

ALASKA LEGISLATURE COMMITTEES FILED 1905-1900
4303 SRES SJR 5 - SJR 10 1183

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND AND WATER MANAGEMENT

555 CORDOVA STREET
POUCH 7-005
ANCHORAGE, ALASKA 99510-7005
PHONE: (907) 276-2653

January 28, 1985

The Honorable Arliss Sturgulewski
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

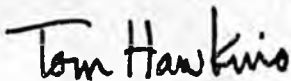
Dear ~~SEN~~ Senator Sturgulewski :

Pursuant to AS 38.50.130 you are being sent this "Report on the Proposed Exchange of Lands" involving the U.S. Department of the Interior and the State of Alaska Department of Natural Resources. Also enclosed is a copy of the public notice.

A public meeting is scheduled for March 5, 1985 in Fairbanks.

Please submit any comments you may have on this proposed exchange by March 19, 1985.

Sincerely,



Tom Hawkins
Director

Enclosures



Alaska Department of
**NATURAL
RESOURCES**

SUMMARY REPORT

The State of Alaska, Department of Natural Resources, and the U.S. Department of Interior, Bureau of Land Management, have proposed an exchange of land located in interior Alaska.

The state hopes to acquire through the exchange, a 22 acre parcel in Fairbanks and another 22 acre parcel in Delta Junction. Both of these properties are improved and presently contain state office buildings. The state uses these buildings under special use arrangements with BLM, which can be terminated at short notice. Receipt of these lands will enable the state to properly maintain and improve these structures and will provide space to consolidate the Fairbanks state resource agencies in a new building.

The BLM hopes to acquire through the exchange the Sourdough Campground and Paxson Lake Wayside along the Richardson Highway (presently managed by BLM), land adjacent to the Circle Hot Springs airport to use as a fire suppression support base, and state land in and adjacent to the Steese National Conservation Area.

The proposed exchange will be based upon equal appraised fair market values and will be subject to, and protect, any valid existing rights, including existing leases, permits, rights-of-way and mining claims. All such interest holders will be individually contacted.

A public meeting has been scheduled on the proposed land exchange for 7 p.m., on March 5th, at the Noel Wien Library in Fairbanks. For more information on the proposed exchange, contact Dennis Daigger at 276-2653.

REPORT ON THE PROPOSED EXCHANGE OF LAND
BETWEEN THE STATE OF ALASKA
AND THE U.S. DEPARTMENT OF THE INTERIOR
ADL 410182

The following report has been prepared pursuant to the requirements of AS 38.50.130. This report and the proposed equal value land exchange are subject to modification following agency and public review.

The attached public notice and maps summarize the purposes of, and describe, the land subject to this proposed exchange of land. The exchange file, assigned Serial Number ADL 410182, is located at the Department of Natural Resources, Division of Land and Water Management, 555 Cordova Street, Pouch 7-005, Room 43, Anchorage, Alaska 99510, and contains, among other things:

1. Preliminary Exchange Agreement dated November 13, 1984, between the State of Alaska, Department of Natural Resources and the U.S. Department of the Interior, Bureau of Land Management.
2. A Notice of Proposed Land Exchange dated January 22, 1985, to the Alaska Land Use Council from Esther C. Wunnicke, Commissioner, Department of Natural Resources, State of Alaska.
3. Applicable maps, land status information, and other descriptive materials pertaining to the proposed land exchange.

Anyone desiring copies of the above, and/or a more thorough review of the circumstances surrounding this proposed exchange, is invited to contact the department at the above address. Some of the information contained in the above-referenced exchange file can be obtained at the department's Northern Region Office, 4420 Airport Way, Fairbanks, Alaska 99701.

PHYSICAL DESCRIPTION OF LAND INVOLVED

The proposed exchange includes land located throughout interior Alaska. The land to be acquired by the state consists of two improved parcels at Fairbanks and Delta Junction. The land to be acquired by the U.S. includes several parcels in the general vicinities of Sourdough, Paxson, Circle Hot Springs and the Steese Highway northeast of Fairbanks.

The Sourdough Campground and Paxson Lake Wayside are developed public facilities on the Richardson Highway, currently managed by BLM under agreement with the state. Proposed exchange land west of Paxson at Round Tangle Lake and Mile 10 Denali Highway, the parcel adjacent to the Circle Hot Springs airstrip, and the state land within and adjacent to the White Mountains National Recreation Area and the Steese National Conservation Area are all unimproved.

REPORT ON THE PROPOSED EXCHANGE OF LAND

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Legal descriptions and maps of all parcels involved are attached to this report.

Fair market value appraisals of the state land proposed for exchange are scheduled for completion by January 31, 1985. Fair market value appraisals of the federal land proposed for exchange are scheduled for completion by mid-February, 1985. Previous appraisals for certain of the lands (appraised in 1983) are being updated. Appraisals of additional land (added in 1984) adjacent to the White Mountains and Steese conservation units, the Circle Hot Springs parcel, and land at Round Tangle Lake and Mile 10 Denali Highway are being completed concurrently to provide sufficient land to equalize land values. The appraisals for both the state and U.S. land will be available at the public hearing scheduled for March 5, 1985 in Fairbanks.

RESOURCE VALUES

The land proposed for exchange was reviewed against the department's 1978 Resource Assessment System. According to this review, wildlife habitat is rated very good in the township containing the Sourdough Campground, good in the townships containing the parcels at Round Tangle Lake, Mile 10 Denali Highway, Paxson Lake Wayside, Circle Hot Springs parcel and townships in or near the White Mountains and Steese units. Fisheries values at the township level are good for Paxson Lake Wayside, moderate for Sourdough Campground, Round Tangle Lake and Mile 10 Denali Highway and fair for the parcels in and adjacent to the White Mountains and Steese conservation units and at Circle Hot Springs.

Recreational values are high at the Sourdough and Paxson Lake parcels, particularly since they are developed recreation sites adjacent to the Gulkana National Wild and Scenic River. Recreational potential is also high for the parcels within the White Mountain National Recreation Area and for the parcels at Round Tangle Lake and Mile 10 Denali Highway.

There are no site-specific data on mineral potential for these lands. However, according to the generalized resource ratings contained in the 1978 Resource Assessment System, the townships containing the Paxson Lake Wayside, Circle Hot Springs parcel, and Round Tangle Lake and Mile 10 Denali Highway parcels are rated as having good mineral potential; subject townships in and adjacent to the White Mountain and Steese units are rated as moderate to good. The township containing the Sourdough Campground is rated as having fair oil and gas potential.

None of the state lands proposed for exchange are classified or designated for forestry or agricultural uses. Moderate timber potential does exist in T5N, R3-4E, F.M.

PURPOSE

The purpose of the proposed exchange is to further land management objectives and reduce long-term operating costs for both the State of Alaska and the U.S. Department of the Interior. Significant lands involved are presently owned by one governmental entity and used or managed by the other through special agreement.

REPORT ON THE PROPOSED EXCHANGE OF LAND

Page 3

PARTIES TO THE EXCHANGE

Parties to the proposed exchange are the State of Alaska, Department of Natural Resources, 555 Cordova Street, Pouch 7-005, Anchorage, Alaska 99510 and the U.S. Department of the Interior, Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

MINERAL ESTATE

The proposed exchange will include both land and mineral estates of both the state and U.S. land, with the exception of one of the parcels near Paxson (land estate only).

EXPECTED BENEFITS AND IMPACTS

The proposed exchange will allow the state to acquire two very important administrative sites at Fairbanks and Delta Junction which presently house DNR's Northern Region Office (NRO) and Forestry Area Office, respectively. These sites are presently used by DNR under special use agreements with BLM. State acquisition of the sites will allow the state to expend the necessary funds to restore and improve departmental facilities at these locations. Both parcels are situated in locations desirable for continued departmental operations as they possess public accessibility, room for expansion, adequate storage areas, and close proximity to airports. The state will also receive title to the 24-site Delta Campground, a public use area presently managed by the Alaska Division of Parks and Outdoor Recreation.

Acquisition of the public campground and wayside by the U.S. Department of Interior will help justify additional federal improvements and expenditures at those sites. Acquisition of land west of Paxson along the Denali Highway (Round Tangle Lake, Mile 10 Denali Highway) will consolidate federal land management authority for these lands for future recreational development. In addition, exchange of state land located in or near the White Mountains and Steese conservation units will consolidate federal land management authority and help assure access to these areas. Acquisition of the Circle Hot Springs airstrip parcel will facilitate BLM fire suppression activities in northern interior Alaska.

No detrimental environmental impacts are expected since the exchange involves a change in ownership rather than a change in management or type of use.

EXCHANGE ALTERNATIVES

1. No Action: DNR's Northern Region Office (NRO) facility in Fairbanks is in need of significant renovation or replacement. Without obtaining title, the state cannot expend funds necessary to restore these facilities or to make significant improvements at this site and the Delta Forestry office. "No action" is not a viable alternative given the present substandard condition of the NRO facility and the need to immediately improve both the NRO and Delta facilities.

2. Purchase: There is no guarantee the properties would be available for state purchase. Other federal agencies have the first right to acquire surplus properties being disposed of by GSA. No state or federal funds have been appropriated for purchase of any land involved in this exchange.
3. Lease: This alternative would reduce the state's flexibility for long-term management of the sites. Without fee ownership, necessary renovations or future capital improvements cannot be made. The land exchange proposal was advanced because both parties found existing special use arrangements on these lands to be unsatisfactory for the purposes of making necessary improvements and for long-term management objectives.
4. Statehood Act Selections: The state selection process is limited to vacant, unappropriated, and unreserved federal land. The state cannot select improved land such as the Fairbanks and Delta Junction parcels.
5. Condemnation: No funds have been allocated for this purpose. Furthermore, there is no significant immediate public interest which conclusively justifies this action.
6. Identify Alternative Land: There are state and federal lands in the vicinities of the DNR Fairbanks and Delta Junction office sites which could be used in lieu of the present sites. This alternative, however, would require site and access development and feasibility studies at additional costs which would effectively increase the future costs of relocation of these DNR facilities. New construction at the existing sites or consolidation of state facilities at one centralized location appear to be viable alternatives to relocation of these facilities. The construction of a new State Resource Agency facility and future expansion capabilities on existing lands provide the most efficient course of action.

The state and federal government considered other alternatives to the state lands proposed for exchange to the Department of the Interior. Those parcels, located in Fort Yukon, Galena, Eagle, and other remote locations were rejected due to ownership conflicts and conflicts with BLM or DOT/PF long range management goals.

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LAND AND WATER MANAGEMENT
Pouch 7-005
555 Cordova Street
Anchorage, Alaska 99510

PUBLIC NOTICE UNDER AS 38.05.945, AS 38.50.110
of ADL 410182

Subject to the provisions of AS 38.05.945 and AS 38.50.110 and applicable regulations, the Division of Land and Water Management proposes to exchange state-owned lands at or near Sourdough, Paxson, Circle Hot Springs and Fairbanks (NE along Steese Highway) for improved federal lands at Fairbanks and Delta Junction. The purpose of the exchange is to further mutual land management objectives and reduce long-term operating costs for both the State of Alaska and the U.S. Department of the Interior.

LAND PROPOSED TO BE ACQUIRED BY THE UNITED STATES FROM THE STATE

1. Sourdough Campground
USS 4424 within Sections 30-31, T9N, R1W and Sections 25 & 36, T9N, R2W, C.R.M., containing approximately 187.98 acres.
2. Paxson Lake Wayside
Lot 1 USS 2707 within Section 36, T14N, R2W, C.R.M., containing approximately 4.0 acres.
3. Parcels within Steese National Conservation Area and White Mountains National Recreation Area
Portion of Section 6, T5N, R6E, F.M.
Portions of Sections 3, 16, and 19, T6N, R6E, F.M.; portions of Sections 1-18 and 20-28, T7N, R8E, F.M.; portions of Sections 1 and 7-10, T5N, R4E, F.M.; portions of Sections 7-12, T5N, R3E, F.M.; and portions of Sections 11-12, 16, and 20, T5N, R2E, F.M. Acreage to be determined, based upon the amount of state land required to complete an equal value land exchange.
4. Parcels outside and adjacent to the Steese National Conservation Area and White Mountains National Recreation Area
Portions of Sections 7, 18-20, 29, 30 and 32, T5N, R3E, F.M.
Portions of Sections 3-5, 8-10, 16 and 17, T5N, R5E, F.M. and Sections 28, 32-34, T6N, R5E, F.M.
Portions of Sections 1-4 and 9-16, T6N, R6E, F.M. and Sections 13-16, 21-24, 26-28, 33-35, T7N, R6E, F.M.
Portions of Sections 1-3, 9-11, 15, 16, 19-21, 29 and 30, T7N, R9E, F.M.
Portions of Sections 15-22, 26-28 and 35, T8N, R11E, F.M.
Acreage to be determined, based upon the amount of state land required to complete an equal value land exchange.
5. Circle Hot Springs
One parcel adjacent to Circle Hot Springs Airport, within Section 35, T8N, R15E, F.M., containing approximately 60 acres.
6. Round Tangle Lake near Paxson
USS 4147 within Section 34, T21S, R9E, F.M., containing approximately 1.91 acres.

7. Mile 10 Denali Highway near Paxson
All or portions of Sections 15, 16, 19-23 and 25-36, T21S, R11E, F.M.
Acreage to be determined, based upon the amount of state land required to complete an equal value land exchange.

LAND PROPOSED TO BE ACQUIRED BY THE STATE FROM THE UNITED STATES

1. DNR Northern Region Office Site
Lots 64, 65, and 66 in Section 7, T1S, R1W, F.M., containing approximately 22 acres and located within the Fairbanks North Star Borough.
2. DNR Forestry Area Office and Delta Campground
Lot 9 of Section 14, T10S, R10E, F.M., containing approximately 22.78 acres.

All parcels involved in the proposed exchange will be conveyed subject to prior valid existing rights.

Parties to the proposed exchange are the State of Alaska, Department of Natural Resources, 555 Cordova Street, Pouch 7-005, Anchorage, Alaska 99510 and the United States Department of the Interior, Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

The proposed exchange will be an equal appraised fair market value land exchange consisting of both land and mineral estates. Fair market value appraisals of land proposed for exchange are now being conducted by the state and the Department of the Interior on their respective lands, and should be completed on or before February 28, 1985.

A statement of findings, containing detailed maps, a physical description of the land involved, impacts and alternatives considered, and statutory requirements is available at the Division of Land and Water Management, 555 Cordova Street, Pouch 7-005, Anchorage, Alaska 99510 (telephone 265-4315) and at the Northern Region Office, 4420 Airport Way, Fairbanks, Alaska 99701 (telephone 479-2243).

A public hearing on the proposed exchange will be held on March 5, 1985, at 7:00 p.m. local time at the Noel Wien Library, 1215 Cowles Street, Fairbanks, Alaska. Fair market value appraisals of the proposed exchange lands will be available at the public hearing.

Any comments, objections, or expressions of interest pertaining to the proposed actions, or assertions of a claim to the property involved, must be received in writing by the Division of Land and Water Management, 555 Cordova Street, Pouch 7-005 Anchorage, Alaska 99510 on or before 4:30 p.m., March 19, 1985 to be considered.

The Division of Land and Water Management reserves the right to waive technical defects in this publication.

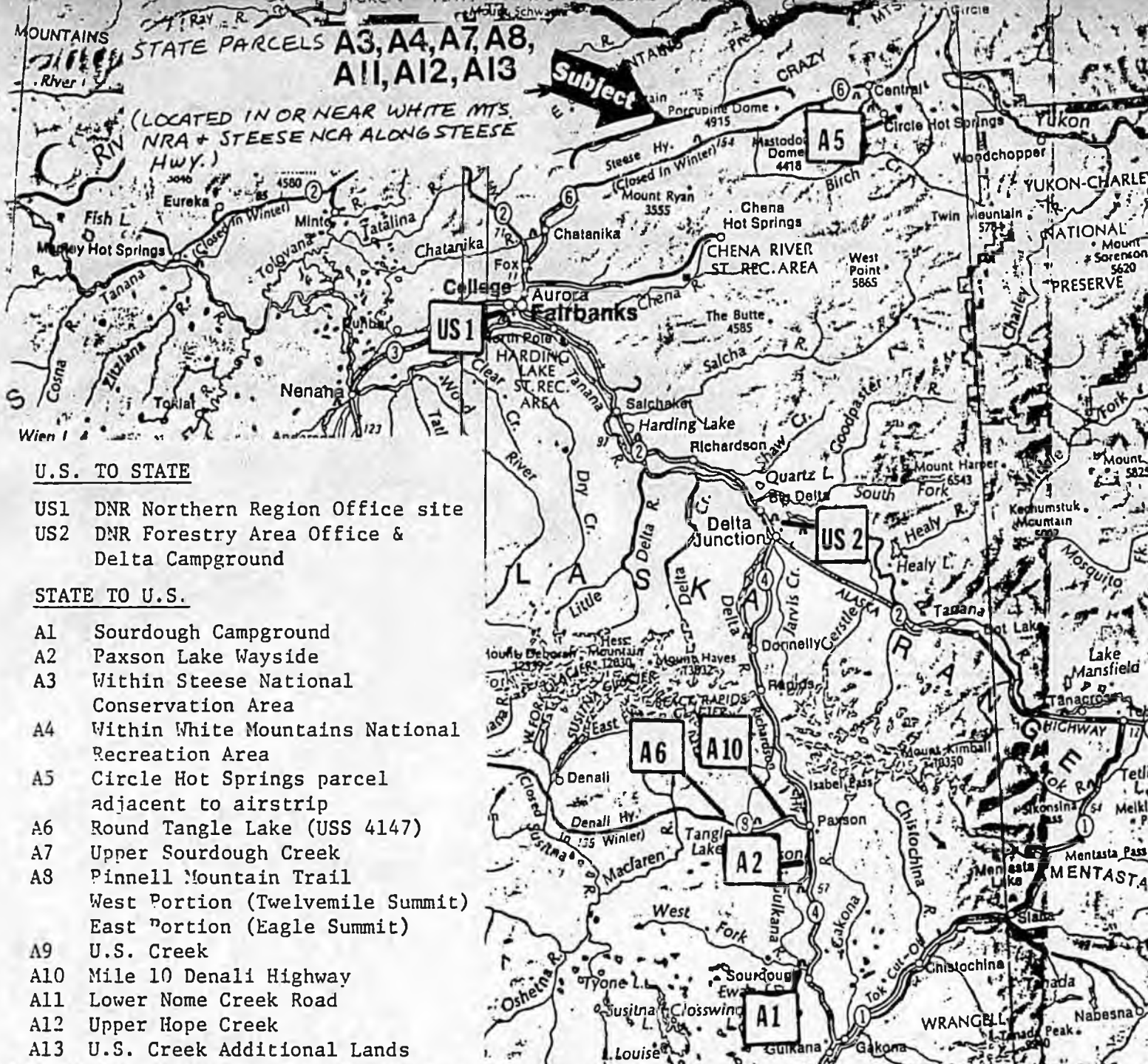
Tom Hawkins, Director

Publish February 3 and February 10, 1985

MOUNTAINS

STATE PARCELS A3, A4, A7, A8, A11, A12, A13

(LOCATED IN OR NEAR WHITE MTS. NRA + STEESE NCA ALONG STEESE HWY.)



U.S. TO STATE

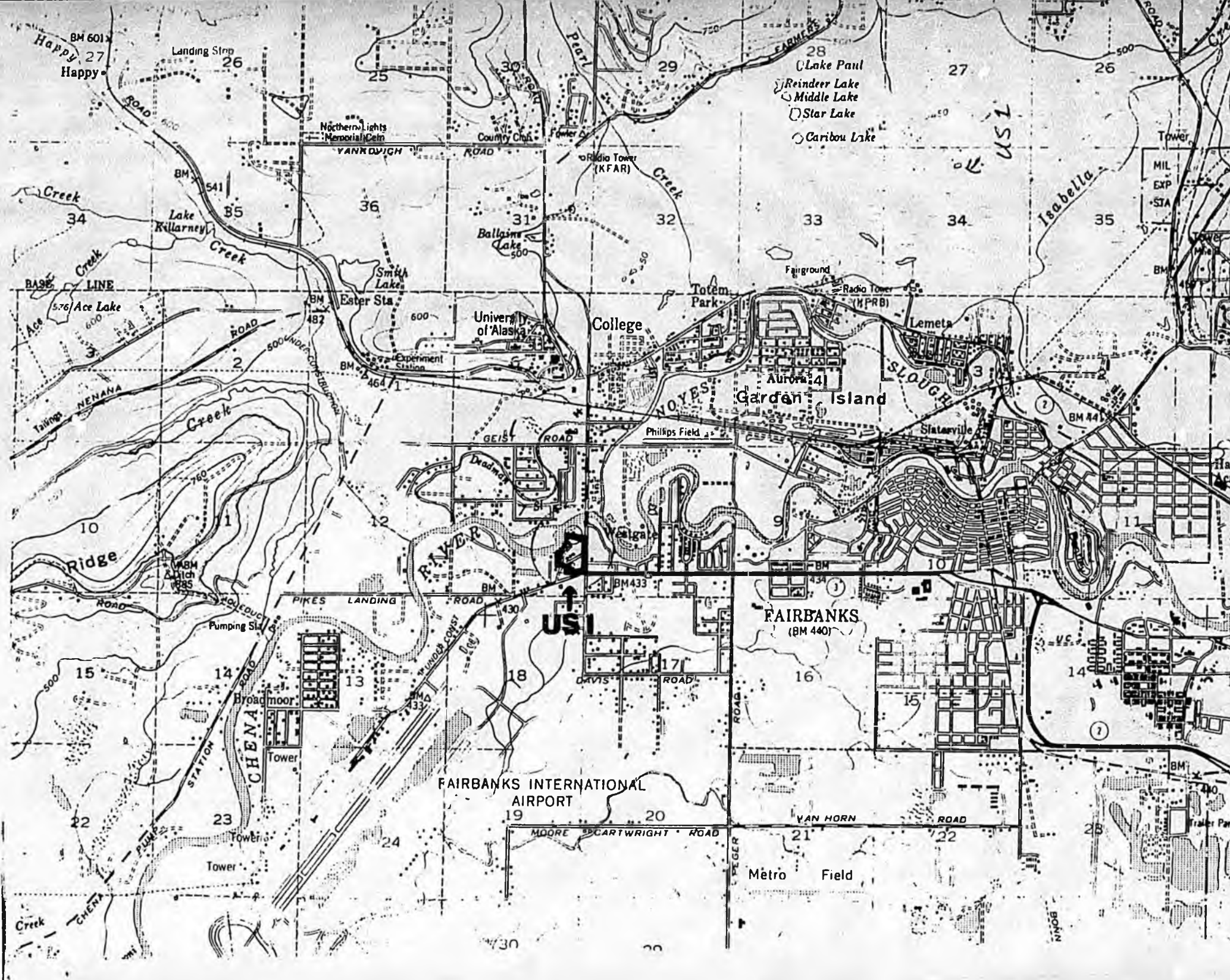
- US1 DNR Northern Region Office site
- US2 DNR Forestry Area Office & Delta Campground

STATE TO U.S.

- A1 Sourdough Campground
- A2 Paxson Lake Wayside
- A3 Within Steese National Conservation Area
- A4 Within White Mountains National Recreation Area
- A5 Circle Hot Springs parcel adjacent to airstrip
- A6 Round Tangle Lake (USS 4147)
- A7 Upper Sourdough Creek
- A8 Pinnell Mountain Trail West Portion (Twelvemile Summit) East Portion (Eagle Summit)
- A9 U.S. Creek
- A10 Mile 10 Denali Highway
- A11 Lower Nome Creek Road
- A12 Upper Hope Creek
- A13 U.S. Creek Additional Lands

Location Map





BM 601
Happy 27
Happy

Landing Strip
26

Northern Lights
Memorial Cahn
YANROVICH ROAD

Country Club
Fowler Dr.

Radio Tower
(KFAR)

- 28 Lake Paul
- Reindeer Lake
- Middle Lake
- Star Lake
- Caribou Lake

USI

Tower
MIL
EXP
STA

BASE LINE
576 Ace Lake
600

Estes Sta.
600

University
of Alaska

College

Totem
Park

Fairground
Radio Tower
(MFRB)

Lemeta

Tailings
NENANA
Creek

Creek

Deadway

Philips Field

Garden Island

Staterville

BM 441

Ridge

ABM
438

CHENA RIVER

USI

BM 433

FAIRBANKS
(BM 440)

Pumping Sta.

PIKES LANDING

ROAD 430

DAVIS ROAD

ROAD

15

14

13

18

17

16

14

22

23

24

19

20

21

22

28

FAIRBANKS INTERNATIONAL
AIRPORT

VAN HORN ROAD

MOORE CARTWRIGHT ROAD

Metro Field

Trailer Park

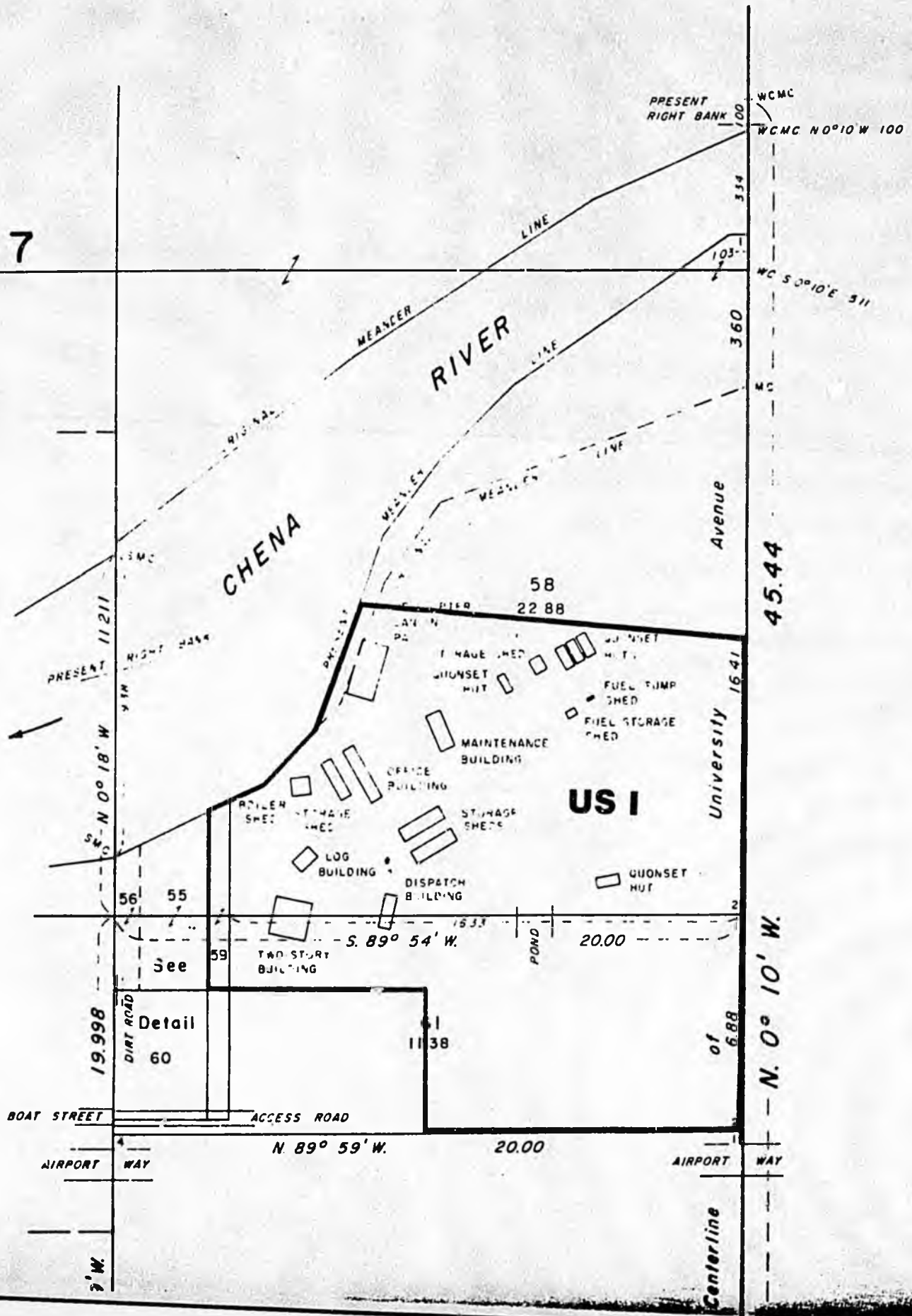
Creek
CHENA

BOBIN

1 SOUTH, RANGE 1 WEST, OF THE FAI

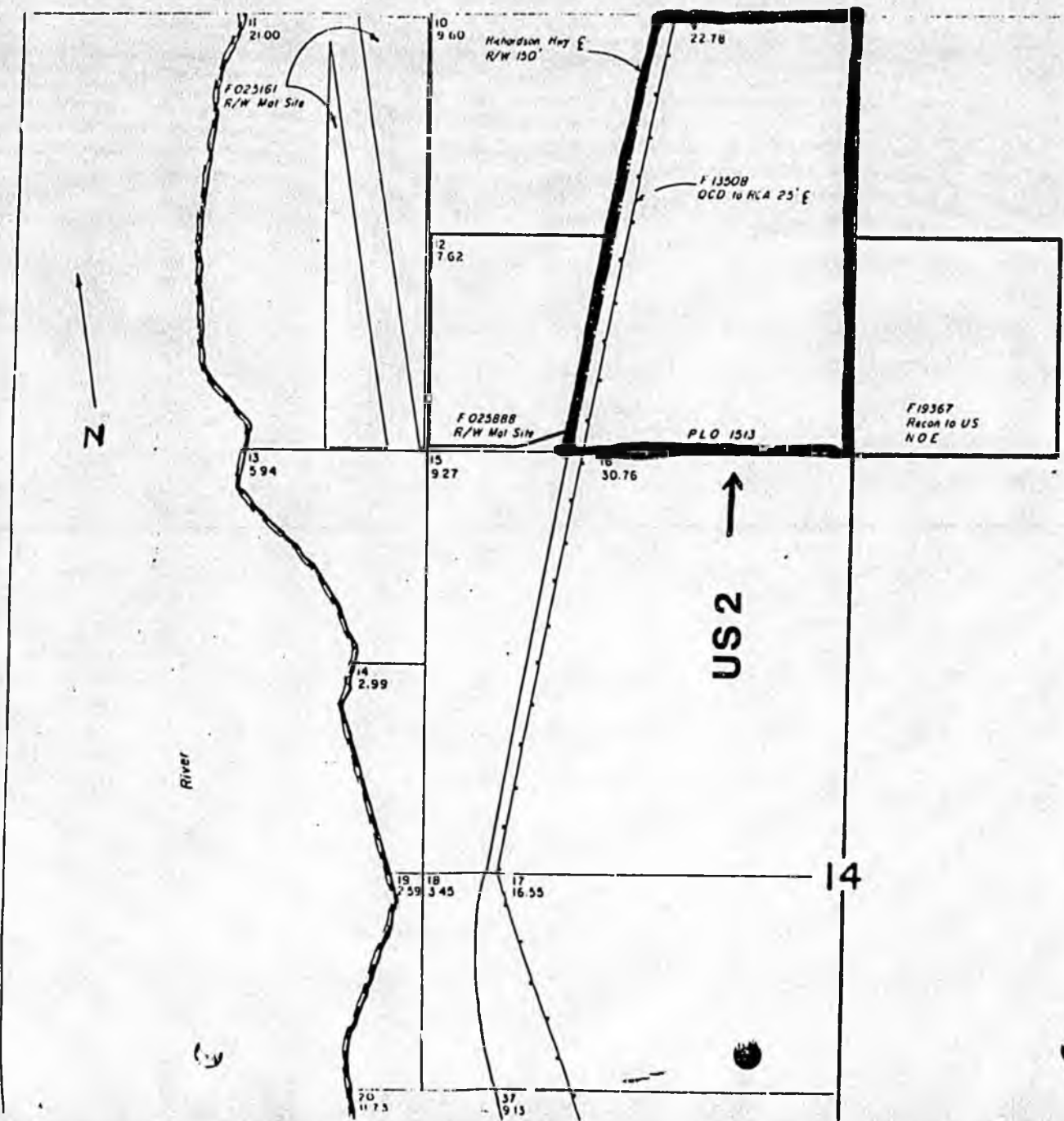
RETRACEMENT AND SUBDIVISION OF SEC

Sec. 7



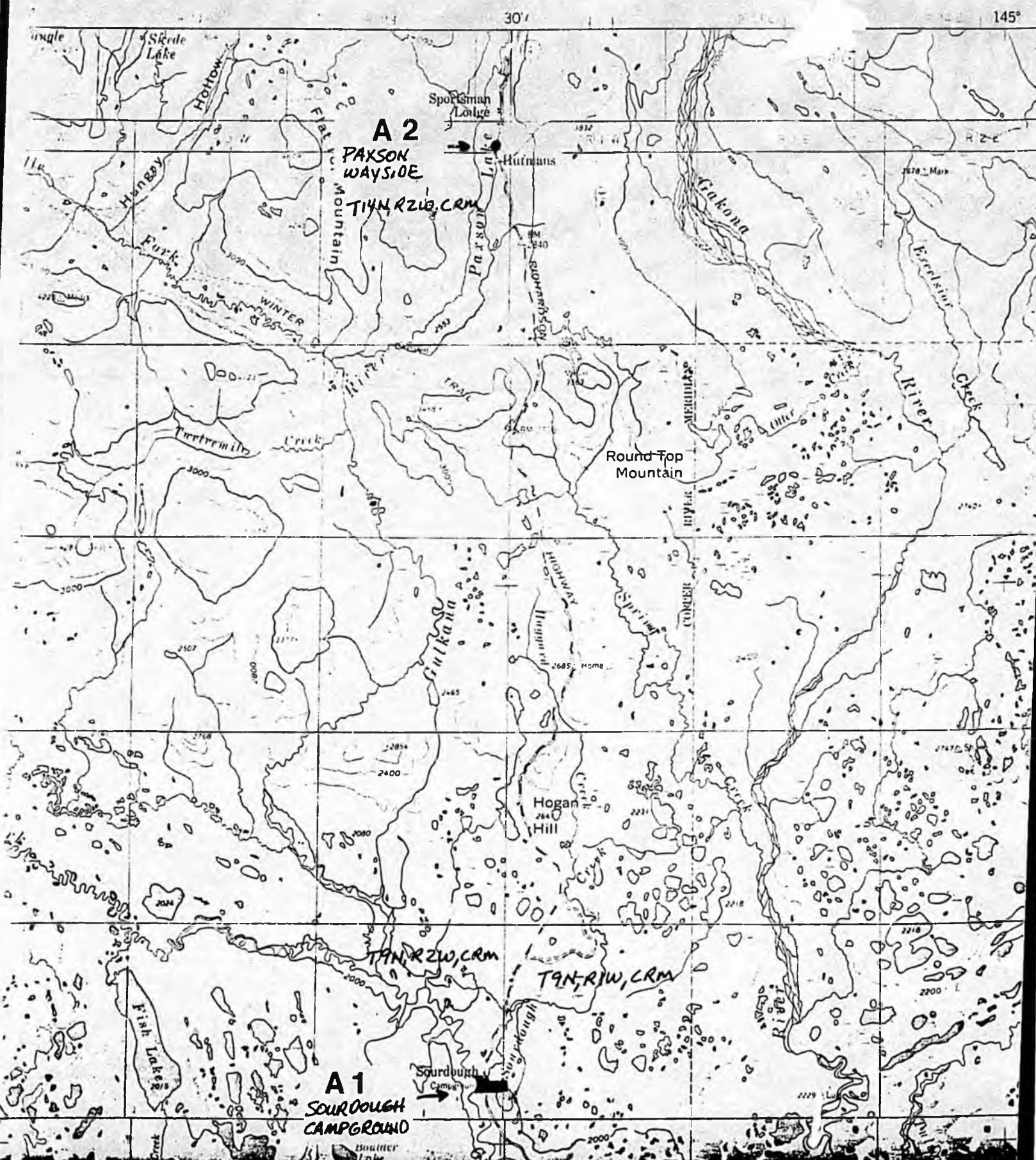
PARTIALLY SURVEYED TOWNSHIP 10 SOUTH, RANGE 10 EAST OF THE FAIRBANKS ME

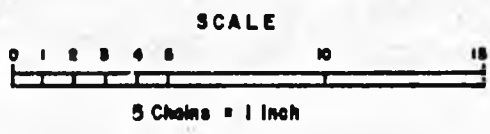
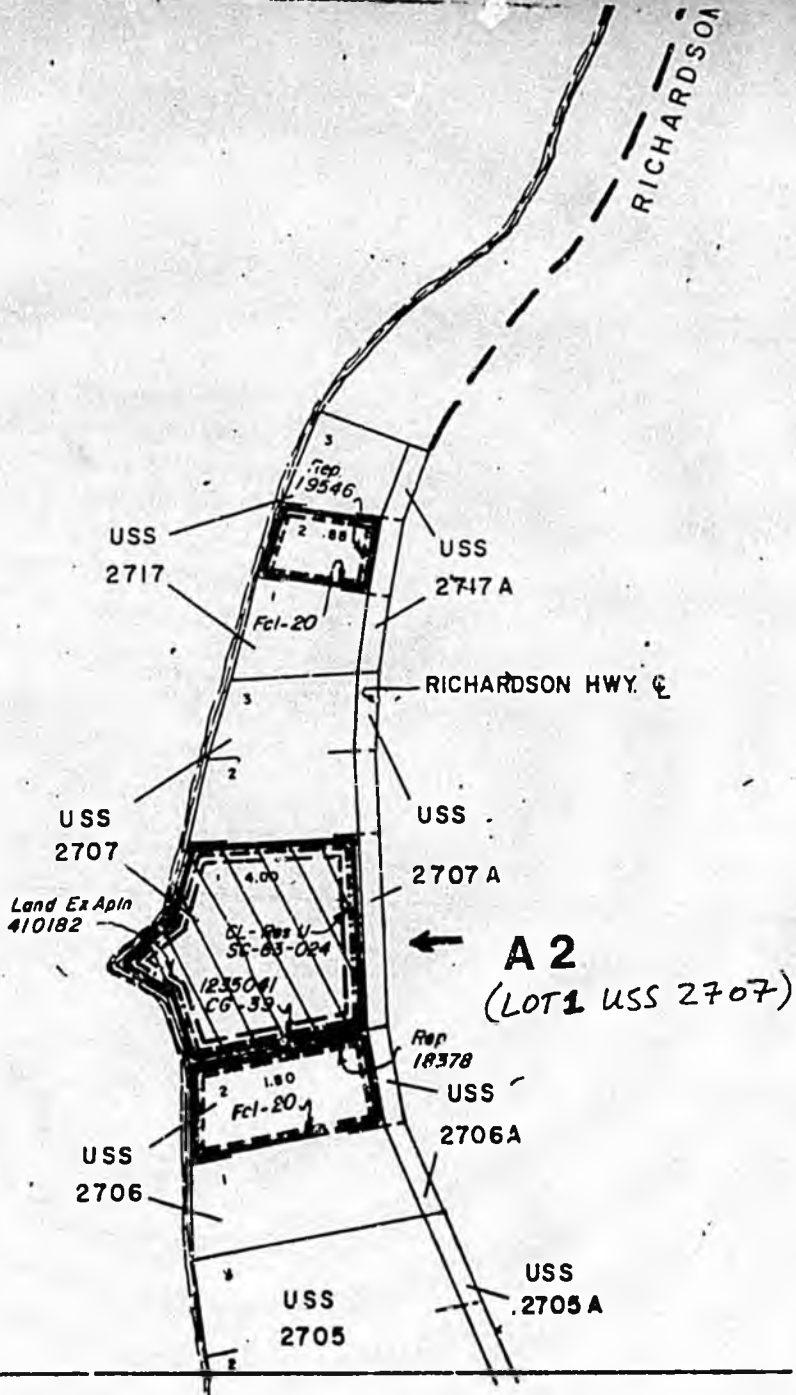
PROTRACTION DIAGRAM NO F9-10

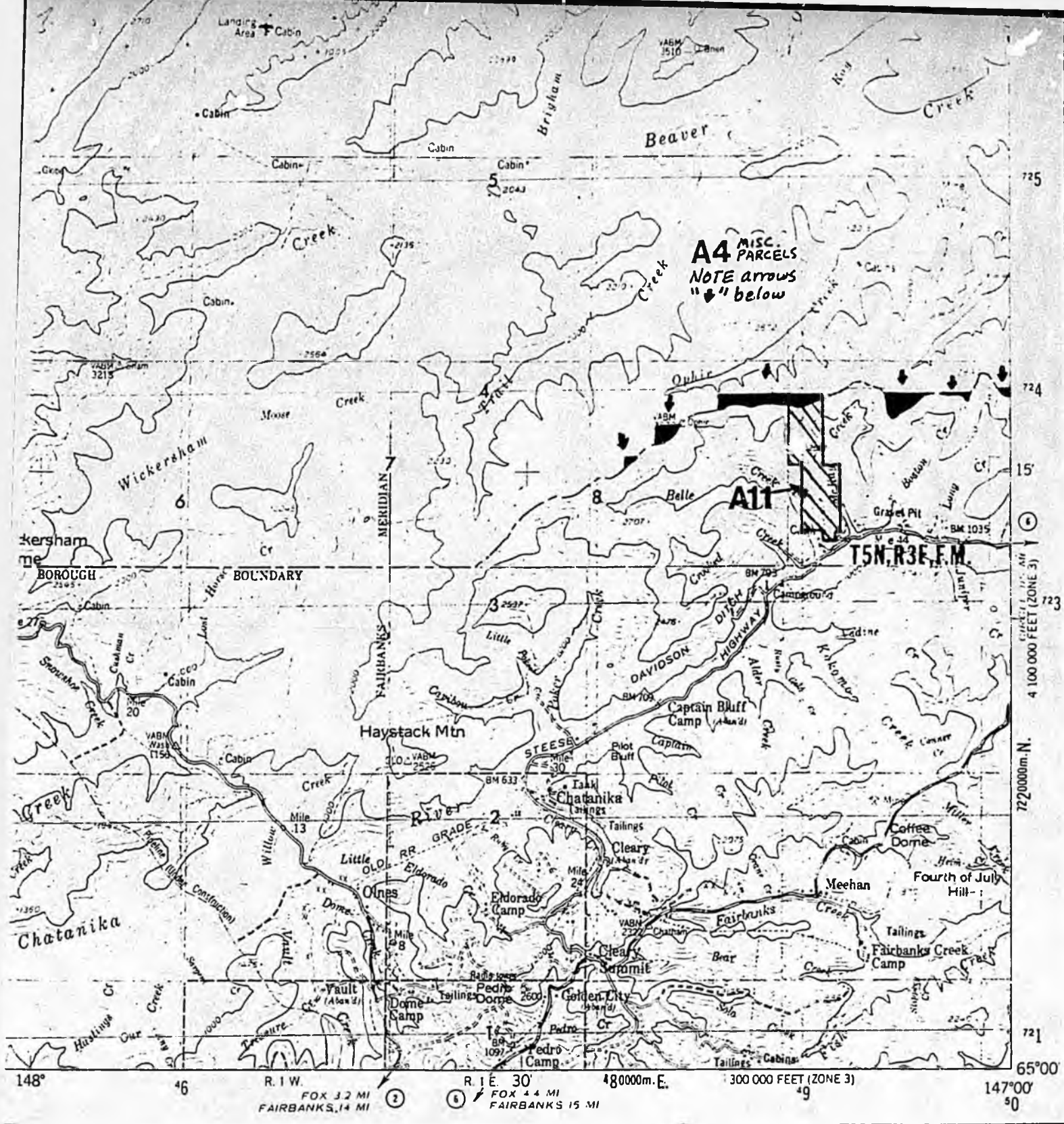


GULKANA

USGS QUAD:
Gulkana, AK
1:250,000







A4 MISC. PARCELS
NOTE arrows
"↓" below

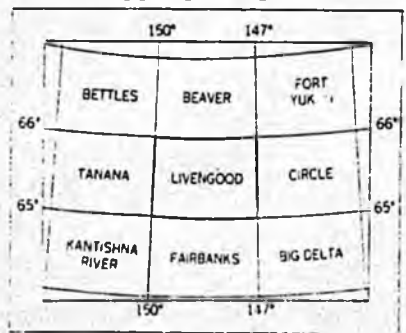
A11

T5N, R3E, E.M.

148° 46' R. 1 W. FOX 3.2 MI FAIRBANKS, 14 MI ②
 R. 1 E 30' FOX 4.4 MI FAIRBANKS 15 MI ⑥
 480000m. E. 300 000 FEET (ZONE 3) 49
 147°00' 50

● INTERIOR—GEOLOGICAL SURVEY RESTON VIRGINIA—1977

LOCATION DIAGRAM



25 MILES

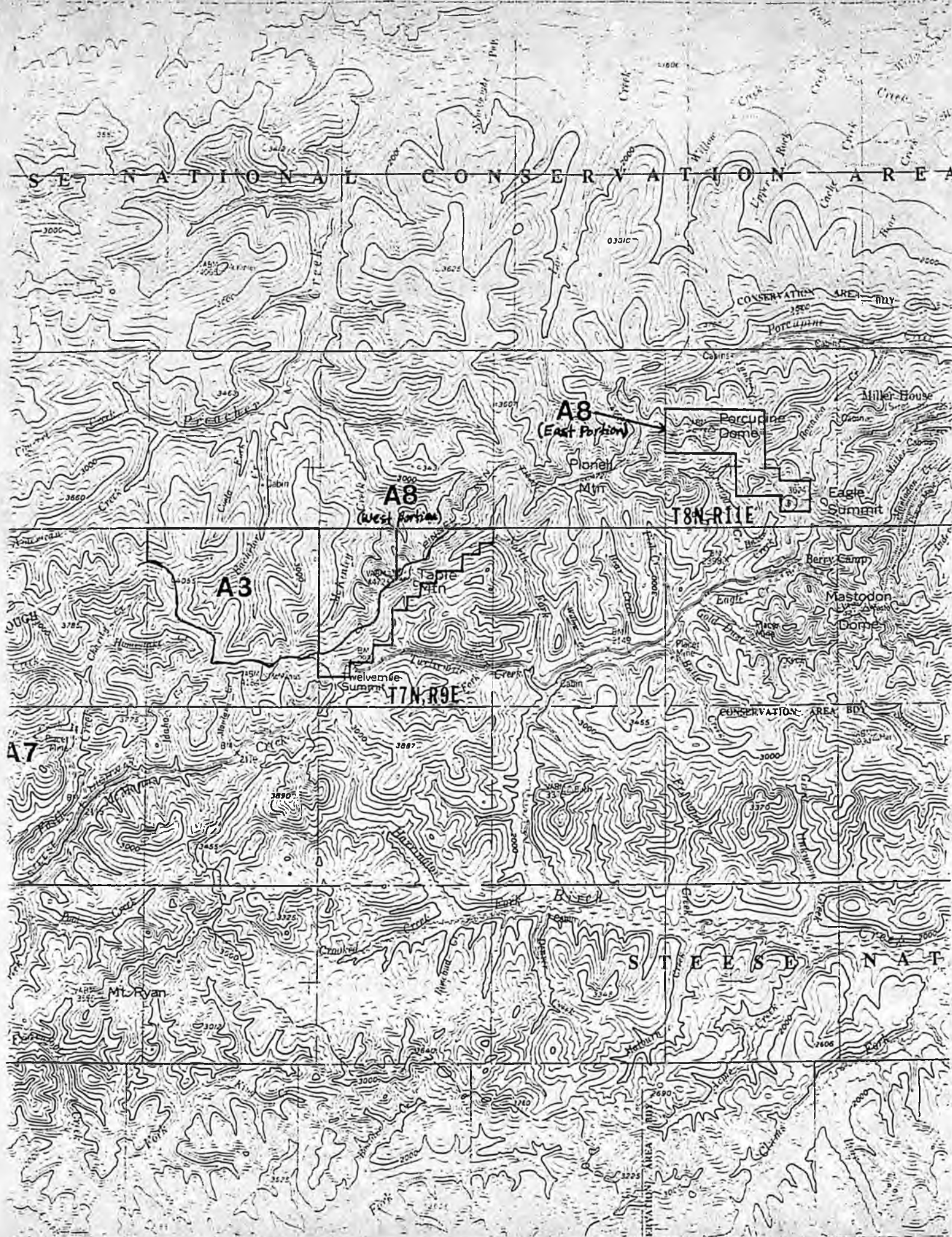
ROAD CLASSIFICATION
 Medium-duty ——— Light-duty ———
 Unimproved dirt - - - - - Trails - - - - -

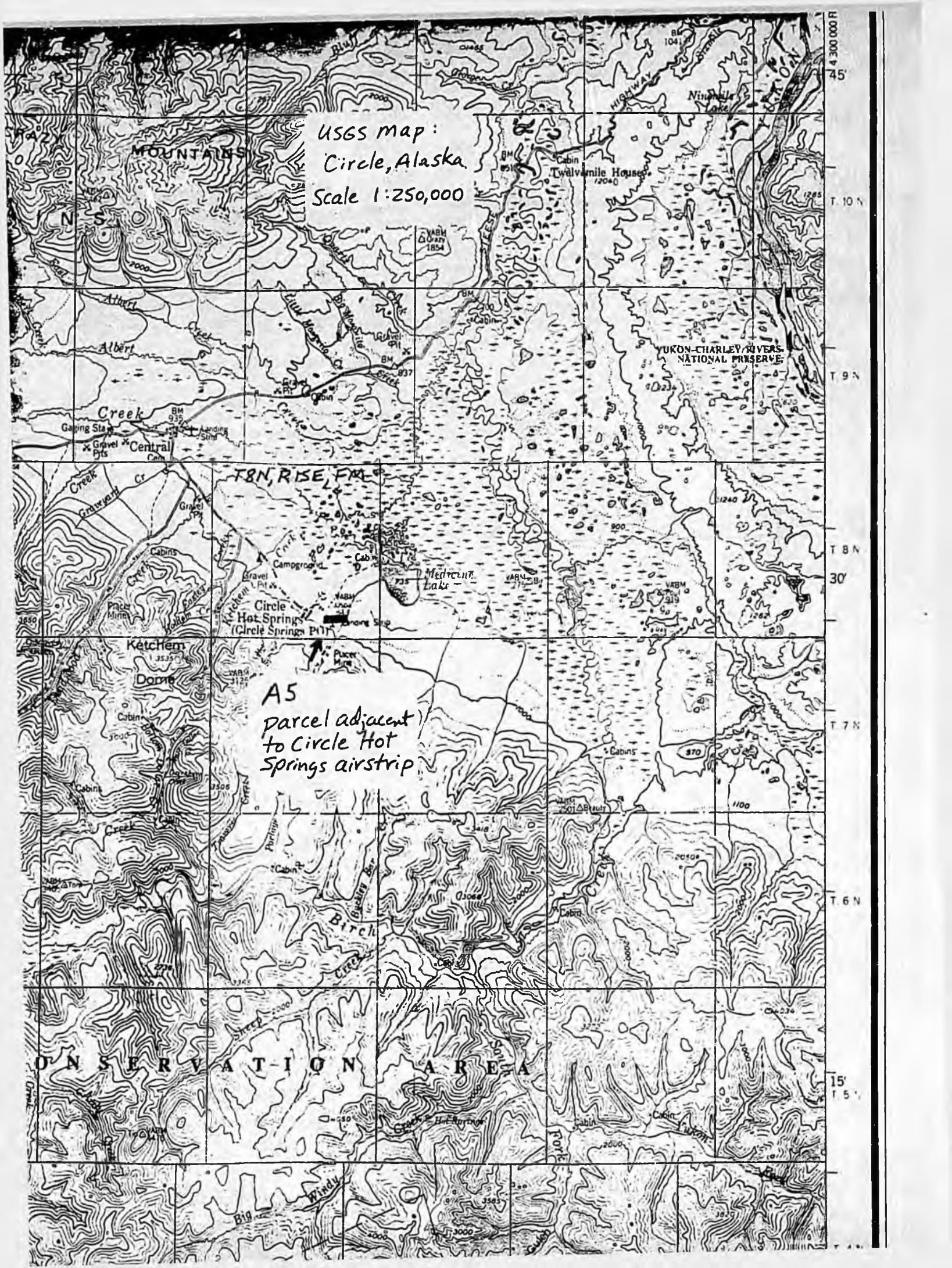
LIVENGOOD, ALASKA

1956
 REVISED 1977

SCALE 1:250,000

S E N A T I O N A L C O N S E R V A T I O N A R E A

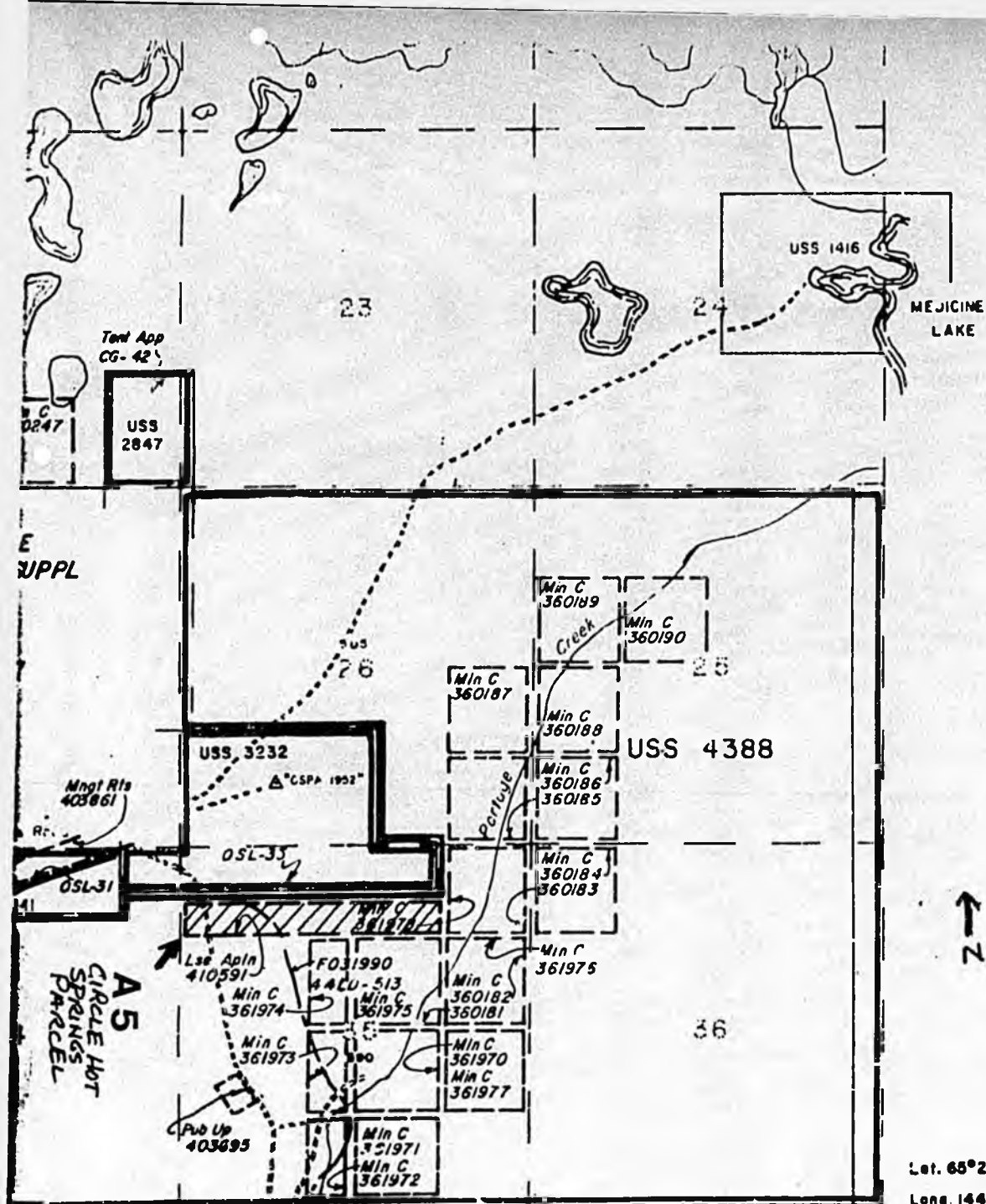




USGS map:
Circle, Alaska
Scale 1:250,000

A5
parcel adjacent
to Circle Hot
Springs airstrip

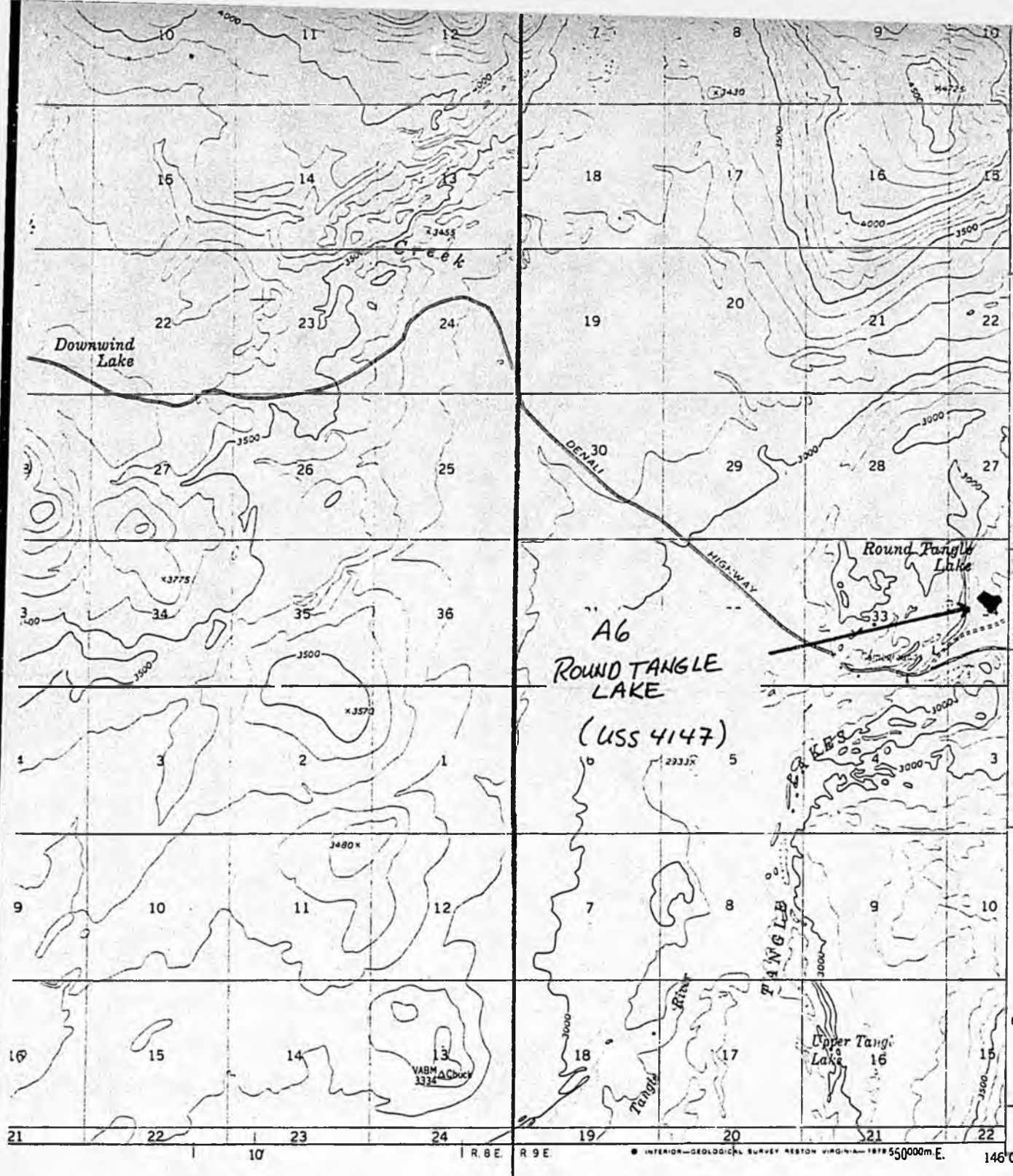
CONSERVATION AREA



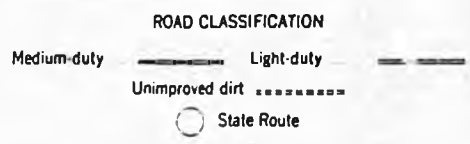
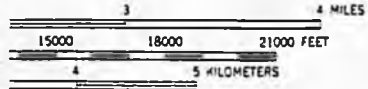
STATE OF ALASKA
 DEPT. OF NATURAL RESOURCES
 DIVISION OF LANDS

DATE	CHECKED BY
12-4-94	[Signature]

SP
 T. J. J.
 R. M. J.
 P. M.



A6
 ROUND TANGLE
 LAKE
 (USS 4147)



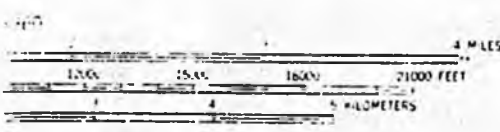
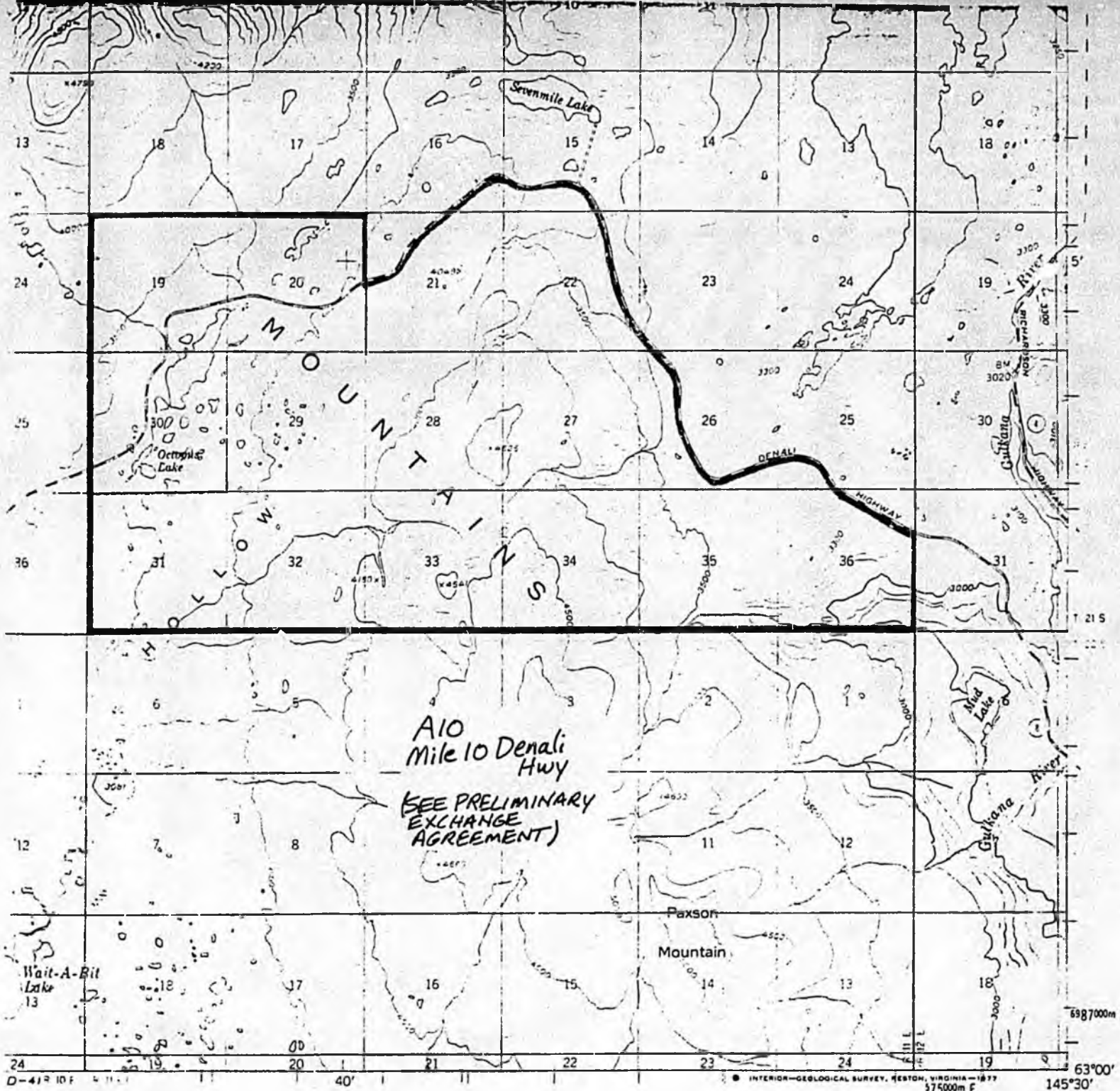
MT. HAYES (A-5), ALASKA
 N6300-W14600/15X30

1949
 MINOR REVISIONS 1978

SCALE -
 1:63,360

ESTON, VIRGINIA 22092
 AVAILABLE ON REQUEST

U.S. GEOLOGICAL SURVEY RESTON, VIRGINIA 22092
 6987000m N
 63°00'
 146°00'
 (GULKANA D-4)



1:62,500
 1:62,500
 DATUM OF 1929



ROAD CLASSIFICATION
 Medium duty ——— Light duty ———
 Unimproved dirt
 State Route

MT. HAYES (A-4), ALASKA
 N6300-W14530/15X30

1949
 LIMITED REVISIONS 1976

LOGICAL SURVEY
 DO 80225 OR RESTON VIRGINIA 22092
 AND SYMBOLS IS AVAILABLE ON REQUEST

PRELIMINARY EXCHANGE AGREEMENT

ADL #410182

This preliminary agreement for the negotiated exchange of land is made and entered into by and between the State of Alaska (hereinafter "State") whose address is Pouch 7-005, Anchorage, Alaska 99510, and the United States Department of the Interior (hereinafter "U.S.") whose address is 701 C Street, Box 13, Anchorage, Alaska 99513. Exchange authority for the State is A.S. 38.50 and for the U.S. is Section 1302(h) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, and Section 22(f) of the Alaska Native Claims Settlement Act of 1971, P.L. 92-203, as amended, 85 Stat. 688.

The land proposed for exchange is described in Attachment A (U.S. land to be acquired by the State) and Attachment B (State land to be acquired by the U.S.) to this agreement.

The State seeks to acquire through exchange a portion of the 3 1/2 Mile administrative site in Fairbanks and the Forestry Area Office site and campground at Delta Junction. The State now occupies both sites under special use authorization from the U.S. The U.S. seeks to acquire through exchange State land within, and adjacent to, the Steese National Conservation Area and the White Mountains National Recreation Area; the Sourdough Campground and Paxson Lake Wayside (which the U.S. now manages under agreement with the State); land adjacent to the Circle Hot Springs airport; and land on Round Tangle Lake and at Mile 10 of the Denali Highway.

In order to further the purposes of the proposed exchange, the State and the U.S. agree as follows:

1. This agreement replaces, supersedes, and cancels the "Notice of Intent for Proposed Exchange of Lands" dated June 27, 1983 and signed by the State and the U.S.
2. The U.S. and the State have established that each is the owner of land included in Attachments A and B respectively, and that the signatories to this agreement have the authority to negotiate this exchange on behalf of their principals.
3. The parties will receive and exchange both the land and mineral estates to the land identified in Attachments A and B, subject to valid existing rights.
4. The land to be exchanged by the parties shall be of equal appraised fair market value. Land thus appraised will be included in the exchange in the priority order set forth by the parties in Attachments A and B, until the appraised value of the land has been equalized.

5. Appraisals of fair market value will be completed and costs associated thereof will be borne by the U.S. for land described in Attachment A and by the State for land described in Attachment B. Appraisals will conform to "Appraisal Instruction Pertaining to Valuation of State Lands" and to "Uniform Appraisal Standards for Federal Land Acquisitions". A mutually agreeable independent appraiser, whose appraisal will be final and binding, will be selected in the event either the State or the U.S. finds an appraisal completed by the other to be unacceptable for whatever reason. The cost of such an appraisal will be borne equally.
6. The U.S. will bear the costs of any surveys required to convey the land described in Attachments A and B. Both parties will bear the advertising and other administrative costs of conducting this exchange as required by their respective statutes, regulations, and procedures.
7. All required surveys will be conducted under the auspices of the Bureau of Land Management, Branch of Cadastral Survey, which will produce the official survey plats.
8. Improvements known to exist on land subject to exchange are: administrative and storage buildings on the land included in Attachment A, and recreational development on the Sourdough Campground and Paxson Lake Wayside sites in Attachment B.
9. The parties will examine their respective land proposed to be exchanged, identify any known unauthorized entries, and take action to expel such entries before execution of the exchange.
10. No new third-party interests will be created by either party on the land included in Attachments A and B until the exchange is executed, unless agreed to in writing by both parties in advance.
11. A parcel or parcels included in Attachments A and B may be deleted from further exchange consideration by mutual agreement.
12. The State will classify or reclassify the land identified in Attachment B to reserved use pursuant to AS 38.05.300 and 11 AAC 55.170 and concurrently execute a mineral closing order on the same land pursuant to AS 38.05.185(a) and 11 AAC 55.170.
13. Following negotiations to equalize the fair market appraised values of the land to be exchanged, both parties will enter into a final exchange agreement. The final exchange agreement will contain all terms, conditions, and considerations of the exchange, including specific legal descriptions of the land to be exchanged and identification of third-party interests created thereon.

To the best of their ability, the State and the U.S. further agree to adhere to the following general timeframe for completion of this proposed land exchange:

<u>Requirement</u>	<u>State</u>	<u>U.S.</u>	<u>Completion Date</u>
Preliminary Exchange Agreement	X	X	November 6, 1984
Initiation of Appraisal Process	X	X	November 6, 1984
Completion of Reclassification and Mineral Closing Order	X		January 31, 1985
Appraisals Completed & Approved	X	X	January 31, 1985
Negotiated Equalizing of Values	X	X	February 5, 1985
Public Notice, Report, Finding	X		February 11, 1985
Presentation to Alaska Land Use Council	X	X	February, 1985
Survey Plat Officially Filed		X	February 13, 1985
Federal Register Publication of Public Land Order(s)		X	March 13, 1985
Public Hearing (Fairbanks)	X	(X)	March 13, 1985
Final Exchange Agreement	X	X	March 29, 1985
Execution of Exchange	X	X	April 29, 1985

ATTACHMENT A

U. S. LANDS TO BE ACQUIRED BY STATE

Parcel	Legal Description	Approximate Acres
US1 3 1/2 Mile Site Fairbanks	<p>T1S, R1W, FM Sec. 7: That portion of Lots 58, 59, and 61 more particularly described as follows: Beginning at corner no. 2, Lot 61, being the true point of beginning; thence N.89°59'W. along line 2-3 of Lot 61, 644.00 feet; thence N.00°09'30"W., 299.67 feet; thence N.89°59'W., 478.38 feet to corner no. 2, Lot 59; thence North along line 2-1 of Lot 59, 367.29 feet to corner no. 1, Lot 59 on the south bank of the Chena River; thence N.64°34'E, 48.25 feet along the meander line of the Chena River to corner 5 of Lot 59 which is common to corner 4 of Lot 58; thence N.64°30'E., 75.90 feet along the meander line of the Chena River; thence N.44°00'E., 153.12 feet along the meander line of the Chena River; thence N.19°32'E., 322.44 feet along the meander line of the Chena River; thence S.81°36'38"E., 802.54 feet to line 1-2 of Lot 58, also being the line common to Sections 7 and 8 and the centerline of University Avenue; thence S.00°10'E., 1,017.72 feet along said line to the Point of Beginning.</p>	22.47
US2 Delta Area Office Site and Delta Campground	<p>T10S, R10E, FM Sec. 14: Lot 9</p>	22.78

ATTACHMENT B

STATE LANDS TO BE ACQUIRED BY U.S.

Parcel	Legal Description	Approximate Acres
A1 Sourdough Campground	T9N, R1-2W, CRM USS 4424 excl. Richardson Hwy. R/W.	187.98
A2 Paxson Lake Wayside	T14N, R2W, CRM USS 2707 Lot 1.	4.0
A3 Within Steese National Conservation Area	T7N, R8E, FM Secs. 1-18 and 20-28: Those portions within Steese NCA.	13,663
A4 Within White Mountains National Recreation Area	T6N, R6E, FM Secs. 3, 16 and 19: Those portions within White Mts. NRA.	146
	T5N, R5E, FM Sec. 6: That portion within White Mts. NRA.	51
	T5N, R4E, FM Secs. 1 and 7-10: Those portions within White Mts. NRA.	1,053
	T5N, R3E, FM Secs. 7-12: Those portions within White Mts. NRA.	435
	T5N, R2E, FM Secs. 11, 12, 16, and 20: Those portions within White Mts. NRA.	490
A5 Circle Hot Springs Adjacent to Airport	T8N, R15E, FM That portion of USS 4388, more particularly described as follows: Beginning at corner no. 15, USS 4388; thence S. approx. 660 feet; thence W. approx. 3,960 feet; thence N. approx. 660 feet to line 14-15, USS 4388; thence E. approx. 3,960 feet along said line 14-15 to the Point of Beginning. (Subject to a navigation and hazard easement on the eastern portion.)	60
A6 Round Tangle Lake	T21S, R9E, FM USS 4147. (Land Estate Only)	1.91

Parcel	Legal Description	Approximate Acres
A7 Upper Sourdough Creek	T6N, R6E, FM Sec. 1: W2W2; Sec. 2: All; Sec. 3: That portion outside White Mts. NRA; Secs. 10 and 11: All; Sec. 12: NW4, S2; Sec. 13: N2, SW4, NW4SE4; Sec. 14: All; Sec. 15: N2, N2SW4, SE4; Sec. 16: E2NE4, NW4NE4, N2N2NW4, excl. White Mts. NRA. (Subject to a 200 ft. R/W on Sourdough Creek Road.)	4,995 (less Federal mining claims)
(Additional Lands: Inclusion Subject to State Receiving Title)	T6N, R6E, FM Secs. 4 and 9: Those portions outside White Mts. NRA. T7N, R6E, FM Sec. 34: SE4, excl. White Mts. NRA; Sec. 35: S2SW4, SW4SE4.	450 180
A8 Pinnell Mountain Trail-- West Portion (Twelvemile Summit)	T7N, R9E, FM Sec. 1: N2, SW4; Secs. 2, 3, 9, 10: Those portions outside Steese NCA; Sec. 11: N2; Sec. 15: NW4; Secs. 16, 19, and 20: Those portions outside Steese NCA; Sec. 21: W2; Sec. 29: N2; Sec. 30: Those portions outside Steese NCA. (Subject to a 300 ft. R/W on Steese Highway.)	5,370
East Portion (Eagle Summit)	T8N, R11E, FM Sec. 15: W2; Secs. 16-18: All; Sec. 19: N2; Sec. 20: N2; Sec. 21: N2, SE4; Sec. 22: W2; Sec. 26: S2; Sec. 27: All; Sec. 28: E2; Sec. 35: N2. (Subject to a 300 ft. R/W on Steese Highway.)	5,370 (less Federal mining claims)

Parcel	Legal Description	Approximate Acres
A9 U.S. Creek	T5N, R5E, FM (Tract A) Sec. 3: W2; Secs. 4, 5, and 8: All; Sec. 9: That portion N. of Steese Hwy. 300 ft. R/W, excl. PLO 4176; Sec. 17: That portion N. of Steese Hwy. 300 ft. R/W, excl. PLO 4176.	3,120
	T6N, R5E, FM Secs. 32 and 33: Those portions outside White Mts. NRA; Sec. 34: W2. (Subject to a 200 ft. R/W on U.S. Creek Road.)	1,425
A10 Mile 10 Denali Highway	T21S, R11E, FM Secs. 19, 20, and 30.	1,920
[Alternative 2]	[T21S, R11E, FM Secs. 19, 20, and 30: Those portions S. of Denali Hwy. R/W]	[775]
[Alternative 3]	[T21S, R11E, FM Secs. 15, 16, 19-23, and 25-36: Those portions S. of Denali Hwy. R/W]	[8,000]
A11 Lower Nome Creek Road	T5N, R3E, FM Sec. 7: That portion outside White Mts. NRA; Sec. 18: All; Sec. 19: E2; Sec. 20: W2; Sec. 29: W2 excl. USS 5361; Sec. 30: E2; Sec. 32: Lots 1 and 2, N2NW4, NW4NE4, excl. USS 5072 and 5361. (Subject to a 200 ft. R/W on Nome Creek Road.)	2,470
A12 Upper Hope Creek (Inclusion Subject To State Receiving Title)	T7N, R6E, FM Secs. 13 and 14: Those portions outside Steese NCA; Sec. 15: That portion outside Steese NCA and White Mts. NRA; Secs. 16, 21, and 22: Those portions outside White Mts. NRA; Sec. 23: All; Sec. 24: NW4, that portion outside Steese NCA; Sec. 26: N2; Secs. 27, 28, and 33: Those portions outside White Mts. NRA; Sec. 34: N2, that portion outside White Mts. NRA.	3,500

Parcel	Legal Description	Approximate Acres
A13 U.S. Creek Additional Lands	T5N, R5E, FM Sec. 10: W2, that portion N. of Steese Hwy. 300 ft. R/W; Sec. 16: That portion N. of Steese Hwy. 300 ft. R/W, excl. PLO 4176.	220
	T6N, R5E, FM Sec. 28: SE4, that portion outside White Mts. NRA.	70

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May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

SENATE RESOURCES COMMITTEE, 2/22/85, 1:35



RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

SJR

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Jeanie Henry

SENATE RESOURCES COMMITTEE,

2/22/85, 1:35

" "

3/1/85, 1:40



United States Department of the Interior

OFFICE OF THE SOLICITOR
ANCHORAGE REGION
510 L Street, Suite 408
Anchorage, Alaska 99501

IN REPLY REFER TO
MAY 21 1980
ANCHORAGE AK

MEMORANDUM

To: Acting Area Director
Bureau of Indian Affairs
Juneau

From: David S. Case
Attorney/Advisor

Subject: Rights of Way on Allotments --
R.S. 2477 and Other Access Questions

I. INTRODUCTION

A. Your Requests

Over the last twelve months you have directed three opinion requests to this office regarding access to and across Native allotments. Your first request (dated May 22, 1979) asked about the effect of Native occupancy on the establishment of section line road easements under R.S. 2477. Your second request (dated July 6, 1979) was for general guidance about the method for assuring access to landlocked Native allotments you had advertised for sale. You also asked if you have to disclose any access problems in your sale advertisement. With respect to R.S. 2477 easements, you asked whether a section line easement for public access would suffice for private access to an otherwise landlocked

The request was entitled "Effect of Statutory Reservations on Native Allotments" and was answered in a memorandum by Dennis Hopewell of this office, dated September 4, 1979. The section line easement question was specifically excluded from that response pending this reply.

allotment. Your final request (dated April 4, 1980) reduced to its essentials, asked whether the Indian right of way laws and regulations apply when the right of way on or through a certified allotment coincides with a surveyed section line easement arguably granted under R.S. 2477.

B. R.S. 2477 in Brief

R.S. 2477 is an 1866 Act "granting" highway rights of way over public lands in the following deceptively simple terms:

The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted. Act of July 26, 1866, c. 262, sec. 8, 14 Stat. 253.

This act was initially codified as Revised Statute (R.S.) 2477 and later as 43 U.S.C. 932. It was repealed by Section 706(a) of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976, PL 94-576, 90 Stat. 2743, 43 U.S.C. 1701, et seq.

Your questions focus on the section line easements appropriated by the Territory and State of Alaska under this federal authorizing legislation. The State statute appropriating the section line easements is codified as Alaska Statute (AS) 19.10.010. However, the the R.S. 2477 grant includes other kinds of rights of way other than those appropriated under this statute. On the other hand, you should note that the R.S. 2477 grant is specifically limited to rights of way over "public lands." The latter point is significant, because it is our opinion that Alaska Native use and occupancy sufficient to qualify for a certificate of allotment is also sufficient to withdraw the land occupied from "public land" status.

Finally, the State's acceptance of the R.S. 2477 grant along section lines has had an on-again, off-again history that must be taken into account when determining whether the easements granted under R.S. 2477 have ever been accepted by the State. Thus, the answers to your questions require some background in the meaning of the term "public lands" and in the history of the application of R.S. 2477 in Alaska. In order to give some direction to that discussion, however, we have provided short answers to each of the questions posed in your opinion requests.

II. SHORT ANSWERS

A. May 22, 1979 Request

We agree with the conclusion expressed at page 2 of your opinion request about the effect of Native use and occupancy on the establishment of a section line easement. However, we would state your conclusion more definitely: ~~If~~ use and occupancy were initiated ~~after survey of the section line~~ then the section line easement is superior to the allottee's rights and a right-of-way across the allotment does not require the consent of the allottee or a grant from the United States. If use and occupancy began any time before the survey, then the easement can only be granted with the consent of the allottee and according to the applicable Indian right of way laws.

B. July 6, 1979 Request

We know of no principle requiring you to disclose whether or not there is access to advertised parcels; furthermore, otherwise valid section line easements can be used to provide private access, but they are also open to the public. Under some circumstances, however, easements by necessity can be implied across otherwise unencumbered lands to afford private access to landlocked parcels.

C. April 4, 1980 Request

Whether the Indian right of way laws apply to a Native allotment depends on whether the allottee commenced use and occupancy before or after a section line right of way was appropriated by survey.

III. DISCUSSION

A. R.S. 2477

1. History and Purpose of R.S. 2477

U.S. Supreme Court and Ninth Circuit cases have cast some doubt on whether R.S. 2477 applies in Alaska. A narrow reading of the U.S. Supreme Court's opinion in Central Pacific Railway Co. v. Alameda County, 284 U.S. 463 (1931), and the Ninth Circuit's later decision in U.S. v. Dunn, 478 F.2d 433, 445 (9th Cir. 1973) would indicate that R.S. 2477

was only a recognition of pre-existing rights rather than a grant of new rights. Strictly construed, this interpretation could mean that R.S. 2477 was never applicable to Alaska, since it was enacted in 1866, one year prior to the purchase of the Territory.

The Territorial and State cases, on the other hand, consistently characterize R.S. 2477 as "in effect, a standing offer from the federal government" for the grant of a right of way, Girves v. Kenai Peninsula Borough, 536 P.2d 1221, 1226 (Alaska 1975). Under this interpretation, the right of way has been held to come into existence upon the "acceptance" of the standing offer. See Berger v. Ohlson, 9 Alaska 389 (D. Alaska 1938); Clark v. Taylor, 9 Alaska 298 (D. Alaska 1938); United States v. Rogge, 10 Alaska 130 (D. Alaska 1941); State v. Fowler, 1 Alas. L.J. 7 (April 1963); Hammerly v. Denton, 359 P.2d 121 (Alas. 1961). Given the weight or authority in this jurisdiction and the historical reliance placed upon R.S. 2477 in Alaska as a source of rights of way across the public domain, we are unwilling to conclude that the statute has no applicability to Alaska. We suspect that if the question were squarely presented to the Ninth Circuit Court of Appeals it would agree.

It has been held that R.S. 2477 first became applicable in Alaska by the Organic Act of May 17, 1884, 23 Stat. 254, whereby Alaska first became an organized territory. ~~Section~~ 9 of that Act, among other things, provided that the laws of the United States be extended to the Territory of Alaska, U.S. v. Rogge, 10 Alaska, supra at 147. As noted previously, R.S. 2477 is construed as a standing offer from the federal government for the creation of a right of way, Girves v. Kenai Peninsula Borough, 536 P.2d, supra at 1226. Under this construction, it has been held that the offer can be accepted (and the right of way created) either (1) by a positive act of the state or territory clearly manifesting an intent to accept the offer, Hammerly v. Denton, 359 P.2d, supra at 123.^{2/}

^{2/} Accord: Wilderness Society v. Morton, 479 F.2d 842, 882 (D.C. Cir. 1973), cert. den'd. 411 U.S. 917.

or (2) by public use of the right of way for such a period of time and under such conditions as to prove that the offer has been accepted, id.

Statutory acceptance of the grant, formal expression on the part of public officials of an intention to construct a highway or actual public construction of a highway may all constitute acceptance of the R.S. 2477 grant by the "positive act" of the appropriate public authorities. Thus, in Girves, supra, the Alaska Supreme Court held that AS 17.10.010 (establishing a highway easement along all section lines in the State) was sufficient to establish a right of way along the boundary of plaintiff's homestead coinciding with a surveyed section line. In Wilderness Society v. Morton, 479 F.2d 842 (D.C. Cir., 1973) - it was held that the State's application to the Bureau of Land Management to construct a "public highway" from the Yukon River to Prudhoe Bay, along with enabling State legislation, was sufficient to establish an acceptance of the federal grant. In addition, the actual construction or public maintenance of a highway may constitute acceptance. See Moulton v. Irish, 218 P.2d 1053 (Montana 1923), construction of highways; Streeter v. Stalnaker, 35 NW 47 (Nebraska 1901), public maintenance and improvement of highways.

Public use (sometimes called "public user") may also constitute acceptance of the grant in the absence of any positive official act. Whether any claimed use constitutes acceptance of the grant, however, is a question of fact to be decided by the court. It appears that continued and consistent use of a right of way across the public lands by even one person with an interest in the lands to which the road gives access may be sufficient to establish public user, State v. Fowler, 1 Alas. L.J., supra at 8 (April 1963). See also Hamerly v. Denton, supra at 125. However, the Alaska Supreme Court has held that mere desultory or occasional use of a road or trail does not create a public highway, id.^{3/}

^{3/} Of course, it is no longer possible to accept the R.S. 2477 grant by any of these methods, because R.S. 2477 was repealed by FLPMA, supra, in 1976.

2. Allotments As "Public Lands"

By its terms, R.S. 2477 is only an offer for a right of way across "public lands." In discussing this term in the context of R.S. 2477, the Alaska Supreme Court has noted:

The term "public lands" means lands which are open to settlement or other disposition under the land laws of the United States. It does not encompass lands in which the rights of the public have passed and which have become subject to individual rights of a settler. Hammerly v. Denton, supra at 123.

Beginning with the 1884 Organic Act, previously discussed, Congress has specifically provided for the protection of lands used or occupied by Alaska Natives. Section 8 of the Organic Act provided in part:

That the Indians or other persons in [Alaska] shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress.^{4/}

Federal decisions have long recognized the statutory protection afforded Alaska Native use and occupancy. See, e.g., U.S. v. Berrigan, 2 Alaska 442 (D. Alas. 1904); U.S. v. Cadzow, 5 Alaska 125 (D. Alas. 1914). Departmental regulations and policy reinforce the statutes. See, e.g., 43 CFR §§ 2091.1(e), 2091.2-1, 2091.5, 2091.6-3; see also Government Appropriation of Rights-of-Way in Alaska, Opinion of the Associate Solicitor, Public Lands (M-36595, March 15, 1960, copy attached).

In analogous circumstances, the U.S. Supreme Court has consistently recognized that railroad land grants are not to be construed in derogation of Native use and occupancy

^{4/} Similar provisions appear in the following acts: Act of March 3, 1891, c. 561, 26 Stat. 1095, § 14; Homestead Act of May 14, 1898, c. 299, 30 Stat. 412, § 7; Act of June 6, 1900, c. 786, 31 Stat. 330, § 27.

rights. That is particularly true where those rights have been protected by treaty, Leavenworth L & GR Co. v. United States, 92 U.S. 733 (1875), or specific statutory exceptions, Buttz v. Northern Pacific Railway Co., 119 U.S. 55 (1886). See generally, Bardon v. Northern Pacific Railway Co., 145 U.S. 535, 540-543 (1892). Most significantly, the U.S. Supreme Court has specifically protected rights of individual Native occupancy against competing federal grants even in the absence of any statutory or treaty protections where those rights flow "from a settled government policy." Cramer v. United States, 261 U.S. 219, 229 (1923). Whether from the statutory protection afforded in the 1884 Organic Act and the other legislation specifically noted or from the settled government policy of protecting Alaska Native use and occupancy, we think it is clear that lands used and occupied by individual Alaska Natives are not "public lands" within the meaning of R.S. 2477 and that the R.S. 2477 grant cannot attach during any period of such occupancy.

3. Acts Accepting the R.S. 2477 Grant

(A) Section Line Easements. You have noted that AS 19.10.010 establishes rights of way of varying widths along the section lines in the State. As noted earlier, the Alaska Supreme Court has concluded this statute is a positive official act constituting acceptance of the R.S. 2477 grant, Girves, supra. The Territorial statute accepting the grant was originally enacted on April 6, 1923 (19 SLA 1923), but was subsequently repealed (perhaps inadvertently) on January 18, 1949. Op. Ak. Atty. Gen. No. 7 at 3 (December 18, 1969). The statute was subsequently reenacted in substantially its present form by the 1953 Territorial legislature (Act of March 21, 1953, 35 SLA 1953). Id. Thus, whether a section line easement has attached to Native occupied land must be viewed against the backdrop of the dates of Native occupancy and the dates during which Alaska's acceptance of the grant was in effect. The section line easements could only attach to lands not occupied by Natives between the dates of April 6, 1923, and January 18, 1949, and from March 21, 1953, forward.

Additionally, by the terms of the State statute, the acceptance is dependent on the existence of a "section line." In the Opinion previously noted, the State Attorney General also concluded that for the R.S. 2477 grant to attach under the statute, the "public lands must be surveyed and section lines ascertained," id. at 7. We agree with this conclusion; therefore, you must also determine whether

the lands in question were subject to individual Native use and occupancy on the date the section line was actually surveyed.^{5/}

(B) Other Official Acts of Acceptance. As noted earlier, other official actions (i.e., construction, repair, dedications, etc.) can constitute official acceptance of the R.S. 2477 grant. Whether such official action has created an R.S. 2477 right of way will have to be determined on a case-by-case basis.

(C) Public User. Rights of way claimed to have been created by public use must also be determined on a case-by-case basis. On the one extreme, an obvious public road established prior to Native use and occupancy would certainly be sufficient to constitute acceptance of the R.S. 2477 grant; see State v. Fowler, 1 Alas. L.J. 7, supra. On the other extreme, it is equally clear that desultory or occasional use of a road or trail by individuals having no interest in the land to which they obtain access is not sufficient to create an R.S. 2477 right of way, Hamerly v. Denton, supra. Whether a given use is sufficient to constitute acceptance of the R.S. 2477 grant, may have to be determined judicially in all but the most obvious cases.

4. Widths

By State statute, section line easements on "public lands" are four rods (66 feet) wide with the section line as a center of the dedicated right of way.^{6/} Other official

^{5/} The Attorney General also concluded that the R.S. 2477 grant attaches on the date the "protracted surveys" were published in the Federal Register. We do not agree with this position; as a practical matter, the protraction diagrams are not a reliable means of ascertaining the correct position of the surveyed section line.

^{6/} A right of way 100 feet wide is granted between sections of land owned by or acquired from the State. Since Native occupied lands could not fall within this category, section line easements on Native allotments will be confined to the 66 foot width.

acts could conceivably establish larger rights of way. Rights of way established by public user appear to be confined to the width actually used, State v. Fowler, supra.

B. Other Access Questions

1. Obligations To Provide Access

We do not believe either the allottee or the United States is obligated to provide a warranty of access to the purchaser of an allotment. By statute (AS 34.15.030) Alaska has incorporated the common law covenants for title into any deed which by its terms "conveys and warrants" real property to another. Thus, a deed substantially in the statutory form includes implied warranties that at the time of the conveyance the grantor: (1) is lawfully seized of the estate in fee simple and has the right and power to convey the premises; (2) that the premises are free from encumbrances and (3) that he warrants quiet enjoyment of the premises and to defend the title against all persons claiming the premises.

You have advised that you use a special warranty deed to convey restricted Indian lands. As you know, a special warranty deed limits the grantor's obligation to defend only against claims arising through him. It does not require the grantor to defend against claims arising through other persons, 21 CJS "Covenants" § 49. Except as so limited, we believe the deed form you used includes all of the statutory covenants implied by AS 34.15.030. None of these, however, include a covenant of access to the land granted. See generally, Powell on Real Property, ¶ 904, et seq. (1968 edition). Furthermore, AS 34.15.030 specifically provides: "No covenant is implied in a conveyance of real estate, whether the conveyance contains special covenants or not." We interpret this to mean that unless there is a specific covenant of access, the grantor is not obligated to provide it.

2. Easements By Conveyance Or Covenant

In spite of the protection this doctrine affords both the United States and the allottee, we recommend that as a prudent land manager you advise the allottee to provide whatever access it is within his power to provide incident to the sale of an allotment. That is especially true if, as in one case you described to us, the allottee is selling a

portion of the allotment which would be landlocked by the remaining lands of the allottee or others. In these circumstances, we advise you to insure that appropriate access is guaranteed through the allottee's other lands either by covenant or specific grant of easement. See generally, Powell on Real Property, ¶ 407 and 408. See also, 28 CJS Easements, § 23, et seq. Conversely, if the allottee's other lands will be landlocked by conveyance of a portion of the allotment to a third party, the allottee should insure that he is reserved an easement in the lands granted. See 28 CJS Easements, § 29. Under these circumstances, failure to provide or obtain access at the time of conveyance could result in later litigation to establish an easement by necessity.

3. Easements By Necessity

Easements by necessity are implied easements across otherwise unencumbered tracts where necessary to afford access to an otherwise landlocked parcel. See generally, Powell on Real Property, supra, ¶ 410. This doctrine comes into play only where there is a unity of ownership between the dominant and servient parcels at the time the landlocked (i.e., dominant) parcel was severed from the rest of the estate. The doctrine would apply to both examples discussed above where the grantor conveys a portion of the allotment thereby isolating either the land conveyed or the grantor's retained lands. In these circumstances, the courts have construed the intention of the parties to create an easement of necessity across the servient estate to provide access to the landlocked (i.e., dominant) estate.

As applied in this jurisdiction, the doctrine only requires proof of reasonable (as opposed to absolute) necessity in order to imply an easement. U.S. v. Dunn, 476 F.2d 443, 446 (9th Cir. 1973). Although the easement must be something more than a mere "convenience," it is not necessary to show that it is the only means of access to the property. In any event, the determination of whether the easement is a "reasonable necessity" is a fact question which involves considerations of public policy as well as the intent of the parties and the reasonable utilization to be made of the landlocked parcel. See generally, Powell on Real Property, supra, ¶ 410.

The doctrine has also been applied to Indian lands in this jurisdiction, cf. Superior Oil Co. v. United States, 353 F.2d 34 (9th Cir. 1965). The oil company in this case

sought to obtain an easement to move heavy oil drilling equipment across Indian reservation lands in order to drill on lands owned by a mission society and leased to the oil company. The mission society had previously been granted the land by the United States under a statute permitting such grants to religious organizations engaged in mission or school work on Indian reservations. The court concluded that although the mission society had an easement by necessity for mission purposes, the scope of that easement could not be expanded to accommodate the purposes of the oil company. We know of no principle which would preclude an easement of necessity from attaching to lands merely because they are Indian trust or restricted lands where the easement of necessity doctrine is otherwise applicable. See also, U.S. v. Clarke, 529 F.2d 984 (9th Cir. 1976), aff'd U.S. _____, (No. 78-1693, March 18, 1980).

IV. SUMMARY

This, of necessity, has been a rather wide-ranging opinion dealing with the several general concerns you raised regarding easements across Indian allotments. We will summarize some of our conclusions below for ease of reference.

A. R.S. 2477 Easements

R.S. 2477 easements can be created either by the positive acts of authorized authorities or public user of a right of way across the "public lands." Native used and occupied lands, however, are not "public lands." Therefore, a right of way under R.S. 2477 can only be obtained if, at the time the R.S. 2477 grant is accepted, the lands were not subject to the individual use and occupancy rights of an Alaska Native who has applied for an allotment.

B. Section Line Easements

Whether a section line easement supersedes Native use and occupancy depends on whether the Native use and occupancy preceded either the statutory acceptance or actual survey of the section line easement. If Native use and occupancy began prior to April 6, 1923, or between January 13, 1949, and March 21, 1953, then the easement could not be imposed on those lands by subsequent survey of a section line. If unoccupied lands were surveyed either between April 6, 1923,

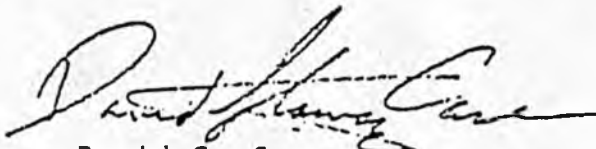
and January 18, 1949, or after March 21, 1953, then the section line easement supersedes Native occupancy rights.

C. Guarantees of Access

Although there is no legal requirement to guarantee access to otherwise landlocked allotments, you would be well advised to counsel the allottees to provide access if it is within their power to do so. It is especially important to provide access where there is an initial unity of title in the allottee. Under these circumstances an easement of necessity can be imposed to benefit a landlocked parcel. Providing access at the time of the grant will avoid later confusion and possible litigation.

D. Public or Private Access

You should also be aware that any R.S. 2477 right of access (whether by section line easement or otherwise) predating Native use and occupancy is a right of public access. While it may also permit private individuals to have access to otherwise landlocked parcels, it also permits the public at large to use the right of way. Of course, that does not permit the public to trespass on the allottee's or anybody else's private property.



David S. Case
Attorney/Advisor

Enclosure

cc: Scott Keep, Div. of Indian Affairs, Washington, D.C.
Area Realty Officer, Bureau of Indian Affairs, Juneau

MEMORANDUM


State of Alaska

TO: Department of Interior
Bureau of Land Management

DATE: April 8, 1974

FILE NO: 00-2528

TELEPHONE NO: 364-2121 Ext. 111

FROM:  B. A. Campbell
Commissioner of Highways

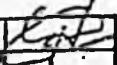
SUBJECT: Existing Trail System

The Alaska Department of Highways has researched and compiled a detailed Existing Trail System for the State of Alaska. We are transmitting one set of blueline prints and one bound set of IEM listings for your records.

The State of Alaska maintains ownership of these trails. The information on these trails is available to the public through the Alaska Department of Highways, and upon request will furnish at cost, approximately \$120.00, a combined set of the plans with the IEM run.

Attachments: as stated.

BAC/JOA/jal

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NOV 14 1984
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MEMORANDUM OF UNDERSTANDING
 BETWEEN ALASKA DEPARTMENT OF NATURAL RESOURCES AND
 ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
 AND
 BUREAU OF LAND MANAGEMENT

PURPOSE

1. The purpose of this agreement is to establish the procedures for the assertion of RS 2477 rights-of-way by the Alaska Department of Natural Resources (DNR) and the Alaska Department of Transportation and Public Facilities (DOT&PF) to the Bureau of Land Management (BLM). Federal, state, and local officials need to know locations of RS 2477 public right-of-way assertions in order to assist such officials in their land and resource management decisions. The public needs to know the location of RS 2477 public right of way assertions to avoid unauthorized uses on private lands. This Memorandum of Understanding (MOU) will establish procedures that will enable RS 2477 rights-of-way assertions to be placed on land status plats.

BACKGROUND

2. RS 2477, formally codified as 43 U.S.C 932 (repealed by P.L. 94-579, Federal Land Policy and Management Act of October 21, 1976), provides:

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

3. By regulation found in 43 C.F.R. 2602.5 (b), the Bureau of Land Management has provided:

In order to facilitate management of the public lands, any person or state or local government which has constructed public highways under the authority of RS 2477 (43 U.S.C. 932, repealed October 21, 1976) may file a map showing the location of such public highways with the authorized officer.

4. In Hamerly v. Denton, 359 P. 2d 121, 123 (Alaska 1961), the Alaska Supreme Court stated that the general rule regarding acceptance of the RS 2477 federal grant:

Before a highway may be created, there must be either positive act on the part of appropriate public authorities of the state, clearly manifesting an intention to accept the grant, or there must be public use for such a period of time and under such conditions as to prove that the grant has been accepted.

5. The United States Department of the Interior, Office of the Solicitor, stated in a memorandum dated July 7, 1983:

"[(T)he Department of the] Interior has long recognized that State law controls what constitutes a (R.S. 2477) highway within each state;" and

6. Alaska Statute 19.45.001(8) states:

"Highways includes a highway (whether included in the primary or secondary systems), road, street, trail, walk, bridge, tunnel, drainage structure and other similar or related structure or facility, and right-of-way thereof, and further includes a ferry system, whether operated solely inside the state or to connect with a Canadian highway, and any such related facility;" and

7. WHEREAS by statute, AS 19 SLA 1923; 123 SLA 1951; 35 SLA 1953; AS 19.10.010, the State of Alaska has accepted the RS 2477 grant.

8. The RS 2477 grant has also been accepted in many cases by actual public use or expenditure of public monies on unreserved public lands for highway purposes.

POLICIES AND PROCEDURES

9. DOT&PF shall have responsibility for asserting and for identifying and submitting maps to BLM of all RS 2477 rights-of-way established before October 21, 1976, identified on the list of state maintained highways. DOT&PF's responsibility under this paragraph includes both state and non state lands.

10. DNR or DOT&PF may identify, assert, and submit maps and evidence of use to BLM for all other RS 2477 rights-of-way established before October 21, 1976, situated upon any land within the State of Alaska.

11. DNR or DOT&PF shall accept evidence of use on any right-of-way established before October 21, 1976, from other state agencies, local governments, and members of the public. For all claims of RS 2477 rights-of-way which involve state land or provide access to state land or public water an ADL/LAS case file will be established.

12. DNR or DOT&PF may maintain duplicate sets of all files regarding RS 2477 rights-of-way. All newly created RS 2477 files, or any documents to be added to an existing file, will be duplicated and forwarded from one agency to the other.

Increments of maintenance over several years may equal construction. When public funds have been spent on the road it may be a public road. When the history of a road is unknown or questionable, its mere existence in a condition adequate for public use may be evidence that construction has taken place.

b. A highway is freely open to everyone. Roads that have had access restricted to the public by locked gates or other means may not be public highways.

c. The construction of a public highway on unreserved public land must have occurred prior to October 21, 1976.

d. A State has to have a procedure to confirm the R.S. 2477 public highway right-of-way permit.

18. This MOU establishes the state's procedure to confirm the RS 2477 and thereby fulfills item d in paragraph 17 above.

19. DNR shall plot each RS 2477 right-of-way asserted on their land status plats.

20. Nothing in this Memorandum of Understanding shall obligate any party in the expenditure of funds, or for future payments of money, in excess of appropriations authorized by law.

21. Each party agrees that it will be responsible for its own acts and the results thereof and each party shall not be responsible for the acts of the other parties; and each party agrees it will assume to itself risk and liability resulting in any manner under this agreement.

22. Nothing in this MOU is intended to limit agency or individual rights to normal administrative or judicial appeal processes.

23. Nothing herein is intended to conflict with Federal, State or local laws or regulations. If there are conflicts, this agreement will be amended as soon as practical to bring it into conformance with conflicting laws or regulations.

24. It is understood by all parties that individual citizens may be entitled to assert rights-of-way under RS 2477 notwithstanding this agreement. Nothing in this Agreement shall affect the right of private citizens to assert rights-of-way under RS 2477 in conformance with applicable law.

25. The effective date of this agreement shall be from the date of final signature. The agreement shall remain in effect until the parties jointly agree otherwise.

Jerry L. Brossia Date 9-28, 1984
 Jerry L. Brossia, District Manager,
 Northcentral District Office, Alaska Department of Natural Resources

Carl Johnson Date 9/28/, 1984
 Carl Johnson, District Manager,
 Fairbanks District Office, Bureau of Land Management

H. Glenzer Date 28 sept, 1984
 H. Glenzer, Deputy Commissioner,
 Northern Region, Alaska Department of Transportation & Public
 Facilities

13. All maps showing the location of RS 2477 rights-of-way established before October 21, 1976, submitted to BLM shall be the best maps possible but not of lesser detail than standard USGS maps at a scale 1:63,360. Maps and supporting documentation shall be submitted by both agencies concurrently. The submission of such maps showing the location of RS 2477 rights-of-way on public lands shall not be conclusive evidence as to their existence. Similarly, a failure to show the location of RS 2477 rights-of-way on any map shall not preclude a later finding as to their existence.

14. There shall be established an RS 2477 coordinating committee in the Northern Region of Alaska composed of DNR, DOT&PF and BLM. The purposes for this committee are as follows:

(a) coordination of agency priorities for identifying, locating, and asserting RS 2477 rights-of-way;

(b) coordination of RS 2477 processing procedures for identifying, locating, establishing case files, making assertions, and platting claims on both federal and state land status plats; and

(c) coordination of requests made to and by the agencies.

15. Each assertion of the existence of an RS 2477 right-of-way made pursuant to this agreement and the submissions to BLM will be reviewed by BLM to ensure the land was unreserved public land as of the date claimed and was established prior to the repeal of the law on October 21, 1976. BLM will not adjudicate the validity of RS 2477 assertions.

16. BLM, DNR, and DOT&PF shall each issue a serial number and establish a case file for each claim made pursuant to this agreement. All correspondence shall reference all agencies' file numbers.

17. BLM shall plot each RS 2477 right-of-way asserted on their Master Title Plats when the following criteria are met (BLM Manual 2801.24 B.1, Rel. 2-152, 9/10/82):

1. Criteria for identification of R.S. 2477 Public Highways, include four elements:

a. In order for a valid right-of-way to come into existence, there must have been the actual building (construction) of a highway. Mere use, planning, or surveying, does not equal construction. However, construction may not have occurred all at once. Road maintenance often equals improvement, or even construction.

CITIZENS' ADVISORY COMMISSION ON FEDERAL AREAS
515 Seventh Avenue, Suite 310
Fairbanks, Alaska 99701
(907) 456-2012

Memorandum

TO: Commission Members
FROM: Nancy Albrittain-Jackson
RE: Federal Right-of-Way Grants, RS 2477
DATE: May 2, 1983

Since settlement began in Alaska, the majority of the roads and trails were constructed out of necessity by the users of public lands. Construction was carried out under a number of statutes including the 1866 mining law, the applicable part of which is commonly referred to as RS 2477.

RS 2477 granted to the states and territories, free rights-of-way over unreserved public land for highway purposes. The object of the grant was to enable citizens to construct roads across public domain. There were no conditions except that the road had to be constructed and used by the public on what was at the time unreserved public land. RS 2477s were used for postal routes, freight hauling and access to mining claims, as well as other commercial travel and general public rights-of-way.

As settlement expanded and lands passed into private ownership or single use management areas, the issue of public use of existing roads and trails intensified into conflicts. At present, the Bureau of Land Management does not involve itself in RS 2477s, therefore conflicts must be resolved in court and the decision is usually based on a less than full understanding of the rights granted under Federal law and a less than complete record of the construction, use and land ownership at the time public use was initiated. Such documentation is essential in proving that a road is a RS 2477. Documentation of use is not always readily apparent, but can often be found in a number of historical sources such as old maps, Alaska Road Commission reports, Territorial Governor's reports, and affidavits of old-timers who used the roads and trails. Thus the private citizen is left to his own resources to defend these Federal access grants. Litigation is costly; the average citizen cannot afford it.

At stake are many roads, trails and access routes throughout the State which have been lawfully used and maintained. These rights will be lost forever if they are not secured. However, State policy has been inconsistent on the subject of RS 2477s. The State could establish a board composed of



Citizens' Advisory Commission on Federal Areas

515 Seventh Avenue
Suite 310
Fairbanks, Alaska 99701
(907) 456-2012

August 16, 1984

RECEIVED

AUG 2 1984

**Alaska Land Use Council
Anchorage, AK**

Governor Bill Sheffield, State Cochairman
Vern Wiggins, Federal Cochairman
Alaska Land Use Council
P.O. Box 100120
Anchorage, Alaska 99510

Dear Governor Sheffield and Mr. Wiggins,

Members of the Citizens' Advisory Commission on Federal Areas at their August 3 meeting passed a motion to request the Alaska Land Use Council to provide time for a report to the Council by the Commission chairman, Mr. Phil Holdsworth, at each of the Council meetings, beginning with the meeting of September 13.

The purpose of this report would be to coordinate information and ideas of common interest in an effort to work more closely on federal land management issues and concerns. Ten minutes should generally suffice for this brief exchange.

For the September meeting, the Commission wishes to make a presentation on the issue of RS 2477s, which will be submitted as a separate agenda item, and also discuss a proposal for enhancing the local hire program created by Section 1308 of the Alaska National Lands Conservation Act.

Sincerely,

A handwritten signature in cursive script that reads "Stan Leaphart".

Stan Leaphart
Executive Director

RS 2477
May 2, 1983
Page 2

members of each of the interested State agencies. This board could study the State's interest and make recommendations for a state-wide policy regarding RS 2477s. Legislation that would establish a clear specific State policy on access grants received from the Federal government would be binding on all State agencies has also been suggested.

In researching "traditional use" and RS 2477s, the implications of their significance becomes apparent. In order to resolve the problems associated with RS 2477s, the Department of Natural Resources would need to address RS 2477s within their land disposal program; the Department of Transportation and Public Facilities would be concerned about their responsibility to maintain a RS 2477; federal land management agencies would have to find a way to accommodate valid existing right-of-way grants within conservation system units; the issue will also have to be resolved on Alaska Native Claims Settlement lands.



Citizens' Advisory Commission on Federal Areas

515 Seventh Avenue
Suite 310
Fairbanks, Alaska 99701
(907) 456-2012

August 17, 1984

RECEIVED

Governor Bill Sheffield, State Co-Chairman
Vernon R. Wiggins, Federal Co-Chairmen
Alaska Land Use Council
P.O. Box 100120
Anchorage, Alaska 99510-0120

AUG 20 1984

**Alaska Land Use Council
Anchorage, AK**

Dear Governor Sheffield and Mr. Wiggins:

In response to the Alaska Land Use Council's (ALUC) call for agenda items, the Citizens' Advisory Commission on Federal Areas wishes to submit the following item for consideration.

The Commission is concerned that inadequate attention is being given to the issue of R.S. 2477 Rights of Way in the planning efforts being undertaken for the Conservation System Units (CSU's). It is noted that the Department of Transportation is the State agency vested with the authority to manage R.S. 2477 public highway grants on non-State lands. An absence of a clear policy and/or political will in previous State and Federal administrations has made it impossible for DOT to assert this authority.

The Commission proposes that the ALUC move to form a task force to formulate and execute a procedure to identify and manage these public highway easements on the ANILCA CSU's. We suggest that the task force include the Department of Transportation and Department of Natural Resources as the lead State agencies. The lead Federal agency should be the Bureau of Land Management. An important element of such an undertaking would be adequate funding for the necessary research.

Congress has recognized the undeveloped nature of Alaska's transportation and utility system in Title XI of ANILCA and called for a systematic and orderly process by which the transportation needs of the state are met. While ANILCA does not specifically address the question of R.S. 2477's in Title XI, valid existing rights are protected by Section 1109 as well as the Federal Land Management and Policy Act. This would include rights of way accepted by the Territory and State of Alaska through AS 19.10.010 or public user prior to 1974.

This issue has been ignored to the detriment of both the State and the Federal governments as well as the valid existing rights of the citizens of the State of Alaska. The recent arrest of a miner on the Bulenberg Trail inside the boundaries


Governor Bill Sheffield and Mr. Vernon Wiggins
August 17, 1984
page 2

of the Yukon-Charley National Park and Preserve is a dramatic example of the confusion inevitable when public issues of such import are neglected.

The Citizens' Advisory Commission on Federal Areas realizes this is a difficult and sensitive issue, especially with regard to access across ANILCA lands. Reluctance to deal with the issue is understandable. However, to continue to ignore the problem will not solve it. The Commission believes its proposal for the Alaska Land Use Council to form a task force is the best way to approach this issue, which may become more of a problem the longer it is ignored.

The Commission would like to extend an offer of assistance to the ALUC in the formation and operation of such a task force. We hope that you will give this matter your most serious consideration.

Sincerely,


for Phil Holdsworth
Chairman

DRAFT



*Citizens' Advisory Commission
on Federal Areas*

515 Seventh Avenue
Suite 310
Fairbanks, Alaska 99701
(907) 456-2012

TO: ALASKA LAND USE COUNCIL MEMBERS
FROM: CITIZENS' ADVISORY COMMISSION ON FEDERAL AREAS
RE: RS 2477 RIGHTS OF WAY
DATE: SEPTEMBER 13, 1984

In 1866 the U.S. Congress passed a law entitled "An Act granting the right of way to Ditch and Canal Owners over the Public Lands, and for other Purposes." Section 8 of this act, which generally dealt with mining activities on the public lands, read as follows: "And be it further enacted, That the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted."

This grant, more commonly known as Revised Statute (RS) 2477 (43 USC §932), was a standing offer by the Federal government until it was repealed with the passage of the Federal Land Policy and Management Act (FLPMA) of 1976. While RS 2477 is no longer the legal basis for the construction of new public highways, valid existing rights granted to the Territory, State and public of Alaska during the period of the act's efficacy are protected by FLPMA Section 701 and reaffirmed by ANILCA Section 1109.

There are perhaps 150 or more RS 2477 rights of way in Alaska, concentrated primarily in the interior, which were accepted directly by the public of the State and the Territory through actual construction and use. This is exclusive of the Section-line right of way dedicated by the State in AS 19.10.010. which legislation acts as formal acceptance of the grant offered. Informal acceptance, that which is accepted directly by the public through actual use, is an equally valid right recognized in case law on the subject.

On State owned lands, authority for the management of these public rights of way is vested in the Department of Natural Resources (DNR). On Federal and private lands, the Alaska Department of Transportation and Public Facilities (DOT/PF) is the managing agency. This authority would extend to those ANILCA lands which were vacant and unreserved public lands during the period of time when the grant was in effect in the Territory and State. The Alaska Organic Act of 1884 was the legislation which brought United States law to Alaska, including RS 2477, and can be regarded as the date at which the grant became effective in the Territory.

In 1923 the Territorial legislature formally accepted the grant by dedicating all Section lines to be public highways with an

DRAFT



Citizens' Advisory Commission on Federal Areas

515 Seventh Avenue
Suite 310
Fairbanks, Alaska 99701
(907) 456-2012

August 31, 1984

RECEIVED

SEP 04 1984

Alaska Land Use Council
Anchorage, AK

Dear Alaska Land Use Council Member:

Enclosed please find a copy of a draft memo outlining the Citizens' Advisory Commission on Federal Areas position on Revised Statute (RS) 2477 Rights of Way. The Commission sees a need for and is proposing the formation of a task force which will establish a procedure to confirm the State's RS 2477 claims.

Please consider this proposal as it will be one of the topics of discussion at the upcoming Sept. 13 meeting of the Council.

Sincerely,

for *Michael Welsh*
Stan Leaphart
Executive Director

DRAFT

easement of either 66 feet or 100 feet depending on the land status at the time of the dedication. Informal acceptance of the grant has occurred every time men cut their way through the wilderness during the gold rush in effect constructing public highways for all to use. Many years of use by succeeding fortune seekers, trappers, traders, subsistence users and recreationists along those routes has reinforced this legacy. Once granted and accepted, the vacant, unreserved public lands over which the right of way lies are severed from ownership by the federal government and pass to the Territory, the State or the public of those political entities.

The Alaska National Interest Lands Conservation Act (ANILCA) mandated the preparation of management plans for the lands added to the Conservation System Units (CSU's) created by that act. Unfortunately, the Federal agencies have neglected for the most part to consider these public highways in the planning efforts now underway. Ignoring the issue of RS 2477 has and will continue to do harm to the interests of the State, the Federal government and the Alaskan public.

Recently, a miner was arrested by Park Service personnel within the bounds of the Yukon-Charley National Preserve while moving a bulldozer along the Bulenberg Trail which both he and State officials claim is a valid RS 2477 right of way. The miner has patented and unpatented mining claims in the National Preserve to which he is guaranteed access by Section 1110 of ANILCA. These "guarantees" are honored by making miners and other traditional users of the lands in question contend with excessive amounts of paperwork to get permits providing access to these lands. This Commission believes that this system of permitting is contrary to the spirit and the letter of the law where legitimate RS 2477's are involved. No one should be obligated to request permission for the use of public rights of way that have been part of a transportation system that has been in use for over eighty years. Valid rights of way belonging to the State of Alaska are not subject to the issuance of permits by Federal land managers.

This is clearly the intent of the Congress as evidenced by the report of the Senate Energy and Natural Resources Committee (Report #96-413; November 14, 1979; page 303): "Those private lands, and those lands owned by the State of Alaska or a subordinate political entity, are not to be construed as subject to the management regulations which may be adopted to manage and administer any national conservation system unit which is adjacent to, or surrounds, the private or non-federal public lands. Federal laws and regulations of general applicability to both private and public lands, such as the Clean Air Act, the Water Pollution Control Act, U.S. Army Corps of Engineers wetlands regulations, and other Federal statutes and regulations of general applicability would be applicable to private or non-federal public land inholdings within the conservation system units, and to such lands adjacent to conservation system units, and are thus unaffected by the passage of this bill."

DRAFT

The State officials responsible for asserting the State's claims and managing these rights of way on behalf of the Alaskan public have been reluctant to do so. Perhaps this is due to a desire to de-polemicize the relations between the State and Federal governments since the passage of ANILCA. However, an absence of both a clear policy and the political will to follow through on such a policy is tantamount to a "de facto" abandonment of these rights of way. This Commission is implacable in its opposition to such an abandonment.

The Yukon-Charley National Preserve case involves more than access by RS 2477 and will be settled in a court of law. One thing is clear however, the trail used in this instance is a valid, documented RS 2477 according to personnel in both the Alaska Department of Transportation and the Department of Natural Resources.

The Citizens' Advisory Commission on Federal Areas proposes the formation of a work group or task force which will establish a procedure to confirm the State's RS 2477 claims. The Commission requests that the member agencies of the ALUC cooperate fully in the implementation of this proposal. Such cooperation would include agency acknowledgement of identified RS 2477 rights of way in the planning efforts of the CSU's, adequate manpower and funding for the necessary research.

The Commission recommends that the Alaska Department of Transportation and Public Facilities and the Department of Natural Resources act as the co-lead agencies on behalf of the State in the task force. We recommend the Bureau of Land Management as the lead agency for the Federal government.

This matter is in urgent need of attention. Access to legitimate inholdings on the CSU's is not being adequately addressed by the Federal agencies despite the guarantees of ANILCA Section 1110. In the absence of a clear initiative on the part of the State, the land managing agencies of the Federal government are only too willing to maintain a posture of silence on the RS 2477 issue while plans for the CSU's are being prepared. Timely action by the appropriate State agencies is necessary to ensure federal and private recognition of RS 2477 rights of way. These rights have been jeopardized by the bureaucratic inertia of previous administrations.

The Citizens' Advisory Commission on Federal Areas believes the ALUC is the proper instrument through which this problem may be addressed. Formation of an intergovernmental task force will clear up some of the confusion felt by private and public land managers on all levels of responsibility. Perhaps more importantly, this proposal calls for Federal recognition that the State of Alaska is entitled to the same rights granted to all other states.

DRAFT

M I N U T E S

OF THE FOURTEENTH REGULAR MEETING OF THE
ALASKA LAND USE COUNCIL
September 13, 1984
Anchorage, Alaska

I. CALL TO ORDER

The meeting was called to order by the State Cochairman Designee, Robert Grogan, at 9:07 A.M., in the Alaska Land Use Council Conference Room, 1689 "C" Street, Anchorage, Alaska, Thursday, September 13, 1984.

II. ESTABLISHMENT OF QUORUM

Council Members Present:

Vernon R. Wiggins	Federal Cochairman
Robert Grogan	State Cochair Designee, Representing Governor Sheffield, State Cochairman
Don Nielsen	Representing Jake Adams, Alaska Native Regional Corporations
Roger Contor	Regional Director, National Park Service
Mike Penfold	Director, Bureau of Land Management
Dave Haugen	Representing Richard Knapp, Commissioner, Department of Transportation and Public Facilities
Janie Leask	President, Alaska Federation of Natives
Michael Barton	Regional Forester, U.S. Forest Service
Robert Putz	Regional Director, U.S. Fish & Wildlife Service
Denny Kelso	Representing Don Collinsworth, Department of Fish & Game
Esther Wunnicke	Commissioner, Department of Natural Resources
Frank Cunningham	Regional Director, Federal Aviation Administration
Jim Brooks	Representing Robert McVey, Director, National Marine Fisheries Service
Richard Neve',	Commissioner, Department of Environmental Conservation

A quorum was established with all members of the Council present or represented.

Opening Remarks of Cochairman:

MR. WIGGINS welcomed Mr. Michael Barton, Regional Forester, U.S. Forest Service, to the Council succeeding Mr. John Sandor who had retired since the last meeting. Mr. Wiggins praised Mr. Sandor for his 20 years' service in the State of Alaska. A plaque was presented to Mr. Sandor for his service on the council and he was honored following the meeting at a special reception.

Jim Brooks is sitting in for Mr. McVey, Regional Director, N.O.A.A.

Don Nelson works for Bristol Bay Native Corporation and is present on behalf of Jake Adams who has not returned from Caribou hunting.

III. ADOPTION OF AGENDA

A MOTION WAS MADE BY MS. WUNNICKE THAT THE COUNCIL ADOPT THE AGENDA.

Mr. Contor requested the deletion of one item from the proposed agenda, Action Item 3, Yukon Charley General Management Plan, at the request of the State which needs more time to complete its review, and recommended it appear on the agenda of the next quarterly meeting of the Council. Sally Gibert distributed a memo explaining that the State intends to use the time to complete its review of the plan. Mr. Contor praised the progress being made since the process of planning

development and most review was moved to Alaska, but requested the State make every effort to stay within agreed deadlines.

Mike Penfold of the BLM requested two additional items be added to the discussion and briefing session, 4. New Townsite policies being implemented by the Bureau of Land Management, and 5. Competitive races and similar events crossing multi-jurisdictional lands.

Janie Leask requested the Alaska Land Bank be moved from Discussion to Action Items on the Agenda in order to obtain the Council's endorsement of a 90-day extension to the comment period.

With these modifications, THE MOTION FOR ADOPTION OF THE AGENDA PASSED UNANIMOUSLY.

IV. LAND USE ADVISORS COMMITTEE REPORT

DR. DREW reviewed the actions and motions that the advisors committee took on their meeting on August 30, 1984 in Anchorage.

A MOTION was made by Wayne Ross that the Land Use Advisors Committee and the Alaska Land Use Council defer consideration of the Bristol Bay Cooperative Management Plan until its next meeting, after the September 13, 1984 meeting of the Alaska Land Use

Council, and that the full text of the revised plan be submitted to the members of the Land Use Advisors Committee and the Alaska Land Use Council at least 45 days before said meeting. The motion was seconded by Brian Rogers and a voice vote was taken. THE MOTION PASSED UNANIMOUSLY.

DR DREW acknowledged that the Yukon Charlie General Management Plan agenda item had been deleted from the present meeting. However, he read two motions that were passed with regard to the Yukon Charlie area:

A MOTION was made by Brian Rogers that the Land Use Advisors Committee encourage the National Park Service and the State of Alaska to provide greater public access to and through the Yukon Charlie Rivers National Preserve by encouraging construction and operation of a sternwheeler ferry between Dawson and Circle, Alaska, or other appropriate means. The intention was not that the state or the federal government establish the ferry system, but that the establishment of it be encouraged by whatever means seem to be the best. The motion was seconded by Dr. Hugh (Bud) Fate and a voice vote was taken. THE MOTION PASSED UNANIMOUSLY.

A MOTION was made by Steve Silver that the Land Use Advisors Committee recommend that the Alaska Land Use Council not approve the Yukon Charley Rivers Preserve General Management Plan. The Motion was seconded by

Dr. Hugh (Bud) Fate and a voice vote was taken. THE MOTION DID NOT PASS, with six (6) of the Advisors voting affirmative, three (3) of the Advisors voting negative, and two (2) of the advisors abstaining.

I was asked by the Advisory Committee to list the two reasons for the six negative votes with respect to that motion. The reasons for the negative votes: 1) Some of the advisors felt that provisions for the development of public access by ground or water transportation for recreational use within the preserve and park are inadequate. 2) Provisions for fisheries enhancement for recreational or subsistence use are nonexistent in the plan.

A MOTION was made by Steve Silver moving that the Land Use Advisors Committee urge the Alaska Land Use Council, and specifically the Governor, as State Cochairman, to request a State of Alaska Attorney General's opinion on the legality of the use of Section 1302,i) of ANILCA, to add a 971,800-acre parcel of relinquished State selections located adjacent to the Arctic National Wildlife Refuge, in light of the requirements of Section 1326 of ANILCA which requires congressional approval of any addition of acreage exceeding 5,000 acres to a wildlife refuge. This opinion should specifically address the issue of "donation" and whether relinquished State selections can be donated by the State under the provisions of

Section 1302(i) of ANILCA. If the Attorney General's office determines that the use of Section 1302(i) is not legal, the Land Use Advisors Committee urges the Governor to take such action, including legal action, as is necessary, to require the Department of the Interior to comply with the provisions of Section 1326 of ANILCA. The Motion was seconded by Brian Rogers and a voice vote was taken. THE MOTION PASSED UNANIMOUSLY.

In addition, a number of the advisors requested clarification from the federal solicitor on the use of the term "donation" in this particular issue, and it was suggested that the federal Cochairman request such clarification from the federal solicitor.

A MOTION was made by Bob Swetnam that the Alaska Land Use Council, at its November or December meeting, request the Department of Interior withhold finalizing the Proposed Cabin Regulations until the matter has been studied and considered by the Alaska Land Use Council and their recommendations forwarded to the Department of Interior. The Motion was seconded by Wayne Ross and a voice vote was taken. THE MOTION PASSED UNANIMOUSLY.

With reference to the proposed cabin regulations, a MOTION was made by Dr. Hugh (Bud) Fate TO USE A MEDIATION BOARD, COMPOSED OF THE National Park Service, the State of Alaska, and a local peer group, to adjudicate matters between the claimant and Federal

Government. The second preferred alternative would be the use of an administrative law judge and the procedure associated therewith. The Motion was seconded by Wayne Ross and a voice vote was taken. THE MOTION PASSED UNANIMOUSLY.

A MOTION was made by Brian Rogers that the Land Use Advisors Committee request the Alaska Land Use Council extend for 90 days the comment period on Proposed Guidelines for the Alaska Land Bank. The Motion was seconded by Steve Silver and a voice vote was taken. THE MOTION PASSED UNANIMOUSLY.

A MOTION was made by Steve Silver to institutionalize a process wherein all actions taken by the Land Use Advisors will be included under the appropriate topic, in the Alaska Land Use Council's Agenda packets. Said actions to be noted under one of three titles:

1. "Recommendation by Land Use Advisors Committee;"
2. "Item Considered - No recommendation made;"
3. "Item Not Considered - Not sufficient time; allotted to study."

The motion was seconded by Brian Rogers and a voice vote was taken. THE MOTION PASSED UNANIMOUSLY.

The purpose of this motion is that sometimes the Advisors Committee discusses items that may be on a Land Use Council Agenda two or three meetings after the

Advisors Committee has taken place. Sometimes the results of the Advisors actions get lost before the actual Council meeting takes place. The intention here was simply to insert a sheet showing advisors actions before each of the items as they come up on the Council agenda for a specific meeting.

A MOTION was made by Brian Rogers to approve the following Resolution recognizing Mr. Steve Silver for his service, dedication and effective work on the Land Use Council Advisors Committee since the inception of the Committee. Mr. Silver will be leaving Alaska temporarily to pursue his legal career in Washington D.C. The Motion reads as follows:

WHEREAS, Steve Silver has been an active member of the Alaska Land Use Advisors Committee since its inception,
and

WHEREAS, Steve served as chairman of the Committee during its formative year, and

WHEREAS, Steve's knowledge of Alaska land use issues and his detailed knowledge of the Alaska National Interest Lands Conservation Act has been invaluable to the Committee, and

WHEREAS, Steve's understanding of federal procedures and the needs of state residents has been beneficial to

the Committee in our consideration of recommendations to the Alaska Land Use Council and federal and state agencies, and

WHEREAS, Steve had decided to leave Alaska temporarily to pursue his legal career,

now therefore be it resolved by the Land Use Advisors Committee of the Alaska Land Use Council that we express our

- heartfelt thanks to Steve Silver for his service to the Committee, the State of Alaska, and the people of Alaska;

- sorrow that he is leaving the Committee;

- best wishes for his future endeavors, and

- hopes that he will return to Alaska to continue his involvement in Alaska Land issues.

The motion was seconded and a vote was taken. THE MOTION PASSED UNANIMOUSLY, thus ending the report by Dr. Drew for the Land Use Advisors Committee.

MR. WIGGINS reported that there was a solicitor's opinion dated August 27, 1984 regarding Section 1326. The use of the word "donation" there gives rise to this

concern. In order to satisfy the request of Dr. Drew and others, Mr. Wiggins will ask the Solicitor's office to talk with the State Attorney General's office and clarify the use of the word "donation" in the text of the document.

MR. WIGGINS also indicated he was not aware that the Land Use Advisors Committee had made an identical recommendation to the one Ms. Leask had indicated that AFN would offer requesting an extension of the 90 days on the Land Bank.

Regarding including Advisors Committee comments in the agenda, MR. WIGGINS encouraged members of the Land Use Council to become more than "one day a quarter" participants. He acknowledged that all are very busy doing many other commendable things and there is not a lot of time, but effective participation requires more than one day a quarter on Land Use Council matters.

MR. WIGGINS commended Dr. Drew's detailed report on the reasons that six of the members voted against the Yukon Charlie General Management Plan.

MR. BROOKS requested clarification of the Bristol Bay Motion in relationship to Paragraph 2 (d) which is directed to the Secretary of the Interior to enter into an MOU. He questioned if it ought not also be directed to the Governor.

MS. WUNNICKE said she had no objections.

V. ACTION ITEMS

1. MR. NEVE' MOVED THE ADOPTION OF THE MINUTES OF THE PREVIOUS MEETING, HELD May 23, 1984. MR. BARTON SECONDED THE MOTION, AND IT PASSED UNANIMOUSLY.

2. Bristol Bay Cooperative Management Plan

MS. WUNNICKE identified the report to the Council members with respect to comments received by Bob Putz and herself as designees of the Cochairmen of the Council with respect to the Bristol Bay Cooperative Management Plan; as well as correspondence between the Governor of Alaska and the Secretary of the Interior; a memorandum from Bob Putz which originally was addressed to the Advisory Committee of the Council and has since been furnished to all members of the Council; and a letter from herself outlining the actions contemplated by the State of Alaska. MS. WUNNICKE MOVED THAT THE ALASKA LAND USE COUNCIL ADOPT THE FOLLOWING MOTION IN THREE MAJOR PARTS:

"A. The Alaska Land Use Council recommends to the Secretary of the Interior that the Bristol Bay Cooperative Management Plan be amended to reflect the decision of the State of Alaska to withdraw as co-signer of the plan;

B. That the specific recommendations which have already been presented by the U.S. Fish and Wildlife Service, the Department of Natural Resources and the Alaska Land Use Council Staff Committee be adopted by the Council and included as part of its recommendation to the Secretary. These recommendations are:

(1) That an introduction to the plan (as described in Dr. Putz's memo of August 30, 1984) be included in the document clarifying that all items in the plan relating to non-federal lands and actions are "recommendations" and not binding on the state government, local governments or Native Corporations;

(2) All items relating to federal lands and actions remain as presented in the Proposed Plan;

(3) That changes recommended by the Departments of Natural Resources and Fish and Game and concurred with by the Staff Committee be incorporated in the plan;

(4) That a master memorandum of understanding be entered into by the Secretary of the Interior and the State of Alaska following approval by the state of the Area Plan and the Secretary of the Bristol Bay Regional Management Plan, to address items requiring participation by both parties;

(5) Prior to printing the Bristol Bay Regional Management Plan and Final E.I.S., the plan be edited to reflect these recommendations.

C. That the Alaska Land Use Council approves the Bristol Bay Regional Management Plan (formerly Cooperative Management Plan) with the above revisions and recommends that it be published along with a Final Environmental Impact Statement and, after compliance with the required federal procedures, the plan be signed by the Secretary of the Interior."

THE MOTION WAS SECONDED BY DR. PUTZ.

In the discussion that followed, Janie Leask (AFN) expressed disappointment that the original cooperative land use plan could not be worked out or implemented. She strongly recommended that the memorandum of understanding between the State of Alaska and the Department of the Interior include an annual meeting of federal, state, and local people to see how the different plans are progressing, and in a cooperative effort see that the plans are brought before the Land Use Council to assure communication and cooperation and leave the door open to a future Bristol Bay cooperative management plan. Ms. Wunnicke endorsed the idea of public participation in the final plan. Dr. Putz recommended an annual report to the Council. Mr. Nielsen identified a deviation from the BBRMP that the Alaska Peninsula National Wildlife Refuge Plan has taken already. It does not coincide with the statements made by the Secretary of the Interior.

Dr. Putz said that the Secretary has made no statements. He recognized that the proposed Bristol Bay Regional Management Plan did identify three trans-peninsula transportation corridors: Pilot Point to Wide Bay; Port Heiden to Kujulik/Aniakchak Bay; and Port Moller to Balboa

Bay. The Draft Alaska Peninsula National Wildlife Refuge Comprehensive Conservation Plan states that the Pilot Corridor to Wide Bay and the Port Heiden to Kujulik/Aniak Bay identify routes that are subject to our compatibility test, and that roads on these corridors appear to be incompatible with the purpose of the refuge at this point in the planning process. Although it may appear that the Service is going counter to the Bristol Bay Regional Management Plan it has carefully considered this position before drafting the plan, and offers the reason for its position as follows:

"The Bristol Bay Regional Management Plan simply identifies possible corridors. The Alaska Peninsula National Wildlife Refuge Comprehensive Conservation Plan identified an area within the Refuge where the greatest possibility of oil and gas in commercial quantities were identified, and therefore we developed and identified the route to be used in moving these products to market, and that was Port Moller to Balboa." Putz referred to page 100 of the plan which shows that if at some future time the commercial discovery of oil and gas is made in the region and a pipeline across the peninsula is proposed to facilitate product marketing and distribution, then development of this corridor will be reviewed under Title 11 ANILCA and appropriate regulations. It is not

ruled out totally. We are just saying, wait till the time is there. The bottom line is that this is a draft plan and we would appreciate your comments on it.

MR. NIELSEN drew to the Council's attention that The Bristol Bay Native Corporation does not look at the draft refuge plan favorably now.

MR. KELSO thanked the study group and its technical teams for all their efforts in working on the Bristol Bay plan. A great deal of hard work and commitment of time and resources over the past three and a half years has gone into this Plan. It has resulted in a high quality product and it set a standard for public participation and effective cooperation and coordination among state and federal agencies and the public. He praised the hard work and genuine productivity that has come from the effort.

THE MOTION CARRIED AS PROPOSED BY UNANIMOUS VOTE.

Ms. Wunnicke noted that the Commissioners of Natural Resources, Department of Fish and Game and Department of Environmental Conservation will be co-signing the State's Area Plan today.