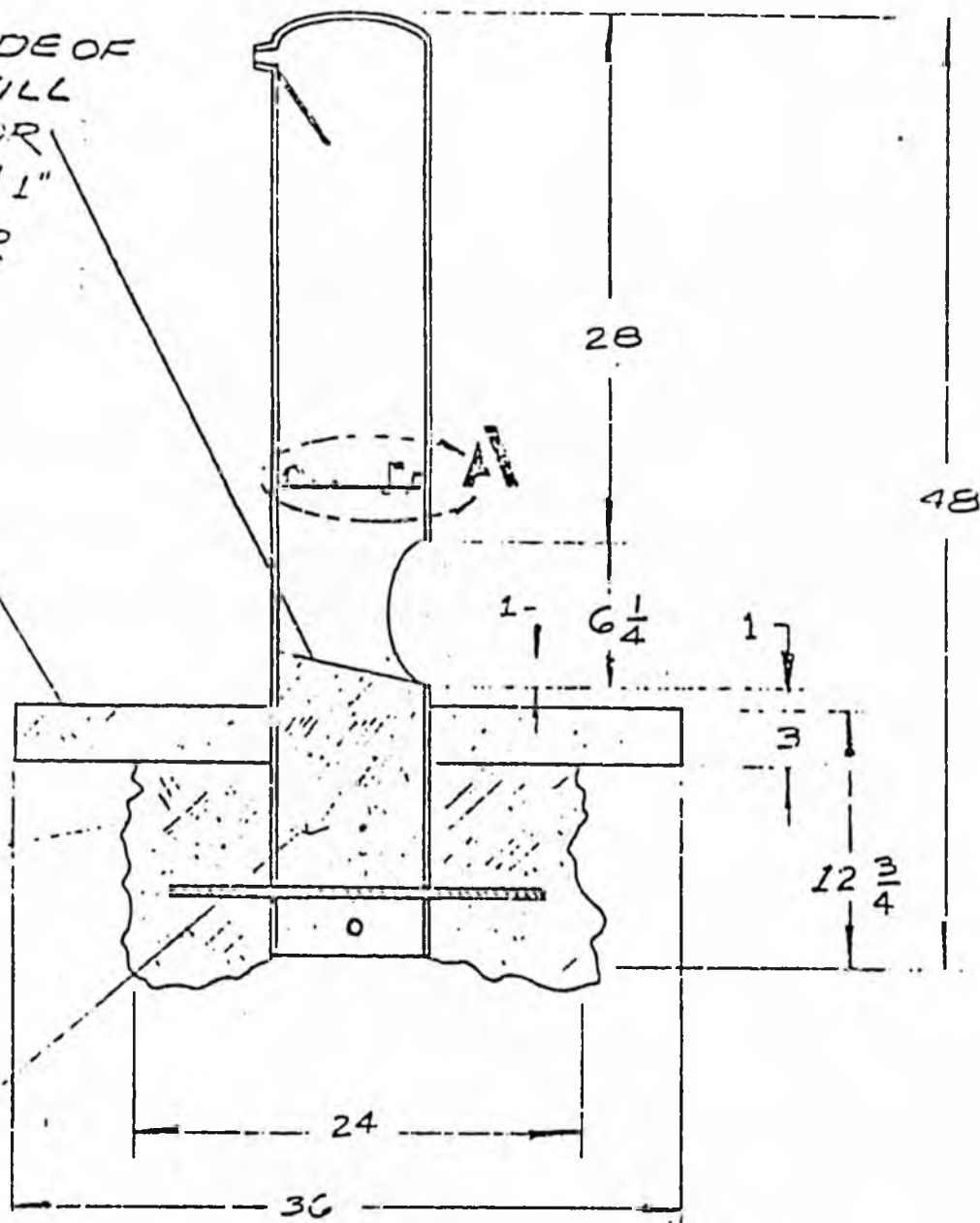
Ron Kerr of the Parks and Outdoor Recreation Division Operations Branch demonstrates the self-registration fee system. Ron is filling out the permit envelope following the instructions on the sign. In the foreground is the vault where Ron will deposit the permit envelope and camping fee.

NOTE: FILL INSIDE OF
TUBE W/ CONC. TILL
EVEN WITH DOOR
LOWER LIP, W/ 1"
SLOPE TO EITHER
SIDE

30 X 30 X 3"
SOUTH PAD
2.15 CU. FT.

31 CU. FT.
CONCRETE

.458 CU. FT.
CONCRETE



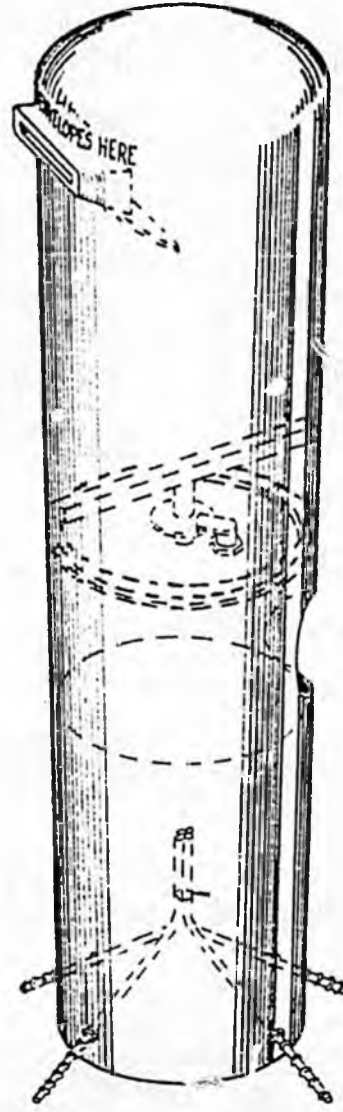
Side view of a typical
fee collection devise
or "iron ranger".

SAMPLE 1

ENVELOPE DEPOSITORY

- D-625 DEPOSITORY BOX 48" HIGH
- DOMED HEAD AND REINFORCED SLOT PREVENTS DISTORTION BY PRYING
- STURDY 8" IRON PIPE PREVENTS USE OF PIPE CUTTER
- HIDDEN LOCK PANEL INACCESSIBLE FOR CHISELING, DRILLING OR PRYING
- ANTI TILT RING ABOVE LOCK PLATE
- CEMENT CAST INTO PIPE ANCHORS IT PERMANENTLY TO BASE
- FOREST GREEN PAINT

72.50 EACH



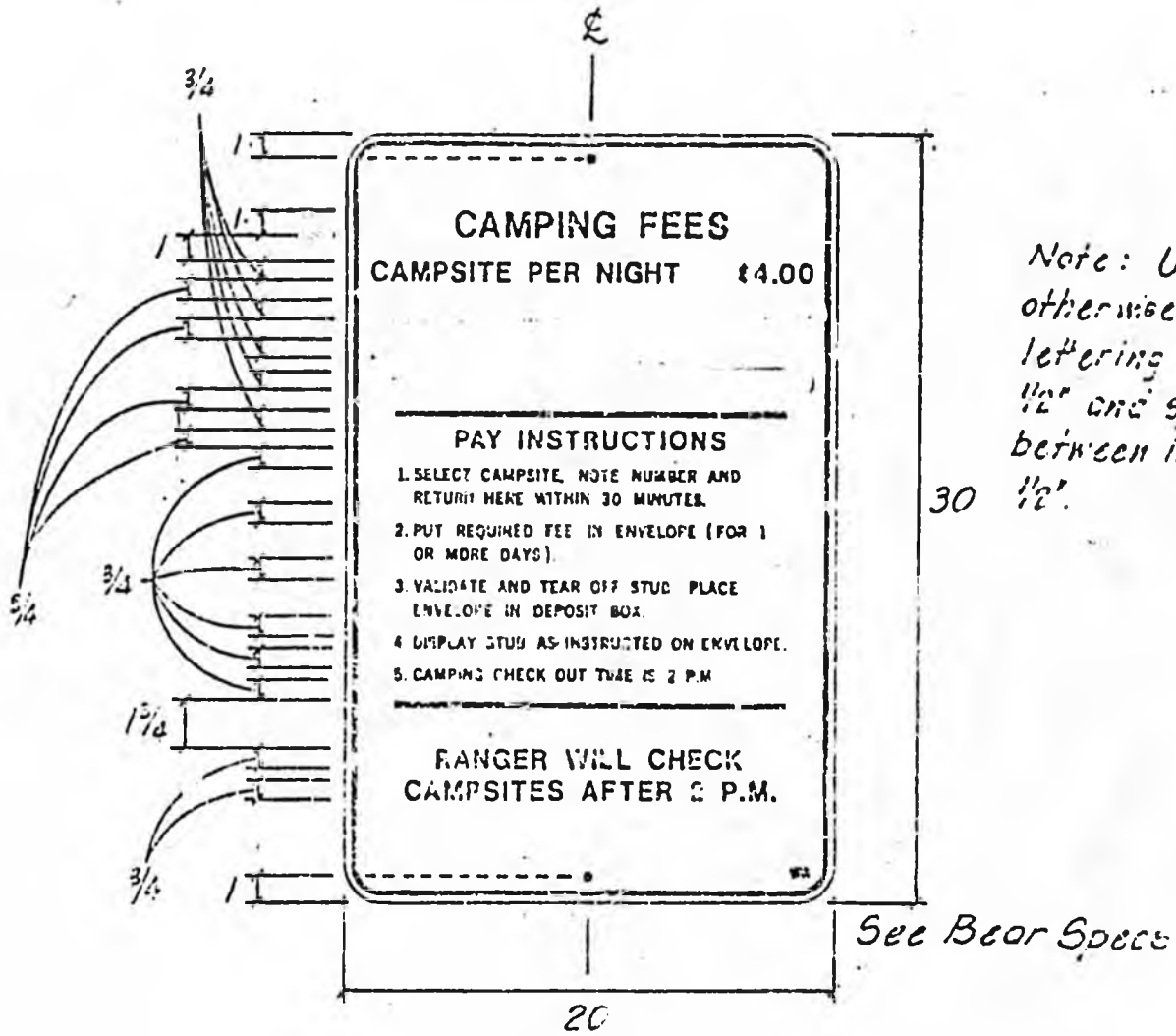
ALL PRICES F.O.B. ORLAND
Subject To Change Without Notice

NOTE: ALL shipments will be prepaid via most economical method
Shipping charges will appear as a separate item on your invoice.



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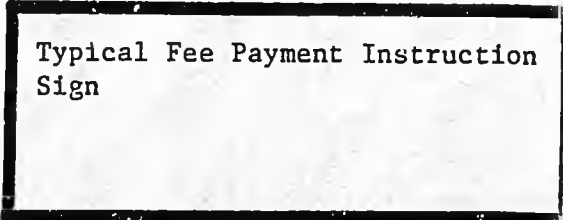
SIGN DIMENSIONS



Sign Number: 190-477 (Revised) ALL DIMENSIONS IN INCHES

Size	Border Width	Margin				Frame Stiffener			Bear	Hole	Gauge	Corner Radius
		Top	Bottom	Left	Right	Dwg.	A	B				
20x30	1/4	3	4	1	1	---	---	---	1/2	5/16	.050	1/2

Colors		Production Method	
Symbols		Background	Reflective / Non-reflective
Sign		Border	
Border	<i>Super-white</i>	Letters & Symbols	
Background	<i>White</i>	Die Cut Letters	
Letters	<i>Super-white</i>	Die Cut Letters & Symbols	
Diamond			
Diamond Letters		Drawn By: <i>JF</i>	



DRAFT
Alaska State Park System User Fee Policy

The policy of the Division of Parks and Outdoor Recreation regarding user fees in state park units is:

1. To establish and levy affordable entry, facility use and program fees where it is practical to do so and where the facilities or programs are worthy of the fees charged. Initial fees shall be levied only for high quality and urban adjacent campsites and for tours of the Wickersham State Historic Site.
2. Fees should be charged for highly specialized developments or programs catering to a specific clientele. Fee schedules shall seek to significantly reduce, or if possible eliminate, user subsidies.
3. Some fees may be adjusted annually, effective January 1. The overall percentage fee increase shall not be greater than the rate of inflation for the preceding year and/or a reasonable amount of increase if it is found that a user fee has been artificially low.
4. Fees schedules shall generally be in round dollar numbers to avoid the expense and inconvenience of making change.
5. Fees may be waived for school groups on a reservation basis, when their visit or trip is in conjunction with an educational program for grades K through 12.
6. Where fees are charged on an individual rather than a per vehicle basis, fees may be reduced for visitors under 12 or over 65 years of age.
7. Insofar as possible every effort should be made to insure that user fees do not unreasonably discriminate against economically disadvantaged or other minority groups.
8. Annual use permits may be established and used in lieu of paying daily fees to provide a moderate savings to frequent users of park facilities.

PERMIT

Valid Only at This Site for
the Day(s) Paid Beginning
Purchase Date ___/___/___
Camping Check Out 2 p.m.
Number of Days Paid ___



No. B 0531009

Detach this stub and display on
vehicle dashboard clearly visible
from outside.

No. B 0531009

U.S. Department of Agriculture
Forest Service

COMPLETE THIS BLOCK ONLY ONCE DURING YOUR STAY			
ARRIVAL	(HOUR)		(AM or PM)
No. PEOPLE IN VEHICLE		HOME ZIP CODE	
EXPECTED DEPARTURE	(DATE)	(HOUR)	(AM or PM)

TO VALIDATE COMPLETE THE FOLLOWING

Amount Enclosed \$ _____ Number of Days Paid _____

Purchase Date ___/___/___

Car License _____ State _____

Golden Age Passport No. (if applicable) _____

CAMPGROUND USERS MUST COMPLETE THE FOLLOWING:

Camp Unit No. _____

2300-26b (2/76)

PERMIT

Valid Only at This Site for
the Day(s) Paid Beginning
Purchase Date ___/___/___
Camping Check Out 2 p.m.
Number of Days Paid ___



No. B 0531010

Detach this stub and display on
vehicle dashboard clearly visible
from outside.

No. B 0531010

U.S. Department of Agriculture
Forest Service

COMPLETE THIS BLOCK ONLY ONCE DURING YOUR STAY			
ARRIVAL	(HOUR)		(AM or PM)
No. PEOPLE IN VEHICLE		HOME ZIP CODE	
EXPECTED DEPARTURE	(DATE)	(HOUR)	(AM or PM)

TO VALIDATE COMPLETE THE FOLLOWING

Amount Enclosed \$ _____ Number of Days Paid _____

Purchase Date ___/___/___

Car License _____ State _____

Golden Age Passport No. (if applicable) _____

CAMPGROUND USERS MUST COMPLETE THE FOLLOWING:

Camp Unit No. _____

2300-26b (2/76)

Projected revenue from
State Park Campground Fee
Summer 1986

South Central Region	RT\$	% mean occup.	Capacity	Open days	Compl. Rate	Total
<u>A. Mat-Su</u>						
1. Byers Lake SRS	6	40	60	90	80	10.4
2. Nancy Lk. SRS	6	60	30	120	80	10.4
3. South Rolly CG	6	30	100	110	80	15.8
4. Finger Lk. SRS	6	50	40	120	85	12.2
5. King MNT SRS	6	50	20	110	75	5.0
6. Moose R. SRS	6	50	10	110	75	2.5
7. Matanuska. GL	6	50	13	110	75	3.2
8. Rocky Lk. SRS	3	50	10	110	75	1.2
<u>B. Copper Basin</u>						
1. Dry CRK. SRS	6	60	60	120	80	20.7
2. Lk. Louise SR	6	40	20	90	60	2.6
3. Blueberry SRS	6	40	10	90	60	1.3
4. Little Tonsina	6	60	10	110	70	2.8
5. Porcupine Crk	6	60	10	110	70	2.8
<u>C. Chugach</u>						
1. Eklutna CG.	6	50	50	150	75	16.9
2. Eagle R. CG.	8	80	36	150	85	29.4
3. Bird Creek CG	6	80	25	150	85	15.3
<u>Kenai Area</u>						
1. Izaak Walt. sr.	6	75	25	120	75	5.9
2. Discovery CG.	6	40	67	120	70	11.5
3. Johnson Lk. sr.	6	40	40	120	80	9.2
4. Ninilchik SRA	6	60	50	120	80	17.3
5. Anchor R. SRA	3	60	38	120	80	6.7
6. Kasilof R. SR	6	50	16	120	80	4.6
<u>Kodiak Ranger District</u>						
1. Ambercr. SHP	6	80	14	120	85	6.9
2. Bushkin R. Sr.	6	80	18	120	70	7.3
<u>SE Region</u>						
1. Settlers Cove	6	60	12	120	70	3.6
2. Chilcoot Lk.	6	80	32	150	85	19.6
3. Chilkat SP.	6	50	32	150	80	11.5
<u>Northern Region</u>						
1. Quartz Lk. sra	6	60	16	110	75	4.8
2. Harding Lk. sra	6	40	90	110	90	21.4
3. Chena R. SRA	6	35	56	110	60	7.8
4. Chena SRS	8	85	60	120	90	44.0
5. Eagle Tr. SRS	6	50	40	110	70	9.2

NORTHERN (CON'T)	RTS	% MEAN OCCUP.	CAPACITY	OPEN DAYS	COMPL RATE	TOTAL
6. Tok River SRS	6	50	40	110	70	9.2
7. Clearwater SRS	6	50	20	90	70	<u>3.8</u>
SUBTOTAL RESIDENT						357.8
NON-RESIDENT SURCHARGE						62.2
GRAND TOTAL						<u>\$420.0</u>

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-485-2400

OFFICE OF THE COMMISSIONER

March 12, 1985

The Honorable Richard Shultz
Co-Chair, House Resources Committee
Pouch V
Juneau, AK 99811

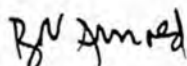
Dear Representative Shultz:

As you have requested, the Department of Natural Resources has reviewed HB 267 which authorizes the collection of fees for use of developed state park campsites.

The department supports this bill because it will generate revenue for the state and help to offset state park operation and maintenance costs. In addition, when recreation user fees are charged, park managers have found that vandalism decreases. Decreases in vandalism would, in turn, save the state money and allow park employees more time for necessary maintenance and supervisory activities.

Please let me know if I may provide additional information about the proposed fee system.

Sincerely,


f Esther C. Wunnicke
Commissioner

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 267

Title: State Park Camping Fees

FISCAL DETAIL

Agency Affected: Natural Resources, Div. of Parks

Program Category Affected: NFMEC

Sponsor: House Resources

Requestor: House Resources Comm

Date of Request: 3/11/85

BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		31.4	38.3	38.3	38.3	38.3
200 TRAVEL						
300 CONTRACTUAL		9.0	6.0	6.0	6.0	6.0
400 SUPPLIES		42.0	15.4	15.4	15.4	15.4
500 EQUIPMENT		5.0	5.0	5.0	-0-	-0-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		87.4	64.7	64.7	59.7	59.7

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE		108.6	420.0	440.0	480.0	520.0
----------------	--	-------	-------	-------	-------	-------

FUNDING: (Thousands of Dollars)

GENERAL FUND		87.4	64.7	64.7	59.7	59.7
FEDERAL FUNDS						
OTHER						
TOTAL		87.4	64.7	64.7	59.7	59.7

POSITIONS:

FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME		1	1	1	1	1
TEMPORARY		-0-	-0-	-0-	-0-	-0-

ANALYSIS: Attach a separate page if necessary

Prepared By: Neil Johannsen/Sharon Barton Phone: 265-4504

Division: Parks and Outdoor Recreation/ Management Date: 3/5/85

Approved by Commissioner: Wm D. Arnold, Deputy Date: 3/12/85

Agency: Natural Resources

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

Attachment to Bill Analysis
State Park Campground Fees

The bill would authorize camping fees for developed campgrounds in the state park system. Fees would be charged on a daily, per vehicle basis in those campgrounds that offer the highest level of facilities and that are economical in terms of administering the program. The cost of implementing the proposed fee system is \$87.4 in FY 86. These funds would provide for the installation of "iron rangers" at self-service fee payment stations at the entrances of state-operated campgrounds. The "iron ranger" is a heavily built iron deposit box that is designed to receive envelopes, providing a very high degree of security. The fiscal note would provide a part-time Accounting Technician for the Division of Management; the Division of Parks and Outdoor Recreation will add time to existing positions for employee overtime to perform the revenue collection tasks, compliance checks, communication with campground hosts, and field accounting functions.

The Division of Parks and Outdoor Recreation would implement the fee collection system through the use of the "Iron ranger" and the use of volunteer camp hosts to insure compliance. The U. S. Forest Service, National Park Service, British Columbia Provincial Park Service and numerous state park systems have found self-collection "iron rangers" vandal proof and to have a very high (80%) public compliance. The contractual service funds would be used to build instructional signs at fee stations and to fund additional vehicle mileage involved with collection, cash deposits, and compliance checks. Supplies funding is needed to purchase the building materials for the self-service collection stations, printing of collection envelopes and field accounting forms. Equipment funds will be used to purchase the safes for remote ranger stations.

The fiscal note reflects the high first year start-up costs of a camping fee program, but assuming that the Division of Parks and Outdoor Recreation does not have a fee system functioning until July 15 and in only nine campgrounds, the expected revenue is \$108.6. This revenue will increase substantially over the five-year period forecasted. The investment-return ration becomes substantial following initial start-up costs. Within 4 years, an investment of about \$60,000 will return revenues of near half a million.




RECORDS CERTIFICATION



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Date

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STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

DS

Revision Date: _____

REQUEST CS (RES)
 Bill/Resolution No.: HB 273
 Title: Extralateral rights of
lode mining claims
 Sponsor: Duncan
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL
 Agency Affected: Natural Resources
 Program Category Affected: NRMEC
 BRU, Program or Subprogram(s) Affected:
Minerals and Energy Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
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-

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

No fiscal impact.

Prepared By: Ned Farquhar *Nef 3/18/85* Phone: 465-2400
 Division: Commissioner's Office Date: March 18, 1985
 Approved by Commissioner: Alma D Arnold Deputy Date: March 18, 1985
 Agency: Natural Resources

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

Original sponsors: Duncan, Pourchot,
Taylor, et al

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 273 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to extralateral rights of federal
7 lode mining claims; and providing for an effective
8 date."

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

10 * Section 1. AS 38.05 is amended by adding a new section to read:

11 Sec. 38.05.252. EXTRALATEPAL RIGHTS UNDER SHORE, TIDE, AND
12 SUBMERGED LAND. (a) Extralateral rights under shoreland, tideland,
13 and submerged land are confirmed and granted to an owner of a lode
14 mining claim located before January 3, 1959 under the mining laws of
15 the United States, subject to AS 38.05.275.

16 (b) In this section, "extralateral rights" means rights given to
17 an owner of a mining claim under 30 U.S.C. 26 to follow, and mine, any
18 vein or lode the apex of which lies within the boundaries of the
19 location of the surface of the mining claim, notwithstanding the
20 course of the vein or lode on its dip or downward direction may so far
21 depart from the perpendicular as to extend beyond the planes which
22 would be formed by the vertical extension downwards of the sidelines
23 of the location.

24 * Sec. 2. This Act takes effect immediately in accordance with AS 01.-

25 10.070(c).

Alaska State Legislature



REPRESENTATIVE JIM DUNCAN

POUCH V

JUNEAU, ALASKA 99811

(907) 465-4766

COMMITTEES:
FINANCE
BUDGET AND AUDIT
LOANS
POLICY

MEMORANDUM

March 11, 1985

TO: Representative Shultz
Representative Herrmann
Co-Chairs of the House
Resources Committee

FROM: Representative Jim Duncan

SUBJECT: HB 273 Extralateral Rights

House Bill 273, Extralateral Rights has been referred to your committee.

Please schedule HB 273 for a hearing in your committee as soon as possible.

All pertinent back-up material is attached for your information.

Purpose and Effect of Proposed
Extralateral Rights Legislation

SUMMARY

The purpose of the proposed extralateral rights legislation is to clarify the law in Alaska and confirm that the owners of federal lode mining claims located prior to statehood may pursue their extralateral rights into lands under navigable waters which are owned by the State ("submerged lands"). The effect of the proposed legislation will be to remove a potential cloud on the title to many lode claims located prior to statehood in Alaska, thereby facilitating additional private investment in the exploration and development of such claims.

DISCUSSION

Extralateral rights are the rights granted to the owner of a lode mining claim located under the federal mining laws to follow and mine any vein or lode the apex of which lies within the surface boundaries of his claim, notwithstanding that the down-dip course of the vein of lode may so far depart from the perpendicular as to extend into lands outside of and beyond the sidelines of his claim.

Not all federal mining claims are entitled to extralateral rights. Extralateral rights attach only to a lode deposit contained within an identifiable vein or lode structure having (1) a definite downward dip and (2) its apex within a properly located federal lode claim. Extralateral rights do not exist in connection with placer deposits, flat-lying lode deposits, or disseminated lode deposits not contained within an identifiable vein or lode structure.

It is important to note that the doctrine of extralateral rights relates only to the title to the minerals contained in the vein or lode structure. A claimowner who is entitled to extralateral rights is not entitled to use the surface of any lands outside his claim, nor is he relieved from obtaining all necessary permits required by law before conducting operations.

The current extralateral rights provision of the federal mining laws was enacted as part of the General Mining Law of 1872, and has been in effect for over 100 years. Even before this, the early mining laws and customs of England, Germany, France, Spain, and Mexico recognized extralateral rights in one form or another. Extralateral rights were also recognized in the miners' rules and customs adopted in California in the mid-1800's prior to the enactment of the federal mining laws. That Congress saw fit to recognize

extralateral rights when it enacted the General Mining Law of 1872 shows that Congress believed extralateral rights to be an important attribute of federal lode mining claims.

For the most part, the lode claims and mines which have utilized the doctrine of extralateral rights have been situated on federal land well removed from the coastlines and navigable rivers of our country. This especially has been the case in the Rocky Mountain states, where hardrock mines have been developed entirely on uplands. The applicability of the doctrine of extralateral rights on uplands is clear and not disputed.

In Alaska, many hardrock mines are situated immediately adjacent to navigable waters along Alaska's extensive coasts. The owners of these mines have consistently held and developed their claims with the understanding and belief that the federal mining laws afforded them extralateral rights, regardless of the direction their lode deposits may take in their downward course. Naturally, some of these lode deposits extend into submerged lands, and in the years prior to statehood a great deal of mining was conducted in Alaska under submerged lands by miners exercising their extralateral rights (e.g., Treadwell Mine at Juneau).

The good faith activities and beliefs of these claimowners notwithstanding, the law is unclear on whether extralateral rights can be asserted in submerged lands. In the only case addressing the issue, the Federal District Court for the Territory of Alaska stated that:

the law giving a party the right to follow all veins, the apices of which are within the limits of his claim, even outside of the sidelines thereof, (should) permit him to go below the waters of the sea in following such vein without trespassing any law of property existing in the United States.

Alaska United Gold Mine. Co. v. Barbridge, 1 Alaska 311, 329 (1901). This early lower court decision has not been overruled, but it is inadequate assurance of the current state of the law for any claimowner seeking to make a substantial investment in developing a mine where ownership of the valuable minerals may depend in part on the existence of extralateral rights.

The Legislature is in a position today to clarify this uncertainty in the Law because on January 3, 1959, title to all submerged lands in Alaska vested in the State. In 1960 the Legislature enacted similar legislation which confirmed and granted title to the surface of submerged lands to those persons who in good faith had occupied or developed the lands before statehood. AS 38.05.820 (1984). Now with lode mining

§ 26. Locators' rights of possession and enjoyment

The locators of all mining locations made on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, where no adverse claim existed on the 10th day of May 1872 so long as they comply with the laws of the United States, and with State, territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. Nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.

R.S. § 2322.

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By

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Editor-in-Chief

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CHAPTER 37

EXTRALATERAL RIGHTS

SYNOPSIS

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 - [1] Definition and Nature of Extralateral Rights
 - [2] Character of Estate in Granted Veins and Lodes
 - [3] Right of Pursuit Associated with Extralateral Rights
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- § 37.05 Subsurface Conflicts as to Extralateral Rights
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 - [2] Patented Non-Mining Lands
 - [3] Intersecting Veins
 - [4] Uniting Veins
 - [5] Conflicts on Different Portions of the Same Vein

CHAPTER 37

EXTRALATERAL RIGHTS

§ 37.01 Nature of Extralateral Rights

[1] Definition and Nature of Extralateral Rights

Extralateral rights are rights to the dip of a vein based on ownership of its apex by means of a valid location. The term "extralateral rights"¹ refers to rights to a vein outside the side line limits of a lode location. The term is used in contradistinction to "intraliminal rights" which refers to rights to ore within the limits of a location.²

There is no common law to support the principle of extralateral rights which are purely statutory in origin.³ The statutory authority appears in the Mining Law of 1872 which provides that lode locators:

shall have the exclusive right of possession and enjoyment. . . of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges.⁴

Extralateral rights are property rights and other rights in the nature of easements⁵

¹ Lindley attributed the coining of "extralateral" to Dr. Rossiter W. Raymond, formerly United States Commissioner of Mining Statistics, who introduced it in his paper, "The Law of the Apex," XII *Transactions of the American Inst. of Mining Engineers* 387 (1884). ² *Lindley on Mines*, § 565 at 1251 (3d ed. 1914). The term has been adopted almost universally by the courts, although other terms are sometimes used, such as "extralimital," "extraliminal," "the right of lateral pursuit," and "apex rights."

² See § 36.01, *supra*, discussing intraliminal rights.

³ *Arizona Commercial Mining Co. v. Iron Cap Copper Co.*, 27 Ariz. 202, 232 P. 545, *aff'd as modified on rehearing*, 29 Ariz. 23, 239 P. 290 (1925), *cert. denied*, 270 U.S. 642 (1926). See also § 37.01[2], *infra*.

⁴ 30 U.S.C. § 26 (1982).

⁵ See § 37.01[3], *infra*.

which are granted by the statute in "veins, lodes, and ledges,"⁶ and which attach to lode locations containing the apex⁷ of a vein which extends⁸ outside the side lines of a location with parallel end lines,⁹ and which may be exercised (under specified conditions) by following the vein downward¹⁰ beneath the surface of certain categories of adjacent lands.¹¹

Extralateral rights are granted by the statute only to lode deposits properly located as lode mining claims.¹² Thus, extralateral rights do not apply to placer locations made on placer deposits¹³ or placer locations improperly made on lode deposits.¹⁴ Because of the statutory limitation, extralateral rights do not apply to mill sites,¹⁵ tunnel sites,¹⁶ or nonmineral land patented under agricultural, townsite, or other nonmining laws,¹⁷ nor to lode locations based upon blanket veins which lack the required dip.¹⁸ Extralateral rights may not be exercised by entering upon the surface of a claim possessed by another,¹⁹ and are applicable only to valuable mineral deposits locatable as lode deposits²⁰ on the public domain.²¹

Because ownership of an apex by means of a valid location is a prerequisite to the existence of extralateral rights, courts and commentators often refer to the statute creating this unique property interest as the "apex law" and the right

⁶ The terms "vein," "lode," and "ledge" are synonymous.

⁷ See § 37.02[1], *infra*.

⁸ See § 37.02[3], *infra*.

⁹ See § 37.02[4], *infra*.

¹⁰ See § 37.02[5], *infra*.

¹¹ See generally § 37.05, *infra*.

¹² 30 U.S.C. § 26 (1982). See *Carson City Gold & Silver Mining Co. v. North Star Mining Co.*, 83 F. 658, 663 (9th Cir. 1897), *cert. denied*, 171 U.S. 687 (1908); *Doe v. Waterloo Mining Co.*, 54 F. 935, 937 (C.C.S.D. Cal. 1893). See also § 32.02, *supra*, discussing the characteristics of lode and placer deposits and factors for distinguishing them.

¹³ 30 U.S.C. § 35 (1982) excepts veins from entry and patent as a placer.

¹⁴ Such locations are void. See *Cole v. Ralph*, 252 U.S. 286, 295 (1920). But see § 32.05, *supra*, and § 37.01[5], *infra*, as to lodes in placer locations for which a placer locator may obtain rights but not extralateral rights.

¹⁵ *Walsen v. Gaddis*, 118 Colo. 63, 194 P.2d 306, 318 (1948). See generally § 32.06, *supra*, on mill sites.

¹⁶ After discovery of a lode within the tunnel, a surface lode location may be made and, if it contains an apex, extralateral rights attach. See § 32.07[7], *supra*.

¹⁷ *Empire Star Mines Co. v. Grass Valley Bullion Mines*, 99 F.2d 228, 234 (9th Cir. 1938) (agricultural patent); *Amador Medean Gold Mining Co. v. South Spring Hill Gold Mining Co.*, 36 F. 668 (C.C.N.D. Cal. 1888) (agricultural entry), *rev'd on other grounds*, 145 U.S. 300 (1892).

¹⁸ See § 32.03[3][a], *supra*, and § 37.01[4], *infra*.

¹⁹ 30 U.S.C. § 26 (1982). See § 37.01[3], *infra*.

²⁰ 30 U.S.C. § 23 (1982). See §§ 32.02[2] & .02[4], *supra*.

²¹ 30 U.S.C. § 22 (1982). See Chapter 6, *supra*.

as "apex rights."²² The apex statute and most of the cases construing it are relatively old, most of the judicial decisions having been made before 1920. Yet, the statute has not been amended,²³ and the judicial construction of it has not changed since the early years, so the early cases remain of continuing importance.

Since World War II the expenses of exploration and of mining at depths of several thousand feet have impelled miners to seek control of large acreages to assure them of the opportunity to recover their investment.²⁴ If sole control and ownership of deep deposits cannot be achieved, miners frequently enter into joint exploration and development agreements for cooperative efforts.²⁵ Both arrangements have tended to reduce the amount of apex litigation as compared with early years when litigation between apex claimants was rife.²⁶

[2] Character of Estate in Granted Veins and Lodes

The extralateral rights obtained by a lode locator in "veins, lodes and ledges" as specified by the Mining Law of 1872²⁷ might be regarded as a modification of the common law maxim that ownership extends from the surface to the center of the earth in vertical planes.²⁸ Strictly speaking, this is not correct because the statutory grant constitutes a severance of the vein from the surrounding soil, is not repugnant to the common law, and should not be so interpreted or construed.²⁹ Rights to veins apexing within a properly located lode mining claim are part and parcel of the location, and at the time a location is perfected the locator obtains a vested estate in the veins throughout their entire length within the statutorily required parallel end lines.

²² See, e.g., *Collins v. Bailey*, 22 Colo. App. 149, 125 P. 543, 548 (1912); Neff, "The Law of the Apex—A Continuing Enigma," 18 *Rocky Mt. Min. L. Inst.* 387 (1973); Arnold, "Lode Locations: A Specific Question of Extralateral Rights and a General Theory of Intralimital Rights," 22 *Harv. L. Rev.* 339 (1909).

²³ The forerunner of the apex statute, 30 U.S.C. § 26 (1982), was the Lode Law of 1866, ch. 262, 14 Stat. 251 (surviving portions codified at 30 U.S.C. §§ 43, 46, & 51 and 43 U.S.C. § 661 (1982)). Many of the judicial decisions construing the 1866 statute are applicable to the 1872 statute. See § 30.03, *supra*.

²⁴ See § 32.03[3][b], *supra*.

²⁵ See Title XIII, *infra*.

²⁶ Neff, "The Law of the Apex—A Continuing Enigma," 18 *Rocky Mt. Min. L. Inst.* 387, 414 (1973) (hypothesizing that the extreme cost of proving identity and continuity of veins at great depths will encourage compromise agreements between conflicting claimants).

²⁷ 30 U.S.C. § 26 (1982).

²⁸ See *Collins v. Bailey*, 22 Colo. App. 149, 125 P. 543, 548 (1912) ("apex right" is in derogation of the common law which granted to the owner of lands all veins within the vertical lines of his land to the center of the earth"); *Duggan v. Davey*, 4 Dak. 110, 26 N.W. 887, 890-91 (1886), *appeal dismissed*, 131 U.S. 433 (1889). See § 36.02, *supra*, as to intralimital mineral rights based upon common law.

²⁹ 3 *Lindley on Mines* § 568 (3d ed. 1914). See Neff, "The Law of the Apex—A Continuing Enigma," 18 *Rocky Mt. Min. L. Inst.* 387, 397-402 (1973).

The ownership estate in mining claims is subject to limitation and extension. Limitation occurs because a locator is not necessarily the owner of veins and lodes found within his claim; if their apexes are outside his claim, his rights may be subject to another's extralateral rights.³⁰ Extension occurs because by statute a locator owns and therefore is entitled to follow, possess, and mine any vein or lode which apexes within his claim even though it might dip beyond his side lines and under adjoining land.³¹

The estate granted by the statute is a possessory right to the minerals.³² It is not an easement, although certain easements attach because of the need to disturb a portion of adjoining rock when following a vein into adjacent lands.³³ The exercise of extralateral rights does not depend upon seniority, but follows automatically from location of an apex whenever a claim is staked out in the manner prescribed by the statute,³⁴ provided that the apex dips downward into land not previously appropriated as non-mining land and does not conflict with a prior apex right.³⁵

As with other real property interests, boundaries of extralateral rights to a vein may be fixed by agreement, either a conveyance or a contract.³⁶ Conveyances of extralateral rights, however, require a very clear-cut expression of intent as to whether or not a conveyance of a lode location includes just the minerals within the vertical boundaries of the locator, or some or all of the extralateral rights.³⁷ While a locator's interest in extralateral ore bodies may be divested by adverse possession, it is settled law that possession of the surface is not necessarily sufficient possession of the minerals underneath to give title to them.³⁸

³⁰ Grant v. Pilgrim, 95 F.2d 562, 565 (9th Cir. 1938); Duggan v. Davey, 4 Dak. 110, 26 N.W. 887, 891 (1886).

³¹ St. Louis Mining & Milling Co. v. Montana Mining Co., 194 U.S. 235 (1904); Tom Reed Gold Mines v. United E. Mining Co., 24 Ariz. 269, 209 P. 283, 287, cert. denied, 260 U.S. 744 (1922).

³² See § 36.03[1], *supra*.

³³ See § 37.01[3], *infra*.

³⁴ Colorado Cent. Consol. Mining Co. v. Turck, 50 F. 888, 894-95 (8th Cir. 1892).

³⁵ See § 37.05, *infra*.

³⁶ See Kennedy Mining & Milling Co. v. Argonaut Mining Co., 189 U.S. 1 (1903); Richmond Mining Co. v. Eureka Mining Co., 103 U.S. (13 Otto.) 839 (1880).

³⁷ See Montana Mining Co. v. St. Louis Mining & Milling Co., 204 U.S. 204, 216-218 (1907) (finding that conveyance of lode location by party entitled to the extralateral rights did not transfer vein *in total* but only the portion between the vertical side lines of the ground transferred); Silver Surprise, Inc. v. Sunshine Mining Co., 15 Wash. App. 1, 547 P.2d 1240 (1976), *aff'd*, 88 Wash. 2d 64, 558 P.2d 186 (1977).

³⁸ See Cole v. Ralph, 252 U.S. 286 (1920); Last Chance Mining Co. v. Bunker Hill & Sullivan Mining & Concentrating Co., 131 F. 579 (9th Cir.), cert. denied, 200 U.S. 617 (1904); Consolidation Coal Co. v. Yonts, 25 F.2d 404, 406 (6th Cir. 1928); Gill v. Colton, 12 F.2d 531, 533 (4th Cir. 1926); Birmingham Fuel Co. v. Boshell, 190 Ala. 597, 67 So. 403, 404 (1914).

[3] Right of Pursuit Associated With Extralateral Rights

The Mining Law of 1872 grants to the locator of the apex of a vein the vein throughout its entire depth extended outside of the side lines of his location.³⁹ The right granted is one to follow the vein on its downward course, sometimes called the right of lateral pursuit.⁴⁰

As a practical matter, a locator often cannot safely or economically mine his vein by following its decline from the surface. This is especially true if the decline undulates, turns, faults, or passes through unconsolidated country rock which will not support a hanging wall. Frequently, therefore, it is necessary to use other land in aid of mining and for the mine workings to consist of vertical shafts which connect to a vein by horizontal adits, cross cuts, and drifts.⁴¹ Yet, the statute granting extralateral rights expressly provides that a locator has no right "to enter upon the surface of a claim owned or possessed by another,"⁴² so there is no surface right of access to an underground vein.⁴³ Similarly, the common law rights of owners of other mining locations and other lands entitle them to the exclusive use and possession of the subsurface of their lands,⁴⁴ so there is no right of approach by tunnelling through land owned by another.⁴⁵ In the absence of consent by the landowner⁴⁶ or legislation allowing condemnation,⁴⁷ a locator may not enter the subsurface of adjacent land to explore, acquire a right of way, or reach the extralateral extension of his ore body.⁴⁸ When attempted, such activity may be restrained, or if completed, an action for ejectment will lie.⁴⁹

Certain rights, however, are integrally associated with the exercise of extralateral rights, being necessary or incidental to underground mining outside the boundaries of a claim in pursuit of the extralateral extension of a vein. Assuming

³⁹ 30 U.S.C. § 26 (1982).

⁴⁰ *St. Louis Mining & Milling Co. v. Montana Mining Co.*, 194 U.S. 235 (1904); *Tyler Mining Co. v. Last Chance Mining Co.*, 71 F. 848, 851 (C.C.D. Idaho 1895), *appeal dismissed*, 97 F. 354 (9th Cir. 1899). See § 37.02[5], *infra*.

⁴¹ See L. Mall, *Public Land and Mining Law* 160-161 (3d ed. 1981).

⁴² 30 U.S.C. § 26 (1982).

⁴³ See *St. Louis Mining & Milling Co. v. Montana Mining Co.*, 113 F. 900, 902 (9th Cir. 1902), *aff'd*, 194 U.S. 235 (1904); *Corection Lode*, 15 L.D. 67 (1892).

⁴⁴ *Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co.*, 171 U.S. 55 (1898). See § 36.02, *supra*, as to a locator's common law intraliminal rights.

⁴⁵ *St. Louis Mining & Milling Co. v. Montana Mining Co.*, 194 U.S. 235 (1904) (claimant may not run a tunnel from its mine shaft to the extralateral extension of a vein through nonmineralized territory outside his claim); *Patten v. Conglomerate Mining Co.*, 35 L.D. 617, 621 (1907).

⁴⁶ See § 112.04, *infra*.

⁴⁷ See § 112.05, *infra*.

⁴⁸ *Richards v. Dower*, 64 Cal. 62, 28 P. 113 (1883) (even though no apparent damages would be suffered).

⁴⁹ *Empire Star Mines Co. v. Grass Valley Bullion Mines*, 99 F.2d 228, 235 (9th Cir. 1938); *Cheesman v. Shreve*, 37 F. 36 (C.C.D. Colo. 1888); *Richards v. Dower*, 64 Cal. 62, 28 P. 113 (1883) (perpetual injunction).

legal continuity of a vein,⁵⁰ without which a locator asserting extralateral rights would be a trespasser, excavating along its course under adjacent mining locations and other categories of land is a legitimate exercise of extralateral rights. In doing so, it is usually necessary to disturb rock surrounding the vein in order to pursue the ore zone successfully. Thus, the right exists to excavate necessary workings beyond the vein itself and into the country rock when a vein cannot economically be worked within its own confines because it is too crooked or too narrow.⁵¹ This right is analogous to the way of necessity which attaches through the space of intersection of cross veins.⁵² Because of this right, a surface owner cannot restrain the excavation of necessary ore pockets, shafts, stations, and chutes in his subsurface.⁵³ Easements and rights of way necessary for the practical and economical operation of a mine, such as sublateral tunnels, drainage ways, and railways, may be acquired by condemnation or otherwise as permitted by state statute.⁵⁴

[4] Blanket Veins

Not all deposits properly located as lodes admit to the possibility of extralateral rights. The Mining Law of 1872's grant of extralateral rights⁵⁵ contemplates the location and subsequent mining of a typical fissure vein,⁵⁶ that is, a mineral mass in a more or less vertical position, occupying an extensive crack, break, or fracture in the enclosing country rock which has been filled with mineral matter different from the walls, and which outcrops at the surface, or near it, at a point known as the apex.⁵⁷ The statute grants extralateral rights in all veins which have an apex within a claimant's location, but no extralateral rights are granted

⁵⁰ See § 37.02[3] *infra*.

⁵¹ *Twenty-One Mining Co. v. Original Sixteen To One Mine*, 255 F. 658 (9th Cir. 1919). See *Iron Silver Mining Co. v. Cheesman*, 116 U.S. 529 (1886); *Collins v. Bailey*, 22 Colo App. 419, 125 P. 534 (1912).

⁵² See *Little Josephine Mining Co. v. Fullerton*, 58 F. 521 (8th Cir. 1893); *Watervale Mining Co. v. Leach*, 4 Ariz. 34, 33 P. 418 (1893), *appeal dismissed*, 159 U.S. 258 (1895); *Lee v. Stahl*, 9 Colo. 208, 11 P. 77 (1886). See also § 37.05[3], *infra*.

⁵³ *Twenty-One Mining Co. v. Original Sixteen To One Mine*, 265 F. 547 (9th Cir. 1920).

⁵⁴ 30 U.S.C. § 43 (1982): "As a condition of sale, in the absence of necessary legislation by Congress, the local legislature of any State or Territory may provide rules for working mines, involving easements, drainage, and other necessary means to their complete development; and those conditions shall be fully expressed in the patent." See § 112.05, *infra*, on condemnation.

⁵⁵ 30 U.S.C. § 26 (1982).

⁵⁶ *Cf.* *Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co.*, 171 U.S. 55, 84 (1898), *Stevens v. Williams*, 23 F. Cas. 40, 44 (C.C.D. Colo. 1879) (Nos. 13,413, 13,414) (jury instructions).

⁵⁷ See § 37.02[1] as to the requirement of an apex. The apex is the uppermost edge of a mineral vein nearest the surface of the ground, whether it outcrops on the surface or not. *A Dictionary of Mining, Mineral and Related Terms*, (P. Thrush ed. 1968). *Accord* *Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co.*, 171 U.S. 55, 90-91 (1898); *Mining Co. v. Tarbet*, 98 U.S. 463, 469 (1878); *Duggan v. Davey*, 4 Dak. 110, 26 N.W. 887, 901 (1886), *appeal dismissed*, 131 U.S. 433 (1889); *Stewart Mining Co. v. Ontario Mining Co.*, 23 Idaho 724, 132 P. 787 (1913), *aff'd*, 237 U.S. 350 (1915). See § 32.03[2][a] discussing the meaning of "apex."

without such an apex.⁵⁸ Many mineral deposits which meet the definition of a "vein" or "lode" do not have an apex. This is especially true of blanket veins, mineralized zones which lie in a more or less horizontal position.⁵⁹ These wide, bedded formations, while validly located if the deposit meets the definition of a lode,⁶⁰ do not give rise to extralateral rights because they do not have an apex with the required dip.⁶¹

Other reasons have been given for the denial of extralateral rights to lode locations made on blanket veins. These are that the apex of a horizontal lode is coextensive with the side lines,⁶² making a location so many feet on either side of the center of the vein, as contemplated by the statute,⁶³ a logical impossibility. Also, blanket veins do not meet the statutory provision for extralateral rights which requires that the vein be parallel with the side, but not the end, line.⁶⁴ Extralateral rights may be obtained, however, in some lodes which have a wide apex.⁶⁵

⁵⁸ *Montana Co. v. Clark*, 42 F. 626 (C.C.D. Mont. 1890); *Tom Reed Gold Mines Co. v. United E. Mining Co.*, 24 Ariz. 269, 209 P. 283, *cert. denied*, 260 U.S. 744 (1922); *Duggan v. Davey*, 4 Dak. 110, 26 N.W. 887, 901-03 (1886), *appeal dismissed*, 131 U.S. 433 (1889); *Jones v. Prospect Mtn. Tunnel Co.*, 21 Nev. 339, 31 P. 642 (1892).

⁵⁹ See, e.g., *Bowen v. Chemi-Cote Perlite Corp.*, 5 Ariz. App. 28, 423 P.2d 104, 118-123 (1967) (perlite lying in a horizontal bed "generally parallel with the surface" and found to be from a common igneous source, segregated in physical appearance from the overlying volcanic deposits, and, at some indeterminate depth, "not too deep" from underlying volcanic deposits properly locatable as a lode deposit). *But see Titanium Actynite Indus. v. McLennan*, 272 F.2d 667 (10th Cir. 1960) (disseminated mass of vermiculite extending over 8 to 12 square miles is a placer deposit); *Ranchers Explor. & Dev. Co. v. Anaconda Co.*, 248 F. Supp. 708 (D. Utah 1965) (widespread beryllium-bearing tuff not locatable as lode). See generally § 32.02, *supra*, on the difficulties of determining whether such widely disseminated deposits are lode or placer deposits.

⁶⁰ *Iron Silver Mining Co. v. Mike & Starr Gold & Silver Mining Co.*, 143 U.S. 394 (1892). See § 32.03[3][a], *supra*, for a fuller discussion of the locatability of these deposits.

⁶¹ *Tom Reed Gold Mines Co. v. United E. Mining Co.*, 24 Ariz. 269, 209 P. 283 *cert. denied*, 260 U.S. 744 (1922); *Stewart Mining Co. v. Ontario Mining Co.*, 23 Idaho 724, 132 P. 787, 792 (1913), *aff'd*, 237 U.S. 350 (1915). See *Gilpin v. Sierra Nev. Consol. Mining Co.*, 2 Idaho 662, 23 P. 547 (1890). See also *Iron Silver Mining Co. v. Cheesman*, 8 F. 297 (C.C.D. Colo. 1881), *aff'd*, 116 U.S. 529 (1886); *Iron Silver Mining Co. v. Murphy*, 3 F. 368 (D. Nev. 1880); *Stevens v. Williams*, 23 F. Cas. 40, 43 (C.C.D. Colo. 1879) (Nos. 13,413, 13,414); *Brugger v. Lee Yim*, 12 Cal. App. 2d 38, 55 P.2d 564, 570 (1936) ("dip" is a miners' term synonymous with the expression "downward course" used in the statute, and means the direction of the vein in its descent into the earth).

⁶² *United States v. Arizona Manganese Corp.*, 57 L.D. 558, 566 (1942); *Homestake Mining Co.*, 29 L.D. 689, 691 (1900).

⁶³ 30 U.S.C. § 23 (1982) ("No claim shall extend more than 300 feet on each side of the middle of the vein at the surface . . ."). See §§ 32.03[1][c], [d], *infra*, as to this requirement.

⁶⁴ *Cf. Catron v. Old*, 23 Colo. 433, 441, 48 P. 687, 690 (1897); *Rico-Argentine Mining Co. v. Rico Consol. Mining Co.*, 74 Colo. 444, 223 P. 31 (1924).

⁶⁵ See § 32.03[2][b], *supra*, and § 37.03[5], *infra*.

[5] Lodes in Placers

A special problem arises with lodes which exist within placer locations.⁶⁶ Placer patents pass absolute title to veins and lodes which apex within a placer claim if they are either known to exist and specifically applied and paid for during patent proceedings or not known to exist on the date of patent application and found later.⁶⁷ On the other hand, veins or lodes known to exist within placers on the date of patent application but not specifically applied and paid for are conclusively excluded from the patent.⁶⁸ In any event, extralateral rights do not attach to placer claims and, hence, may not be asserted by placer claimants.⁶⁹

Lode locators may obtain extralateral rights to veins or lodes apexing within placers under certain conditions. Known lodes within placers, unless applied and paid for during patent proceedings, are subject to peaceable appropriation and location as lode mining claims⁷⁰ to which extralateral rights may attach.⁷¹ A previously unknown lode within a patented placer cannot be appropriated by a lode locator since title to it passed with the patent,⁷² but such situations may give rise to litigation as to whether the lode was known or unknown at the time of the patent application.⁷³ Furthermore, a lode locator may obtain extra-

⁶⁶ See generally § 32.05, *supra*, as to lodes within placers.

⁶⁷ 30 U.S.C. § 37 (1982). See *Inyo Marble Co. v. Loundagin*, 120 Cal. App. 298, 7 P.2d 1067 (1932). See also § 32.02[1], *supra*.

⁶⁸ 30 U.S.C. § 37 (1982). See *Clipper Mining Co. v. Eli Mining & Land Co.*, 194 U.S. 220, 228 (1904).

⁶⁹ See *Woods v. Holden*, 26 L.D. 198, 205-206 (1898) ("It has been indisputably settled, . . . that a placer claimant cannot follow a vein or lode beyond the surface boundaries of this claim extended vertically downward."). See also 2 *Lindley on Mines* § 619 (3d ed. 1914).

⁷⁰ *Clipper Mining Co. v. Eli Mining & Land Co.*, 29 Colo. 377, 68 P. 286, 289 (1902), *aff'd*, 194 U.S. 220 (1904); *Noyes v. Clifford*, 37 Mont. 138, 94 P. 842, 844 (1908) (where a lode is known to exist, and land containing the same is patented as a placer claim, the lode is open for "exploitation and location by any citizen of the United States"). Accord *Excelsior Iron Mining Co. v. Justheim*, 122 Utah 573, 252 P.2d 1084, 1086 (1953). See Note, "Known Lodes Within Placers," 3 *Calif. L. Rev.* 156 (1915). See also, Note, "Lodes in Placers: Presumption Arising from Lapse of Time," 3 *Calif. L. Rev.* 249 (1915).

⁷¹ *Excelsior Iron Mining Co. v. Justheim*, 122 Utah 573, 252 P.2d 1084, 1087 (1953) ("When the Cora lode claimant filed on this ground, he was entitled to all of the lode which apexed within the fifty feet of surface rights awarded to him by his patent, and he had a right to follow the ore beyond the sidelines to the limits of the ore body. Thus was segregated from the public domain all of the iron ore body contained within the forty-acre placer claim . . ."). Accord *Daphne Lode Claim*, 32 L.D. 513 (1904); *Mt. Rosa Mining, Milling & Land Co. v. Palmer*, 26 Colo. 56, 56 P. 176, 177 (1899).

⁷² 30 U.S.C. § 37 (1982). See *Sullivan v. Iron Silver Mining Co.*, 143 U.S. 431 (1892), 109 U.S. 550 (1883).

⁷³ *Iron Silver Mining Co. v. Mike & Starr Gold & Silver Mining Co.*, 143 U.S. 394 (1892); *United States v. Iron Silver Mining Co.*, 128 U.S. 673 (1888); *Noyes v. Mantle*, 127 U.S. 348 (1888); *Thomas v. South Butte Mining Co.*, 211 F.2d 105 (9th Cir. 1914); *Clark Mont. Realty Co. v. Ferguson*, 218 F. 959 (D.C. Mont. 1914); *Barnard Realty Co. v. Nolan*, 215 F. 996 (D.C. Mont. 1914); *Inyo*

lateral rights to the extralateral extension of the apex of a vein which is within a prior placer location based on the concept of a "legal apex."⁷⁴

§ 37.02 Requirements for Exercising Extralateral Rights

[1] Apex within Boundaries of the Claim

The Mining Law of 1872 provides for exclusive possession and enjoyment of veins or lodes "the top or apex of which lies inside of such surface lines. . . ."¹ Thus, among the limitations governing the exercise of extralateral rights,² is the universally-stated rule that in order for extralateral rights to obtain, the top or apex of the vein must be found within the surface boundaries of the claim.³ Furthermore, the length of the apex within the surface boundaries limits the area in which extralateral rights may be exercised.⁴ As suggested by the statute, the apex of a vein, lode, or ledge is the top or highest point of the vein proper, whether at or below the surface,⁵ and not a mere spur, feather, or offshoot.⁶ It is the terminal edge from which the vein extends downward to form its dip, and it is the point at which the vein also continues horizontally along its strike.⁷

Marble Co. v. Loundagin, 120 Cal. App. 298, 7 P.2d 1067 (1932); Mutchmor v. McCarty, 149 Cal. 603, 87 P. 85 (1906).

⁷⁴ See Woods v. Holden, 26 L.D. 198 (1898). See generally § 37.02[2], *infra*, as to legal and theoretical apex.

¹ 30 U.S.C. § 26 (1982).

² Three general conditions or limitations apply to the exercise of extralateral rights. "One conditions it on the presence of the top or apex inside the boundaries of the claim. Another restricts it to the dip or course downward, and so excludes the strike or onward course along the top or apex. And the last confines it to such outside parts as lie between the end lines continued outwardly in their own direction and extended vertically downward." *Jim Butler Tonopah Mining Co. v. West End Consol. Mining Co.*, 247 U.S. 450, 454-455 (1918).

³ *Stewart Mining Co. v. Ontario Mining Co.*, 237 U.S. 350 (1915), *aff'd* 23 Idaho 724, 132 P. 787 (1913); *Grant v. Pilgrim*, 95 F.2d 562 (9th Cir. 1938). The identity of the apex of a vein with its spurs or extensions is the crucial test which fixes proprietary rights to the vein. See *William H. Hoegge Inv. Co. v. Burton Bros.*, 132 Cal. App. 2d 863, 283 P.2d 314 (1955); *Brugger v. Lee Yim*, 12 Cal. App. 2d 38, 55 P.2d 564 (1936); *Alameda Mining Co. v. Success Mining Co.*, 29 Idaho 618, 161 P. 862 (1916), *appeal dismissed*, 249 U.S. 622 (1919); *Butte & Boston Mining Co. v. Societe Anonyme des Mines de Lexington*, 23 Mont. 107, 58 P. 111, 113 (1899). See generally § 32.03[2][a], *supra*.

⁴ *Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co.*, 171 U.S. 55 (1898) (mining locator can have but the same number of feet along the dip of the vein beneath the surface as he has at its apex). Accord *Anaconda Copper Mining Co. v. Pilot-Butte Mining Co.*, 52 Mont. 165, 156 P. 409 (1916). See § 37.03[1], *infra*.

⁵ *Larkin v. Upton*, 144 U.S. 19, 23 (1892).

⁶ *Stewart Mining Co. v. Ontario Mining Co.*, 23 Idaho 724, 132 P. 787 (1913), *aff'd*, 237 U.S. 350 (1915) (the highest point of the vein must be along a more or less continuous edge of the vein proper, that is, like the roof of a house and not simply its chimney). See Annot., "What is 'Top' or 'Apex' of Vein or Lode," 1 A.L.R. 418 (1919). See also § 32.03[2], *supra*.

⁷ *Brugger v. Lee Yim*, 12 Cal. App. 2d 38, 55 P.2d 564 (1936) (apex of a vein can be ascertained by following its ascent along the line of its dip or outcropping beyond which it extends no further

Hence, the "strike" of a vein is its horizontal course,⁸ and its "dip" is its downward course at a right angle to the strike.⁹

A possible exception to the requirement of an apex within the surface boundaries is the concept that extralateral rights may be predicated upon a fictional apex.¹⁰ In any event, parallel end lines¹¹ and continuity of a vein with an apex¹² are required to authorize its pursuit outside the boundaries of a location, but even then extralateral rights exist only for the downward course of a vein.¹³

[2] Legal, Theoretical, or Judicial Apex

"Legal," "judicial," and "theoretical" apex are terms which have been used to express the concept of allowing a locator extralateral rights when a portion of the apex of the vein located by him is held under a prior location or patent without extralateral rights for the corresponding portion of the dip having attached. The concept is best illustrated by the case of *Woods v. Holden* in which the Mary Mabel lode claim overlapped the northwest corner of the previously patented Mt. Rosa Placer. The result was that a segment of the lode's apex, but not the entire lode claim, was bisected by the placer.¹⁴ Since the lode was unknown at the time the Mt. Rosa was patented, the portion of the lode claim and its apex that were within the placer had been conveyed by the patent.¹⁵ The vein dipped to the north, away from the placer claim. Since placer locations do not convey extralateral rights,¹⁶ limiting the Mary Mabel to extralateral rights for only those portions of the apex not within the Mt. Rosa would leave a portion

to the surface of the land); *Alameda Mining Co. v. Success Mining Co.*, 29 Idaho 618, 161 P. 862, 865 (1916), *appeal dismissed*, 249 U.S. 622 (1919). See *Stewart Mining Co. v. Ontario Mining Co.*, 237 U.S. 350, 360 (1915), *aff'g* 23 Idaho 724, 132 P. 787 (1913): "An apex is . . . 'all that portion of the terminal edge of a vein from which the vein has extension downward in the direction of the dip.' And . . . the definition has been approved in *Lindley on Mines*, because as therein expressed it 'involves the elements of terminal edge, and downward course therefrom.' We may accept the definition."

⁸ *Brugger v. Lee Yim*, 12 Cal. App. 2d 38, 55 P.2d 564 (1936). See also *Flagstaff Mining Co. v. Tabet*, 98 U.S. 463, 469 (1878) (course of vein is shown by surface outcrop or surface explorations and workings); *Alameda Mining Co. v. Success Mining Co.*, 29 Idaho 618, 161 P. 862 (1916), *appeal dismissed*, 249 U.S. 622 (1919).

⁹ *Empire Star Mines Co. v. Butler*, 62 Cal. App. 2d 466, 145 P.2d 49, 58 (1944) ("Dip" is broadly defined as the downward course of a vein, the direction or inclination toward the depth, while 'strike,' at right angles to dip, is used to designate the longitudinal or horizontal course of a vein."); *Brugger v. Lee Yim*, 12 Cal. App. 2d 38, 55 P.2d 564, 570 (1936).

¹⁰ See § 37.02[2], *infra*.

¹¹ See § 37.02[2], *infra*.

¹² See § 37.02[3], *infra*.

¹³ See § 37.02[5], *infra*.

¹⁴ *Woods v. Holden*, 26 L.D. 198, (On Review) 27 L.D. 375 (1898).

¹⁵ *Woods v. Holden*, 26 L.D. 198, 205 (1898). See § 32.05, *supra*, discussing lodes in placers.

¹⁶ See § 37.01[1], *supra*.

of the dip to which neither party could claim extralateral rights. Instead of allowing this to happen, the Land Department found that:

For the purposes of discovery and purchase under the mining laws, the legal apex of a vein like the Mary Mabel, dipping out of the ground disposed of under the placer or non-mineral laws, is that portion of the vein within the public lands which would constitute its actual apex if the vein had no actual existence in the ground so disposed of.¹⁷

Because the portion of the apex for which extralateral rights were allowed was not held by the lode locator but owned by the placer patentee, the "legal apex" allowed by the Land Department has also been termed a "theoretical apex."¹⁸

The concept of a "judicial apex" arises from a similar situation presented the United States Supreme Court in *Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co.*¹⁹ Two lode claims had been placed on a winding vein so that they overlapped each other at an angle. Among the questions certified to the court was whether it had been proper for the junior locator to enter the senior location to lay his boundary lines for the purpose of establishing parallel end lines and securing extralateral rights.²⁰ The court held that such was proper.²¹ It was careful to note that a junior locator cannot obtain rights to the prejudice of a senior locator, but it left open the extent of extralateral rights to which the junior locator was entitled.²² Thus, while the senior locator was entitled to the full extent of the apex within his location and corresponding extralateral rights, the Court did not decide whether the junior locator's extralateral rights were to be measured from his location's original end lines or from a false end line drawn parallel to his end lines from the point the apex left his claim.²³ Because the claims crossed at an angle, the latter choice would mean that the

¹⁷ *Woods v. Holden*, 26 L.D. 198, 206 (1898). See *McElligott v. Krogh*, 151 Cal 126, 90 P. 823 (1907) (permitting lode claim overlapping previously patented agricultural land and other granted land).

¹⁸ See 1 *Lindley on Mines* § 312a (3d ed. 1914); G. Costigan, *Mining Law* § 118m (1908).

¹⁹ 171 U.S. 55 (1898).

²⁰ *Id.* at 59.

²¹ *Id.* at 84-85. See *Zula C. Brinkerhoff*, 75 IBLA 179, 181, GFS(MIN) 217 (1983), *modified*, *Santa Fe Mining, Inc.*, 79 IBLA 48, GFS(MIN) 48 (1984). *But see* *Bagg v. New Jersey Loan Co.*, 88 Ariz. 182, 354 P.2d 40, 44 (1960) (in a possessory dispute not involving extralateral rights the court said that it is not competent for junior locators to project their location over a senior location while the senior locator has possession).

²² *Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co.*, 171 U.S. 55, 85 (1898): "It may be observed in passing that the answer to this question does not involve a decision as to the full extent of the rights beneath the surface which the junior locator acquires. . . . Perhaps the rights of the junior locator below the surface are limited to the length of the vein within the surface of the territory patented to him, but it is unnecessary now to consider that matter. All that comes fairly within the scope of the question before us is the right of the owners of the Last Chance to pursue the vein as it dips into the earth . . . and to appropriate so much of it as is not held by the prior location of the New York, and to that extent only is the question answered. The junior locator is entitled to have the benefit of making a location with parallel end lines. The extent of that benefit is for further consideration."

²³ *Id.* See §§ 37.03[2], [3], *infra*.

extralateral extensions of the end lines of the two claims would extend over the vein's dip in diverging directions, leaving a slice in the middle unowned by either party. This has led commentators to suggest that since the senior locator obtained all that he was entitled to, the junior should judicially be allowed the additional slice as though he also held its apex.²⁴

Although differences can readily be found between the two cases, the concepts of legal, theoretical, and judicial apexes are basically the same in permitting extralateral rights which could not otherwise be obtained because of prior appropriation of the true apex. In doing so they implicitly engage in a legal fiction that the locator holds more of the apex than he actually does. The real difference is that the application of the doctrine to previously patented placer or nonmineral land has been recognized in *Woods v. Holden*, while its application to overlapping lode locations, although consistent with case law, is merely conjectural.²⁵

[3] Continuity of Vein

While the Mining Law of 1872 grants extralateral rights in "veins, lodes, and ledges throughout their entire depth" to the locator of a vein,²⁶ a claimant of extralateral rights must establish the continuity of the ore body outside his claim with a vein or lode which apexes within his location.²⁷ This requirement imposes substantial difficulties of proof. A vein usually cannot be directly followed in its downward course because it is discontinuous, even if only for a short distance, and it may twist or turn in such a way that it is mechanically or economically impractical to excavate an incline shaft alongside it.²⁸ For these reasons, extra-

²⁴ 1 Snyder, *Mines* § 807 (1902); C. Costigan, *Mining Law* § 118h (1908). See Arnold, "Lode Locations: A Specific Question of Extralateral Rights and a General Theory of Intralimital Rights," 22 *Harv. L. Rev.* 266 (1909).

²⁵ See *Walrath v. Champion Mining Co.*, 171 U.S. 293 (1898) (allowing more territory on dip of secondary vein than length of apex held); *Bunker Hill & Sullivan Mining & Concentrating Co. v. Empire State-Idaho Mining & Dev. Co.*, 131 F. 591 (9th Cir. 1904) (allowing extralateral rights measured from end line laid across surface of senior location). But see *State ex rel. Anaconda Copper Mining Co. v. District Court*, 25 Mont. 304, 65 P. 1020 (1901), holding that a junior locator who has no apex within his surface area cannot obtain rights to an apex within other claims. The court rejected the argument that a junior locator might acquire extralateral rights under the surface of prior patented land when (1) the junior locator had to lay his lines upon a senior location to obtain parallelism, (2) the junior had no part of the apex within his claim but a valid discovery otherwise, and (3) a senior locator had the apex but no extralateral rights because he had laid his lines improperly.

²⁶ 30 U.S.C. § 26 (1982). See generally Neff, "The Law of the Apex—A Continuing Enigma," 18 *Rocky Mt. Min. L. Inst.* 387, 411-12 (1973).

²⁷ *Iron Silver Mining Co. v. Cheesman*, 116 U.S. 529 (1886); *Leadville Co. v. Fitzgerald*, 15 F. Cas. 98 (C.C.D. Colo. 1879) (No. 8,158).

²⁸ See, e.g., *Twenty-One Mining Co. v. Original Sixteen To One Mine*, 265 F. 547 (9th Cir. 1920); *Carson City Gold & Silver Mining Co. v. North Star Mining Co.*, 73 F. 597 (C.C.N.D. Cal. 1896) (strike of vein below surface nearly at right angles to its strike on surface), *aff'd*, 83 F. 658 (9th Cir. 1897), *cert. denied*, 171 U.S. 687 (1898).

lateral portions of veins are usually pursued by exploratory drilling, and when the locale of an ore body is established, production is often by underground mine workings consisting of vertical shafts from which horizontal tunnels, cross-cuts, and drifts are run to reach the ore deposits.²⁹

In the early decision of *Iron Silver Mining Co. v. Cheesman*, still the leading case, the Supreme Court adopted the rule that absolute continuity of a vein need not be shown if the identity of the vein is established between two points separated by minor interruptions, but that if the mineral disappears, or the fissure and its walls disappear, so that the identity of the vein can no longer be traced, the extralateral right is lost.³⁰ This may have been a practical test at the time, but the current practice of exploration by expensive deep drilling cannot meet the requirement of continuity and usually does not meet the requirement of identity if the drill holes are more than a few dozen feet apart.³¹

Continuity of a vein may, of course, be established by actual mine workings on its downward dip.³² The vein need be continuous only in the sense that it can be traced through the surrounding rock; neither slight interruptions in the ore-bearing rock nor partial closure of the fissure for short distances destroys continuity if either resumes a little further on.³³ Continuity may also mean such mineral or geological connection as enables a person to follow the vein along its dip and through obstructions, interruptions, and breaks with reasonable certainty that it is the same vein from the apex to the point of controversy.³⁴ If the mineral and fissure are far from the original trend or appear under different geological conditions or surroundings, continuity does not exist.³⁵ The presence of

²⁹ See L. Mall, *Public Land and Mining Law* 160-61 (3d ed. 1981).

³⁰ 116 U.S. 529 (1886). The court recognized that a vein is "by no means always a straight line of uniform dip, or thickness, or richness of mineral matter throughout its course." *Id.* at 534.

³¹ *E.g.*, *Collins v. Bailey*, 22 Colo. App. 149, 125 P. 543 (1912) (continuity between an apex and a vein not established over an unexposed distance of 550 feet); *Silver Surprise, Inc. v. Sunshine Mining Co.*, 15 Wash. App. 1, 547 P.2d 1240 (1976) (continuity of extralateral portion of vein not established by drill hole samples taken at intervals of up to 800 feet, *aff'd*, 88 Wash. 2d 64, 558 P.2d 186 (1977)). *Accord* *Tom Reed Gold Mines Co. v. United E. Mining Co.*, 24 Ariz. 269, 209 P. 283 (no extralateral rights exist if vein is interrupted "for a very great distance"), *cert. denied*, 260 U.S. 744 (1922).

³² *Alameda Mining Co. v. Success Mining Co.*, 29 Idaho 618, 161 P. 862 (1916), *appeal dismissed*, 249 U.S. 622 (1919).

³³ *Gold, Silver & Tungsten, Inc. v. Wallace*, 104 Colo. 273, 91 P.2d 975, *cert. denied*, 308 U.S. 612, *reh'g denied*, 308 U.S. 639 (1939), *Accord* *Buffalo Zinc & Copper Co. v. Crump*, 70 Ark. 525, 69 S.W. 572 (1902). See *Hyman v. Wheeler*, 29 F. 347 (C.C.D. Colo. 1886).

³⁴ See *Bulte & Boston Mining Co. v. Societe Anonyme des Mines de Lexington*, 23 Mont. 177, 58 P. 111, 113-16 (1899). *Accord* *Fitzgerald v. Clark*, 17 Mont. 100, 42 P. 273 (1895), *aff'd*, 171 U.S. 92 (1898).

³⁵ *Tom Reed Gold Mines Co. v. United E. Mining Co.*, 24 Ariz. 269, 209 P. 283, *cert. denied*, 260 U.S. 744 (1922). *Accord* *Utah Consol. Mining Co. v. Utah Apex Mining Co.*, 285 F. 249 (8th Cir. 1922) (when the mineral and fissure come to an end, the contiguity is gone and so are extralateral rights), *cert. denied*, 261 U.S. 617 (1923); *Cheesman v. Shreeve*, 40 F. 787 (C.C.D. Colo. 1889).

transverse veins, seams, or spurs does not necessarily destroy continuity of the main vein.³⁶ Likewise, the fact that the vein has step-faulted does not destroy the identity of the vein and abridge the extralateral right.³⁷

It is impossible to prescribe a definite rule as to the degree of continuity or identity which an extralateral right claimant must show to exist between an apex within his claim and the vein he is pursuing under adjoining ground.³⁸ Absolute truth as to the identity of ore bodies found on different levels in an underground mine is difficult to obtain³⁹ and is legally always a question of fact.⁴⁰ The most that can be said is that identification in some reasonable manner must be made,⁴¹ although courts will not accept speculation or conjecture as the required proof.⁴²

Because a surface owner is presumed to be the owner of ores found in his subsurface,⁴³ one who asserts extralateral rights to a vein penetrating another claim has the burden of proving that the vein has its apex within his claim.⁴⁴ The courts have not agreed upon the required degree of proof necessary for the extralateral claimant to establish his right. A majority has required an apex claimant to demonstrate by a preponderance of the evidence that the deposit in dispute is the same vein as that which has its apex within his location.⁴⁵ Some

³⁶ *Pennsylvania Consol. Mining Co. v. Grass Valley Explor. Co.*, 117 F. 509 (C.C.N.D. Cal. 1902). See *Utah Consol Mining Co. v. Utah Apex Mining Co.*, 285 F. 249 (8th Cir. 1922), (dyke cutting through limestone bedded vein at approximate point where mineralization ended terminated extralateral rights), *cert. denied*, 261 U.S. 617 (1923).

³⁷ *Iron Silver Mining Co. v. Cheesman*, 116 U.S. 529 (1886); *Original Sixteen To One Mine, Inc. v. Twenty-One Mining Co.*, 254 F. 630 (D. Cal. 1918) (segment commencing 15 or more feet below fault plane held to be a continuation of the same vein), *aff'd*, 260 F. 724 (9th Cir. 1919); *National Mines Co. v. Charleston Hill Nat'l Mining Syndicate*, 205 F. 787 (D.C. Nev. 1912).

³⁸ 2 *Lindley on Mines* § 615 (3d ed. 1914). See *Silver Surprise, Inc. v. Sunshine Mining Co.*, 15 Wash. App. 1, 547 P.2d 1240, 1246 (1976), *aff'd*, 88 Wash. 2d 64, 558 P.2d 186 (1977).

³⁹ *Justice Mining Co. v. Barclay*, 82 F. 554 (C.C.D. Nev. 1897).

⁴⁰ *Silver King Coalition Mines Co. v. Conkling Mining Co.*, 256 U.S. 18 (1921); *Wm. H. Hoegge Inv. Co. v. Burton Bros.*, 132 Cal. App. 2d 863, 283 P.2d 314 (1955); *Walsen v. Gaddis*, 118 Colc. 63, 194 P.2d 306 (1948).

⁴¹ *Iron Silver Mining Co. v. Cheesman*, 116 U.S. 529 (1886).

⁴² *Collins v. Bailey*, 22 Colo. App. 149, 125 P. 543 (1912); *Silver Surprise, Inc. v. Sunshine Mining Co.*, 15 Wash. App. 1, 547 P.2d 1240 (1976), *aff'd*, 88 Wash. 2d 64, 558 P.2d 186 (1977).

⁴³ *Bourne v. Federal Mining & Smelting Co.*, 243 F. 466, 468 (C.C.D. Idaho 1908); *Parrot Silver & Copper Co. v. Heinze*, 25 Mont. 139, 64 P. 326 (1901). See § 37.01[2], *supra*.

⁴⁴ *Consolidated Wyo. Gold Mining Co. v. Champion Mining Co.*, 63 F. 540 (C.C.N.D. Cal. 1894); *Mount Diablo Milling & Mining Co. v. Callison*, 17 F. Cas. 918 (C.C.D. Nev. 1879) (No. 9,886); *Leadville Co. v. Fitzgerald*, 15 F. Cas. 98 (C.C.D. Colo. 1879) (No. 8,158); *Walsen v. Gaddis*, 118 Colo. 63, 194 P. 2d 306 (1948); *Collins v. Bailey*, 22 Colo. App. 149, 125 P. 543, 548 (1912); *Barker v. Condon*, 53 Mont. 585, 165 P. 909, 912 (1917); *Heinz v. Boston & Mont. Consol. Copper & Silver Mining Co.*, 30 Mont. 484, 77 P. 421 (1904).

⁴⁵ *Utah Consol. Mining Co. v. Utah Apex Mining Co.*, 285 F. 249 (8th Cir. 1922), *cert. denied*, 261 U.S. 617 (1923); *Pennsylvania Consol. Mining Co. v. Grass Valley Explor. Co.*, 117 F. 509 (C.C.N.D. Cal. 1902); *Parrot Silver & Copper Co. v. Heinz*, 25 Mont. 139, 64 P. 326 (1901).

courts which require a preponderance of evidence to prove continuity have stated that there is no established degree of continuity or identity which an extralateral rights claimant must show,⁴⁶ but rather that the required showing is dependent upon the facts of each case.⁴⁷

[4] Parallel End Lines

The Mining Law of 1872 grants extralateral rights to veins even though they "extend outside the vertical side lines" of the location.⁴⁸ Another section of the statute, pertaining to the form of a lode claim, provides that "[t]he end lines of each claim shall be parallel to each other," and also provides that a mining claim shall not exceed 1,500 feet in length along the vein.⁴⁹

The history of disputes over rights to the dip of veins located under the Lode Law of 1866⁵⁰ suggests that the requirement of parallel end lines under the 1872 Act was intended to establish more definite boundary planes between adjacent locations.⁵¹ This is not, however, the reason assigned to the requirement by the Supreme Court. Instead, the Court believed that Congress expected a lode locator to align his location with the course of a vein, thus appropriating the 1,500 feet of vein allowed by the statute, and to use parallel end lines, which, when extended downward, would limit the locator's extralateral rights to the same horizontal length along the vein's dip.⁵² While a locator may follow his vein in its descent beyond his own side lines into another's territory, he may not follow its strike beyond his end lines.⁵³ Thus, the maximum length of a vein which is granted at the surface as well as in the subsurface is 1,500 feet.⁵⁴

⁴⁶ *Silver Surprise, Inc. v. Sunshine Mining Co.*, 15 Wash. App. 1, 547 P.2d 186 (1976), *aff'd*, 88 Wash. 2d 64, 558 P.2d 186 (1977).

⁴⁷ *Gold, Silver & Tungsten, Inc. v. Wallace*, 104 Colo. 273, 91 P.2d 975, *cert. denied*, 308 U.S. 612, *reh'g denied*, 308 U.S. 639 (1939).

⁴⁸ 30 U.S.C. § 26 (1982).

⁴⁹ 30 U.S.C. § 23 (1982).

⁵⁰ Act of July 26, 1866, ch. 262, 14 Stat. 251 (surviving portions codified at 30 U.S.C. §§ 43, 46, 51 and 43 U.S.C. § 661 (1982)).

⁵¹ See § 30.03, *supra*.

⁵² *Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co.*, 171 U.S. 55, 84 (1898). See *Bunker Hill & Sullivan Mining & Concentrating Co. v. Empire State Idaho Mining & Dev. Co.*, 100 F. 189 (C.C.D. Idaho 1900), *aff'd*, 109 F. 538 (9th Cir.), *cert. denied*, 136 U.S. 482 (1901); *Fitzgerald v. Clark*, 17 Mont. 100, 42 P. 273 (1895), *aff'd*, 171 U.S. 92 (1898).

⁵³ *Butler Tonopah Mining Co. v. West End Consol. Mining Co.*, 247 U.S. 450, 454 (1918); *Larkin v. Upton*, 144 U.S. 19 (1892); *Walsen v. Gaddis*, 118 Colo. 63, 194 P.2d 306 (1948).

⁵⁴ *Golden Fleece Gold & Silver Mining Co. v. Cable Consol. Gold & Silver Mining Co.*, 12 Nev. 312 (1877) (Hawley, C.J. concurring). Patents issued for locations made under the Lode Law of 1866, however, are not limited by the Mining Law of 1872 to 1,500 feet along the vein. *Ames v. Empire Star Mines Co.*, 17 Cal. 2d 213, 110 P.2d 13 (1941), *cert. denied*, 314 U.S. 651 (1941). See § 30.03, *supra*.

The statute does not impose a penalty for the lack of parallel end lines,⁵⁵ but it has been uniformly construed with the section granting extralateral rights to impose a condition upon the exercise of such rights.⁵⁶ Only extralateral rights are affected by non-parallel end lines, and the claim itself is not invalid.⁵⁷

A distinction must be drawn, however, between nonparallel end lines which diverge and those which converge in the direction of the dip. In the case of diverging end lines, courts have uniformly denied extralateral rights,⁵⁸ and the locator has only intraliminal common law rights.⁵⁹ The reason for the denial is that as the vein descends into the ground, diverging end lines would include an ever increasing amount of it.⁶⁰ As to converging end lines, there is a split of authority. The strict view applies the statute literally and denies extralateral rights.⁶¹ The liberal view permits the right because the wedge-like area of appropriation is smaller than would have been permitted had the lines been parallel.⁶² In any event, substantial parallelism has been held to be sufficient for purposes of extralateral rights.⁶³

While the length of an end line is not determinative of extralateral rights, it

⁵⁵ See 30 U.S.C. § 26 (1982).

⁵⁶ *Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co.*, 171 U.S. 55, 85 (1898). See *Butler Tonopah Mining Co. v. West End. Consol. Mining Co.*, 247 U.S. 450 (1918); *Elgin Mining & Smelting Co. v. Iron Silver Mining Co.*, 14 F. 377 (C.C.D. Colo. 1882), *aff'd*, 118 U.S. 196 (1886); *Daggett v. Yreka Mining & Milling Co.*, 149 Cal. 357, 86 P. 968, 974 (1906). *But see* *Moody v. General Beryllium Corp.*, 224 F. Supp. 934, 947 (D. Utah 1963) (under equitable decree of court, end lines of claims intersected by peripheral boundary line established by private contract may be deemed parallel for purposes of extralateral rights between parties and as to third parties).

⁵⁷ *Eureka Consol. Mining Co. v. Richmond Mining Co.*, 8 F. Cas. 819, 826-28 (C.C.D. Nev. 1877) (No. 4,548); *Gibson v. Hjul*, 32 Nev. 360, 108 P. 759, 762 (1917).

⁵⁸ *Iron Silver Mining Co. v. Elgin Mining & Smelting Co.*, 118 U.S. 196 (1886); *Montana Co. v. Clark*, 42 F. 626 (C.C.D. Mont. 1890); *Daggett v. Yreka Mining & Milling Co.*, 149 Cal. 357, 86 P. 968 (1906); *Quilp Gold Mining Co. v. Republic Mines Corp.*, 96 Wash. 439, 165 P. 57 (1917). This is not necessarily true, however, as to mining claims located prior to 1872. See § 30.03, *supra*.

⁵⁹ *Grant v. Pilgrim*, 95 F.2d 562 (1938); *Doe v. Waterloo Mining Co.*, 54 F. 935 (C.C.S.D. Cal. 1893), *aff'd*, 82 F. 45 (8th Cir. 1897).

⁶⁰ See *Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co.*, 171 U.S. 55, 85 (1898) ("the requisition that the end lines shall be parallel was for the purpose of bounding the extralateral rights . . . and the end lines must be parallel in order that going downwards he shall acquire no further length of the vein than the planes of those lines extended downward inclose").

⁶¹ *Iron Silver Mining Co. v. Elgin Mining & Smelting Co.*, 118 U.S. 196, 208 (1886).

⁶² *Grant v. Pilgrim*, 95 F.2d 562, 568 (9th Cir. 1938) (converging lines limit the extralateral area, and, therefore, no one can complain, citing *Carson City Gold & Silver Mining Co. v. North Star Mining Co.*, 73 F. 597, 602 (C.C.N.D. Cal. 1896), *aff'd*, 83 F. 658 (9th Cir. 1897), *cert. denied*, 171 U.S. 687 (1898)).

⁶³ *Consolidated Wyo. Gold Mining Co. v. Champion Mining Co.*, 63 F. 540 (C.C.N.D. Cal. 1894); *Tyler Mining Co. v. Sweetnev*, 54 F. 284, 293 (9th Cir. 1893). See *Grant v. Pilgrim*, 95 F.2d 562, 568 (9th Cir. 1938) (end lines were "substantially parallel" even though they converged at a six-degree angle).

must have sufficient distance to qualify for purposes of the law.⁶⁴ End lines, for the purpose of obtaining extralateral rights, are those originally laid out when a claim is located, and extralateral rights are not affected if prior patented claims necessitate that the territory conveyed by a later patent be bound by a zig-zag end line.⁶⁵ The United States Supreme Court has established the doctrine that a junior lode locator may enter a senior location for the purpose of making his end lines parallel so as to obtain extralateral rights.⁶⁶ Explanations for failure to comply with the parallel end lines requirement will not excuse noncompliance.⁶⁷

While end lines must be parallel in order for the statutory grant of extralateral rights to apply, side lines need not be.⁶⁸ End lines must be straight and neither broken nor curved, but irregular side lines do not necessarily have an adverse effect upon extralateral rights; side lines may have angles and elbows and be converging or diverging so long as their general course is along the vein and the statutory restriction on width of claims is met.⁶⁹ However, extralateral rights do not attach to claims staked out in the form of a horseshoe⁷⁰ or an isosceles triangle,⁷¹ because they do not have parallel end lines, and denomination on one side line of such an irregular location as an end line will not be controlling.

[5] Restriction to Downward Course

The Mining Law of 1872 grants extralateral rights to "veins, lodes, and ledges throughout their entire depth" even though they "depart from a perpendicular in their course downward as to extend outside the vertical side lines" of the location.⁷² Restricting extralateral rights to the dip or downward course of the vein⁷³ excludes any right to follow the strike or onward course of the vein along

⁶⁴ *Belligerent and Other Lode Mining Claims*, 35 L.D. 22 (1906), *review denied*, 36 L.D. 7 (1907); *Jack Pot Lode Mining Claim*, 34 L.D. 470 (1906) (two-tenths of a foot in length is not an end line within the meaning of the statute).

⁶⁵ *Big Hatchet Copper Mining Co. v. Colvin*, 19 Colo. App. 405, 75 P.605 (1904).

⁶⁶ *Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co.*, 171 U.S. 55 (1898).

⁶⁷ *See Montana Co. v. Clark*, 42 F. 626 (C.C.D. Mont. 1890).

⁶⁸ *Jim Butler Tonopah Mining Co. v. West End Consol. Mining Co.*, 247 U.S. 250 (1918); *Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co.*, 171 U.S. 55 (1898).

⁶⁹ *Jim Butler Tonopah Mining Co. v. West End Consol. Mining Co.*, 247 U.S. 250 (1918).

⁷⁰ *Iron Silver Mining Co. v. Elgin Mining & Smelting Co.*, 118 U.S. 196 (1886) (a nine-sided figure in the shape of a horseshoe with two lines denominated as end lines did not qualify for extralateral rights because the court held that one of the lines marked as an end line was a side line).

⁷¹ *Montana Co. v. Clark*, 42 F. 626 (C.C.D. Mont. 1890) (triangular claim geometrically could not have two parallel lines).

⁷² 30 U.S.C. § 26 (1982).

⁷³ *King v. Amy & Silversmith Consol. Mining Co.*, 9 Mont. 543, 24 P. 200 (1890), *rev'd on other grounds*, 152 U.S. 222 (1894); *Tom Reed Gold Mines Co. v. United E. Mining Co.*, 24 Ariz. 269, 209 P. 283, *cert. denied*, 260 U.S. 744 (1922). The terms "downward course" and "course downward" are used interchangeably and signify the course of the vein from the surface toward the center of the earth whether in a perpendicular or on a dip. A vein's "downward course" contrasts with

the top or apex.⁷⁴ Thus, there cannot be extralateral rights in a horizontal vein because it has no downward course.⁷⁵ Likewise, the upward trend of a vein cannot be followed.⁷⁶ Of course, the dip within the extension of the end lines may be followed to its entire depth, even though it enters another claim.⁷⁷

The statute does not specify a degree of angle of descent, but it has been suggested that the angle must not be less than 45° for any substantial distance or the extralateral right will be lost.⁷⁵ Other courts have rejected any limitation as judicial legislation.⁷⁹ Under this view, the right to follow the dip of a vein remains if it departs from its apex at any angle other than horizontal because there is a departure from the perpendicular so long as the vein is not at a right angle to the perpendicular.⁸⁰

§ 37.03 Relation of Location to Course of Vein as Affecting Extralateral Rights

[1] Location Parallel with Course of the Vein

Extralateral rights exist only when certain conditions and requirements have

its "strike" or onward course. See *King v. Amy & Silversmith Consol. Mining Co.*, *supra*; *Duggan v. Davey*, 4 Dak. 110, 26 N.W. 887 (1886), *appeal dismissed*, 131 U.S. 433 (1889).

⁷⁴ *Walsen v. Gaddis*, 118 Colo. 63, 194 P.2d 306 (1948); *Stewart Mining Co. v. Ontario Mining Co.*, 23 Idaho 724, 132 P. 787 (1913), *aff'd*, 237 U.S. 350 (1915).

⁷⁵ *Butler Tonopah Mining Co. v. West End Consol. Mining Co.*, 39 Nev. 375, 158 P. 876 (1916), *aff'd*, 247 U.S. 450 (1918); *Tom Reed Gold Mines Co. v. United E. Mining Co.*, 24 Ariz. 269, 209 P. 283 (no extralateral right on a vein if it becomes "flattened and extends from thence horizontally in a departure from the approximate general plane"), *cert. denied*, 260 U.S. 744 (1922). See § 37.01[4], *supra*, as to blanket veins.

⁷⁶ *Tom Reed Gold Mines Co. v. United E. Mining Co.*, 24 Ariz. 269, 209 P. 283, *cert. denied*, 260 U.S. 744 (1922); *Southern Nev. Gold & Silver Mining Co. v. Holmes Mining Co.*, 27 Nev. 107, 73 P. 759 (1903). *But see Silver Surprise, Inc. v. Sunshine Mining Co.*, 15 Wash. App. 1, 547 P.2d 1240 (1976) (suggesting that mining upward to establish continuity with an apex at the surface would be possible except for the unfavorable economics—a procedure previous authorities would not seem to allow), *aff'd*, 88 Wash. 2d 64, 558 P.2d 186 (1977).

⁷⁷ *Mining Co. v. Tabet*, 98 U.S. 463 (1879); *Colorado Cent. Consol. Mining Co. v. Turck*, 54 F. 262 (8th Cir.), *aff'd*, 150 U.S. 138 (1893); *Arizona Commercial Mining Co. v. Iron Cap Copper Co.*, 27 Ariz. 202, 232 P. 545, *modified on other grounds*, 29 Ariz. 23, 239 P. 290 (1925), *cert. denied*, 270 U.S. 642 (1926). *Accord Iron Silver Mining Co. v. Murphy*, 3 F. 368 (D. Nev. 1880).

⁷⁸ *Stewart Mining Co. v. Ontario Mining Co.*, 23 Idaho 724, 132 P. 787 (1913) (dictum), *aff'd*, 237 U.S. 350 (1915).

⁷⁹ *Alameda Mining Co. v. Success Mining Co.*, 29 Idaho 618, 161 P. 862 (1916) (extralateral rights must be determined by the course of the vein at the apex at the surface and not at lower levels; there is no degree or angle which would arbitrarily bar extralateral pursuit), *appeal dismissed*, 249 U.S. 622 (1919). *Accord Bunker Hill & Sullivan Mining & Concentrating Co. v. Empire State-Idaho Mining & Dev. Co.*, 134 F. 268 (C.C.D. Idaho 1903).

⁸⁰ *Stevens v. Williams*, 23 F. Cas. 44 (C.C.D. Colo. 1879) (No. 13,414). *Accord Leadville Co. v. Fitzgerald*, 15 F. Cas. 59 (C.C.D. Colo. 1879) (No. 8,158).

been met.¹ The relation of a location's boundaries to the course of the vein nearest the surface may also abridge or restrict the maximum rights obtainable because the location is entitled to only as much horizontal length of the dip as the length of the apex within the surface boundaries.² The extent of extralateral rights is determined by the course or strike of the vein nearest the surface, and subsurface variations in direction do not affect extralateral rights.³ It has been held that extralateral rights are determined by the actual course of the vein on the ground rather than as shown on the survey plat of a patent.⁴

The maximum possible extent of extralateral rights is obtained when there has been an ideal location upon an ideal lode, that is, a location with parallel end lines and side lines running generally parallel with the course of a vein which is nearly straight, has continuity and passes out of the location at each end line.⁵ An ideal location is properly staked out in relation to a vein or lode so that the side lines encompass the course or strike of the vein and the vein bisects each parallel end line.⁶ Because in an ideal location the strike of the vein located runs the full length of the location, and the surface boundaries of the location are the maximum statutory length of 1,500 feet, its locator is entitled to pursue the vein's dip anywhere between the extensions of the end lines, which is also the maximum allowable distance of 1,500 feet. Often, of course, mining locators mistake the true course of the vein, or the vein itself is irregular, which results in obtaining less than maximum extralateral rights.⁷

[2] Location with Vein Crossing Two Side Lines

Locators often find it difficult or impossible to determine the true direction or course of a vein at the time of location, with the result that the location is

¹ Extralateral rights will be denied when a location fails to meet requirements as to apex, parallel end lines, and downward dip; when the location is located as a placer claim or is improperly located as a lode claim; and when the extralateral vein extends into land previously appropriated as non-mining land, or conflicts with a prior apex, or in some instances, prior dip rights. See §§ 37.01[1], 37.02, *supra*.

² *Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co.*, 171 U.S. 55, 89 (1898).

³ *Mining Co. v. Tarbet*, 98 U.S. 463 (1879) (the direction of the side lines must correspond substantially with the course or strike of the vein at its apex near the surface of the ground; *Arizona Commercial Mining Co. v. Iron Cap Copper Co.*, 27 Ariz. 202, 232 P. 545, 550, *modified on other grounds*, 239 P. 290 (1925), *cert. denied*, 270 U.S. 642 (1926); *Alameda Mining Co. v. Success Mining Co.*, 29 Idaho 618, 161 P. 862, 866 (1916) ("[T]he course of a vein is not determined by its direction at any single given point where the vein is a crooked one. . . . The . . . extralateral rights must be determined by the course of the vein at its apex at the surface of the claim.").

⁴ *Consolidated Wyo. Gold Co. v. Champion Mining Co.*, 63 F. 540 (N.D. Cal. 1894).

⁵ See § 37.02, *supra*.

⁶ *Silver King Coalition Mines Co. v. Conkling Mining Co.*, 256 U.S. 18 (1921). *Accord* *Mining Co. v. Tarbet*, 98 U.S. 463 (1879).

⁷ See Clayberg, "Extralateral Rights to Quartz Veins Granted by the Act of Congress of May 10, 1872," 1 *Calif. L. Rev.* 336 (1913); Note, "Extra-Lateral Rights in Mining," 15 *Notre Dame Law* 68, 74 (1939), for discussions of various situations which result in a locator receiving less than the maximum obtainable extralateral rights.

laid crosswise instead of lengthwise on the strike. In this event, a locator is often allowed to adjust his location within a statutory period.⁸ If the statutory time has expired or it is otherwise not possible to change the lines of the location after the course of the vein is ascertained, the judicial concept of "false end lines" may apply.

Since a vein cannot be pursued on its strike beyond the end lines of a location,⁹ extralateral rights cannot be exercised when the strike of a vein crosses the side lines. Courts have uniformly recognized, however, that the designation of lines by a locator is not controlling and that what were specified as side lines may be regarded as end lines for extralateral rights purposes.¹⁰ As explained by the Supreme Court:

When, therefore, a mining claim crosses the course of the lode or vein instead of being 'along the vein or lode,' the end lines are those which measure the width of the claim as it crosses the lode. Such is evidently the meaning of the statute. The side lines are those which measure the extent of the claim on each side of the middle of the vein at the surface.¹¹

Under this doctrine, a locator is entitled to the same rights regarding his new side and end lines as if they were originally located as such.¹² Hence, extralateral rights may be fully exercised beyond the originally designated end lines¹³ and the originally designated side lines define the vertical planes within which the rights may be exercised.¹⁴ In order for the side lines to become end lines, they must be opposite and parallel, and the same rules apply as for conventional end lines.¹⁵ This "cross-lode" type of mining location is the only exception to the rule that the end lines, once located, establish limits beyond which the locator cannot go.¹⁶

⁸ See §§ 33.04[3] & [4], *supra*.

⁹ Southern Nev. Gold & Silver Mining Co. v. Holmes Mining Co., 27 Nev. 107, 73 P. 759, 752 (1903).

¹⁰ See, e.g., Consolidated Wyo. Mining Co. v. Champion Mining Co., 62 F. 540, 549 (C.C.N.D. Cal. 1894). See also § 32.03[1][d], *supra*.

¹¹ Argentine Mining Co. v. Terrible Mining Co., 122 U.S. 478, 485 (1887). *Accord* Silver King Coalition Mines Co. v. Conkling Mining Co., 256 U.S. 18 (1921); King v. Amv & Silversmith Consol. Mining Co., 152 U.S. 222, 228 (1894); Mining Co. v. Tarnet, 98 U.S. 463 (1879); Northport Smelting & Ref. Co. v. Lone Pine-Surprise Consol. Mines Co., 217 F. 105 (E.D. Wash. 1920), *aff'd*, 278 F. 719 (9th Cir. 1922); Tombstone Milling & Mining Co. v. Way Up Mining Co., 1 Ariz. 426, 25 P. 794 (1883); Round Mtn. Mining Co. v. Round Mtn. Sphinx Mining Co., 35 Nev. 392, 129 P. 308, 310 (1913).

¹² Empire Milling & Mining Co. v. Tombstone Mill & Mining Co., 100 F. 910 (C.C.D. Conn. 1900).

¹³ Silver King Coalition Mines Co. v. Conkling Mining Co., 256 U.S. 18 (1921).

¹⁴ Northport Smelting & Ref. Co. v. Lone Pine-Surprise Consol. Mines Co., 271 F. 105 (E.D. Wash. 1920), *aff'd*, 278 F. 719 (9th Cir. 1922).

¹⁵ Empire State-Idaho Mining & Dev. Co. v. Bunker Hill & Sullivan Mining & Concentrating Co., 131 F. 591, 205 (9th Cir. 1904), *cert. denied*, 200 U.S. 617 (1906); Last Chance Mining Co. v. Bunker Hill & Sullivan Mining & Concentrating Co., 131 F. 579, 588 (9th Cir. 1904), *cert. denied*, 200 U.S. 617 (1906). See § 37.02[4], *supra*.

¹⁶ Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co., 171 U.S. 55, 89-90 (1898).